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

DEPARTMENT:	Capital Improvement
AGENDA DATE:	November 9, 2021
CONTACT PERSON/PHONE:	Sam Rodriguez, P.E., City Engineer, (915) 212-1845
DISTRICT(S) AFFECTED:	All Districts

# STRATEGIC GOAL: 6. Set the standard for sound governance and fiscal management SUBGOAL: 6.5. Deliver services timely and effectively with focus on continual improvement

# **SUBJECT:**

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

- 1. CBRE, Inc.
- 2. Gayle-Reid Appraisal Services, Inc.
- 3. Lowery Property Advisors, LLC.
- 4. Ralph Sellers & Associates
- 5. Wilkinson, Pendergras & Associates LP.

Each On-Call Agreement will be for an amount not to exceed \$100,000. In addition, the City Manager is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement. Further, that the City Manager, or designee, is authorized to execute any amendments to the agreements provided such amendments do not increase the contract amounts. Further, that the City Manager, or designee, is authorized to exercise up to three options to extend the contracts for one year each option, each option increasing the contract amount by an additional \$50,000 for a total contract amount, including options, not to exceed \$250,000.

# **BACKGROUND / DISCUSSION:**

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

# **PRIOR COUNCIL ACTION:**

NA

# HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? \_x\_ YES \_\_\_NO

**PRIMARY DEPARTMENT:** Capital Improvement Department **SECONDARY DEPARTMENT:** 

# **AMOUNT AND SOURCE OF FUNDING:**

Rea; property transactions and leases

# **BOARD / COMMISSION ACTION:**

N/A

Jerry DeMuro/for Sam Rodriguez, P.E., City Engineer DEPARTMENT HEAD:

Revised 04/09/2021

# **RESOLUTION**

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

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

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**ADOPTED** THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.

CITY OF EL PASO:

Oscar Leeser Mayor

ATTEST:

Laura Prine City Clerk

APPROVED AS TO FORM:

Omar De La Rosa Assistant City Attorney APPROVED AS TO CONTENT:

erry DeMuro/for

Sam Rodriguez, City Engineer Capital Improvement Department

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CITY OF EL PASO A&E SELECTION SCORESHEET					
EVALUATION CRITERIA	SOLICITATION #2021-1448R ON CALL REAL ESTATE APPRAISAL SERVICES				
	CBRE VALUATION & ADVISORY SERVICES	GAYLE-REID APPRAISAL SERVICES	LOWERY PROPERTY ADVISORS	RALPH SELLERS & ASSOCIATES	WILKINSON, PENDERGRAS & BEARD
Rater 1	65	54	61	49	59
Rater 2	85	80	80	69	81
Rater 3	84	86	86	81	86
Rater 4	96	94	93	79	87
Rater 5	95	93	84	78	88
	425	407	404	356	401

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

This On-Call Agreement for Professional Services Appraisal Services ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_2021 ("Effective Date"), and is between the CITY OF EL PASO, TEXAS (the "City") and CBRE, Inc. (the "Appraiser"). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

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

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

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

The parties agree as follows:

#### **SECTION 1. TERM.**

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

#### SECTION 2. SUBJECT PROPERTY TO BE APPRAISED.

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

#### **SECTION 3. PAYMENT**

A. The City will pay the Appraiser an amount not to exceed \$100,000. No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement. The Appraiser will invoice the City following the completion

of each task order in accordance to the fee schedule attached to this Agreement as **Attachment "A"**. If the City exercises an option to extend the term as described in this Agreement above, then the maximum payment amount under this contract will be increased by \$50,000 for each option exercised by the City for a total amount, including all options, not to exceed \$250,000. The parties agree that the exercise of an option only increases the maximum contract amount and does not constitute a request for services from the Appraiser unless accompanied by a Task Order. The Appraiser will abide by the fees listed in Attachment "A" to this Agreement during any option periods exercised by the City.

#### SECTION 4. SCOPE OF APPRAISER'S SERVICES.

- A. The Appraiser will perform the services as provided by each Task Order issued by the City in writing ("**Task Order**"). The Appraiser will perform the services for the fees stipulated on the fee schedule attached to this Agreement as Attachment "A". The Appraiser will not perform any services until the Appraiser has received a Task Order from the City. Notwithstanding anything to the contrary, the City will not owe the Appraiser any payments for any work that is performed without a Task Order.
- B. Unless otherwise provided in the Task Order, the Appraiser will perform the following services for all Task Order's issued by the City:
  - 1. APPRAISAL. The Appraiser shall appraise the property identified in the task order and prepare and deliver one (1) draft appraisal report for on or before the date specified in the Task Order to the City Representative. For purposes of this Agreement, the "City **Representative**" is the City Engineer or designee. The City Representative will review the draft appraisal report in a timely manner. Within seven (7) City business days after the Appraiser receives the City Representative's written comments, the Appraiser will deliver three (3) hard copies and an electronic file (a pdf and tiff file on one CD) of the appraisal report to the City. The City Representative may waive the requirement for hard copies and/or CD.
  - 2. PROPERTY INSPECTION. The Appraiser shall personally inspect the property identified in the Task Order, to include any buildings, structure improvements, fixtures and appurtenances, thereon or belonging thereto. If the Appraiser's inspection or investigation discloses a sale of a portion of a property by an unrecorded contract of sale or otherwise, the Appraiser shall notify the City.
  - 3. VALUATION DATA. The Appraiser shall make such investigations, studies and property inspections as are appropriate to enable the Appraiser to derive sound conclusions and to prepare the appraisal report to be furnished under this Agreement,

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

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

- 7. Appraiser will provide the services in two parts. First Appraiser will provide a Restricted Report & second a Full Report in accordance to the timelines set in the Task Order.
- 8. EXPERT WITNESS. If specifically requested by a Task Order, the Appraiser will provide expert witnesses services in any Eminent Domain proceeding or other judicial proceedings as directed by the Task Order.

## SECTION 5. CONTENTS OF APPRAISAL REPORT.

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

or any other interest that would conflict in any way with the services performed or the making of an impartial appraisal report;

- 7. A certification that, in the Appraiser's opinion, the market value of the property identified in the Task Order is an amount to be stated as of the date of valuation determined in accordance with the Task Order; and
- 8. The signature of the Appraiser.
- C. LEGAL AND TITLE MATTERS AFFECTING VALUE. The appraisal report shall include a report of any official citations or personal observations by the Appraiser of any condition or occupancy of the Property in violation of law, and any other legal or title matters that the Appraiser is aware of affecting the available lawful uses or the value of the Property.
- D. HIGHEST AND BEST USE. The appraisal report shall include the Appraiser's opinion as to the highest and best use for the property identified in the task order.
- E. PROPERTY VALUATION AND APPRAISAL ANALYSES. The appraisal report shall utilize basic appraisal principles and standards of professional practice to set forth the market value of the property identified in the Task Order. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching a conclusion as to value and all data and analyses needed to explain and support the valuation, including:
  - 1. Such maps, plans, photographs or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser; and
  - 2. The Appraiser's evaluation of the indications of value deduced from its separate analyses of the various evidences of value and an explanation of how it reached its final conclusion as to the market value of the property identified in the task order.

#### SECTION 6. ITEMS TO BE PROVIDED BY CITY.

- A. The City agrees to furnish the Appraiser with the following:
  - 1. PROPERTY MAP. Each Task Order will have a map or plat, based on official records, of the Property showing the boundaries and dimensions of the property to be appraised.
  - 2. OWNERSHIP DATA. The name and, if known or shown of record, the address of the ostensible owner as it appears of record and the legal description of the property in the

Task Order as shown by the conveyance or conveyances or other instrument by which the record owner acquired title.

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

#### SECTION 7. REPRESENTATIONS AND AGREEMENTS OF APPRAISER.

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

release to the public any appraisals provided by the Appraiser without the Appraiser's consent.

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

#### SECTION 8. INTEREST OF OFFICIALS OF CITY.

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

#### **SECTION 9. CHANGES.**

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

#### **SECTION 10. TERMINATION.**

A. TERMINATION FOR FAILURE TO FULFILL. If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner all obligations under this Agreement or a Task Order, or if the Appraiser shall violate any of the covenants or agreements thereof, the City may, upon written notice to the Appraiser, terminate the right of the Appraiser to proceed under this Agreement or with such part or parts thereof as to which there has been default, and may hold the Appraiser liable for any damage caused to the City by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this Agreement shall, at the option of the City, become its property

and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Appraiser, however, shall not thereby be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Appraiser, and the City may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the City from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Section solely for reasons of delay if the delay is due to causes beyond the control and without the fault or negligence of the Appraiser, but this shall not prevent the City from terminating this Agreement because of such delay.

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

#### **SECTION 11. INSURANCE.**

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

\$1,000,000.00 Per Occurrence\$2,000,000.00 General Aggregate\$2,000,000.00 Products/Completed Operations Aggregate

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\$1,000,000.00 Personal and Advertising Injury

#### Personal Injury or Death & Property Damage

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

# b. AUTOMOBILE LIABILITY

Combined Single Limit \$1,000,000.00 per accident

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

#### **SECTION 12. INDEMNIFICATION.**

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

#### **SECTION 13. GENERAL PROVISIONS.**

A. NON-EXCLUSIVE AGREEMENT. This Agreement is non exclusive. The City is entitled to enter into appraisal services agreements at any time with other appraisers in addition to the Appraiser who is the party to this Agreement. The City has the sole discretion as to whether it makes an assignment of an appraisal under this Agreement or the agreement of another appraiser. The selection shall be based upon the experience of the respective appraisers and the nature of the work to be performed.

- B. NO WAIVER. Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- C. INDEPENDENT CONTRACTOR RELATIONSHIP. This Agreement does not create an employee-employer relationship between the Appraiser and the City. As such, the City is not subject to the liabilities or obligations the Appraiser obtains under the performance of this Agreement.
- D. TIME IS OF THE ESSENCE. The times and dates specified in this contract are material to this Agreement. For the purpose of this Agreement "**business days**" means Monday through Friday excluding City of El Paso holidays and "**calendar days**" means Monday through Sunday excluding City of El Paso holidays.
- E. NOTICES. The parties will send all notices required by this Agreement in writing, postmarked, and delivered by certified mail. All notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the City:	The City of El Paso Attn: City Manager P. O. Box 1890 El Paso, Texas 79950-1890
With a Copy to:	Capital Improvement Depart Real Estate Division 218 N. Campbell St. El Paso, TX 79901 realestate@elpasotexas.gov
To the Appraiser:	CBRE Inc.,

221 N. Kansas, St 2100 El Paso, TX 79901

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

civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.

