Oscar Leeser Mayor

Tommy Gonzalez City Manager



CITY COUNCIL
Peter Svarzbein, District 1
Alexsandra Annello, District 2
Cassandra Hernandez, District 3
Joe Molinar, District 4
Isabel Salcido, District 5
Claudia L. Rodriguez, District 6
Henry Rivera, District 7
Cissy Lizarraga, District 8

## Final AGENDA FOR THE REGULAR COUNCIL MEETING

# November 09, 2021 COUNCIL CHAMBERS, CITY HALL, 300 N. CAMPBELL AND VIRTUALLY 9:00 AM THE LOCAL HEALTH AUTHORITY STRONGLY RECOMMENDS THE USE OF MASKS IN ALL CITY FACILITIES AND INDOOR SPACES

Teleconference phone number: 1-915-213-4096
Toll free number: 1-833-664-9267
Conference ID: 222-784-564#

**AND** 

AGENDA REVIEW MEETING COUNCIL CHAMBERS, CITY HALL 300 N. CAMPBELL AND VIRTUALLY November 8, 2021 9:00 AM

Teleconference phone number: 1-915-213-4096
Toll free number: 1-833-664-9267
Conference ID: 385-755-41#

Notice is hereby given that an Agenda Review Meeting will be conducted on November 8, 2021 at 9:00 A.M. and a Regular Meeting of the City Council of the City of El Paso will be conducted on November 9, 2021 at 9:00 A.M. Members of the public may view the meeting via the following means:

Via the City's website. http://www.elpasotexas.gov/videos Via television on City15,

YouTube: https://www.youtube.com/user/cityofelpasotx/videos

In compliance with the requirement that the City provide two-way communication for members of the public, members of the public may communicate with Council during public comment, and regarding agenda items by calling the following number:

1-915-213-4096 or Toll free number: 1-833-664-9267

At the prompt please enter the corresponding Conference ID:

Agenda Review, November 8, 2021 Conference ID: 385-755-41#
Regular Council Meeting, November 9, 2021 Conference ID: 222-784-564#

The public is strongly encouraged to sign up to speak on items on this agenda before the start of this meeting on the following links:

https://www.elpasotexas.gov/city-clerk/meetings/city-council-meetings and http://legacy.elpasotexas.gov/muni\_clerk/Sign-Up-Form-Call-To-The-Public.php

The following member of City Council will be present via video conference on November 9, 2021:

Representative Alexsandra Annello (Upon approval from City Council)

A quorum of City Council must participate in the meeting.

#### ROLL CALL

#### INVOCATION BY EL PASO POLICE CHAPLAIN ROBERT HEMPHILL, JR., PhD

#### PLEDGE OF ALLEGIANCE

#### **MAYOR'S PROCLAMATIONS**

**Veterans Day** 

**Hal Marcus Gallery Day** 

#### NOTICE TO THE PUBLIC

All matters listed under the CONSENT AGENDA, including those on the Addition to the Agenda, will be considered by City Council to be routine and will be enacted by one motion unless separate discussion is requested by Council Members. Prior to the vote, members of the audience may ask questions regarding items on the consent agenda. When the vote has been taken, if an item has not been called out for separate discussion, the item has been approved. Council may, however, reconsider any item at any time during the meeting.

#### CONSENT AGENDA - APPROVAL OF MINUTES:

Goal 6: Set the Standard for Sound Governance and Fiscal Management

1. Approval of Minutes of the Regular City Council Meeting of October 26, 2021, the Agenda Review of October 25, 2021, the Work Session of October 25, 2021, the Special Meeting of July 27, 2020, and the Work Session of September 28, 2020.

21-1296

#### **All Districts**

City Clerk's Office, Laura D. Prine, (915) 212-0049

#### **CONSENT AGENDA - REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS:**

#### 2. CONSENT AGENDA - REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS:

#### **CONSENT AGENDA - RESOLUTIONS:**

#### **Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development:**

A Resolution to authorize the City Manager to sign an Air Cargo Building Lease Agreement between the City of El Paso ("Lessor") and Swissport SAUSA, LLC, a Delaware Limited Liability Company ("Lessee"), for office and warehouse space, loading dock, round service equipment parking apron and vehicle parking area, at 6415 Convair Road, El Paso, Texas, in Air Cargo Center Building #2. The annual rental fees are \$120,156.78 and the lease effective date will be November 9, 2021.

21-1275

The initial term of this lease is of one (1) year plus four (4) automatic options of one (1) year each. The initial annual rent is \$120,156.78, which is the same rate under the recently expired lease. The rental fee will be adjusted at the exercise of the first option on November 9, 2022.

#### **District 3**

Airport, Sam Rodriguez, (915) 212-7301

4. A Resolution to authorize the City Manager to sign a First Amendment to Air Cargo Center Agreement ("First Amendment") with an effective date of November 9, 2021, by and between the City of El Paso ("Lessor") and DHL Express (USA), Inc. ("Lessee") to add the following described property:

**21-1280** 

That certain office and warehouse space containing approximately 12,325 square feet, more or less, in total as shown on Exhibit "C" to said First Amendment, known as the Air Cargo Center, 301 George Perry Blvd., Suite H, El Paso, El Paso County, Texas, together with portions of the loading dock and vehicle parking space, ground service equipment parking and the non-exclusive use of the roadway in front of the Air Cargo Center, all as set forth therein.

That the First Amendment shall identify Lessor Additional Improvements and the rental rates for Suite H.

The term of this lease is five (5) years with one (1) year and three (3)

months remaining plus one (1) option to extend the term by five (5) years. The new annual rental rate will be \$173,139.55, which is an increase of \$87,713.55 per year.

#### District 2

Airport, Sam Rodriguez, (915) 212-7301

#### Goal 2: Set the Standard for a Safe and Secure City

5. That the El Paso City Council authorizes the submission to the Office of the Governor of the State of Texas, Criminal Justice Division, grant application number 4365501, for the City of El Paso Police Department project identified as "Body Worn Camera Grant Program FY2022" to provide financial assistance to the City of El Paso. Requesting \$497,790.00, which requires a cash match by the City of \$165,930.00 for a total project amount of \$663,720.00. Grant period will be March 1, 2022 - February 28, 2023.

#### **21-1263**

#### **All Districts**

Police, Assistant Chief Zina Silva, (915) 212-4306

## Goal 4: Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments

That the closure of rights-of-way within the City of El Paso for the Sun Bowl Thanksgiving Day Parade from 3:00 a.m. to 2:00 p.m. on Thursday, November 25, 2021, serves a public purpose of providing cultural and recreational activities for the residents and visitors of the City of El Paso, and in accordance with 43 TAC, Section 22.12, the City Manager be authorized to sign an Agreement For The Temporary Closure of State Right Of Way (Form TEA 30A) by and between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation, for the temporary closure and use of State owned and operated street(s) in excess of four hours for portions of Copia St. between La Luz Ave. and Tularosa Ave. upon the issuance of required permits from the City of El Paso and substantial conformity to the finalized TEA30 agreement between the City of El Paso and State of Texas Department of Transportation. (CSEV21-00059)

#### 21-1262

#### District 2

Planning and Inspections, Philip F. Etiwe, (915) 212-1553 Planning and Inspections, Klarissa Mijares, (915) 212-1544

#### Goal 6: Set the Standard for Sound Governance and Fiscal Management

7. Approve a Resolution that in conformity with Section 3.5 of the City Charter, the regular City Council meeting scheduled on December 21, 2021 is hereby rescheduled for Tuesday, December 14, 2021, and the related Agenda Review and Work Session will be held on Monday, December 13, 2021. The regular meetings of the City Council for the 2022 calendar year will resume on January 4, 2022.

#### 21-1266

#### **All Districts**

8. A Resolution authorizing the City Manager, or designee, to exercise the first renewal option under a Lease Agreement entered on November 29, 2011 between the City of El Paso, Texas and Madison River Investments, LLC for the lease of the property commonly known as Suite 300 of the Wells Fargo Building located at 221 N. Kansas Street and to accept the Landlord's determination of the Market Base Rental Rate as provided in the lease.

21-1294

With this renewal the current rent of \$11,391/month or \$136,700/year will be increased by 11% to \$12,065/month or \$151,563/year. The renewal rental rate will be in effect for the five year renewal term.

#### **District 8**

Capital Improvement Department, Sam Rodriguez, (915) 212-1845

#### **Goal 7: Enhance and Sustain El Paso's Infrastructure Network**

9. That the City Manager, or designee, be authorized to sign a First Amendment to Agreement for Professional Services by and between the CITY OF EL PASO and GRV Integrated Engineering Solutions, LLC., a Texas Limited Liability Corporation, for a project known as "YARBROUGH, GEORGE DIETER AND LEE TREVINO ARTERIAL LIGHTING AND LANDSCAPE IMPROVEMENTS" to allow additional basic services for construction administration increasing the contract amount by \$63,405 extending the contract amount from \$503,956.76 to \$567,361.76. Further, that the City Engineer is authorized to approve Additional Services for an amount not to exceed \$36,595 if such services are necessary for the proper execution of the project and that the increased amounts are within the appropriate budgets of the project for a total amount of \$603,956.76; and that the City Manager is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for the execution of the Agreement.

21-1234

#### Districts 3, 5, 6 and 7

Capital Improvement Department, Sam Rodriguez, (915) 212-1808

#### Goal 8: Nurture and Promote a Healthy, Sustainable Community

10. That the Mayor of the City of El Paso, Texas be authorized to sign a Resolution of no objection for a 2021 4% Non-Competitive, Low Income Housing Tax Credit (LIHTC) application submitted by EP Salazar II, LP to the Texas Department of Housing and Community Affairs (TDHCA) for the rehabilitation of approximately 302 affordable rental housing units at 311 S. Eucalyptus Street, El Paso, Texas 79905 (aka Salazar Apartments).

21-1272

#### **All Districts**

Community and Human Development, Nicole Ferrini, (915) 212-1659

11. That the Mayor of the City of El Paso, Texas be authorized to sign a Resolution acknowledging that the census tract within which the 2021 4% Non-Competitive, Low Income Housing Tax Credit (LIHTC) application

**21-1273** 

submitted by EP Salazar II, LP to the Texas Department of Housing and Community Affairs (TDHCA) for the rehabilitation of approximately 302 affordable rental housing units at 311 S. Eucalyptus Street, El Paso, Texas 79905 (aka Salazar Apartments) is within a census tract with a poverty rate greater than 55%; and confirming that the City Council has voted specifically to authorize the Development to move forward.

#### **All Districts**

Community and Human Development, Nicole Ferrini, (915) 212-1659

12. That the Mayor be authorized to sign an Interlocal Agreement between the City of El Paso, Texas and the City of Anthony, Texas, for the period of September 1, 2021 through August 31, 2022, for the provision of public health and environmental services by the City of El Paso to the City of Anthony, for which the City of Anthony shall pay to the City of El Paso an annual amount of FIFTY-ONE THOUSAND THREE HUNDRED FOUR DOLLARS AND NO/100 (\$51,304.00).

**21-1276** 

#### **All Districts**

Public Health, Angela Mora, (915) 212-6502

#### **CONSENT AGENDA - BOARD RE-APPOINTMENTS:**

#### Goal 3: Promote the Visual Image of El Paso

**13.** Edmund Castle to the Historic Landmark Commission by Representative Joe Molinar, District 4.

21-1299

Members of the City Council, Representative Joe Molinar, (915) 212-0004

#### **CONSENT AGENDA - APPLICATIONS FOR TAX REFUNDS:**

#### Goal 6: Set the Standard for Sound Governance and Fiscal Management

14. That the tax refunds listed on the attachment posted with this agenda be approved. This action would allow us to comply with state law which requires approval by the legislative body of refunds of tax overpayments greater than \$2,500.00. (See Attachment A)

21-1268

#### **All Districts**

Tax Office, Maria O. Pasillas, (915) 212-1737

#### CONSENT AGENDA - NOTICE OF CAMPAIGN CONTRIBUTIONS:

#### Goal 6: Set the Standard for Sound Governance and Fiscal Management

**15.** For notation pursuant to Section 2.92.080 of the City Code: receipt of campaign contributions by Representative Peter Svarzbein in the amount of \$1,500.00 by

**21-1297** 

El Paso Association of Fire Fighters Local 51.

Members of the City Council, Representative Peter Svarzbein, (915) 212-0001

#### REGULAR AGENDA - MEMBERS OF THE CITY COUNCIL

### Goal 4: Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments

16. Discussion and action that the City Council declares that the expenditure of District 2 discretionary funds in an amount not to exceed \$4,446.42 to the Downtown Management District for costs related to the placement of informational banners in the City's downtown area for the Ann Richards Legacy Project; serves the public purpose of inspiring new leaders.