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

- 2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- 3. That the Appraiser shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. The Appraiser shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- 4. That, in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.
- W. AFFIRMATIVE ACTION. The Appraiser assures that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments, or otherwise applicable to persons leasing premises from the City of El Paso. The Appraiser assures that it will require that its covered sub-organizations provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations to the same effect.

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

[signatures begin on the following page]

## **CITY OF EL PASO**

Tomas Gonzalez, City Manager

# **APPROVED AS TO CONTENT:**

Mary Lou Capinoza Mary Lou Espinoza, Real Estate

Mary Lou Espinoza, Real Estate Capital Improvement Department

#### STATE OF TEXAS

)

#### COUNTY OF EL PASO )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_, City Manager, City of El Paso.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_ day of \_\_\_\_, 20\_\_.

Notary Public in and for the State of Texas **My Commission expires:** 

Omar De La Rosa Assistant City Attorney

APPROVED AS TO FORM:

**APPRAISER:** 

Name: Preston Chastine Title: Senior Appraiser

STATE OF TEXAS

)

)

COUNTY OF EL PASO

This instrument was acknowledged before me on the 22nd day of 0 the 22h, by 2021, by 1000,

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 22 day of 32, 202.

Notary Public in and for the State of Texas My Commission expires:  $May IV_{1} ZIZZ$ 



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# Attachment "A" Fee Schedule

Appraisal Fee ranges from \$1,800 to \$6,000 per appraisal depending on complexity.

Expert Testimony fee: \$250 per hour

Consultation Fee: \$250 per hour

ter Alter and Const. Proce Charge Alter - Alter

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 3/19/2021

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 OF 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 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	CONTACT NAME:			
Aon Risk Services of the Northeast, Inc. Stamford CT Office	PHONE (A/C, No. Ext):	(866) 283-7122	PHONE (A/C, NO.):	(800) 363-0105
1600 Summer Street Stamford CT 06907-4907 USA	E-MAIL ADDRESS:			
		INSURERS AFFORDING CO	VERAGE	NAIC #
INSURED	INSURER A:	Zurich American Insurance	16535	
CBRE Group, Inc., and Subsidiaries 2100 McKinney Avenue, Suite 1250 Dallas, TX 75201	INSURER B:	ACE Property & Casualty In	surance Co.	20699
	INSURER C:	American Zurich Insurance	Company	40142
	INSURER D:	Factory Mutual Insurance C	ompany	21482
	INSURER E:			
	INSURER F:			

ISR TR	TYPE OF INSURANCE	ADD'L INSRD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YY)	POLICY EXP (MM/DD/YY)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY CLAIMS MADE COCCUR CLAIMS MADE CCCUR CLAIMS MADE CCCUR CLAIMS AGREGATE LIMIT APPLIES PER: CLOC	North		GLO838419919	3/1/2021	3/1/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	\$5,000,000 \$50,000 \$10,000 \$5,000,000 \$5,000,000 \$5,000,000
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	UMBRELLA LIAB         Image: Occur           EXCESS LIAB         Image: Claims made           DEDUCTIBLE         RETENTION           \$10,000			G27952501006	3/1/2021	3/1/2022	AGGREGATE	\$5,000,000 \$5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR/PARTNER/EXECUTIVE N OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			WC914173615 WC838419522	3/1/2021	3/1/2022	WC STATU- TORY LIMITS     OTH - ER       E.L. EACH ACCIDENT       E.L. DISEASE-EA EMPLOYEE       E.L. DISEASE-POLICY LIMIT	\$1,000,000 \$1,000,000 \$1,000,000
	BUSINESS PERSONAL PROP & TENANT IMPROVEMENTS			1077900	3/1/2021	3/1/2022	All Risk Form, \$10,000 Deductible, Replacement Cost	\$1,000,000

CERTIFICATE HOLDER

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

. Son . Risk Services Northeast . Inc.

ACORD 25 (2016/03)

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# **CERTIFICATE OF LIABILITY INSURANCE**

Page 1 of 1

DATE (MM/DD/YYYY)
02/24/2021

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.					
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Willis Towers Watson Northeast, Inc.			on Certificate Center		465.0050
c/o 26 Century Blvd	PHONE (A/C, No, Ext): 1-877-	-945-7378	(A/C, No):	1-888	-467-2378
P.O. Box 305191	E-MAIL ADDRESS: certific	cates@willi	s.com		
Nashville, TN 372305191 USA					NAIC #
	INSURER A: Zurich	American 1	Insurance Company		16535
INSURED CBRE Group, Inc. and its subsidiaries	INSURER B :				
400 South Hope Street	INSURER C :				
Los Angeles, CA 90071	INSURER D :				
	INSURER E :				
	INSURER F :				
COVERAGES CERTIFICATE NUMBER: W20147970			REVISION NUMBER:		
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			MED EXP (Any one person)	\$	
			PERSONAL & ADV INJURY	\$	
GEN'L AGGREGATE LIMIT APPLIES PER:			GENERAL AGGREGATE	\$	
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OTHER:				\$	
AUTOMOBILE LIABILITY			COMBINED SINGLE LIMIT (Ea accident)	\$	5,000,000
X ANY AUTO			BODILY INJURY (Per person)	\$	
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EXCESS LIAB CLAIMS-MADE			AGGREGATE	\$	
DED RETENTION \$				\$	
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AND EMPLOYERS' LIABILITY Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE			E.L. EACH ACCIDENT	\$	
OFFICER/MEMBER EXCLUDED?			E.L. DISEASE - EA EMPLOYEE		
If yes, describe under DESCRIPTION OF OPERATIONS below			E.L. DISEASE - POLICY LIMIT		
			L.L. DISEASE - FOLICT LIMIT	Ψ	
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedu	le, may be attached if more	e space is require	ed)		
			<i>.</i>		
CERTIFICATE HOLDER	CANCELLATION				
		DATE THE	ESCRIBED POLICIES BE C/ EREOF, NOTICE WILL E Y PROVISIONS.		
	AUTHORIZED REPRESEI	NTATIVE			
Evidence of Insurance	f!II	0			
	© 19	88-2016 AC	ORD CORPORATION.	All rial	hts reserved.

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

This On-Call Agreement for Professional Services Appraisal Services ("**Agreement**") is entered into this \_\_\_\_\_ day of \_\_\_\_\_\_, 2021 ("**Effective Date**"), and is between the **CITY OF EL PASO, TEXAS** (the "**City**") and **Lowery Property Advisors, LLC.** (the "**Appraiser**"). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

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

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

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

The parties agree as follows:

# SECTION 1. TERM.

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

# SECTION 2. SUBJECT PROPERTY TO BE APPRAISED.

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

# **SECTION 3. PAYMENT**

A. The City will pay the Appraiser an amount not to exceed \$100,000. No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere

execution of this Agreement. The Appraiser will invoice the City following the completion of each task order in accordance to the fee schedule attached to this Agreement as **Attachment "A"**. If the City exercises an option to extend the term as described in this Agreement above, then the maximum payment amount under this contract will be increased by \$50,000 for each option exercised by the City for a total amount, including all options, not to exceed \$250,000. The parties agree that the exercise of an option only increases the maximum contract amount and does not constitute a request for services from the Appraiser unless accompanied by a Task Order. The Appraiser will abide by the fees listed in Attachment "A" to this Agreement during any option periods exercised by the City.

# SECTION 4. SCOPE OF APPRAISER'S SERVICES.

- A. The Appraiser will perform the services as provided by each Task Order issued by the City in writing ("**Task Order**"). The Appraiser will perform the services for the fees stipulated on the fee schedule attached to this Agreement as Attachment "A". The Appraiser will not perform any services until the Appraiser has received a Task Order from the City. Notwithstanding anything to the contrary, the City will not owe the Appraiser any payments for any work that is performed without a Task Order.
- B. Unless otherwise provided in the Task Order, the Appraiser will perform the following services for all Task Order's issued by the City:
  - 1. APPRAISAL. The Appraiser shall appraise the property identified in the task order and prepare and deliver one (1) draft appraisal report for on or before the date specified in the Task Order to the City Representative. For purposes of this Agreement, the "**City Representative**" is the City Engineer or designee. The City Representative will review the draft appraisal report in a timely manner. Within seven (7) City business days after the Appraiser receives the City Representative's written comments, the Appraiser will deliver three (3) hard copies and an electronic file (a pdf and tiff file on one CD) of the appraisal report to the City. The City Representative may waive the requirement for hard copies and/or CD.
  - 2. PROPERTY INSPECTION. The Appraiser shall personally inspect the property identified in the Task Order, to include any buildings, structure improvements, fixtures and appurtenances, thereon or belonging thereto. If the Appraiser's inspection or investigation discloses a sale of a portion of a property by an unrecorded contract of sale or otherwise, the Appraiser shall notify the City.
  - 3. VALUATION DATA. The Appraiser shall make such investigations, studies and property inspections as are appropriate to enable the Appraiser to derive sound

conclusions and to prepare the appraisal report to be furnished under this Agreement, including but not limited to, the three (3) most recent comparable sales which precede the appraisal, if any.

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

- 7. Appraiser will provide the services in two parts. First Appraiser will provide a Restricted Report & second a Full Report in accordance to the timelines set in the Task Order.
- 8. EXPERT WITNESS. If specifically requested by a Task Order, the Appraiser will provide expert witnesses services in any Eminent Domain proceeding or other judicial proceedings as directed by the Task Order.

# SECTION 5. CONTENTS OF APPRAISAL REPORT.

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

or any other interest that would conflict in any way with the services performed or the making of an impartial appraisal report;

- 7. A certification that, in the Appraiser's opinion, the market value of the property identified in the Task Order is an amount to be stated as of the date of valuation determined in accordance with the Task Order; and
- 8. The signature of the Appraiser.
- C. LEGAL AND TITLE MATTERS AFFECTING VALUE. The appraisal report shall include a report of any official citations or personal observations by the Appraiser of any condition or occupancy of the Property in violation of law, and any other legal or title matters that the Appraiser is aware of affecting the available lawful uses or the value of the Property.
- D. HIGHEST AND BEST USE. The appraisal report shall include the Appraiser's opinion as to the highest and best use for the property identified in the task order.
- E. PROPERTY VALUATION AND APPRAISAL ANALYSES. The appraisal report shall utilize basic appraisal principles and standards of professional practice to set forth the market value of the property identified in the Task Order. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching a conclusion as to value and all data and analyses needed to explain and support the valuation, including:
  - 1. Such maps, plans, photographs or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser; and
  - 2. The Appraiser's evaluation of the indications of value deduced from its separate analyses of the various evidences of value and an explanation of how it reached its final conclusion as to the market value of the property identified in the task order.

# SECTION 6. ITEMS TO BE PROVIDED BY CITY.

- A. The City agrees to furnish the Appraiser with the following:
  - 1. PROPERTY MAP. Each Task Order will have a map or plat, based on official records, of the Property showing the boundaries and dimensions of the property to be appraised.
  - 2. OWNERSHIP DATA. The name and, if known or shown of record, the address of the ostensible owner as it appears of record and the legal description of the property in the

Task Order as shown by the conveyance or conveyances or other instrument by which the record owner acquired title.

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

# SECTION 7. REPRESENTATIONS AND AGREEMENTS OF APPRAISER.

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

release to the public any appraisals provided by the Appraiser without the Appraiser's consent.

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

# SECTION 8. INTEREST OF OFFICIALS OF CITY.

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

# **SECTION 9. CHANGES.**

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

# SECTION 10. TERMINATION.

A. TERMINATION FOR FAILURE TO FULFILL. If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner all obligations under this Agreement or a Task Order, or if the Appraiser shall violate any of the covenants or agreements thereof, the City may, upon written notice to the Appraiser, terminate the right of the Appraiser to proceed under this Agreement or with such part or parts thereof as to which there has been default, and may hold the Appraiser liable for any damage caused to the City by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this Agreement shall, at the option of the City, become its property

and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Appraiser, however, shall not thereby be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Appraiser, and the City may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the City from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Section solely for reasons of delay if the delay is due to causes beyond the control and without the fault or negligence of the Appraiser, but this shall not prevent the City from terminating this Agreement because of such delay.

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

# SECTION 11. INSURANCE.

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

# a. COMMERCIAL GENERAL LIABILITY

\$1,000,000.00 Per Occurrence\$2,000,000.00 General Aggregate\$2,000,000.00 Products/Completed Operations Aggregate

## \$1,000,000.00 Personal and Advertising Injury

## Personal Injury or Death & Property Damage

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

# b. <u>AUTOMOBILE LIABILITY</u> Combined Single Limit \$1,000,000.00 per accident

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

# SECTION 12. INDEMNIFICATION.

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

# SECTION 13. GENERAL PROVISIONS.

A. NON-EXCLUSIVE AGREEMENT. This Agreement is non exclusive. The City is entitled to enter into appraisal services agreements at any time with other appraisers in

addition to the Appraiser who is the party to this Agreement. The City has the sole discretion as to whether it makes an assignment of an appraisal under this Agreement or the agreement of another appraiser. The selection shall be based upon the experience of the respective appraisers and the nature of the work to be performed.

- B. NO WAIVER. Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- C. INDEPENDENT CONTRACTOR RELATIONSHIP. This Agreement does not create an employee-employer relationship between the Appraiser and the City. As such, the City is not subject to the liabilities or obligations the Appraiser obtains under the performance of this Agreement.
- D. TIME IS OF THE ESSENCE. The times and dates specified in this contract are material to this Agreement. For the purpose of this Agreement "business days" means Monday through Friday excluding City of El Paso holidays and "calendar days" means Monday through Sunday excluding City of El Paso holidays.
- E. NOTICES. The parties will send all notices required by this Agreement in writing, postmarked, and delivered by certified mail. All notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the City:	The City of El Paso Attn: City Manager P. O. Box 1890 El Paso, Texas 79950-1890
With a Copy to:	Capital Improvement Depart Real Estate Division 218 N. Campbell St. El Paso, TX 79901 realestate@elpasotexas.gov
To the Appraiser:	Lowery Property Advisors LLC

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

civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.

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

- 2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- 3. That the Appraiser shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. The Appraiser shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- 4. That, in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.
- W. AFFIRMATIVE ACTION. The Appraiser assures that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments, or otherwise applicable to persons leasing premises from the City of El Paso. The Appraiser assures that it will require that its covered sub-organizations provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations to the same effect.

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

[Signature pages begin on the following page]
## **CITY OF EL PASO**

Tomas Gonzalez, City Manager

**APPROVED AS TO FORM:** 

Omar De La Rosa Assistant City Attorney

## **APPROVED AS TO CONTENT:**

Mary Lou Capinoza Mary Lou Espinoza, Real Estate

Mary Lou Espinoza, Real Estate Capital Improvement Department

#### STATE OF TEXAS )

#### COUNTY OF EL PASO )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, City Manager, City of El Paso.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day of \_\_\_\_, 20\_\_.

Notary Public in and for the State of Texas **My Commission expires:** 

**APPRAISER:** Name: Mark Lowery

Title: CEO

#### STATE OF TEXAS )

#### COUNTY OF EL PASO )

This instrument was acknowledged before me on the  $20^{\text{M}}$  day of <u>October</u>, 2021, by <u>Lowery</u>, <u>Mank</u> on behalf of Lowery Property Advisors, LLC.

Eleni Thoms My Commission Expires 03/19/2024 D No. 132411460

len Aromers

Notary Public in and for the State of Texas My Commission expires: 03/19/2024

# Attachment "A" Fee Schedule

Appraisal Fee ranges from \$1,500 to \$10,000 depending on complexity. Expert Testimony Fee: \$175 per hour Consultation Fee: \$175 per hour



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/05/2021

CI BI RI	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.								
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 09/30/2021

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		EL PASO, TX 79901								
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11342258 Lowery Property Advisors

Certificate Of Insurance

9/29/2021 6:03:03 PM

ACORD C	ERTIFI	CATE OF LIAI	BILITY INS	URANC	E		MM/DD/YYYY) 9/2021
THIS CERTIFICATE IS ISSUED AS A CERTIFICATE DOES NOT AFFIRMA BELOW. THIS CERTIFICATE OF IN REPRESENTATIVE OR PRODUCER,	TIVELY OR SURANCE I	NEGATIVELY AMEND, DOES NOT CONSTITUT RTIFICATE HOLDER.	EXTEND OR AL E A CONTRACT	TER THE CO	VERAGE AFFORDED B HE ISSUING INSURER(	(S), AU	THORIZED
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PRODUCER			CONTACT NAME:	-			
<b>^</b> .			PHONE (A/C, No, Ext); (800)	688-1984	FAX (A/C, No):	877-8	26-9067
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				-	MED EXP (Any one person)	\$	
	-				PERSONAL & ADV INJURY	\$	
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If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - POLICY LIMIT		
A Professional Liability (Errors and Omissions)		EKI3380093	6/26/2021	6/26/2022	Occurrence/Aggregate	\$1,000,	000 / \$2,000,000
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CERTIFICATE HOLDER							
City of El Paso 218 North Campbell Street,	2nd Floor	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFO THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED ACCORDANCE WITH THE POLICY PROVISIONS.					
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			Ô	1988-2014 AC	CORD CORPORATION.	All rig	ints reserved

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

This On-Call Agreement for Professional Services Appraisal Services ("**Agreement**") is entered into this \_\_\_\_\_ day of \_\_\_\_\_\_, 2021 ("**Effective Date**"), and is between the **CITY OF EL PASO, TEXAS** (the "**City**") and **Ralph Sellers & Associates** (the "**Appraiser**"). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

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

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

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

The parties agree as follows:

#### SECTION 1. TERM.

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

#### SECTION 2. SUBJECT PROPERTY TO BE APPRAISED.

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

#### **SECTION 3. PAYMENT**

A. The City will pay the Appraiser an amount not to exceed \$100,000. No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere

execution of this Agreement. The Appraiser will invoice the City following the completion of each task order in accordance to the fee schedule attached to this Agreement as **Attachment "A"**. If the City exercises an option to extend the term as described in this Agreement above, then the maximum payment amount under this contract will be increased by \$50,000 for each option exercised by the City for a total amount, including all options, not to exceed \$250,000. The parties agree that the exercise of an option only increases the maximum contract amount and does not constitute a request for services from the Appraiser unless accompanied by a Task Order. The Appraiser will abide by the fees listed in Attachment "A" to this Agreement during any option periods exercised by the City.

## SECTION 4. SCOPE OF APPRAISER'S SERVICES.

- A. The Appraiser will perform the services as provided by each Task Order issued by the City in writing ("**Task Order**"). The Appraiser will perform the services for the fees stipulated on the fee schedule attached to this Agreement as Attachment "A". The Appraiser will not perform any services until the Appraiser has received a Task Order from the City. Notwithstanding anything to the contrary, the City will not owe the Appraiser any payments for any work that is performed without a Task Order.
- B. Unless otherwise provided in the Task Order, the Appraiser will perform the following services for all Task Order's issued by the City:
  - 1. APPRAISAL. The Appraiser shall appraise the property identified in the task order and prepare and deliver one (1) draft appraisal report for on or before the date specified in the Task Order to the City Representative. For purposes of this Agreement, the "**City Representative**" is the City Engineer or designee. The City Representative will review the draft appraisal report in a timely manner. Within seven (7) City business days after the Appraiser receives the City Representative's written comments, the Appraiser will deliver three (3) hard copies and an electronic file (a pdf and tiff file on one CD) of the appraisal report to the City. The City Representative may waive the requirement for hard copies and/or CD.
  - 2. PROPERTY INSPECTION. The Appraiser shall personally inspect the property identified in the Task Order, to include any buildings, structure improvements, fixtures and appurtenances, thereon or belonging thereto. If the Appraiser's inspection or investigation discloses a sale of a portion of a property by an unrecorded contract of sale or otherwise, the Appraiser shall notify the City.
  - 3. VALUATION DATA. The Appraiser shall make such investigations, studies and property inspections as are appropriate to enable the Appraiser to derive sound

conclusions and to prepare the appraisal report to be furnished under this Agreement, including but not limited to, the three (3) most recent comparable sales which precede the appraisal, if any.

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

- 7. Appraiser will provide the services in two parts. First Appraiser will provide a Restricted Report & second a Full Report in accordance to the timelines set in the Task Order.
- 8. EXPERT WITNESS. If specifically requested by a Task Order, the Appraiser will provide expert witnesses services in any Eminent Domain proceeding or other judicial proceedings as directed by the Task Order.