<u>21-1302</u>

#### **All Districts**

Members of the City Council, Representative Alexsandra Annello, (915) 212-0002

## **Goal 5: Promote Transparent and Consistent Communication Amongst All Members of the Community**

17. Discussion and action to direct the City Manager and staff to provide an answer on or before the February 1, 2022 City Council meeting with a cost estimate of how much the Multipurpose Performing Arts and Entertainment Center (MPC) project would cost if it were executed today.

**21-1300** 

#### **All Districts**

Members of the City Council, Representative Joe Molinar, (915) 212-0004

#### Goal 7: Enhance and Sustain El Paso's Infrastructure Network

18. Discussion and action to suspend November Sun Metro route closures to the 2nd quarter of 2022 to fully ascertain return of ridership and to create a timeline for reinstatement of route closures during the pandemic from March 2020 to present.

21-1298

#### **All Districts**

Members of the City Council, Representative Peter Svarzbein, (915) 212-0001 Members of the City Council, Representative Alexandra Annello, (915) 212-0002

#### Goal 8: Nurture and Promote a Healthy, Sustainable Community

**19.** Discussion and action on a Resolution recognizing and honoring November 20, 2021 as National Transgender Day of Remembrance.

21-1304

#### **All Districts**

Members of the City Council, Representative Alexsandra Annello, (915) 212-0002 Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003 Members of the City Council, Representative Peter Svarzbein, (915) 212-0001

#### **REGULAR AGENDA - OPERATIONAL FOCUS UPDATES**

#### Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development:

**20.** Management Update: Eco-Tourism Update.

21-1274

#### **All Districts**

Parks and Recreation, Ben Fyffe, (915) 212-1766

#### Goal 6: Set the Standard for Sound Governance and Fiscal Management

**21.** Presentation, discussion and action on the upcoming Strategic Planning Session to be held on December 1-2, 2021 at the El Paso Museum of Art.

21-1258

#### All Districts

City Manager's Office, Juliana Baldwin-Munoz, (915) 212-1204 City Manager's Office, K. Nicole Cote, (915) 212-1092

#### **CALL TO THE PUBLIC - PUBLIC COMMENT:**

Call to the Public will begin at 12:00 p.m. Requests to speak must be received by 9:00 a.m. on the date of the meeting. Sixty minutes in total will be devoted for Call to the Public. This time is reserved for members of the public who would like to address the City Council on items that are not on the City Council Agenda.

Members of the public may communicate with Council during public comment, and regarding agenda items by calling 1-915-213-4096 or toll free number 1-833-664-9267 at the prompt please enter the following Conference ID: 222-784-564#

A sign-up form is available on line for those who wish to sign up in advance of the meeting at: http://legacy.elpasotexas.gov/muni\_clerk/signup\_form.asp

#### **REGULAR AGENDA - FIRST READING OF ORDINANCES:**

## INTRODUCTION OF ORDINANCES PURSUANT TO SECTION 3.9 OF THE EL PASO CITY CHARTER:

Public comment typically is not taken during the first reading of ordinances. Public comments are invited at the date of the scheduled public hearing.

Public Hearings will be held as part of the regular City Council meeting that begins at approximately 9:00 a.m. All interested persons present shall have an opportunity to be heard at that time. After the public hearings, Council may also delay taking action on Ordinances; no requirement is made by Section 3.9B of the El Paso City Charter to publish any further notice. Copies of all Ordinances are available for review in the City Clerk's office, 300 N. Campbell, Monday through Friday, 8:00 a.m. to 5:00 p.m.

#### Goal 2: Set the Standard for a Safe and Secure City

22. An Ordinance amending Title 12 (Vehicles and traffic), Chapter 12.08 (Administration and Enforcement), Section 12.08.220 (Impounding Vehicles) of the City Code, in its entirety, to allow an employee designated by the City to request the removal and storage of illegally parked and abandoned vehicles.

21-1284

#### **All Districts**

Police, Assistant Chief Peter Pacillas (915) 212-4308

#### PUBLIC HEARING WILL BE HELD ON NOVEMBER 23, 2021

#### Goal 3: Promote the Visual Image of El Paso

23. An Ordinance granting Special Permit No. PZST21-00012, to allow for a television and radio broadcasting antennae on the property described as a portion of Lot 1, Block 2, Pellicano Commercial Unit Three, 12285 Pellicano Drive, City of El Paso, El Paso County, Texas, pursuant to Section 20.10.700 of the El Paso City Code. The penalty being as provided in Chapter 20.24 of the El Paso City Code.

**21-1269** 

The proposed special permit meets the intent of the Future Land Use designation for the property and is in accordance with *Plan El Paso*, the City's Comprehensive Plan.

Subject Property: 12285 Pellicano Drive Applicant: Montoya Oak Business Park, LP PZST21-00012

#### **District 6**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553 Planning and Inspections, Andrew Salloum, (915) 212-1603

#### PUBLIC HEARING WILL BE HELD ON DECEMBER 7, 2021

24. An Ordinance changing the zoning of Tract 8C, Section 29, Block 80, TSP 1, Texas And Pacific RR Company Surveys, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) to C-4 (Commercial). The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

<u>21-1270</u>

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: Generally located East of Dyer Street and North of Sean Haggerty Drive/Angora Loop Avenue

Applicant: Sitework Engineering c/o Jorge Garcia, PZRZ21-00022

#### **District 4**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553 Planning and Inspections, Luis Zamora, (915) 212-1552

#### PUBLIC HEARING WILL BE HELD ON DECEMBER 7, 2021

#### REGULAR AGENDA - OTHER BIDS, CONTRACTS, PROCUREMENTS:

#### Goal 7: Enhance and Sustain El Paso's Infrastructure Network

**25.** The linkage to the Strategic Plan is subsection 7.2 - Improve competitiveness through infrastructure improvements impacting the quality of life.

**21-1260** 

#### Award Summary:

Discussion and action on the award of solicitation 2022-0052 Airport RTS to MIRADOR ENTERPRISES, INC. for an estimated award of \$1,474,731.79. The purpose of the project is to improve the existing local bus service in El Paso along the Montana Street corridor by adding a new bus rapid transit service route, as well as providing a pickup location for rideshare users. A new enclosed station at the El Paso International Airport will be constructed that will follow the development of the Montana Rapid Transit System (RTS), that will also provide a pickup location for rideshare users. The station will consist of a climate-controlled building, pedestrian lighting, new sidewalks, landscaping, bicycle racks and artwork.

Department: Capital Improvement

Award to: MIRADOR ENTERPRISES, INC.

El Paso, TX

Item(s): Base Bid I, Base Bid II, Base Bid III and Base Bid IV

Initial Term: 182 Consecutive Calendar Days

Base Bid I: \$1,224,669.94

Base Bid II: \$26,055.72

Base Bid III: \$77,566.32

Base Bid IV: \$134,730.00

Additive Alternate I: \$11,709.81

Total Estimated Award: \$1,474,731.79

Funding Source: 2021 Certificate of Obligation/Federal Transit

Administration

Account: 190-4746-38290-580270-PCP11MT050B

560-3210-38290-580270-PCP11MT050B

District(s): 2 & 3

This is a Low Bid procurement, lump sum contract.

The Purchasing & Strategic Sourcing and Capital Improvement Departments recommend award as indicated to MIRADOR ENTERPRISES, INC., the lowest responsive and responsible bidder and that Arrow Building Corp. be deemed non-responsible due to not providing proper documentation that demonstrates a satisfactory performance record and that PERIKIN Enterprises, LLC be deemed non-responsible due to not meeting the minimum experience requirement that demonstrates a satisfactory performance record.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

As a part of this award, upon the review of the City Attorney, the City Engineer may without further authorization from City Council approve contract changes which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable law, do not make changes to the prices and are within the appropriate budget.

#### Districts 2 and 3

Capital Improvement Department, Sam Rodriguez, (915) 212-0065 Purchasing and Strategic Sourcing, Bruce D. Collins, (915) 212-1181

#### REGULAR AGENDA – PUBLIC HEARINGS AND SECOND READING OF ORDINANCES:

#### Goal 2: Set the Standard for a Safe and Secure City

26. An Ordinance amending Title 10 (Public Peace, Morals and Welfare), Chapter 10.12 (Offenses against Public Peace), Section 10.12.050 (Alcohol Prohibited in Public Places), Subsection A to define "Homeless Shelter," "Possesses," and "Possession," and Subsection B to add Homeless Shelter to the area where offense can occur; the penalty being provided in Subsection 10.12.050 E of the El Paso City Code. [POSTPONED FROM 10-12-2021 AND 10-26-2021]

#### 21-1104

#### All Districts

Police, Assistant Chief Victor Zarur, (915) 212-4307

#### Goal 3: Promote the Visual Image of El Paso

27. An Ordinance changing the zoning for a portion of Tract 6, Fruitvale Addition, 8458 Roseway Drive, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) to R-4 (Residential). The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

**21-1154** 

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with *Plan El Paso*, the City's Comprehensive Plan.

Subject Property: 8458 Roseway Drive Applicant: Elder Ramirez, PZRZ21-00023

#### **District 6**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553 Planning and Inspections, Jorge Olmos, (915) 212-1607

28. An Ordinance approving a special permit for a parking lot for the property described as Lot 7 and 8 and South 2 Feet of Lot 9, Block 82, Campbell Addition, City of El Paso, El Paso County, Texas, The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

<u>21-1157</u>

The proposed special permit meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: 707 S. Ochoa St.

Applicant: Jaime Montoya, PZST21-00010

#### **District 8**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553 Planning and Inspections, Luis Zamora, (915) 212-1552

29. An Ordinance changing the zoning for the property described as being a portion of Tracts 3 and 3A, Section 15, Block 80, Township 1, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas from R-F (Ranch-Farm) to R-5 (Residential). The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

21-1169

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with *Plan El Paso*, the City's Comprehensive Plan.

Subject Property: Dyer Street and O'Connor Drive Applicant: Salvare NE El Paso, LLC, PZRZ21-00019

#### District 4

Planning and Inspections, Philip F. Etiwe, (915) 212-1553 Planning and Inspections, David Samaniego, (915) 212-1608

#### **REGULAR AGENDA - OTHER BUSINESS:**

## Goal 4: Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments

30. Discussion and action that the City Manager be authorized to sign an Amendment to a Standard Form of Agreement between the Owner and Design-Builder entered into by and between the City and Jordan Foster Construction, LLC, dated March 19, 2019, and establishes a Guaranteed Maximum Price (GMP) for construction and time for completion of construction.

<u>21-1279</u>

Design-Builder's GMP for cost of the Eastside Sports Complex Phase II 2018-1186R project is \$12,105,896.36, which includes amounts previously paid under the Agreement, the Owner's Contingency, Design-Builder's Fee, General Conditions and Design-Builder's Contingency.

#### **District 5**

Capital Improvement Department, Sam Rodriguez, (915) 212-1808

#### Goal 6: Set the Standard for Sound Governance and Fiscal Management

**31.** Discussion and action that the City Manager, or designee, be authorized to sign a two year On-Call Agreement for Professional Services to perform appraisal

<u>21-1230</u>

services on a task order basis between the 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.

#### **All Districts**

Capital Improvement Department, Sam Rodriguez, (915) 212-1845

32. Discussion and action on the Resolution that the City reviewed and approves the issuance of the Unlimited Tax Bonds, Series 2021 by Paseo Del Este Municipal Utility District No. 1 with the acknowledgement that the issuance of such bonds does not constitute debt issuance by the City of El Paso.

#### 21-1271

#### **All Districts**

City Manager's Office, Robert Cortinas, (915) 212-1067

#### Goal 7: Enhance and Sustain El Paso's Infrastructure Network

33. Discussion and action that the City Manager, or designee, be authorized to sign an Agreement for Professional Services by and between the CITY OF EL PASO and TRANSMAP CORPORATION, an Ohio Professional Limited Liability Company, for a project known as "PAVEMENT CONDITIONS INDEX ASSESSMENT" for an amount not to exceed SIX HUNDRED FIFTY TWO THOUSAND EIGHT HUNDRED NINETY FIVE AND 93/100 DOLLARS (\$652,895.93) and that the City Manager, or designee, be authorized to establish the funding sources, make any necessary budget transfers, execute any and all documents necessary for the execution of the Agreement, and to execute any contract amendments that do not impact the funding amount.