## SECTION 5. CONTENTS OF APPRAISAL REPORT.

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

or any other interest that would conflict in any way with the services performed or the making of an impartial appraisal report;

- 7. A certification that, in the Appraiser's opinion, the market value of the property identified in the Task Order is an amount to be stated as of the date of valuation determined in accordance with the Task Order; and
- 8. The signature of the Appraiser.
- C. LEGAL AND TITLE MATTERS AFFECTING VALUE. The appraisal report shall include a report of any official citations or personal observations by the Appraiser of any condition or occupancy of the Property in violation of law, and any other legal or title matters that the Appraiser is aware of affecting the available lawful uses or the value of the Property.
- D. HIGHEST AND BEST USE. The appraisal report shall include the Appraiser's opinion as to the highest and best use for the property identified in the task order.
- E. PROPERTY VALUATION AND APPRAISAL ANALYSES. The appraisal report shall utilize basic appraisal principles and standards of professional practice to set forth the market value of the property identified in the Task Order. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching a conclusion as to value and all data and analyses needed to explain and support the valuation, including:
  - 1. Such maps, plans, photographs or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser; and
  - 2. The Appraiser's evaluation of the indications of value deduced from its separate analyses of the various evidences of value and an explanation of how it reached its final conclusion as to the market value of the property identified in the task order.

# SECTION 6. ITEMS TO BE PROVIDED BY CITY.

- A. The City agrees to furnish the Appraiser with the following:
  - 1. PROPERTY MAP. Each Task Order will have a map or plat, based on official records, of the Property showing the boundaries and dimensions of the property to be appraised.
  - 2. OWNERSHIP DATA. The name and, if known or shown of record, the address of the ostensible owner as it appears of record and the legal description of the property in the

Task Order as shown by the conveyance or conveyances or other instrument by which the record owner acquired title.

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

## SECTION 7. REPRESENTATIONS AND AGREEMENTS OF APPRAISER.

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

release to the public any appraisals provided by the Appraiser without the Appraiser's consent.

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

# SECTION 8. INTEREST OF OFFICIALS OF CITY.

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

# **SECTION 9. CHANGES.**

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

# SECTION 10. TERMINATION.

A. TERMINATION FOR FAILURE TO FULFILL. If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner all obligations under this Agreement or a Task Order, or if the Appraiser shall violate any of the covenants or agreements thereof, the City may, upon written notice to the Appraiser, terminate the right of the Appraiser to proceed under this Agreement or with such part or parts thereof as to which there has been default, and may hold the Appraiser liable for any damage caused to the City by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this Agreement shall, at the option of the City, become its property

and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Appraiser, however, shall not thereby be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Appraiser, and the City may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the City from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Section solely for reasons of delay if the delay is due to causes beyond the control and without the fault or negligence of the Appraiser, but this shall not prevent the City from terminating this Agreement because of such delay.

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

# SECTION 11. INSURANCE.

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

#### a. <u>COMMERCIAL GENERAL LIABILITY</u>

\$1,000,000.00 Per Occurrence\$2,000,000.00 General Aggregate\$2,000,000.00 Products/Completed Operations Aggregate

#### \$1,000,000.00 Personal and Advertising Injury

#### Personal Injury or Death & Property Damage

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

### b. <u>AUTOMOBILE LIABILITY</u> Combined Single Limit \$1,000,000.00 per accident

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

#### SECTION 12. INDEMNIFICATION.

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

#### SECTION 13. GENERAL PROVISIONS.

A. NON-EXCLUSIVE AGREEMENT. This Agreement is non exclusive. The City is entitled to enter into appraisal services agreements at any time with other appraisers in addition to the Appraiser who is the party to this Agreement. The City has the sole discretion as to whether it makes an assignment of an appraisal under this Agreement or the agreement of another appraiser. The selection shall be based upon the experience of the respective appraisers and the nature of the work to be performed.

- B. NO WAIVER. Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- C. INDEPENDENT CONTRACTOR RELATIONSHIP. This Agreement does not create an employee-employer relationship between the Appraiser and the City. As such, the City is not subject to the liabilities or obligations the Appraiser obtains under the performance of this Agreement.
- D. TIME IS OF THE ESSENCE. The times and dates specified in this contract are material to this Agreement. For the purpose of this Agreement "business days" means Monday through Friday excluding City of El Paso holidays and "calendar days" means Monday through Sunday excluding City of El Paso holidays.
- E. NOTICES. The parties will send all notices required by this Agreement in writing, postmarked, and delivered by certified mail. All notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the City:	The City of El Paso Attn: City Manager P. O. Box 1890 El Paso, Texas 79950-1890
With a Copy to:	Capital Improvement Depart Real Estate Division 218 N. Campbell St. El Paso, TX 79901 realestate@elpasotexas.gov
To the Appraiser:	Ralph Sellers & Associates

# 8020A Artcraft Road El Paso, TX 79932

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

civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.

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

- 2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- 3. That the Appraiser shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. The Appraiser shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- 4. That, in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.
- W. AFFIRMATIVE ACTION. The Appraiser assures that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments, or otherwise applicable to persons leasing premises from the City of El Paso. The Appraiser assures that it will require that its covered sub-organizations provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations to the same effect.

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

[Signatures begin on the next page]

## CITY OF EL PASO

Tomas Gonzalez, City Manager

**APPROVED AS TO FORM:** 

Omar De La Rosa Assistant City Attorney

## **APPROVED AS TO CONTENT:**

Mary Low Capinoza Mary Lou Espinoza, Real Estate

Mary Lou Espinoza, Real Estate Capital Improvement Department

## STATE OF TEXAS )

#### COUNTY OF EL PASO )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, City Manager, City of El Paso.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public in and for the State of Texas **My Commission expires:** 

#### **APPRAISER:**

Name: Bevery Sellers Title: Sole Proprietor

STATE OF TEXAS )

#### COUNTY OF EL PASO

)

This instrument was acknowledged before me on the 20 day of Otober, 2021, by Beverly Sellers, Sole Propriotor on behalf of Ralph Sellers & Associates.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ZD day of October, 2021.

Notary Public in and for the State of Texas My Commission expires: 03 - 11 - 2023



# Attachment "A" Fee Schedule

Consulting services: \$300 per hour Court preparation and testimony: \$300 per hour



Business Auto Policy Policy Endorsement

#### DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE.

#### THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

BUSINESS AUTO COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Ralph Sellers & Associates

Endorsement Effective Date: 10/06/2021

#### SCHEDULE

Name Of Person(s) Or Organization(s):

CITY OF EI PASO

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I - Covered Autos Coverages of the Auto Dealers Coverage Form.

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	Endorsement No: 22; Page: 1 of 1		
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<sup>©</sup> Copyright Insurance Services Office, Inc., 2011

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	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).										
	ODUCER					CONTA NAME:		inzanares			
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В	X AUTOS ON	Y SCHEDULED AUTOS	Y		BUA6025199520		04/29/2021	04/29/2022	BODILY INJURY (Per accident)	\$	
	HIRED AUTOS ON	NON-OWNED	ŀ						PROPERTY DAMAGE (Par accident)	\$	
									Broad Form	\$	
		LIAB X OCCUR						2.0	EACH OCCURRENCE	\$ 1,00	0,000
A	EXCESS LI	ULAUMSHRAUC			B4030661136		04/29/2021	04/29/2022	AGGREGATE	\$ 1,00	0,000
		RETENTION \$ 10,000								\$	
	WORKERS COMP AND EMPLOYER								X PER OTH-		
c	ANY PROPRIETO	R/PARTNER/EXECUTIVE	NIA		WC431161587	11/10/20:	11/10/2020	0/2020 11/10/2021	E.L. EACH ACCIDENT		0,000
	OFFICER/MEMBE (Mandatory In NH	)							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	
	DESCRIPTION OF	OPERATIONS below							E.L. DISEASE - POLICY LIMIT	\$ 1,00	0,000
DEP		ATTONS / LOCATIONS / VICULA	ER IN	1	01, Additional Remarks Schedule,	marte	l	ana la masterit	L	I	
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									a		
CERTIFICATE HOLDER CANCELLATION											
	City of El Paso						SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.				
2 Civic Center Plaza							AUTHORIZED REPRESENTATIVE				
	-				TV 10001			~	In Ollanson		
	EIP	850			TX 79901			H	lancy Manganares		

ACORD 25 (2016/03)

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

This On-Call Agreement for Professional Services Appraisal Services ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_\_, 2021 ("Effective Date"), and is between the CITY OF EL PASO, TEXAS (the "City") and Wilkinson, Pendergras & Associates LP (the "Appraiser"). For the convenience of the parties, all defined terms appear in bold face print when first defined.

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

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

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

The parties agree as follows:

#### SECTION 1. TERM.

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

#### SECTION 2. SUBJECT PROPERTY TO BE APPRAISED.

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

#### **SECTION 3. PAYMENT**

A. The City will pay the Appraiser an amount not to exceed \$100,000. No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere

execution of this Agreement. The Appraiser will invoice the City following the completion of each task order in accordance to the fee schedule attached to this Agreement as **Attachment "A"**. If the City exercises an option to extend the term as described in this Agreement above, then the maximum payment amount under this contract will be increased by \$50,000 for each option exercised by the City for a total amount, including all options, not to exceed \$250,000. The parties agree that the exercise of an option only increases the maximum contract amount and does not constitute a request for services from the Appraiser unless accompanied by a Task Order. The Appraiser will abide by the fees listed in Attachment "A" to this Agreement during any option periods exercised by the City.

## SECTION 4. SCOPE OF APPRAISER'S SERVICES.

- A. The Appraiser will perform the services as provided by each Task Order issued by the City in writing ("**Task Order**"). The Appraiser will perform the services for the fees stipulated on the fee schedule attached to this Agreement as Attachment "A". The Appraiser will not perform any services until the Appraiser has received a Task Order from the City. Notwithstanding anything to the contrary, the City will not owe the Appraiser any payments for any work that is performed without a Task Order.
- B. Unless otherwise provided in the Task Order, the Appraiser will perform the following services for all Task Order's issued by the City:
  - 1. APPRAISAL. The Appraiser shall appraise the property identified in the task order and prepare and deliver one (1) draft appraisal report for on or before the date specified in the Task Order to the City Representative. For purposes of this Agreement, the "**City Representative**" is the City Engineer or designee. The City Representative will review the draft appraisal report in a timely manner. Within seven (7) City business days after the Appraiser receives the City Representative's written comments, the Appraiser will deliver three (3) hard copies and an electronic file (a pdf and tiff file on one CD) of the appraisal report to the City. The City Representative may waive the requirement for hard copies and/or CD.
  - 2. PROPERTY INSPECTION. The Appraiser shall personally inspect the property identified in the Task Order, to include any buildings, structure improvements, fixtures and appurtenances, thereon or belonging thereto. If the Appraiser's inspection or investigation discloses a sale of a portion of a property by an unrecorded contract of sale or otherwise, the Appraiser shall notify the City.
  - 3. VALUATION DATA. The Appraiser shall make such investigations, studies and property inspections as are appropriate to enable the Appraiser to derive sound

conclusions and to prepare the appraisal report to be furnished under this Agreement, including but not limited to, the three (3) most recent comparable sales which precede the appraisal, if any.

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

- 7. Appraiser will provide the services in two parts. First Appraiser will provide a Restricted Report & second a Full Report in accordance to the timelines set in the Task Order.
- 8. EXPERT WITNESS. If specifically requested by a Task Order, the Appraiser will provide expert witnesses services in any Eminent Domain proceeding or other judicial proceedings as directed by the Task Order.

## SECTION 5. CONTENTS OF APPRAISAL REPORT.

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

or any other interest that would conflict in any way with the services performed or the making of an impartial appraisal report;

- 7. A certification that, in the Appraiser's opinion, the market value of the property identified in the Task Order is an amount to be stated as of the date of valuation determined in accordance with the Task Order; and
- 8. The signature of the Appraiser.
- C. LEGAL AND TITLE MATTERS AFFECTING VALUE. The appraisal report shall include a report of any official citations or personal observations by the Appraiser of any condition or occupancy of the Property in violation of law, and any other legal or title matters that the Appraiser is aware of affecting the available lawful uses or the value of the Property.
- D. HIGHEST AND BEST USE. The appraisal report shall include the Appraiser's opinion as to the highest and best use for the property identified in the task order.
- E. PROPERTY VALUATION AND APPRAISAL ANALYSES. The appraisal report shall utilize basic appraisal principles and standards of professional practice to set forth the market value of the property identified in the Task Order. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching a conclusion as to value and all data and analyses needed to explain and support the valuation, including:
  - 1. Such maps, plans, photographs or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser; and
  - 2. The Appraiser's evaluation of the indications of value deduced from its separate analyses of the various evidences of value and an explanation of how it reached its final conclusion as to the market value of the property identified in the task order.

# SECTION 6. ITEMS TO BE PROVIDED BY CITY.

- A. The City agrees to furnish the Appraiser with the following:
  - 1. PROPERTY MAP. Each Task Order will have a map or plat, based on official records, of the Property showing the boundaries and dimensions of the property to be appraised.
  - 2. OWNERSHIP DATA. The name and, if known or shown of record, the address of the ostensible owner as it appears of record and the legal description of the property in the

Task Order as shown by the conveyance or conveyances or other instrument by which the record owner acquired title.

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

#### SECTION 7. REPRESENTATIONS AND AGREEMENTS OF APPRAISER.

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

release to the public any appraisals provided by the Appraiser without the Appraiser's consent.

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

# SECTION 8. INTEREST OF OFFICIALS OF CITY.

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

# **SECTION 9. CHANGES.**

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

# SECTION 10. TERMINATION.

A. TERMINATION FOR FAILURE TO FULFILL. If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner all obligations under this Agreement or a Task Order, or if the Appraiser shall violate any of the covenants or agreements thereof, the City may, upon written notice to the Appraiser, terminate the right of the Appraiser to proceed under this Agreement or with such part or parts thereof as to which there has been default, and may hold the Appraiser liable for any damage caused to the City by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this Agreement shall, at the option of the City, become its property

and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Appraiser, however, shall not thereby be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Appraiser, and the City may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the City from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Section solely for reasons of delay if the delay is due to causes beyond the control and without the fault or negligence of the Appraiser, but this shall not prevent the City from terminating this Agreement because of such delay.

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

# SECTION 11. INSURANCE.

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

#### a. <u>COMMERCIAL GENERAL LIABILITY</u>

\$1,000,000.00 Per Occurrence\$2,000,000.00 General Aggregate\$2,000,000.00 Products/Completed Operations Aggregate

#### \$1,000,000.00 Personal and Advertising Injury

#### Personal Injury or Death & Property Damage

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

### b. <u>AUTOMOBILE LIABILITY</u> Combined Single Limit \$1,000,000.00 per accident

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

#### SECTION 12. INDEMNIFICATION.

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

#### SECTION 13. GENERAL PROVISIONS.

A. NON-EXCLUSIVE AGREEMENT. This Agreement is non exclusive. The City is entitled to enter into appraisal services agreements at any time with other appraisers in addition to the Appraiser who is the party to this Agreement. The City has the sole discretion as to whether it makes an assignment of an appraisal under this Agreement or the agreement of another appraiser. The selection shall be based upon the experience of the respective appraisers and the nature of the work to be performed.

- B. NO WAIVER. Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- C. INDEPENDENT CONTRACTOR RELATIONSHIP. This Agreement does not create an employee-employer relationship between the Appraiser and the City. As such, the City is not subject to the liabilities or obligations the Appraiser obtains under the performance of this Agreement.
- D. TIME IS OF THE ESSENCE. The times and dates specified in this contract are material to this Agreement. For the purpose of this Agreement "**business days**" means Monday through Friday excluding City of El Paso holidays and "**calendar days**" means Monday through Sunday excluding City of El Paso holidays.
- E. NOTICES. The parties will send all notices required by this Agreement in writing, postmarked, and delivered by certified mail. All notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the City:	The City of El Paso
	Attn: City Manager
	P. O. Box 1890
	El Paso, Texas 79950-1890
With a Copy to:	Capital Improvement Depart
	Real Estate Division
	218 N. Campbell St.
	El Paso, TX 79901
	realestate@elpasotexas.gov
To the Appraiser:	Wilinson, Pendergras & Associates, LP

# PO Box 13501 El Paso, TX 79913

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

civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.

- P. SUCCESSORS AND ASSIGNS. This Agreement is binding on the City and the Appraiser, and the Appraiser's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- Q. THIRD-PARTY BENEFICIARIES. There are no third party beneficiaries for this Agreement.
- R. PROVISIONS SURVIVING THIS AGREEMENT. Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- S. REPRESENTATIONS AND WARRANTIES. The Appraiser warrants to the City that the Appraiser has all required licenses, permits, and expertise to perform the Work of this Agreement. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- T. TEXAS GOVERNMENT CODE. In accordance with Chapter 2274 of the Texas Government Code, as amended from time to time, the Appraiser represents and warrants to the City the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- U. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties.
- V. NON-DISCRIMINATION COVENANT. The Appraiser, for itself, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:
  - 1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the preparation of this appraisal report.
- 2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- 3. That the Appraiser shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. The Appraiser shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- 4. That, in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.
- W. AFFIRMATIVE ACTION. The Appraiser assures that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments, or otherwise applicable to persons leasing premises from the City of El Paso. The Appraiser assures that it will require that its covered sub-organizations provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations to the same effect.

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

[Signatures begin on the following page]

### **CITY OF EL PASO**

Tomas Gonzalez, City Manager

#### **APPROVED AS TO CONTENT:**

Mary Lou Espinoza Mary Lou Espinoza, Real Estate

Mary Lou Espinoza, Real Estate Capital Improvement Department

)

STATE OF TEXAS

#### COUNTY OF EL PASO )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, City Manager, City of El Paso.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day of \_\_\_\_, 20\_\_\_.

Notary Public in and for the State of Texas **My Commission expires:** 

APPROVED AS TO FORM:

Omar De La Rosa Assistant City Attorney

**APPRAISER:** 

Title: Oppraise ) Partner

#### STATE OF TEXAS )

#### COUNTY OF EL PASO )

BLANCA ALEJANDRA CAMPOS-MERAZ Notary Public, State of Texas Comm. Expires 12-06-2022 Notary ID 126810307

This instrument was acknowledged before me on the 20 day of 0 cto be , 2021, by Genevieve, <u>Pendergras</u> on behalf of Wilkinson, Pendergras & Associates LP.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 20 day of 0 day.

Blanca alejandra Camper

Notary Public in and for the State of Texas My Commission expires: 12-06-2022

## Attachment "A" Fee Schedule

Appraisal Fee: \$800 to \$5,000 per appraisal depending on the complexity of the project.

Consultation Fee: \$500 to \$3,000 per consultation depending on complexity and scope.

Deposition and Testimony services: \$300 per hour.

StateFarm	STATE FARM LLOYDS A LLOYDS COMPANY IN RICHARDSON, TEXAS	DECLARATIONS AMENDED AUG 13 2021
	Po Box 853925 Richardson, TX 75085-3925	Policy Number 93-CP-S901-1
	Named Insured	Policy Period Effective Date Expiration Date
	M-08-34E2-FB6B F U 000675 3123 WILKINSON, PENDERGRAS & ASSOCIATES LP	12 Months SEP 12 2021 SEP 12 2022 The policy period begins and ends at 12:01 am standard time at the premises location.
PO BOX 13501 EL PASO TX 79913-3501	EL PASO TX 79913-3501	Agent and Mailing Address JAIME PORTILLO 6633 N MESA ST STE 201 EL PASO TX 79912-4422
	դիսվիսիվերիկին կնդինին, որիկին կիներին հետերույնին	PHONE: (915) 581-8484 (915) 581-8550
Office	Policy	4
forms i	atic Renewal - If the policy period is shown as <b>12 months</b> , this polic n effect for each succeeding policy period. If this policy is terminate ance with the policy provisions or as required by law.	y will be renewed automatically subject to the premiums, rules and d, we will give you and the Mortgagee/Lienholder written notice in

Entity: Partnership

Reason for Declarations: Your policy is amended AUG 13 2021 INSURED NAME AND/OR ADDRESS CHANGE

Other items shown are effective with the policy's 2021 renewal

Endorsement Premium None
Discounts Applied:
Renewal Year
Years in Business
Enclosed Building
Protective Devices
Claim Record

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Prepared SEP 09 2021 CMP-4000

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#### **DECLARATIONS (CONTINUED)**

# Office Policy for WILKINSON, PENDERGRAS & Policy Number 93-CP-S901-1

#### SECTION I - PROPERTY SCHEDULE

Location Number	Location of Described Premises	Limit of Insurance* Coverage A - Buildings	Limit of Insurance* Coverage B - Business Personal Property	Seasonal Increase- Business Personal Property
001	545 E REDD RD STE C-2 EL PASO TX 79912-1294	No Coverage	\$ 5,900	25%

\* As of the effective date of this policy, the Limit of Insurance as shown includes any increase in the limit due to Inflation Coverage.