#### 21-1259

#### **All Districts**

Capital Improvement Department, Sam Rodriguez (915) 212-1845

Discussion and action that the City Manager be authorized to sign a two year On-Call Agreement for Professional Services to perform Urban Design Services on a task basis by and between the City of El Paso and each of the following consultants for services not traditionally offered by other design consultants with active on-call contract:

**21-1286** 

- Service Area Information Analysis AECOM Technical Services.
   Inc.
- Service Area Strategic Planning and Visioning Lake Flato Architects, Inc. and Mycotoo, Inc. (2 contracts)
- Service Area Sustainability & Resiliency Planning AECOM Technical Services, Inc. and Quantum Engineering Consultants, Inc. (2 contracts)
- Service Area Urban Design Asakura Robinson Company, LLC and Lake Flato Architects, Inc. (2 contracts)

Each On Call Agreement will be for an amount not to exceed Two Hundred Thousand and No/00 Dollars (\$200,000.00), and each agreement will include authorization for the City Engineer to approve additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and authorization for the City Engineer to approve Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if the identified services are necessary for proper execution of identified project and if the increased amounts are within the appropriate budget identified for a project. 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.

#### **All Districts**

Capital Improvement Department, Sam Rodriguez, (915) 212-1808

#### Goal 8: Nurture and Promote a Healthy, Sustainable Community

35. Discussion and action that the City Manager be authorized to sign a two year On-Call Agreement for Professional Services to perform energy management services on a task order basis by and between the City of El Paso and each of the following two (2) consultants:

<u>21-1265</u>

- 1. Texas Energy Engineering Services, Inc.
- 2. Yearout Energy Services Company, LLC

Each On-Call Agreement will be for an amount not to exceed Three Hundred Thousand and No/00 Dollars (\$300,000.00), and each agreement will include authorization for the City Engineer to approve additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and authorization for the City Engineer to approve Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if the identified services are necessary for proper execution of identified project and if the increased amounts are within the appropriate budget identified for a project. In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement.

#### **All Districts**

#### **EXECUTIVE SESSION**

The following member of City Council will be present via video conference on November 9, 2021:

#### Representative Alexsandra Annello (Upon approval from City Council)

The City Council of the City of El Paso may retire into EXECUTIVE SESSION pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Chapter 551, Subchapter D, to discuss any of the following: (The items listed below are matters of the sort routinely discussed in Executive Session, but the City Council of the City of El Paso may move to Executive Session any of the items on this agenda, consistent with the terms of the Open Meetings Act and the Rules of City Council.) The City Council will return to open session to take any final action and may also, at any time during the meeting, bring forward any of the following items for public discussion, as appropriate.

Section 551.071	CONSULTATION WITH ATTORNEY
Section 551.072	DELIBERATION REGARDING REAL PROPERTY
Section 551.073	DELIBERATION REGARDING PROSPECTIVE GIFTS
Section 551.074	PERSONNEL MATTERS
Section 551.076	DELIBERATION REGARDING SECURITY DEVICES OR SECURITY AUDITS
Section 551.087	DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS
Section 551.089	DELIBERATION REGARDING SECURITY DEVICES OR SECURITY AUDITS; CLOSED
	MEETING

#### **ADJOURN**

#### **NOTICE TO THE PUBLIC:**

Sign Language interpreters are provided for regular City Council meetings. If you need Spanish Interpreter Services, you must email CityClerk@elpasotexas.gov at least 48 hours in advance of the meeting.

ALL REGULAR CITY COUNCIL AGENDAS ARE PLACED ON THE INTERNET ON THURSDAY PRIOR TO THE MEETING AT THE ADDRESS BELOW:

http://www.elpasotexas.gov/

### El Paso, TX

#### Legislation Text

File #: 21-1296, Version: 1

## CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

City Clerk's Office, Laura D. Prine, (915) 212-0049

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Approval of Minutes of the Regular City Council Meeting of October 26, 2021, the Agenda Review of October 25, 2021, the Work Session of October 25, 2021, the Special Meeting of July 27, 2020, and the Work Session of September 28, 2020.

OSCAR LEESER MAYOR

CITY MANAGER

MAYOR
TOMMY GONZALEZ



#### CITY COUNCIL

PETER SVARZBEIN, DISTRICT 1
ALEXSANDRA ANNELLO, DISTRICT 2
CASSANDRA HERNANDEZ, DISTRICT 3
JOE MOLINAR, DISTRICT 4
ISABEL SALCIDO, DISTRICT 5
CLAUDIA L. RODRIGUEZ, DISTRICT 6
HENRY RIVERA, DISTRICT 7
CISSY LIZARRAGA, DISTRICT 8

## AGENDA REVIEW MINUTES COUNCIL CHAMBERS AND VIRTUALLY CITY HALL, 300 N. CAMPBELL October 25, 2021 9:00 A.M.

The City Council met at the above place and date. Meeting was called to order at 9:02 a.m. Mayor Oscar Leeser present and presiding and the following Council Members answered roll call: Alexsandra Annello, Cassandra Hernandez, Joe Molinar, Isabel Salcido, Claudia Rodriguez, and Henry Rivera. Cissy Lizarraga participated via videoconference. Late arrival: Peter Svarzbein at 9:04 a.m.

The agenda items for the October 26, 2021 Regular City Council meeting were reviewed.

#### 3. CONSENT AGENDA - RESOLUTIONS

A Resolution that the City Council, in accordance with the provisions of the City Code Subsection 12.056.020f.1, hereby exempts the regularly designated parking meter fees to the north of I-10, to include, but not be limited to the Uptown Parking Benefit District, on November 20, 2021, for WinterFest, which constitutes a special downtown event.

Representative Rodriguez questioned the following City staff member:

Paul Stresow, International Bridges Assistant Director

#### 9. CONSENT AGENDA – RESOLUTIONS

A Resolution to amend the process for Council Member attendance via videoconference to a first come, first served basis each meeting week beginning November 8, 2021.

Mayor Leeser and Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga questioned the following City staff members:

- Ms. Laura Prine, City Clerk
- Ms. Karla Nieman, City Attorney
- Ms. Kristen Hamilton-Haram, Assistant City Attorney

#### 10. CONSENT AGENDA - RESOLUTIONS

That the City Council approves a change order in the amount of \$264,139.21 to J.A.R. Concrete Inc. for the increase in landscaping, irrigation, and other elements to the project under Contract No. 2019-452 Paso Del Norte (PDN) Port of Entry (POE) Roundabout Improvements. This notice provides for the additional scope of work, which allows for additional capacity to the awarded contract. The new contract sum, including this change order notice and previous change order notices is \$2,662,492.51. The City Manager, or designee, is authorized to execute any documents and contract amendments needed to carry out the intent of this resolution.

Representative Svarzbein commented.

Ms. Laura Prine, City Clerk, commented.

#### 22. REGULAR AGENDA – MEMBERS OF THE CITY COUNCIL

Discussion and action to direct the City Manager and staff to come back at the November 23, 2021 City Council meeting with an estimate of how much the Multipurpose Performing Arts and Entertainment Center (MPC) project would cost if it were executed today.

Mayor Leeser and Representative Rodriguez commented.

Ms. Laura Prine, City Clerk commented.

## 25. REGULAR AGENDA – OTHER BUSINESS

Discussion and action on a Resolution that the City, as part of its instruction to the Districting Commission and in its adoption of a redistricting plan, will observe certain redistricting criteria in the adjustment of representative district boundaries.

Mayor Leeser commented.

Ms. Karla Nieman, City Attorney, commented.

## 31. REGULAR AGENDA – PUBLIC HEARINGS AND SECOND READING OF ORDINANCES

An Ordinance authorizing the City Manager to sign a Purchase and Sale Agreement, Special Warranty Deed and any other documents necessary to convey to VJ Capital Properties, Ltd., approximately 3.15 acres of land being described as a portion of Tracts 23-G-1 and 23-G-2, Block 54, Ysleta Grant, El Paso County, Texas.

Representative Rivera questioned the following EP Water staff member:

Mr. Alex Vidales, Real Estate Manager

## 33. REGULAR AGENDA – PUBLIC HEARINGS AND SECOND READING OF ORDINANCES

An Ordinance amending Title 10 (Public Peace, Morals and Welfare), Chapter 10.12 (Offenses against Public Peace), Section 10.12.050 (Alcohol Prohibited in Public Places), Subsection A to define "Homeless Shelter," "Possesses," and "Possession," and Subsection B to add Homeless Shelter to the area where offense can occur; the penalty being provided in Subsection 10.12.050 E of the El Paso City Code

Representative Lizarraga commented.

Ms. Laura Prine, City Clerk, commented.

## 34. REGULAR AGENDA – PUBLIC HEARINGS AND SECOND READING OF ORDINANCES

An Ordinance changing the zoning of the following real property known as:

Parcel 1: Tract 1, Section 4, Block 80, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, from R-F (Ranch and Farm) to M-2 (Heavy Manufacturing); and

Parcel 2: Tract 3, Section 3, Block 80, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, from R-F (Ranch and Farm) to M-2 (Heavy Manufacturing), and imposing conditions. The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: 7000 Stan Roberts Applicant: City of El Paso, PZRZ21-00020

Mayor Leeser and Representatives Svarzbein, Annello, and Molinar questioned the following City staff member:

• Ms. Anne Guayante, Lead Planner

#### 36. REGULAR AGENDA - PUBLIC HEARINGS AND SECOND READING OF ORDINANCES

An Ordinance renewing a Special Privilege License to the El Paso Electric Company, Owner and El Paso Parking, Inc., Lessee, to permit off-street parking within a portion of Rim Road right-of-way, by extending the term for another five years.

Subject Property: South of Rim Rd. and West of El Paso St. 21-1170 Applicant: El Paso Parking Inc. NESV2020-00005

Representative Svarzbein questioned the following City staff member:

Ms. Armida Martinez, Senior Planner

#### 37. REGULAR AGENDA - PUBLIC HEARINGS AND SECOND READING OF ORDINANCES

An Ordinance amending Title 12 (Vehicles and Traffic), Chapter 12.88 (Schedules), Section 12.88.030 (Schedule III - Parking Prohibited at all times on certain streets) of the City Code, to add portions of South El Paso Street; the penalty being provided in Chapter 12.84 of the El Paso City Code.

Representatives Annello and Lizarraga commented.

Ms. Hannah Williams, Traffic Engineer Associate, commented.

#### 39. REGULAR AGENDA – OTHER BUSINESS

Discussion and action that the City Manager be authorized to sign a two year On-Call Agreement for Professional Services to perform Municipal Solid Waste Engineering consulting services on a task basis by and between the City of El Paso and each of the following four (4) consultants:

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- 1. AECOM Technical Services, Inc.
- 2. Burns & McDonnell Engineering Company, Inc.
- 3. Parkhill, Inc.
- 4. SCS Engineers

Each On Call Agreement will be for an amount not to exceed Three Hundred Thousand and No/100 Dollars (\$300,000.00), and each agreement will include authorization for the City Engineer to approve additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and authorization for the City Engineer to approve Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if the identified services are necessary for proper execution of identified project and if the increased amounts are within the appropriate budget identified for a project. 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.

Representative Hernandez questioned the following City staff member:

Mr. Gerry DeMuro, Capital Improvement Assistant Director
Motion made by Representative Rivera, seconded by Representative Annello, and unanimously carried to <b>ADJOURN</b> this meeting at 9:58 a.m.
AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga NAYS: None
APPROVED AS TO CONTENT:
Laura D. Prine, City Clerk

OSCAR LEESER MAYOR

TOMMY GONZALEZ
CITY MANAGER



#### CITY COUNCIL

PETER SVARZBEIN, DISTRICT 1
ALEXSANDRA ANNELLO, DISTRICT 2
CASSANDRA HERNANDEZ, DISTRICT 3
JOE MOLINAR, DISTRICT 4
ISABEL SALCIDO, DISTRICT 5
CLAUDIA L. RODRIGUEZ, DISTRICT 6
HENRY RIVERA, DISTRICT 7
CISSY LIZARRAGA, DISTRICT 8

## CITY COUNCIL WORK SESSION MINUTES October 25, 2021 COUNCIL CHAMBERS, CITY HALL AND VIRTUALLY 9:05 AM

The City Council of the City of El Paso met at the above place and date. Meeting was called to order at 9:58 a.m. Mayor Oscar Leeser was present and presiding and the following Council Members answered roll call: Peter Svarzbein, Alexsandra Annello, Cassandra Hernandez, Joe Molinar, Isabel Salcido, Claudia Rodriguez, and Henry Rivera. Cissy Lizarraga attended via videoconference.

AGENDA

- 1. Presentation and discussion by the COVID-19 Response and Recovery Cross-Functional Team providing information on key activities, efforts and processes.
  - 1. Overview (Tommy Gonzalez)

Mr. Tommy Gonzalez, City Manager, introduced the presentation by stating that the transmission rate of COVID-19 infections was currently high as the rate for new cases per 100,000 individuals was at 10.3%. He added that 30% of COVID-19 hospitalizations were breakthrough cases and followed up with statistical information related to vaccination rates. Mr. Gonzalez said 77% of individuals were now fully vaccinated; with 90% receiving a first dose. He explained that vaccinations for children between the ages of 5 and 11 were close to receiving approval adding that the City was providing Moderna and Johnson & Johnson booster shots in addition to the Pfizer booster. Mr. Gonzalez ended the overview by providing the hours of operation for the City's vaccination sites and encouraged the use of facemasks regardless of vaccination status.

- 2. City Attorney Overview (Karla Nieman)
  - a) Greg Abbott, in his official capacity as Governor of Texas, v. City of El Paso

Ms. Karla Nieman, City Attorney, provided an update on litigation related to the City's Mask Mandate, pending with the 8<sup>th</sup> Court of Appeals, and said a decision was expected in a couple of weeks with the likelihood that the case would return to County Court No. 7 for trial. She stated that the Mask Mandate was still on pause, explaining that this litigation was being handled in house with an estimated 395 hours spent on the case to date.

- 3. Team Lead Report:
  - a) Health Focus (Hector Ocaranza, M.D.)

#### b) Data Analysis

Dr. Hector Ocaranza, Public Health Authority, continued the presentation by explaining that the number of new COVID-19 cases and hospitalizations continued on an upward trend. He added that new cases were prominent among unvaccinated individuals proving that vaccinations were effective in fighting the virus. Dr. Ocaranza stated that the Center for Disease and Control Prevention (CDC) was currently reviewing trials on children age 5 to 11 and recommended vaccinations for those eligible along with the use of non-pharmacological interventions such as face masks, hand washing, and testing. He also elaborated on the differences between doses and frequency among vaccine brands along while explaining the variance between a booster dose and a third dose.

Mr. David Coronado, Managing Director for International Bridges, began his update by stating that the Department of Homeland Security (DHS) announced that the port of entries would soon reopen. He explained that stakeholders in the Bridges Steering Committee were preparing to restart the P3 program with U.S. Customs and Border Protection to provide additional funding for overtime and traffic control in anticipation of increased travel. Mr. Coronado also provided statistical information related to trade, sales tax allocations, and hotel occupancy, which are performing above pre-pandemic levels.

The following City staff members responded to questions posed by Members of the City Council:

- Ms. Angela Mora, Public Health Director
- Ms. Ellen Smyth, Managing Director of Public Transportation
- 4. City Manager Wrap-up (Tommy Gonzalez)

Mr. Tommy Gonzalez, City Manager, wrapped up the presentation by saying the City would be setting up vaccination sites at bus depots and ports of entry and continue to seek opportunities for additional sites. He urged the community to obtain flu vaccines ahead of the flu season and explained that once approved the roll out of vaccinations for children age 5 to 11 would be similar to methods used for current eligible individuals in order to obtain the same positive results.

Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, and Lizarraga commented.

**NO ACTION** was taken on this item.

The meeting was **RECESSED** at 11:26 a.m. and **RECONVENED** at 12:04 p.m.

2. Discussion with Veterans Affairs Advisory Committee as they present their 5-year Strategic Plan.

Mr. Paul Albright, Military Program Administrator, introduced the item.

The following members of the Veterans Affairs Advisory Committee presented a PowerPoint presentation (copy on file in the City Clerk's Office):

- 1. Mr. Lance Lehr, Chair
- 2. Mr. Bruce Biegel, Vice Chair
- 3. Ms. Tephanie Hopper, Marketing Subcommittee Chair
- 4. Ms. Hope Jackson, Homelessness Subcommittee Chair

Representatives Svarzbein, Annello and Molinar commented.

The following members of City staff commented:

- 1. Mr. Tommy Gonzalez, City Manager
- 2. Ms. Karla Nieman, City Attorney
- 3. Ms. Nicole Ferrini, Chief Resilience Officer

**NO ACTION** was taken on this item.

3. Presentation and discussion about Municipal Energy operations and plan and its alignment with the City's and Regional Renewable Energy Advisory Council's (RREAC) Strategic Plans.

The following members of City staff presented a PowerPoint presentation (copy on file in the City Clerk's Office):

- 1. Ms. Nicole Ferrini, Chief Resilience Officer
- 2. Mr. Sam Rodriguez, Chief Operations and Transportation Officer
- 3. Mr. Rene Barraza, Business and Financial Officer, Streets and Maintenance Department
- 4. Mr. Fernando Berjano, Sustainability Coordinator, Community and Human Development Department

Mayor Leeser and Representatives Svarzbein, Hernandez

Mr. Tommy Gonzalez, City Manager, commented.

Ms. Cynthia Pina, Regional Vice President, El Paso Electric, commented.

**NO ACTION** was taken on this item.

4. RESOLUTION

WHEREAS, in 2010 and 2015, the City of El Paso passed a resolution authorizing the

Mayor to submit the paperwork necessary for the City of El Paso to join the Cities of Service Coalition, including a Declaration of Service; and

**WHEREAS,** in 2021, the City of El Paso was awarded grant funds for the Love Your Block program by Cities of Service; and

**WHEREAS**, the Cities of Service Coalition requires the City of El Paso to be an active coalition member of the Cities of Service; and

WHEREAS, the Cities of Coalition has requested the Mayor to re-submit the paperwork for

the City of El Paso to join the Cities of Service Coalition and a Declaration of Service; and

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

That the Mayor be authorized to submit the paperwork necessary for the City of El Paso to join the Cities of Service Coalition, including the attached Declaration of Service.

Ms. Nickole Rodriguez, Community Development Program Manager, presented a PowerPoint presentation (copy on file in the City Clerk's Office).

Ms. Nicole Ferrini, Community and Human Deveopment Director, commented.

Representatives Svarzbein and Molinar commented

Motion made by Representative Molinar, seconded by Representative Svarzbein, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

### EXECUTIVE SESSION

Motion made by Representative Molinar, seconded by Representative Salcido, and unanimously carried that the City Council **RETIRE** into **EXECUTIVE SESSION** at 2:17 p.m. pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Sections 551.071 - 551.089 to discuss the following:

Section 551.071 CONSULTATION WITH ATTORNEY

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

Motion made by Representative Rivera, seconded by Representative Rodriguez, and unanimously carried to **ADJOURN** the Executive Session at 4:21 and **RECONVENE** the meeting of the City Council.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera and Lizarraga

NAYS: None

#### EX1. Claim of Joe Olivas. Matter No. 21-1006-1411 (551.071)

Motion made by Mayor Pro Tempore Svarzbein, seconded by Representative Rivera, and unanimously carried that the City Attorney's Office be authorized to **DENY** the claim of Joe Olivas in Matter No. 21-1006-1411, in its entirety.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

#### EX2. Denton, Ryan vs. City of El Paso. Matter No. 20-1051-1091 (551.071)

Motion made by Mayor Pro Tempore Svarzbein, seconded by Representative Rivera, and carried that the City Attorney's Office, in consultation with the City Manager, be **AUTHORIZED** to enter into settlement negotiations and settle the case entitled, *Denton, Ryan v. City of El Paso;* Cause No. 3:20-CV-85. In addition to negotiating a settlement agreement, the City Attorney is authorized to sign all necessary documents to effectuate this authority under Matter Number 20-1051-1091.

AYES: Representatives Annello, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga NAYS: Representatives Svarzbein and Hernandez

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EX3. Adrian Medina and Ana McElhinny v. City of El Paso. Matter No. 16-1026-7712 (551.071)

**NO ACTION** was taken on this item.

EX4. Steve T. Hernandez v. City of El Paso. Matter No. 17-1006-779 (551.071)

Motion made by Mayor Pro Tempore Svarzbein, seconded by Representative Rivera, and unanimously carried that the City Attorney be **AUTHORIZED**, in consultation with the City Manager, to engage in settlement negotiations and settle through mediation the case entitled, *Steve Hernandez v. City of El Paso, Texas; Cause No. 2016DCV4711*. In addition to negotiating a settlement agreement, the City Attorney is authorized to sign all necessary documents to effectuate this authority under Matter No. 17-1006-779.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

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NAYS: None

EX5. Proposed Settlement and Update- Application of El Paso Electric Company for approval to revise its Energy Efficiency Cost Recovery Factor (EECRF) and to request to establish cost caps, Public Utility Commission of Texas Docket No. 52081. Matter No. 21-1008-172 (551.071)

NO ACTION was taken on this item.

EX6. Application of El Paso Electric Company for approval to revise its Fixed Fuel Factor, Public Utility Commission of Texas Docket No. 52723, Matter No. 21-1008-182 (551.071)

Motion made by Mayor Pro Tempore Svarzbein, seconded by Representative Molinar, and unanimously carried that the City Attorney is **AUTHORIZED** to retain outside counsel and any other necessary consultants, in consultation with the City Manager, to file an intervention and take any other necessary legal action in the Petition of El Paso Electric Company to Revise its Fixed Fuel Factor on October 15, 2021, under Texas Public Utility Commission Docket No. 52723.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez,

Rivera, and Lizarraga

NAYS: None

EX7. Update of Application of El Paso Electric Company to Change Rates, Public Utility Commission of Texas Docket No. 52195. Matter No. 21-1008-174 (551.071)

Motion made by Mayor Pro Tempore Svarzbein, seconded by Representative Rivera, and unanimously carried that the City Attorney, in consultation with the City Manager, is AUTHORIZED to engage in settlement negotiation on the Application to Amend Rates filed by El Paso Electric, on June 1, 2021, under Texas Public Utility Commission Docket No. 52195.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

EX8. Update and action on Request by Texas Gas Service Company, a division of ONE Gas, Inc., for Recovery of Extraordinary Costs Incurred during the 2021 Winter Storm Uri and Mitigate Future Costs, Texas Railroad Commission Docket No. 00007069, Matter No. 20-1008-147 (551.071)

Motion made by Mayor Pro Tempore Svarzbein, seconded by Representative Molinar, and unanimously carried that the City Attorney is AUTHORIZED to settle, in consultation with the City Manager, the Application for Customer Rate Relief Related to Winter Storm Uri and Regulatory Asset Determination filed by Texas Gar Service Co., a Division of One Gas, Inc., under Texas Railroad Commission Docket No. 00007069. In addition to negotiating a settlement agreement, the City Attorney is authorized to sign all necessary documents to effectuate this authority under Matter No. 21-1008-175. In the event that a settlement is not reached, the City Attorney is authorized to file an appeal, as appropriate, in this matter.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

#### **ADJOURN**

Motion made by Representative Annello, seconded by Representative Svarzbein and unanimously carried to **ADJOURN** the meeting at 4:28 p.m.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera,

and Lizarraga

NAYS: None .....

APPROVED AS TO CONTENT:

Laura D. Prine, City Clerk

.....

DEE MARGO MAYOR

TOMMY GONZALEZ
CITY MANAGER



## PETER SVARZBEIN, DISTRICT 1 ALEXSANDRA ANNELLO, DISTRICT 2 CASSANDRA HERNANDEZ, DISTRICT 3 SAM MORGAN, DISTRICT 4 ISABEL SALCIDO, DISTRICT 5

CITY COUNCIL

CLAUDIA L. RODRIGUEZ, DISTRICT 6
HENRY RIVERA, DISTRICT 7
CISSY LIZARRAGA, DISTRICT 8

## CITY COUNCIL SPECIAL MEETING MINUTES July 27, 2020 9:00 AM

Due to the temporary suspension of Open Meetings laws due to the COVID-19 emergency this meeting was conducted via telephonic and videoconference formats.

The City Council of the City Council met on the above time and date via videoconference. Meeting was called to order at 9:03 a.m. Mayor Dee Margo present and presiding and the following Council Members answered roll call: Peter Svarzbein, Alexsandra Annello, Cassandra Hernandez, Sam Morgan, Isabel Salcido, Claudia Rodriguez, Henry Rivera and Cissy Lizarraga.

#### **AGENDA**

#### ITEMS 1 AND 2 WERE TAKEN TOGETHER

- **1.** Presentation and submission of appraisal roll, certified anticipated collection rate for the current year.
- 2. Presentation and submission of the No-New Revenue Tax Rate and Voter-Approval Tax Rate for FY 2020-2021 taxes.
  - Mr. Tommy Gonzalez, City Manager, introduced the items and informed Members of the City Council that he would return with a strategy and a plan in response to requests to fund public safety and reduce property taxes.
  - Mr. Robert Cortinas, Chief Financial Officer, presented a PowerPoint presentation, (copy on file in the City Clerk's Office), and answered questions posed by Members of the City Council.

NO ACTION was taken on these items.

- **3.** Presentation, discussion, and action on the proposed FY 2020 2021 Budget.
  - Mr. Robert Cortinas, Chief Financial Officer, presented a PowerPoint presentation (copy on file in the City Clerk's Office).

Mayor Margo and Representatives Svarzbein, Annello, Hernandez, Morgan, Salcido, Rodriguez, Rivera, and Lizarraga commented and posed questions to City staff.