#### SECTION I - INFLATION COVERAGE INDEX(ES)

Cov A - Inflation Coverage Index: Cov B - Consumer Price Index:	N/A 269.2	
SECTION I - DEDUCTIBLES		 ·······

Basic Deductible	\$1,000		
Special Deductibles:			
Money and Securities Equipment Breakdown	\$250 \$1,000	Employee Dishonesty	\$250

The Inflation Coverage provision may change your deductible. Refer to page 17 of your policy.

Continued on Next Page



#### **DECLARATIONS (CONTINUED)**

Office Policy for WILKINSON, PENDERGRAS & Policy Number 93-CP-S901-1



ST-0205-0000

#### SECTION I - EXTENSIONS OF COVERAGE - LIMIT OF INSURANCE - EACH DESCRIBED PREMISES

The coverages and corresponding limits shown below apply separately to each described premises shown in these Declarations, unless indicated by "See Schedule." If a coverage does not have a corresponding limit shown below, but has "Included" indicated, please refer to that policy provision for an explanation of that coverage.

COVERAGE	LIMIT OF INSURANCE
Accounts Receivable On Premises Off Premises	\$50,000 \$15,000
Arson Reward	\$5,000
Back-Up Of Sewer Or Drain	\$15,000
Collapse	Included
Damage To Non-Owned Buildings From Theft, Burglary Or Robbery	Coverage B Limit
Debris Removal	25% of covered loss
Equipment Breakdown	Included
Fire Extinguisher Systems Recharge Expense	\$5,000
Forgery Or Alteration	\$10,000
Glass Expenses	Included
Increased Cost Of Construction And Demolition Costs (applies only when buildings are insured on a replacement cost basis)	10%
Money And Securities (Off Premises)	\$5,000
Money And Securities (On Premises)	\$10,000
Money Orders And Counterfeit Money	\$1,000
Newly Acquired Business Personal Property (applies only if this policy provides Coverage B - Business Personal Property)	\$100,000
Newly Acquired Or Constructed Buildings (applies only if this policy provides Coverage A - Buildings)	\$250,000

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# Office Policy for WILKINSON, PENDERGRAS & Policy Number 93-CP-S901-1

Ordinance Or Law - Equipment Coverage	Included
Outdoor Property	\$5,000
Personal Effects (applies only to those premises provided Coverage B - Business Personal Property)	\$5,000
Personal Property Off Premises	\$15,000
Pollutant Clean Up And Removal	\$10,000
Preservation Of Property	30 Days
Property Of Others (applies only to those premises provided Coverage B - Business Personal Property)	\$2,500
Signs	\$2,500
Unauthorized Business Card Use	\$5,000
Valuable Papers And Records On Premises Off Premises	\$50,000 \$15,000
Water Damage, Other Liquids, Powder Or Molten Material Damage	Included

#### SECTION I - EXTENSIONS OF COVERAGE - LIMIT OF INSURANCE - PER POLICY

The coverages and corresponding limits shown below are the most we will pay regardless of the number of described premises shown in these Declarations.

COVERAGE	LIMIT OF INSURANCE
Dependent Property - Loss Of Income	\$5,000
Employee Dishonesty	\$10,000
Utility Interruption - Loss Of Income	\$10,000
Loss Of Income And Extra Expense	Actual Loss Sustained - 12 Months



#### **DECLARATIONS (CONTINUED)**

## Office Policy for WILKINSON, PENDERGRAS & Policy Number 93-CP-S901-1



ST-0305-0000 SECTION II - LIABILITY

COVERAGE	LIMIT OF INSURANCE
Coverage L - Business Liability	\$1,000,000
Coverage M - Medical Expenses (Any One Person)	\$5,000
Damage To Premises Rented To You	\$300,000
AGGREGATE LIMITS	LIMIT OF INSURANCE
Products/Completed Operations Aggregate	\$2,000,000
General Aggregate	\$2,000,000

Each paid claim for Liability Coverage reduces the amount of insurance we provide during the applicable annual period. Please refer to Section II - Liability in the Coverage Form and any attached endorsements.

Your policy consists of these Declarations, the BUSINESSOWNERS COVERAGE FORM shown below, and any other forms and endorsements that apply, including those shown below as well as those issued subsequent to the issuance of this policy.

#### FORMS AND ENDORSEMENTS

CMP-4100 CMP-4819.1 FE-6999.3	Businessowners Coverage Form Unauthorized Business Card Use Terrorism Insurance Cov Notice
CMP-4243.2	Amendatory Endorsement
CMP-4705.2	Loss of Income & Extra Expnse
CMP-4710	Employee Dishonesty
CMP-4709	Money and Securities
CMP-4706	Back-Up of Sewer or Drain
CMP-4704.1	Dependent Prop Loss of Income
CMP-4703.1	Utility Interruption Loss Incm
CMP-4786	AddI Insd Owners Lessee Sched
FE-3650	Actual Cash Value Endorsement
CMP-4561.1	Policy Endorsement

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## Office Policy for WILKINSON, PENDERGRAS & Policy Number 93-CP-S901-1

FD-6007 Inland Marine Attach Dec

#### SCHEDULE OF ADDITIONAL INTERESTS

Interest Type: Addl Insured-Section II Endorsement #: CMP4786 Loan Number: N/A

EL PASO INDEPENDENT SCHOOL DISTRICT 1014 N STANTON ST EL PASO TX 799024109 Interest Type: Addl Insured-Section II Endorsement #: CMP4786 Loan Number: N/A

HOUSING AUTHORITY OF THE CITY OF EL PASO 5300 E PAISANO DR EL PASO TX 799052931

Interest Type: Addl Insured-Section II Endorsement #: CMP4786 Loan Number: N/A

TEXAS GENERAL LAND OFFICE 1700 CONGRESS AVE AUSTIN TX 787011495

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Continued on Next Page



#### **DECLARATIONS (CONTINUED)**

Office Policy for WILKINSON, PENDERGRAS & Policy Number 93-CP-S901-1



ST-0405-0000 This policy is issued by State Farm Lloyds.

SERVICE OF PROCESS - Service of Process may be had upon the State Official duly designated for such purpose in the state in which the property insured hereunder is located if State Farm Lloyds is licensed in such state; or upon the Commissioner of Insurance of the State of Texas; or upon the duly appointed Attorney-in-Fact for State Farm Lloyds at Richardson, Texas. Underwriters at State Farm Lloyds have complied with the laws of the State of Texas regulating Lloyds plan insurance and said statutes are hereby made a part of the policy. The entire assets of State Farm Lloyds supports its policies, but each individual underwriter's liability is several and not joint and is limited by law to the amount fixed by his/her underwriter's contract and subscription and no underwriter is liable as a partner. This policy is made and accepted subject to the foregoing stipulations and conditions together with such other provisions, agreements or conditions as may be endorsed hereon or added hereto, and no agent or other representative of State Farm Lloyds shall have the power to waive any provision or condition of this policy. This policy is non-assessable and no contingent liability of any kind and character attaches to the insured named herein.

In Witness Whereof, State Farm Lloyds has caused this policy to be signed by its President and Secretary.

By:

Secretary State Farm Lloyds, Inc. Attorney-in-Fact State Farm Lloyds

Thills M Hawkins

President State Farm Lloyds, Inc. Attorney-In-Fact

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STATE FARM LLOYDS A LLOYDS COMPANY IN RICHARDSON, TEXAS

Po Box 853925 Richardson, TX 75085-3925

Named Insured

M-08-34E2-FB6B F U



ST-0505-0000 WILKINSON, PENDERGRAS & ASSOCIATES LP PO BOX 13501 EL PASO TX 79913-3501

NLAND	MARINE	ATTACHING	DECLAI	RATIONS

Policy Number 93-CP-S901-1

Policy Period 12 Months	Effective Date SEP 12 2021	Expiration Date SEP 12 2022
The policy period b time at the premise	egins and ends at s location.	

## ATTACHING INLAND MARINE

Automatic Renewal - If the policy period is shown as 12 months, this policy will be renewed automatically subject to the premiums, rules and forms in effect for each succeeding policy period. If this policy is terminated, we will give you and the Mortgagee/Lienholder written notice in compliance with the policy provisions or as required by law.

Annual Policy Premium Included

The above Premium Amount is included in the Policy Premium shown on the Declarations.

Your policy consists of these Declarations, the INLAND MARINE CONDITIONS shown below, and any other forms and endorsements that apply, including those shown below as well as those issued subsequent to the issuance of this policy.

#### Forms, Options, and Endorsements

FE-8739	Inland Marine Conditions
FE-6865	Amend of Inland Marine Condtns
FE-8743.1	Inland Marine Computer Prop

See Reverse for Schedule Page with Limits

Prepared SEP 09 2021 FD-6007

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## ATTACHING INLAND MARINE SCHEDULE PAGE

#### **ATTACHING INLAND MARINE**

endorsement Number	COVERAGE		LIMIT OF INSURANCE	DEDUC AMOU		ANNUAL PREMIUM
FE-8743.1	Inland Marine Computer Prop Loss of Income and Extra Expense	\$ \$	25,000 25,000	\$	500	Included Included

OTHER LIMITS AND EXCLUSIONS MAY APPLY - REFER TO YOUR POLICY -

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Prepared SEP 09 2021 FD-6007

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PREPARE	06/09/2021			
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StateFarm	WORKERS COMPENSATION AN INFORMATION P	ID EMPL PAGE AGE 01	OYERS LIABILI ENDORSEMENT	TY POLICY 08-34E2-FB6B
THIS FORM POLICY NO	IS A PART OF 0. 93-GD-F237-3 STATE FAR PO Box 85	OVERAG M FIRE 3925,	E IS PROVIDED AND CASUALTY Richardson TX	BY COMPANY 75085-3925
NAMED INS WIL BEA	SURED AND MAILING ADDRESS KINSON, PENDERGRAS & RD, LP BOX 13501			
EL	PASO TX 79913-3501			
	TIVE DATE IS 06/07/2021			
	ATION DATE IS 06/07/2022			
	OF THE INSURED			
LOCATION NUMBER				
01 545 ENTI	E REDD RD STE C-2 TY:ETO1 EMP:1	SIC:	EL PASO TX 6531	79912-1294

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ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED. WC 99 00 02 04-84 PREPARED 06/09/2021

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

This On-Call Agreement for Professional Services Appraisal Services ("Agreement") is entered into this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2021 ("Effective Date"), and is between the CITY OF EL PASO, TEXAS (the "City") and Gayle-Reid Appraisal Services, Inc. (the "Appraiser"). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

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

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

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

The parties agree as follows:

### SECTION 1. TERM.

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

### SECTION 2. SUBJECT PROPERTY TO BE APPRAISED.

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

### **SECTION 3. PAYMENT**

A. The City will pay the Appraiser an amount not to exceed \$100,000. No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere

execution of this Agreement. The Appraiser will invoice the City following the completion of each task order in accordance to the fee schedule attached to this Agreement as **Attachment "A"**. If the City exercises an option to extend the term as described in this Agreement above, then the maximum payment amount under this contract will be increased by \$50,000 for each option exercised by the City for a total amount, including all options, not to exceed \$250,000. The parties agree that the exercise of an option only increases the maximum contract amount and does not constitute a request for services from the Appraiser unless accompanied by a Task Order. The Appraiser will abide by the fees listed in Attachment "A" to this Agreement during any option periods exercised by the City.

## SECTION 4. SCOPE OF APPRAISER'S SERVICES.

- A. The Appraiser will perform the services as provided by each Task Order issued by the City in writing ("**Task Order**"). The Appraiser will perform the services for the fees stipulated on the fee schedule attached to this Agreement as Attachment "A". The Appraiser will not perform any services until the Appraiser has received a Task Order from the City. Notwithstanding anything to the contrary, the City will not owe the Appraiser any payments for any work that is performed without a Task Order.
- B. Unless otherwise provided in the Task Order, the Appraiser will perform the following services for all Task Order's issued by the City:
  - 1. APPRAISAL. The Appraiser shall appraise the property identified in the task order and prepare and deliver one (1) draft appraisal report for on or before the date specified in the Task Order to the City Representative. For purposes of this Agreement, the "**City Representative**" is the City Engineer or designee. The City Representative will review the draft appraisal report in a timely manner. Within seven (7) City business days after the Appraiser receives the City Representative's written comments, the Appraiser will deliver three (3) hard copies and an electronic file (a pdf and tiff file on one CD) of the appraisal report to the City. The City Representative may waive the requirement for hard copies and/or CD.
  - 2. PROPERTY INSPECTION. The Appraiser shall personally inspect the property identified in the Task Order, to include any buildings, structure improvements, fixtures and appurtenances, thereon or belonging thereto. If the Appraiser's inspection or investigation discloses a sale of a portion of a property by an unrecorded contract of sale or otherwise, the Appraiser shall notify the City.
  - 3. VALUATION DATA. The Appraiser shall make such investigations, studies and property inspections as are appropriate to enable the Appraiser to derive sound

conclusions and to prepare the appraisal report to be furnished under this Agreement, including but not limited to, the three (3) most recent comparable sales which precede the appraisal, if any.

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

- 7. Appraiser will provide the services in two parts. First Appraiser will provide a Restricted Report & second a Full Report in accordance to the timelines set in the Task Order.
- 8. EXPERT WITNESS. If specifically requested by a Task Order, the Appraiser will provide expert witnesses services in any Eminent Domain proceeding or other judicial proceedings as directed by the Task Order.

## SECTION 5. CONTENTS OF APPRAISAL REPORT.

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

or any other interest that would conflict in any way with the services performed or the making of an impartial appraisal report;

- 7. A certification that, in the Appraiser's opinion, the market value of the property identified in the Task Order is an amount to be stated as of the date of valuation determined in accordance with the Task Order; and
- 8. The signature of the Appraiser.
- C. LEGAL AND TITLE MATTERS AFFECTING VALUE. The appraisal report shall include a report of any official citations or personal observations by the Appraiser of any condition or occupancy of the Property in violation of law, and any other legal or title matters that the Appraiser is aware of affecting the available lawful uses or the value of the Property.
- D. HIGHEST AND BEST USE. The appraisal report shall include the Appraiser's opinion as to the highest and best use for the property identified in the task order.
- E. PROPERTY VALUATION AND APPRAISAL ANALYSES. The appraisal report shall utilize basic appraisal principles and standards of professional practice to set forth the market value of the property identified in the Task Order. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching a conclusion as to value and all data and analyses needed to explain and support the valuation, including:
  - 1. Such maps, plans, photographs or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser; and
  - 2. The Appraiser's evaluation of the indications of value deduced from its separate analyses of the various evidences of value and an explanation of how it reached its final conclusion as to the market value of the property identified in the task order.

## SECTION 6. ITEMS TO BE PROVIDED BY CITY.

- A. The City agrees to furnish the Appraiser with the following:
  - 1. PROPERTY MAP. Each Task Order will have a map or plat, based on official records, of the Property showing the boundaries and dimensions of the property to be appraised.
  - 2. OWNERSHIP DATA. The name and, if known or shown of record, the address of the ostensible owner as it appears of record and the legal description of the property in the

Task Order as shown by the conveyance or conveyances or other instrument by which the record owner acquired title.

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

### SECTION 7. REPRESENTATIONS AND AGREEMENTS OF APPRAISER.

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

release to the public any appraisals provided by the Appraiser without the Appraiser's consent.

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

## SECTION 8. INTEREST OF OFFICIALS OF CITY.

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

## **SECTION 9. CHANGES.**

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

## SECTION 10. TERMINATION.

A. TERMINATION FOR FAILURE TO FULFILL. If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner all obligations under this Agreement or a Task Order, or if the Appraiser shall violate any of the covenants or agreements thereof, the City may, upon written notice to the Appraiser, terminate the right of the Appraiser to proceed under this Agreement or with such part or parts thereof as to which there has been default, and may hold the Appraiser liable for any damage caused to the City by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this Agreement shall, at the option of the City, become its property

and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Appraiser, however, shall not thereby be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Appraiser, and the City may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the City from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Section solely for reasons of delay if the delay is due to causes beyond the control and without the fault or negligence of the Appraiser, but this shall not prevent the City from terminating this Agreement because of such delay.

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

## SECTION 11. INSURANCE.

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

### a. COMMERCIAL GENERAL LIABILITY

\$1,000,000.00 Per Occurrence\$2,000,000.00 General Aggregate\$2,000,000.00 Products/Completed Operations Aggregate

#### \$1,000,000.00 Personal and Advertising Injury

#### Personal Injury or Death & Property Damage

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

### b. <u>AUTOMOBILE LIABILITY</u> Combined Single Limit \$1,000,000.00 per accident

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

### SECTION 12. INDEMNIFICATION.

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

### SECTION 13. GENERAL PROVISIONS.

A. NON-EXCLUSIVE AGREEMENT. This Agreement is non exclusive. The City is entitled to enter into appraisal services agreements at any time with other appraisers in

addition to the Appraiser who is the party to this Agreement. The City has the sole discretion as to whether it makes an assignment of an appraisal under this Agreement or the agreement of another appraiser. The selection shall be based upon the experience of the respective appraisers and the nature of the work to be performed.

- B. NO WAIVER. Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- C. INDEPENDENT CONTRACTOR RELATIONSHIP. This Agreement does not create an employee-employer relationship between the Appraiser and the City. As such, the City is not subject to the liabilities or obligations the Appraiser obtains under the performance of this Agreement.
- D. TIME IS OF THE ESSENCE. The times and dates specified in this contract are material to this Agreement. For the purpose of this Agreement "business days" means Monday through Friday excluding City of El Paso holidays and "calendar days" means Monday through Sunday excluding City of El Paso holidays.
- E. NOTICES. The parties will send all notices required by this Agreement in writing, postmarked, and delivered by certified mail. All notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the City:	The City of El Paso
	Attn: City Manager
	P. O. Box 1890
	El Paso, Texas 79950-1890
With a Copy to:	Capital Improvement Depart
	Real Estate Division
	218 N. Campbell St.
	El Paso, TX 79901
	realestate@elpasotexas.gov
To the Appraiser:	600 Sunland Park, #4 Suite #100

#### El Paso, Texas 79912

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

civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.

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

- 2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- 3. That the Appraiser shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. The Appraiser shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- 4. That, in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.
- W. AFFIRMATIVE ACTION. The Appraiser assures that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments, or otherwise applicable to persons leasing premises from the City of El Paso. The Appraiser assures that it will require that its covered sub-organizations provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations to the same effect.

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

[Signatures begin on the following page]

### **CITY OF EL PASO**

Tomas Gonzalez, City Manager

**APPROVED AS TO FORM:** 

Omar De La Rosa Assistant City Attorney

## **APPROVED AS TO CONTENT:**

<u>Jerry DeMuro/for</u> Mary Lou Espinoza, Real Estate

Mary Lou Espinoza, Real Estate Capital Improvement Department

## STATE OF TEXAS )

#### COUNTY OF EL PASO )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, City Manager, City of El Paso.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day of \_\_\_\_, 20\_\_.

Notary Public in and for the State of Texas My Commission expires: \_\_\_\_\_

**APPRAISER:** 

Gyle Reil Lynch altha Name:

Title:

#### STATE OF TEXAS

### COUNTY OF EL PASO )

)

This instrument was acknowledged before me on the 25 day of 00000, 2021, by Lynch, Martha Gayle Keid on behalf of Gayle-Reid Appraisal Services, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 25 day of October, 2021.



Notary Public in and for the State of Texas My Commission expires: <u>Sept. 21</u>, 2024

## Attachment "A" Fee Schedule

Appraisal Fee ranges from \$500 to \$5,500 per appraisal depending on complexity. Expert testimony fee: \$250 per hour COnsultation fee: \$225 per hour.



**TEXAS FARM BUREAU INSURANCE COMPANIES** 

TEXAS FARM BUREAU CASUALTY INSURANCE COMPANY TEXAS FARM BUREAU COUNTY MUTUAL INSURANCE COMPANY TEXAS FARM BUREAU MUTUAL INSURANCE COMPANY TEXAS FARM BUREAU UNDERWRITERS

7420 FISH POND RD • WACO TX 76710-1010 • (254) 772-3030 • MAILING ADDRESS: PO BOX 2689 • WACO TX 76702-2689

## CERTIFICATE OF INSURANCE

FOR INFORMATION PURPOSES ONLY

#### CERTIFICATE HOLDER NAME AND MAILING ADDRESS

CITY OF EL PASO 300 N CAMPBELL ST EL PASO, TX 79901-1402 Policy Number 21584124 Date: 08/25/2021 Policy Period: From: 08-24-2021 To: Until Cancelled

Ապիլիսոսեիկիկուսուներիներիներիներունելիչընո

This is to certify that the policy (including endorsements) of insurance, as described below, has been issued by the undersigned, to the insured named below, is in force at this time, and has been duly countersigned. If cancelled at the request of either party, or changed in any manner for any reason during this period of coverage, as stated herein, so as to affect this Certificate, **10** days prior written notice will be given by this Insurance Company to the Certificate Holder named above.