The following City staff members were available to answer questions from Council members:

- 1. Mr. Tommy Gonzalez, City Manager
- 2. Ms. Araceli Guerra, Information Technology Director
- 3. Mr. Sam Rodriguez, City Engineer
- 4. Ms. Tracey Jerome, Deputy City Manager
- 5. Ms. Ellen Smyth, Sun Metro Director
- 6. Mr. Julio Perez, Accessibility and Lift Services Compliance Officer
- 7. Ms. Dionne Mack, Deputy City Manager
- 8. Mr. Cary Westin, Senior Deputy City Manager
- 9. Mr. Ben Fyffe, Parks and Recreation Director
- 10. Mr. Philip Etiwe, Planning and Inspections Director
- 11. Ms. Nicole Cote, Office of Management and Budget Director
- 12. Ms. Paula Powell. Animal Services Director
- 13. Mr. Joel McKnight, Parks and Recreation Assistant Director
- 14. Ms. Trudy Sweeten, EP Live Assistant General Manager
- 15. Ms. Sol Cortez, Senior Assistant City Attorney

Topics of discussion included the budget stabilization fund, a system for constituent requests, franchise fees, streets, curb cuts for ADA accessibility, library services, property appraisals, animal services, and addressing needs in response to COVID-19.

Motion made by Representative Annello, seconded by Representative Lizarraga, and carried to **TAKE** \$250,000 from the proposed increase to the Budget Stabilization Fund to **FUND** a comprehensive system for constituent requests.

AYES: Representatives Svarzbein, Annello, Hernandez, Morgan, Salcido, Rivera, and Lizarraga

NAYS: Representative Rodriguez

#### **REGULAR AGENDA - FIRST READING OF ORDINANCES**

**4.** Introduction of an Ordinance levying FY 2020 – 2021 taxes.

#### **PUBLIC HEARING WILL BE HELD ON AUGUST 18, 2020**

Mr. Robert Cortinas, Chief Financial Officer, explained that the introduction of the Ordinance would set the tax rate at .907301 of one percent of the assessed value on all property, real, personal, and mixed.

Motion made by Representative Morgan, seconded by Representative Lizarraga, and unanimously carried that the Ordinance, having been introduced pursuant to Section 3.9 of the El Paso City Charter, be **ADVERTISED** for public hearing.

AYES: Representatives Svarzbein, Annello, Hernandez Morgan, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

#### ADJOURN

Motion made by Alternate Mayor Pro Tempore Lizarraga, seconded by Representative Salcido, and unanimously carried to **ADJOURN** the Special City Council meeting at 11:38 a.m.

AYES: Representatives Svarzbein, Annello, Hernandez, Morgan, Salcido, Rodriguez, Rivera,

and Lizarraga

NAYS: None

.....

APPROVED AS TO CONTENT:

Laura D. Prine, City Clerk

OSCAR LEESER MAYOR

TOMMY GONZALEZ
CITY MANAGER



#### CITY COUNCIL

PETER SVARZBEIN, DISTRICT 1
ALEXSANDRA ANNELLO, DISTRICT 2
CASSANDRA HERNANDEZ, DISTRICT 3
JOE MOLINAR, DISTRICT 4
ISABEL SALCIDO, DISTRICT 5
CLAUDIA L. RODRIGUEZ, DISTRICT 6
HENRY RIVERA, DISTRICT 7

CISSY LIZARRAGA, DISTRICT 8

#### MINUTES FOR REGULAR COUNCIL MEETING

October 26, 2021 COUNCIL CHAMBERS, CITY HALL AND VIRTUALLY 9:00 AM
ROLL CALL
The City Council of the City of El Paso met on the above time and date. Meeting was called to order at 9:00 a.m. Mayor Oscar Leeser present and presiding and the following Council Members answered roll call: Joe Molinar, Isabel Salcido, Claudia Rodriguez and Henry Rivera. Late Arrivals: Peter Svarzbein at 9:03 a.m., Alexsandra Annello at 9:01 a.m., and Cassandra Hernandez at 9:01 a.m. Cissy Lizarraga participated via videoconference. Early Departure: Oscar Leeser at 2:41 p.m.
INVOCATION BY POLICE, FIRE AND MINISTRY COORDINATOR FOR THE SHERIFF'S OFFICE, CHAPLAIN SAM FARAONE
PLEDGE OF ALLEGIANCE
MAYOR'S PROCLAMATIONS
Tom Lea Month
El Paso Commission for Women Hall of Fame Honorees Day
NOTICE TO THE PUBLIC
Motion made by Mayor Pro Tempore Svarzbein, seconded by Representative Annello, and unanimously carried to <b>APPROVE, AS REVISED</b> , all matters listed under the Consent Agenda unless otherwise noted. (Items approved, postponed, or deleted pursuant to the vote on the Consent Agenda will be shown with an asterisk {*}.
AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera and Lizarraga NAYS: None
CONSENT AGENDA - APPROVAL OF MINUTES:
Goal 6: Set the Standard for Sound Governance and Fiscal Management

REGULAR CITY COUNCIL MEETING MINUTES OCTOBER 26, 2021

\*Motion made, seconded, and unanimously carried to APPROVE the Minutes of the 1. Regular City Council Meeting of October 12, 2021, the Agenda Review Meeting of October 11, 2021, the Work Session of October 11, 2021 and the Special Meeting of October 20, 2021. **CONSENT AGENDA - REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS:** REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS: 2. **NO ACTION** was taken on this item ..... **CONSENT AGENDA - RESOLUTIONS:** Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development

3.

**WHEREAS**, WinterFest is a holiday event that draws the community to the downtown area, during a time of year when there are numerous other activities in the downtown area, which can cause a strain on available downtown parking; and

\*RESOLUTION

WHEREAS, City Code Subsection 12.56.020F allows for the International Bridges Director to make a recommendation to City Council for exceptions to the days and times when parking meter fees shall apply; and

WHEREAS, the International Bridges Director recommends that parking meter fees North of I10, including but not limited to the Uptown Parking Benefit District, be waived solely and exclusively on November 20, 2021, for the event known as WinterFest; and

WHEREAS, the International Bridges Director does not recommend that parking meter fees in the downtown area be waived on November 20, 2021; and

WHEREAS, the City Council encourages the community to park at the parking meters to the North of I10, including but not limited to the Uptown Parking Benefit District, and encourages the community to utilize the El Paso Streetcar in order to travel to WinterFest on November 20, 2021; and

WHEREAS, the City Council finds that WinterFest constitutes a special downtown event as contemplated in City Code Subsection 12.56.020F.1;

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

THAT the City Council, in accordance with the provisions of City Code Subsection 12.056.020F.1, hereby exempts the regularly designated parking meter fees to the North of 110, to include, but not be limited to the Uptown Parking Benefit District, on November 20, 2021, for WinterFest which constitutes a special downtown event.

..... 4.

\*RESOLUTION

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

That the City Manager is authorized to sign a License Agreement between the City of El Paso ("City") and **SITA INFORMATION NETWORKING COMPUTING USA, INC**. ("Licensee") for the site known as the Electric Room across from Gate A3 in the El Paso International Airport Terminal building, City of El Paso, El Paso County, Texas, commonly known as 6701 Convair Road (Terminal"), for a term of five (5) years.

Goal 4: Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments

\*RESOLUTION

WHEREAS, Winterfest and Scherr Legate Celebration of Lights Parade (hereinafter referred to as "Grantee") has submitted an application for a Special Event Permit as per Chapter 13.38 (Special Events) of the El Paso City Code, for the use and closure of rights-of-way within the City of El Paso's (hereinafter referred to as "the City") for the Winterfest and Scherr Legate Celebration of Lights Parade from Saturday, November 20, 2021 6:00 a.m. to 3:00 a.m. on Sunday, November 21, 2021 and Saturday, November 20, 2021 12:00 p.m. to 10:00 p.m., (hereinafter referred to as the "Event"); and

WHEREAS, The Event will utilize both City and State rights-of-way: and

**WHEREAS**, The City of El Paso (hereinafter referred to as the "City") has found the Event serves a public purpose; and

WHEREAS, The State of Texas (hereinafter referred to as the "State") owns and operates a system of highways for public use and benefit, including Mesa St. between Franklin Ave. and Paisano Dr. and Texas Ave. between Oregon St. and Ange St. within El Paso, Texas; and

**WHEREAS**, 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of portions of the State Highway System for periods of time exceeding four hours; and

**WHEREAS**, the State in recognition of the public purpose for the Event, provides a means of cooperating with the City for the temporary closure of State right-of-way, provided the closure is in accordance with the requirements of 43 TAC, Section 22.12 and the City enters into an Agreement for the Temporary Closure of State Right-of-Way for the Event (Form TEA 30A).

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

That the closure of rights-of-way within the City of El Paso for the Winterfest and Scherr Legate Celebration of Lights Parade from Saturday, November 20, 2021 6:00 a.m. to 3:00 a.m. on Sunday, November 21, 2021 and Saturday, November 20, 2021 12:00 p.m. to 10:00 p.m., serves a public purpose of providing cultural and recreational

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activities for the residents and visitors of the City of El Paso, and in accordance with 43 TAC, Section 22.12, the City Manager be authorized to sign an Agreement For The Temporary Closure of State Right Of Way (Form TEA 30A) by and between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation, for the temporary closure and use of State owned and operated street (s) in excess of four hours for portions of Mesa St. between Franklin Ave. and Paisano Dr. and Texas Ave. between Oregon St. and Ange St. upon the issuance of required permits from the City of El Paso and substantial conformity to the finalized TEA30 agreement between the City of El Paso and State of Texas Department of Transportation.

6. \*RESOLUTION

WHEREAS, Winterfest Celebration of Lights 2021 (hereinafter referred to as "Grantee") has submitted an application for a Special Event Permit as per Chapter 13.38 (Special Events) of the El Paso City Code, for the use and closure of rights-of-way within the City of El Paso's (hereinafter referred to as "the City") for the Winterfest Celebration of Lights 2021 from Saturday, November 20, 2021 6:00 a.m. to 3:00 a.m. on Sunday, November 21, 2021, (hereinafter referred to as the "Event"); and

WHEREAS. The Event will utilize both City and State rights-of-way: and

**WHEREAS**, The City of El Paso (hereinafter referred to as the "City") has found the Event serves a public purpose; and

WHEREAS, The State of Texas (hereinafter referred to as the "State") owns and operates a system of highways for public use and benefit, including Mesa St. between Franklin Ave. and Texas Ave. within El Paso, Texas; and

**WHEREAS**, 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of portions of the State Highway System for periods of time exceeding four hours; and

**WHEREAS**, the State in recognition of the public purpose for the Event, provides a means of cooperating with the City for the temporary closure of State right-of-way, provided the closure is in accordance with the requirements of 43 TAC, Section 22.12 and the City enters into an Agreement for the Temporary Closure of State Right-of-Way for the Event (Form TEA 30A).

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

That the closure of rights-of-way within the City of El Paso for the Winterfest Celebration of Lights 2021 from Saturday, November 20, 2021 6:00 a.m. to 3:00 a.m. on Sunday, November 21, 2021, serves a public purpose of providing cultural and recreational activities for the residents and visitors of the City of El Paso, and in accordance with 43 TAC, Section 22.12, the City Manager be authorized to sign an Agreement For The Temporary Closure of State Right Of Way (Form TEA 30A) by and between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation, for the temporary closure and use of State owned and operated street (s) in excess of four hours for portions of Mesa St. between Franklin Ave. and Texas Ave.

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upon the issuance of required permits from the City of El Paso and substantial conformity to the finalized TEA30 agreement between the City of El Paso and State of Texas Department of Transportation.

Goal 5: Promote Transparent and Consistent Communication Amongst All Members of the Community

7. \*RESOLUTION

**WHEREAS**, the City of El Paso (City) entered into a Fiber Lease Agreement on December 18, 2007, (Fiber Lease) with Transtelco, Inc., a Texas corporation (Transtelco) to lease 144 fiber strands for high-speed connectivity (City Fiber) along 134,239 linear square feet of conduit owned by Transtelco.

WHEREAS, on December 22, 2011, the Fiber Lease was amended (Amended Fiber Lease Agreement) and its term began on the effective date of the Amended Fiber Lease Agreement for a period of ten (10) years, set to terminate on December 21, 2021. The Amended Fiber Lease Agreement included an option for the City to extend the term of the Amended Fiber Lease Agreement for two additional ten (10) year terms.

**WHEREAS**, the Amended Fiber Lease Agreement stipulated that the rental payable on the Fiber Lease had been paid in full and no further rental or other monetary payments were due by the City under the Amended Fiber Lease Agreement for its entire term, including the two ten (10) year option periods.

**WHEREAS**, the City wishes to exercise the option to extend the Amended Fiber Lease Agreement for a further term of 10 years at no additional cost to the City, as contained in Article III of the Amended Fiber Lease Agreement.