The Texas Farm Bureau Mutual Insurance Company of Waco, Texas hereby certifies that the following described policy has been issued and is in force and effect.

#### INSURED NAME AND MAILING ADDRESS

JOHN KEVIN LYNCH JR MARTHA GAYLE REID LYNCH PO BOX 192 DELL CITY TX 79837-0192 DESCRIPTION OF RISK 2019 LEXS GX 460 JTJBM7FXXK5217651

COVERAGE	LIMITS OF LIAB	ILITY
PUBLIC LIABILITY	BODILY INJURY/PROPE	RTY DAMAGE
<ul> <li>( ) Commercial General Liability</li> <li>( ) Premises and Operations</li> <li>( ) Contractors Protective</li> <li>( ) Products - Completed Operations</li> <li>( ) Contractual - Designated Contracts Only</li> <li>( ) Excludes Explosion, Collapse and Underground</li> </ul>	\$ \$ Property Damage Hazard	EACH OCCURRENCE AGGREGATE
AUTOMOBILE LIABILITY		
<ul> <li>( ) Fleet</li> <li>(X) Specific Automobiles Only</li> <li>( ) Non-Ownership and Hired Automobiles</li> </ul>	\$ 1,000,000 \$ 1,000,000 \$ 1,000,000	EACH PERSON EACH ACCIDENT EACH ACCIDENT
FARM LIABILITY	\$ \$	EACH OCCURRENCE AGGREGATE
PERSONAL LIABILITY		
<ul><li>( ) Homeowners</li><li>( ) Farm and Ranch Owners</li></ul>	*	EACH OCCURRENCE EACH OCCURRENCE
	\$ \$	EACH OCCURRENCE AGGREGATE

COI-PA6

This Certificate of Insurance neither affirmatively nor negatively amends, extends, or alters the coverage or any provision afforded by the policy. This Certificate is executed and issued in duplicate by the aforesaid Company.



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 09/30/2021

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).									
	DUCER	0 1110			CONTACT	- ,- ,- ,- ,- ,- ,- ,- ,- ,- ,- ,- ,- ,-			
	USI SOUTHWEST INC				NAME: PHONE (A/C, No, Ext): (88	P) 661 2029	FAX (A/C, No): (8	77) 973 -	7604
	303 N OREGON STE 310				E-MAIL	•		11) 812-	1004
	EL PASO, TX 79901 (888) 661-3938				ADDRESS: Service.	center@travelers.com			NAIC #
	(000) 001-3330				INSURER(S) AFFORDING COVERAGE NAIC #				
INS	JRED							<u>'</u> A	
	GAYLE REID APPRAISAL				INSURER B : THE TRAVELERS INDEMNITY COMPANY OF AMERICA INSURER C :				
	SERVICES CORP. MGR EL PASO 1 L	LC.							
	600 SUNLAND PARK DR, #4 EL PASO, TX 79912				INSURER D : INSURER E :				
	(FD 4 0 F 0 0 F 0				INSURER F :				
CO	/ERAGES CEI	RTIFI	CAT	E NUMBER: 144959502	2311372	1	REVISION NUMBER:		
INI CE EX	IS IS TO CERTIFY THAT THE POLICIE DICATED. NOTWITHSTANDING ANY RI RTIFICATE MAY BE ISSUED OR MAY CLUSIONS AND CONDITIONS OF SUCH	equir ' Per Polic	EMEN TAIN, CIES. L	IT, TERM OR CONDITION C THE INSURANCE AFFORDE IMITS SHOWN MAY HAVE B	DF ANY CONTRA ED BY THE POLI EEN REDUCED BY	CT OR OTHER D CIES DESCRIBED ( PAID CLAIMS.	OCUMENT WITH RESPEC	т то и	HICH THIS
INSR LTR	TYPE OF INSURANCE		SUBR WVD		POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMIT	rs	
В	X COMMERCIAL GENERAL LIABILITY	Х		680-8231B28A-20	11/17/2020	11/17/2021	EACH OCCURRENCE	\$1,00	0,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,	000
							MED EXP (Any one person)	\$5,00	0
	X NON OWNED AUTO						PERSONAL & ADV INJURY	\$1,00	0,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$2,00	0,000
	X POLICY PRO- JECT LOC						PRODUCTS - COMP/OP AGG	\$2,00	0,000
	OTHER:							\$	
							COMBINED SINGLE LIMIT	\$	
							(Ea accident) BODILY INJURY (Per person)	\$	
	ANY AUTO OWNED AUTOS ONLY AUTOS						BODILY INJURY (Per accident)	\$	
	HIRED AUTOS ONLY AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$		
								\$	
А	X UMBRELLA LIAB X OCCUR			CUP-4K006244-20	11/17/2020	11/17/2021	EACH OCCURRENCE	\$1,00	0,000
	EXCESS LIAB         CLAIMS-MADE           DED         X         RETENTION \$5,000						AGGREGATE \$1,000,000		0,000
	,							\$	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N	N/A					PER STATUTE ER		
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?						E.L. EACH ACCIDENT	\$	
	If yes, describe under						E.L. DISEASE - EA EMPLOYEE	\$	
	DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	\$	
DESC	RIPTION OF OPERATIONS / LOCATIONS / VEHI	CLES (	ACORD	l ) 101. Additional Remarks Schedul	e. may be attached if i	more space is required	d)		
	RESPECTS TO GENERAL LIABILITY,								
	URED (INCLUDES PRODUCTS-COM								
WORK PERFORMED BY THE INSURED.									
CE	CERTIFICATE HOLDER CANCELLATION								
	THE CITY OF EL PASO 600 SUNLAND PARK EL PASO, TX 79912				THE EXPIRAT		EREOF, NOTICE WILL		
I					AUTHORIZED REPR	RESENTATIVE			
						min	hald mulligan		
					© 19	88-2015 ACOR	D CORPORATION. A	ll right	s reserved.

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## LIA Administrators & Insurance Services APPRAISAL AND VALUATION PROFESSIONAL LIABILITY INSURANCE POLICY

#### **DECLARATIONS**

#### ASPEN AMERICAN INSURANCE COMPANY

(A stock insurance company herein called the "Company") 175 Capitol Blvd. Suite 100 Rocky Hill, CT 06067

Date Issued	Policy Number	Previous Policy Number
01/08/2021	AAI007576-06	AAI007576-05

THIS IS A **CLAIMS** MADE AND REPORTED POLICY. COVERAGE IS LIMITED TO LIABILITY FOR ONLY THOSE **CLAIMS** THAT ARE FIRST MADE AGAINST THE **INSURED** DURING THE **POLICY PERIOD** AND THEN REPORTED TO THE COMPANY IN WRITING NO LATER THAN SIXTY (60) DAYS AFTER EXPIRATION OR TERMINATION OF THIS POLICY, OR DURING THE **EXTENDED REPORTING PERIOD**, IF APPLICABLE, FOR A **WRONGFUL ACT** COMMITTED ON OR AFTER THE **RETROACTIVE DATE** AND BEFORE THE END OF THE **POLICY PERIOD**. PLEASE READ THE POLICY CAREFULLY.

Item

<ol> <li>Customer ID: 164265 Named Insured: GAYLE-REID APPRAISAL SERVICES, INC Martha Gayle Reid Lynch, MAI 600 Sunland Park, Bldg 4-100 El Paso, TX 79912</li> </ol>	
<b>2. Policy Period:</b> From: 01/10/2021 To: 01/10/2022 12:01 A.M. Standard Time at the address stated in 1 above.	
<b>3. Deductible: </b> \$1,000 Each <b>Claim</b>	
4. Retroactive Date: 01/10/2011	
<b>5. Inception Date: </b> 01/10/2016	
6. Limits of Liability:A. \$1,000,000Each ClaimB. \$2,000,000Aggregate	
<ul> <li>7. Mail all notices, including notice of Claim, to: LIA Administrators &amp; Insurance Services 1600 Anacapa Street Santa Barbara, California 93101 (800) 334-0652; Fax: (805) 962-0652</li> </ul>	
8. Annual Premium: \$1,189.00	
9. Forms attached at issue: LIA002 (12/14) ASPCO1122 0 LIA012 (12/14) LIA013 (10/14) LIA018 (10/14) LIA021 LIA025A (11/14)	
This Declarations Page, together with the completed and signed Policy A the Policy shall constitute the contract between the Named Insured and the	
01/08/2021 By (	Ruie

Date LIA-001 (12/14) Authorized Signature

Aspen American Insurance Company

## Appraisal and Valuation Professional Liability Insurance Policy





**Policy Number:** AAI007576-06 **Effective Date:** 01/10/2021 **Customer ID:** 164265

#### THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### ADDITIONAL COVERED APPRAISERS ENDORSEMENT

In consideration of the premium charged, it is agreed that Section IV. DEFINITIONS (I) "Insured" is amended to include:

"Insured" means:

The persons identified below, but only while acting on behalf of the Named Insured:

Name	Coverage Effective Date	Principal/Owner, Appraiser or Trainee
Martha Gayle Reid Lynch	01/10/2021	Principal/Owner

All other terms, conditions, and exclusions of this Policy remain unchanged.

## Appraisal and Valuation Professional Liability Insurance Policy

Named Insured: GAYLE-REID APPRAISAL SERVICES, INC Martha Gayle Reid Lynch, MAI



**Policy Number:** AAI007576-06 **Effective Date:** 01/10/2021 **Customer ID:** 164265

#### THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### COMMERCIAL APPRAISAL ENDORSEMENT

In consideration of the premium charged, it is agreed that the **Insureds** identified below have been approved by the Company to perform **Professional Services** involving **Commercial Property**.

<u>Insured</u>

**Effective Date of Approval** 

01/10/2021

Martha Gayle Reid Lynch

Exclusion (N) remains unchanged and effective, however, unless the **Insured** identified is approved for **Professional Services** involving undeveloped or vacant land whose proposed use is for multiple unit single-family housing developments, condominium developments, co-operative housing developments or apartment developments consisting of 10 units or more.

All other terms, conditions, and exclusions of this Policy remain unchanged.