**WHEREAS**, the City and Transtelco entered into a Maintenance Agreement on December 18 2007, wherein Transtelco agreed to maintain the City Fiber.

WHEREAS, the Maintenance Agreement was amended on December 20, 2011 (Amended Maintenance Agreement) and its term began on the effective date of the Amended Maintenance Agreement for a period of ten (10) years, with no option to extend, at a monthly rate of FIVE THOUSAND THREE HUNDRED SIXTY NINE AND 56/100 DOLLARS (\$5369.56).

**WHEREAS**, the City wishes to enter into an agreement to amend the Amended Maintenance Agreement in order to extend the Amended Maintenance Agreement for an additional ten (10) years, under the same terms of the Amended Maintenance Agreement, with an option to extend for one additional ten (10) year period.

**WHEREAS**, on December 22, 2011, Transtelco entered into a Conduit Lease Agreement with the City to lease a conduit belonging to the City for a period of five (5) years, with three (3) additional five (5) year options to extend.

**WHEREAS**, on August 4, 2021, Transtelco notified the City in writing of its desire to exercise its second option to extend the Conduit Lease Agreement for an additional five (5) year term.

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**WHEREAS**, Transtelco is not in default of any provision of this Lease and has represented that it is in good standing with the applicable regulatory authorities.

**WHEREAS**, the City wishes to acknowledge receipt of Transtelco's written exercise of its second option to extend the Conduit Lease Agreement.

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

That the City Manager is authorized to sign the Agreement to Extend Amended Fiber Lease Agreement, reflecting the City's desire to exercise its option to extend the Amended Fiber Lease Agreement for a further term of 10 years at no additional cost to the City. That the City Manager is authorized to sign the First Amendment to the Amended Maintenance Agreement, extending the term of the Amended Maintenance Agreement for a period of ten (10) years. And that the City, via this resolution, acknowledges receipt of Transtelco's notice to extend the Conduit Lease Agreement for an additional five (5) year term.

#### **Goal 6: Set the Standard for Sound Governance and Fiscal Management**

\*Motion made, seconded, and unanimously carried to **DELETE** a Resolution authorizing the City Manager, or designee, to exercise the first renewal option under a Lease Agreement entered on November 29, 2011 between the City of El Paso, Texas and Madison River Investments, LLC for the lease of the property commonly known as Suite 300 of the Wells Fargo Building located at 221 N. Kansas Street and to accept the Landlord's determination of the Market Base Rental Rate as provided in the lease.

### 9. \*R E S O L U T I O N

**WHEREAS**, although the nation is still experiencing the Pandemic caused by the novel Coronavirus that causes the disease COVID-19, the Texas Governor and Attorney General have lifted the suspension of certain provisions of the Texas Open Meetings Act ("TOMA"), and on September 1, 2021, all Council meetings must adhere to the full TOMA requirements; and

**WHEREAS**, the TOMA allows members of the governing body to attend by videoconference, and the City's Rules of Order require that members notify the City Clerk no later than the Wednesday before each meeting at noon if attending by videoconference in order to post on the agenda; and

**WHEREAS**, the TOMA requires that a quorum of Council be present at the meeting location in order to constitute a meeting; and

**WHEREAS**, the COVID-19 pandemic is still a concern for the residents of the City of El Paso and the members of Council; and

**WHEREAS**, in order to allow for safe distancing and to maintain a quorum during each meeting, beginning on September 1, 2021, up to two members of Council may appear by videoconference at each meeting in accordance with this resolution.

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

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That, during the declared disaster related to the COVID-19 Pandemic, up to two members of City Council may attend the City Council Meetings by videoconference at each Council meeting on a first come, first served basis each meeting week beginning November 8, 2021, provided however, that priority will be given for one person appearing by videoconference on a rotating basis beginning with District 1.

Members who wish to attend by videoconference must notify the City Clerk no later than noon on the Wednesday before each meeting.

In order to ensure equity among the members of Council, Members may request to attend by videoconference no more than three months in advance, and shall not request to attend by videoconference more than one regular meeting week in a row without prior approval of Council.

Up to two members may participate in any Special City Council meeting by videoconference on a first come, first served basis by notifying the City Clerk prior to the agenda being posted.

Ms. Lisa Turner, citizen, commented.

Goal 7: Enhance and Sustain El Paso's Infrastructure Network

10. RESOLUTION

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

That the City Council approves a change order in the amount of \$264,139.21 to J.A.R. Concrete Inc. for the increase in landscaping, irrigation and other elements to the project under Contract No. 2019-452 Paso Del Norte (PDN) Port of Entry (POE) Roundabout Improvements. This notice provides for the additional scope of work, which allows for additional capacity to the awarded contract. The new contract sum, including this change order notice and previous change order notices is \$2,662,492.51. The City Manager, or designee, is authorized to execute any documents and contract amendments needed to carry out the intent of this resolution.

Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera and Lizarraga commented.

The following City staff members commented:

- 1. Mr. Tommy Gonzalez, City Manager
- 2. Mr. Sam Rodriguez, Chief Operations and Transportation Officer
- 3. Ms. Yvette Hernandez, CID Grant Funded Programs Director
- 4. Mr. Ben Fyffe, Managing Director of Cultural Affairs and Recreation

Ms. Monica Lombraña, Representative for J.A.R. Concrete, Inc., commented.

#### 1<sup>ST</sup> MOTION

\*Motion made, seconded, and unanimously carried to **MOVE** the item to the Regular Agenda.

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#### **2<sup>ND</sup> AND FINAL MOTION**

Motion made by Mayor Pro Tempore Svarzbein, seconded by Representative Annello, and unanimously carried to **APPROVE** the Resolution and to **DIRECT** the City Manager to come back with alternatives for entry monuments to include public art.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

11. \*R E S O L U T I O N

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

That the City Manager, or designee, be authorized to sign an Underground Electrical and Transformer Pad Easement, granting an easement to the El Paso Electric Company to provide electrical power to the property legally known as a Portion of Lot 1, Block 103, Tierra Del Este Unit Twenty-Two, El Paso County, Texas commonly known as 12781 Edgemere Blvd.

### CONSENT AGENDA – BOARD RE-APPOINTMENTS:

#### Goal 3: Promote the Visual Image of El Paso

- 12. \*Motion made, seconded, and unanimously carried to REAPPOINT Margaret L. Livingston
- to the Building and Standards Commission by Mayor Oscar Leeser.
- \*Motion made, seconded, and unanimously carried to REAPPOINT Linda C. Troncoso to the Zoning Board of Adjustment by Representative Alexsandra Annello, District 2.

## CONSENT AGENDA – BOARD APPOINTMENTS:

## Goal 4: Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments

**14.** \*Motion made, seconded, and unanimously carried to **APPOINT** Gary Edens to the Museums and Cultural Affairs Advisory Board by Mayor Oscar Leeser.

#### Goal 6: Set the Standard for Sound Governance and Fiscal Management

**15**. \*Motion made, seconded, and unanimously carried to **APPOINT** Susannah M. Byrd to the Public Service Board Selection Committee by Representative Cassandra Hernandez, District 3.

#### **Goal 8: Nurture and Promote a Healthy, Sustainable Community**

**16.** \*Motion made, seconded, and unanimously carried to **APPOINT** Christina Olivares to the Retired and Senior Volunteer Program Advisory Council by Representative Cassandra Hernandez, District 3.

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#### **CONSENT AGENDA – APPLICATIONS FOR TAX REFUNDS:** Goal 6: Set the Standard for Sound Governance and Fiscal Management ..... \*Motion made, seconded, and unanimously carried to **APPROVE** the tax refunds listed 17. below and posted on the attachment with this agenda: 1. Adalberto M. Navar, in the amount of \$30.00, made an overpayment on December 28, 2017 of 2017 taxes. (Geo. # V927-999-0260-0500) 2. Sierra Title Company, in the amount of \$13.58, made an overpayment on February 7, 2017 of 2016 taxes. (Geo.# H779-091-7910-0170) 3. Jorge Valenzuela, in the amount of \$10.35, made an overpayment on March 13, 2017 of 2016 taxes. (Geo.# S658-999-0050-1200) CONSENT AGENDA – NOTICE FOR NOTATION: ..... Goal 5: Promote Transparent and Consistent Communication Amongst All Members of the Community ..... \*Motion made, seconded, and unanimously carried to ACCEPT the donation of 200 18. Halloween costumes, valued at approximately \$3,000 from Technimark that are being provided to children during the Halloween Costume giveaway event to be held this Saturday, October 23, 2021 in District 6. Representative Rodriguez commented. ..... \*Motion made, seconded, and unanimously carried that to ACCEPT the donation of \$1000 from Marathon Petroleum and \$1000 from the Aguilar Family Foundation toward the Halloween Costume Giveaway event held Saturday, October 23, 2021 at Armijo Park in District 8. **CONSENT AGENDA – NOTICE OF CAMPAIGN CONTRIBUTIONS:** Goal 6: Set the Standard for Sound Governance and Fiscal Management

\*Motion made, seconded, and unanimously carried to ACCEPT the notation pursuant to 20.

Section 2.92.080 of the City Code, receipt of campaign contribution of five hundred dollars or greater by Representative Isabel Salcido in the amounts of \$500.00 from Linebarger Goggan Blair & Sampson, LLP; \$1,000.00 from J. Kirk Robison; \$2,500.00 from Stanley P. Jobe; \$1,000.00 from L. Frederick Francis; \$2,500.00 from Gerald Rubin & Stanlee Rubin; \$1,000.00 from Adam Z. Frank & Dana M. Frank; \$5,000.00 from Robert L. Bowling IV; \$5,000.00 from Randall J. Bowling & Paige Bowling; \$5,000.00 from Paul L. Foster; \$2,500.00 from Maria F. Teran; \$500.00 from John C. Karlsruher & Mary Eileen Karlsruher; \$5,000.00 from Woody L. Hunt & Gayle G. Hunt; \$2,500.00 from Demetrio Jimenez; \$500.00 from Rogelio Lopez; \$1,000.00 from Donald R. Margo II & Adair W. Margo; \$2,500.00 from Raymond Palacios; \$2,500.00 from Douglas Schwartz; \$1,000.00 from Jack Chapman.

## CONSENT AGENDA – REQUESTS TO ISSUE PURCHASE ORDERS:

#### Goal 2: Set the Standard for a Safe and Secure City

21. \*Motion made, seconded, and unanimously carried to AUTHORIZE the Director of

Purchasing & Strategic Sourcing to issue a Purchase Order to Advanced Data Processing, Inc. a Subsidiary of Intermedix Corporation, referencing Contract 2016-385R Transport Medical Billing, Collections & ePCR Service. This will be a change order to increase the contract by \$75,496.56 for a total amount not to exceed \$6,618,707.56. The change order will cover expenses for integration of Imagetrend Mobile Fire Inspections - License, Elite Mobile Fire Inspections Support and Account Advisement Services.

#### Contract Variance:

The difference in price, based on comparison to a similar license and support module is as follows: A decrease of \$3,502.94 for the license and support, which represents a 5% decrease due to the license is an additional module of a software included in the original contract.

Department: Fire

Award to: Advanced Data Processing, Inc. a Subsidiary of

Intermedix Corporation

Chappaqua, NY

Total Estimated Amount: \$75,496,56

Account No. 322-1000-22070-522010-P2212 Funding Source: Billing Collect Agency Contracts

District(s):

This is a Request for Proposal, requirements contract.

## REGULAR AGENDA – MEMBERS OF THE CITY COUNCIL

Goal 5: Promote Transparent and Consistent Communication Amongst All Members of the Community

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**22. ITEM:** Discussion and action to direct the City Manager and staff to come back at the November 23, 2021 City Council meeting with an estimate of how much the Multipurpose Performing Arts and Entertainment Center (MPC) project would cost if it were executed today.

Mayor Leeser and Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez and Rivera commented.

The following City staff members commented:

- 1. Mr. Tommy Gonzalez, City Manager
- 2. Ms. Karla Nieman, City Attorney
- 3. Mr. Sam Rodriguez, Chief Operations and Transportation Officer REGULAR CITY COUNCIL MEETING MINUTES OCTOBER 26, 2021

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The following members of the public commented:

- 1. Mr. Max Grossman
- 2. Mr. J. P. Bryan
- 3. Mr. Rafael Garcia
- 4. Mr. Rich Wright
- 5. Mr. John Hogan
- 6. Ms. Ana Reza
- 7. Ms. Veronica Carbajal
- 8. Mr. Kenneth Bell
- 9. Mr. James R. Peinado
- 10. Ms. Lisa Turner
- 11. Mr. Brian Kennedy
- 12. Mr. Robert Storch
- 13. Mr. Mike Aboud

Ms. Laura Prine, City Clerk, read into the record a statement from Mr. Bernie Sargent.

#### 1<sup>ST</sup> MOTION

\*Motion made, seconded, and unanimously carried to **MOVE** the item **AFTER THE CALL TO THE PUBLIC PORTION OF THE AGENDA**.

#### 2<sup>ND</sup> MOTION

Motion made by Representative Hernandez, seconded by Representative Svarzbein, and carried to **DENY** directing the City Manager and staff to come back at the November 23, 2021 City Council meeting with an estimate of how much the Multipurpose Performing Arts and Entertainment Center (MPC) project would cost if it were executed today.

AYES: Representatives Svarzbein, Hernandez, Salcido, and Rivera

NAYS: Representatives Annello, Molinar, and Rodriguez

NOT PRESENT FOR THE VOTE: Representative Lizarraga

#### 3<sup>RD</sup> MOTION

Motion made by Representative Salcido, seconded by Representative Svarzbein, and carried to **RECONSIDER** the item.

AYES: Representatives Svarzbein, Annello, Hernandez, Salcido, Rodriguez, and Rivera

NAYS: Representative Molinar

NOT PRESENT FOR THE VOTE: Representative Lizarraga

#### 4<sup>TH</sup> AND FINAL MOTION

Motion made by Representative Hernandez, seconded by Representative Svarzbein, and carried to **DELETE** the item.

AYES: Representatives Svarzbein, Hernandez, Salcido, Rivera, and Lizarraga

NAYS: Representatives Annello, Molinar, and Rodriguez

#### Goal 6: Set the Standard for Sound Governance and Fiscal Management

23. ITEM: Discussion and action to direct the City Attorney to drop the litigation related to

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the mandated use of masks and facial coverings (currently in the Eighth Court of Appeals), and to cease all staff work related to said litigation, in order to better prioritize staff time and taxpayer funds toward efforts more likely to be successful.

Mayor Leeser and Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera and Lizarraga commented.

Ms. Karla Nieman, City Attorney, commented.

Ms. Lisa Turner, citizen, commented.

Motion made by Representative Salcido, seconded by Representative Rodriguez, to **APPROVE** the item.

AYES: Representatives Molinar, Salcido, and Rodriguez

NAYS: Representatives Svarzbein, Annello, Hernandez, Rivera, and Lizarraga

THE MOTION FAILED

**24. ITEM:** Update, discussion, and action on the comprehensive constituent request system development timeline and implementation deadlines.

Representatives Annello and Lizarraga commented.

The following City staff members commented:

- 1. Ms. Araceli Guerra, Managing Director of Internal Services
- 2. Mr. Robert Cortinas, Chief Financial Officer

Motion made by Representative Annello, seconded by Representative Lizarraga, and unanimously carried to **POSTPONE THE ITEM FOR FOUR WEEKS.** 

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

#### REGULAR AGENDA – OTHER BUSINESS

Goal 6: Set the Standard for Sound Governance and Fiscal Management

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#### 25. RESOLUTION

**WHEREAS**, under Public Law 94-171, after the completion of the 2020 U.S. Census, realignment of representative district boundaries of the City of El Paso is required when the difference in population between the largest and smallest district exceeds ten percent; and

**WHEREAS**, upon review of the 2020 census data for the City of El Paso it appears that a population imbalance exists requiring adjustment of the representative district boundaries; and

REGULAR CITY COUNCIL MEETING MINUTES OCTOBER 26, 2021

**WHEREAS**, it is the intent of the City to comply with the Voting Rights Act and with all other relevant law, including Shaw v. Reno jurisprudence; and

**WHEREAS**, pursuant to Article II, Section 2.4(B) of the City Charter the City Council has established the Districting Commission (the "Commission"), which will make recommendations to the Council concerning adjustments of the boundaries of representative districts as necessary to insure substantial equality of the population s of the districts; and

**WHEREAS**, a set of established redistricting criteria will serve as a framework to guide the Council and its Commission in consideration of districting plans; and

**WHEREAS**, redistricting criteria will also assist the City and its Commission in efforts to comply with all applicable federal and state laws.

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

That the City, as part of its instruction to the Commission and in its adoption of a redistricting plan, will observe the following redistricting criteria in the adjustment of representative district boundaries:

- 1. Where possible, easily identifiable geographic boundaries should be followed.
- 2. Communities of interest should be maintained in a single district, where possible, and attempts should be made to avoid splitting neighborhoods.
- 3. To the extent possible, districts should be composed of whole voting precincts.
- 4. Although it is recognized that existing districts will have to be altered to reflect new population distribution, any districting plan should, to the extent possible, be based on existing districts.
- 5. Districts must be configured so that they are relatively equal to total population according to the 2020 Federal Census. In no event should the total deviation between the largest and the smallest district exceed ten percent. The City will attempt to achieve a deviation that is less than ten percent under the data released by the Census Bureau.
- 6. The districts should be compact and composed of contiguous territory. Compactness may contain a functional, as well as geographical dimension.
- 7. Consideration may be given to the preservation of incumbent- constituency relations by recognition of the residence of incumbents and their history in representing certain areas.
- 8. The plan should not fragment a geographically compact minority community or pack minority voters so as to comply with Section 2 of the Voting Rights Act, 42. U.S.C. Section 1973, and not prejudice minority voters.

Ms. Karina Brasgalla, Lead Planner, and Mr. Russell Abeln, Assistant City Attorney, presented a PowerPoint presentation (copy on file at the City Clerk's office).

Mayor Leeser and Representatives Svarzbein, Annello, Hernandez and Rivera commented.

Mr. David Mendez, Outside Counsel from Bickerstaff Health Delgado Acosta LLP, commented.

Motion made by Representative Annello, seconded by Representative Rivera, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez,

Rivera, and Lizarraga

NAYS: None

The Regular City Council meeting was **RECESSED** at 11:20 a.m.

The Regular City Council meeting was **RECONVENED** at 12:01 pm.

# REGULAR AGENDA – OPERATIONAL FOCUS UPDATES

## Goal 4: Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments

**26.** Management Update: WinterFest 2021.

Mr. Ben Fyffe, Managing Director of Cultural Affairs and Recreation and Ms. Diana Cepeda, Strategic Initiatives Coordinator, presented a PowerPoint presentation (copy on file at the City Clerk's office).

Representatives Svarzbein and Molinar commented.

The following City staff members commented:

- 1. Mr. Tommy Gonzalez, City Manager
- 2. Mr. Cary Westin, Senior Deputy City Manager
- 3. Ms. Tracey Jerome, Deputy City Manager
- 4. Ms. Ellen Smyth, Managing Director of Sun Metro and Environmental Services

## CALL TO THE PUBLIC – PUBLIC COMMENT

The following members of the public commented:

- 1. Mr. Rich Wright
- 2. Mr. Marco Ortega
- 3. Mr. Michael Castro
- 4. Ms. Crystal Garcia
- 5. Ms. Sabrina Soto
- 6. Mr. Carlos Mireles

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- 7. Mr. Guillermo Guerrero
- 8. Ms. Wally Czech
- 9. Ms. Bettina Olivares
- 10. Mr. Rick Bonart
- 11. Ms. Lisa Turner
- 12. Mr. Placido Salazar
- 13. Mr. Alfred Lugo
- 14. Mr. Ruben Ochoa
- 15. Mr. Abel Rodriguez
- 16. Ms. Maria Ramos
- 17. Mr. John Moreno
- 18. Mr. Arnulfo Hernandez, Jr.
- 19. Mr. James Peinado

Ms. Laura Prine, City Clerk, read into the record statement from Ms. Kellie Rumba.

Mayor Leeser and Representative Lizarraga commented.

#### REGULAR AGENDA – FIRST READING OF ORDINANCES:

Motion made by Representative Rivera, seconded by Representative Hernandez, and unanimously carried that the following Ordinances, having been introduced pursuant to Section 3.9 of the El Paso City Charter, be **ADVERTISED** for public hearing:

.....

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Rodriguez and Rivera

NAYS: None

NOT PRESENT FOR THE VOTE: Representatives Salcido and Lizarraga

#### Goal 3: Promote the Visual Image of El Paso

..... 27. An Ordinance changing the zoning of all of Lots 1 through 20, Block 266, Campbell Addition, and the vacated 20.00' alley, City of El Paso, El Paso County, Texas from C-1/c/sp

(Commercial/conditions/special permit), A-2 (Apartments), and C-4/sp (Commercial/special permit) to G-MU/c/sp (General Mixed Use/conditions/special permit) and approving a Master Zoning Plan. The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: 405 Montana Ave.

Applicant: SLI Engineering c/o Georges Halloul, PZRZ21-00001

An Ordinance granting Special Permit No. PZST21-00001, to allow for a 50% reduction in 28. parking on the property described as all of Lots 1 through 20, Block 266, Campbell Addition, and the Vacated 20.00' Alley, City of El Paso, El Paso County, Texas, pursuant to Section 20.14.070.B of the El Paso City Code. The penalty being as provided in Chapter 20.24 of the El Paso City Code.

The proposed special permit and detailed site development plan meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: 405 Montana Ave.

Applicant: SLI Engineering, c/o Georges Halloul, PZST21-00001

## PUBLIC HEARING WILL BE HELD ON NOVEMBER 23, 2021 FOR ITEMS 27 AND 28

## REGULAR AGENDA – OTHER BIDS, CONTRACTS, PROCUREMENTS

#### Goal 2: Set the Standard for a Safe and Secure City

29. Motion made by Representative Rivera, seconded by seconded by Representative Annello, and unanimously carried to **AUTHORIZE** the Director of the Purchasing and Strategic Sourcing Department to issue a Purchase Order(s) to Texas Commission on Fire Protection (TCFP). Texas Commission on Fire Protection is a State Agency and the sole source for

the TCFP certification in order to comply with the requirements under the Texas Administrative Code Title 37; Part 13; Chapter 421; Rule 421.17.

#### Contract Variance:

The difference in price, based on comparison to the previous contract is as follows: A decrease of \$2,400.00 for the annual estimated amount, which represents a 3.52% decrease due to the number of employees was reduced by 32.

Department: Fire

Award to: Texas Commission on Fire Protection

Austin, TX

Annual Estimated Amount: \$65,700.00

Funding Source: Professional Licenses and Memberships

Account No.: 322-1000-22020-544140-P2221

Districts(s):

Reference No.: 2022-0023

This is a Sole Source, requirements contract.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, and

Rivera NAYS: None

NOT PRESENT FOR THE VOTE: Representative Lizarraga

#### **Goal 7: Enhance and Sustain El Paso's Infrastructure Network**

20 Mation made by Depresentative Divers accorded by Depresentative Maliner and

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30. Motion made by Representative Rivera, seconded by Representative Molinar, and unanimously carried to AWARD Solicitation 2021-1305 Parkway Structure Citywide Maintenance to J.A.R. CONCRETE, INC. DBA J.A.R. CONSTRUCTION, INC. for seven hundred thirty (730) consecutive calendar days as initial term for an estimated amount of \$1,272,335.00. The award also includes a seven hundred thirty (730) consecutive calendar day option for an estimated amount of \$1,272,335.00. The total value of the contract,

REGULAR CITY COUNCIL MEETING MINUTES OCTOBER 26, 2021

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including the initial term plus the option is one thousand four hundred sixty (1,460) consecutive calendar days, for an estimated total award of \$2,544,670.00.

Department: Capital Improvement

Award to: J.A.R. CONCRETE, INC. DBA J.A.R. CONSTRUCTION,

INC.

El Paso, TX Base Bid I

Item(s): Initial Term: 730 Consecutive Calendar Days 730 Consecutive Calendar Days Option to Extend:

Initial Term Estimated Award: \$1,272,335.00 (730 Consecutive Calendar Days) Total Estimated Award: \$2,544,670.00 (1,460 Consecutive Calendar Days) Funding Source: General Fund and American with Disability Act Funding

Account: 532-1000-32040-52270-P3230

532-4930-32040-580250-PIF16ADA01 Account:

District(s):

This is a Low Bid procurement, unit price contract.

The Purchasing & Strategic Sourcing and Capital Improvement Departments recommend award as indicated to J.A.R. CONCRETE, INC. DBA J.A.R. CONSTRUCTION, INC., the lowest responsive and responsible bidder. It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

As a part of this award, upon the review of the City Attorney, the City Engineer may without further authorization from City Council approve contract changes which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable law, do not make changes to the prices and are within the appropriate budget.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, and Rivera

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Lizarraga

#### **REGULAR AGENDA - PUBLIC HEARINGS AND SECOND READING OF ORDINANCES:**

Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development

31.

#### **ORDINANCE 019248**

The City Clerk read an Ordinance entitled: AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A PURCHASE AND SALE AGREEMENT, SPECIAL WARRANTY DEED AND ANY OTHER DOCUMENTS NECESSARY TO CONVEY TO VJ CAPITAL PROPERTIES, LTD., APPROXIMATELY 3.15 ACRES OF LAND BEING DESCRIBED AS A PORTION OF TRACTS 23-G-1 AND 23-G-2, BLOCK 54, YSLETA GRANT, EL PASO COUNTY, TEXAS.

Motion duly made by Representative Annello, seconded by Representative Rodriguez, and carried that the Ordinance be ADOPTED.

Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, and Rivera

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Lizarraga

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same is hereby **ADOPTED**.

The Regular City Council meeting was **RECESSED** at 2:46 p.m. in order to convene the Tax Increment Reinvestment Zone Number Fourteen Board of Directors Meeting.

The Regular City Council meeting was **RECONVENED** at 3:04 pm.

#### ..... 32. ORDINANCE 019249

The City Clerk read an Ordinance entitled: AN ORDINANCE APPROVING A PROJECT AND FINANCING PLAN FOR TAX INCREMENT REINVESTMENT ZONE NUMBER FOURTEEN, CITY OF EL PASO, TEXAS; MAKING VARIOUS FINDINGS RELATED TO SUCH PLAN; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion duly made by Representative Hernandez, seconded by Representative Rivera, and carried that the Ordinance be ADOPTED.

Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Svarzbein, Annello, Hernandez, Salcido, Rodriguez, and Rivera NAYS: Representative Molinar

NOT PRESENT FOR THE VOTE: Representative Lizarraga

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same is hereby **ADOPTED**.

#### Goal 2: Set the Standard for a Safe and Secure City

33. \*Motion made by, seconded, and unanimously carried to POSTPONE FOR TWO WEEKS an Ordinance amending Title 10 (Public Peace, Morals and Welfare), Chapter 10.12 (Offenses against Public Peace), Section 10.12.050 (Alcohol Prohibited in Public Places), Subsection A to define "Homeless Shelter," "Possesses," and "Possession," and Subsection B to add Homeless Shelter to the area where offense can occur; the penalty being provided in Subsection 10.12.050 E of the El Paso City Code. [POSTPONED FROM 10-12-21]

.....

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#### Goal 3: Promote the Visual Image of El Paso

**34.** Motion made by Representative Molinar, seconded by Representative Rodriguez, and unanimously carried to **POSTPONE FOR FOUR WEEKS** an Ordinance changing the zoning of the following real property known as:

.....

Parcel 1: Tract 1, Section 4, Block 80, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, from R-F (Ranch and Farm) to M-2 (Heavy Manufacturing); and

Parcel 2: Tract 3, Section 3, Block 80, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, from R-F (Ranch and Farm) to M-2 (Heavy Manufacturing), and imposing conditions. The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: 7000 Stan Roberts Applicant: City of El Paso, PZRZ21-00020

Ms. Anne Guayante, Zoning Administrator, presented a PowerPoint presentation (copy on file in the City Clerk's office).

Representatives Svarzbein, Annello, Molinar, Salcido and Rivera commented.

The following City staff members commented:

- 1. Mr. Tommy Gonzalez, City Manager
- 2. Mr. Cary Westin, Senior Deputy City Manager

The following members of the public commented:

- 1. Mr. Richard Dayoub
- 2. Mr. Douglas Schwartz

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, and Rivera

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Lizarraga

## 35. ORDINANCE 019250

The City Clerk read an Ordinance entitled: AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO AMX CONSTRUCTION & WASTE, TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE.

Motion duly made by Representative Annello, seconded by Representative Rodriguez, and carried that the Ordinance be **ADOPTED.** 

Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, and Rivera

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Lizarraga

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same is hereby **ADOPTED**.

.....

#### 36. ORDINANCE 019251

The City Clerk read an Ordinance entitled: AN ORDINANCE RENEWING A SPECIAL PRIVILEGE LICENSE TO THE EL PASO ELECTRIC COMPANY, OWNER AND EL PASO PARKING, INC., LESSEE, TO PERMIT OFF-STREET PARKING WITHIN A PORTION OF RIM ROAD RIGHT-OF-WAY, BY EXTENDING THE TERM FOR ANOTHER FIVE YEARS.

Subject Property: South of Rim Rd. and West of El Paso St.

Applicant: El Paso Parking Inc. NESV2020-00005

Motion duly made by Mayor Pro Tempore Svarzbein, seconded by Representative Salcido, and carried that the Ordinance be **ADOPTED**.

Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Svarzbein, Annello, Hernandez, Salcido, Rodriguez, and Rivera

NAYS: Representative Molinar

NOT PRESENT FOR THE VOTE: Representative Lizarraga

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same is hereby **ADOPTED**.

#### Goal 7: Enhance and Sustain El Paso's Infrastructure Network

## 37. ORDINANCE 019252

The City Clerk read an Ordinance entitled: AN ORDINANCE AMENDING TITLE 12 (VEHICLES AND TRAFFIC), CHAPTER 12.88 (SCHEDULES), SECTION 12.88.030 (SCHEDULE III - PARKING PROHIBITED AT ALL TIMES ON CERTAIN STREETS) OF THE CITY CODE, TO ADD PORTIONS OF SOUTH EL PASO STREET; THE PENALTY BEING PROVIDED IN CHAPTER 12.84 OF THE EL PASO CITY CODE.

Ms. Hannah Allen, Traffic Engineering Associate, presented a PowerPoint presentation (copy on file at the City Clerk's office).

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Representatives Annello and Lizarraga commented.

#### 1<sup>ST</sup> MOTION

\*Motion made, seconded, and unanimously carried to **MOVE THE ITEM TO THE FOREFRONT** of the Regular Agenda.

#### 2<sup>ND</sup> AND FINAL MOTION

Motion duly made by Alternate Mayor Pro Tempore Lizarraga, seconded by Representative Salcido, and carried that the Ordinance be **ADOPTED.** 

Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same is hereby **ADOPTED**.

REGULAR AGENDA – OTHER BUSINESS:

Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development

RESOLUTION

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

That the City Manager be authorized to submit an application to the Office of the Governor, Texas Military Preparedness Commission for the Defense Economic Adjustment Assistance Grant ("DEAAG") for the construction of approximately 1,200 feet of a 120-foot wide roadway corridor from Bert Williams Drive, located in the City of El Paso, to Iron Dust-Off Drive, located on Department of Defense property. When complete, the bypass will provide two traffic circles, accommodate the separation of traffic between secured and unsecured vehicles and include utility, landscape, lighting, and pedestrian improvements. The primary purpose of the bypass is to address security concerns required by the Department of Defense concerning Fort Bliss Army Base ("Fort Bliss"). Fort Bliss requires a secure vehicle corridor between the installation and William Beaumont Army Medical Center ("WBAMC"). The only viable route is through El Paso International Airport ("Airport") property upon a publicly dedicated roadway. The roadway in its present configuration cannot provide for both secure and public traffic without a bypass. Once constructed, prescreened vehicles will be able to travel freely between Fort Bliss and WBAMC. This will eliminate security risks as well as reduce operational overhead. The Airport anticipates a whole project cost of \$3.7 million. The Airport will fund 50% of the cost at \$1.85 million. Through the DEAAG grant, the Airport will request 50% of the project cost totaling \$1.85 million.

Further, that the City Manager, or designee, be authorized to explore funding sources and partnerships and to execute any documents and agreements in relations to the grant,

REGULAR CITY COUNCIL MEETING MINUTES OCTOBER 26, 2021

funding sources, and/or partnership agreements, after consultation with the City Attorney's Office. In addition, the City Manager or designee is authorized to sign any related documents, including but not limited to budget transfer authorizations, revisions to the project plan, grant amendments, and/or corrections or extensions of the grant that increase, decrease or de-obligate project funds.

Motion made by Representative Annello, seconded by Representative Salcido, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, and Rivera

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Lizarraga

Goal 6: Set the Standard for Sound Governance and Fiscal Management

39. RESOLUTION

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

That the City Manager be authorized to sign a two year On-Call Agreement for Professional Services to perform solid waste engineering services on a task order basis by and between the City of El Paso and each of the following four (4) consultants:

- 1. AECOM Technical Services, Inc.
- 2. Burns & McDonnell Engineering Company, Inc.
- 3. Parkhill, Inc.
- 4. SCS Engineers

Each On-Call Agreement will be for an amount not to exceed \$300,000.00, and each agreement will include authorization for the City Engineer to approve and sign amendments for additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and authorization for the City Engineer to approve and sign amendments for Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if the identified services are necessary for proper execution of identified project and if the increased amounts are within the appropriate budget identified for a project. In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement.

Motion made by Representative Molinar and seconded by Representative Salcido, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, and Rivera

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Lizarraga

#### **ADJOURN**

REGULAR CITY COUNCIL MEETING MINUTES OCTOBER 26, 2021

Motion made by Mayor Pro Tempore Svarzbein, seconded by Representative Hernandez, and unanimously carried to <b>ADJOURN</b> this meeting at 3:56 p.m.
AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera and Lizarraga NAYS: None
APPROVED AS TO CONTENT:
Laura D. Prine. City Clerk

**DEE MARGO**MAYOR

TOMMY GONZALEZ
CITY MANAGER



#### CITY COUNCIL

PETER SVARZBEIN, DISTRICT 1
ALEXSANDRA ANNELLO, DISTRICT 2
CASSANDRA HERNANDEZ, DISTRICT 3
SAM MORGAN, DISTRICT 4
ISABEL SALCIDO, DISTRICT 5
CLAUDIA L. RODRIGUEZ, DISTRICT 6
HENRY RIVERA, DISTRICT 7
CISSY LIZARRAGA, DISTRICT 8

# CITY COUNCIL WORK SESSION MINUTES September 28, 2020 3:35 PM

Due to the temporary suspension of Open Meetings laws due to the COVID-19
emergency this meeting was conducted via telephonic and videoconference formats

The City Council of the City of El Paso met on the above time and date via videoconference. Meeting was called to order at 3:50 p.m. Mayor Dee Margo present and presiding and the following Council Members answered roll call: Alexsandra Annello, Cassandra Hernandez, Sam Morgan, Isabel Salcido, Claudia Rodriguez, Henry Rivera and Cissy Lizarraga. Peter Svarzbein requested to be excused.

## AGENDA

- 1. For Notation Only: Formal Report of the Financial Oversight and Audit Committee meeting held on August 24, 2020.
  - 1. Discussion and Action regarding an Update to the City of El Paso Investment Policy.
    - Motion made by Representative Lizarraga, seconded by Representative Rivera and approved by Representative Morgan, Representative Lizarraga and Representative Rivera to bring the recommendations to City Council.
  - Discussion and Action regarding an Update to the City of El Paso Debt Service Policy.
    - Motion made by Representative Rivera, seconded by Representative Lizarraga and approved by Representative Morgan, Representative Lizarraga and Representative Rivera to bring the recommendations to City Council.
  - 3. Discussion on 2nd Quarter Audit Plan Updates.
  - 4. Discussion on 3rd Quarter Audit Plan Updates.
  - 5. Discussion on Client Surveys.
  - Mr. Edmundo Calderon, Chief Internal Auditor, briefed Council on the actions taken during the last meeting.

NO ACTION was taken on this item.

- **2.** Presentation and discussion by the COVID-19 Response and Recovery Cross-Functional Team providing information on key activities, efforts and processes.
  - 1. Overview
    - a) COVID-19 Updates-Governor Abbott's Executive Orders

- b) Emergency Ordinances
- c) COVID-19 Judicial Updates
- d) City Attorney's Office COVID-19 Support

#### 2. Cross Functional Team Operations

#### 3. Team Lead Reports:

- 1. Health Focus
  - a) Community Task Force Short and Long-Term Recommendations
- 2. Data Analysis (David Coronado)
- 3. Financial Focus (Robert Cortinas)
- 4. Testing Recap and Update (Tracey Jerome)
- 5. Community Vulnerabilities + Human Services (Nicole Ferrini)
- 6. Economic Recovery (Miranda Diaz)
- 7. Operations Focus (Cary Westin)

Mr. Tommy Gonzalez, City Manager, introduced the item and the following City staff members presented a PowerPoint presentation (copy on file in the City Clerk's Office) and answered questions posed by Council members.

- Ms. Karla Nieman, City Attorney
- Dr. Hector Ocaranza, Health Authority
- Ms. Dionne Mack, Deputy City Manager
- Mr. David Coronado, International Bridges Director
- Mr. Robert Cortinas, Chief Financial Officer
- Ms. Tracey Jerome, Deputy City Manager
- Ms. Nicole Ferrini, Community and Human Development Director
- Ms. Miranda Diaz, Administrative Division Mgr. for Economic and International Development
- Mr. Cary Westin, Senior Deputy City Manager
- Fire Chief Mario D'Agostino

Dr. Nicole Brennan, Director of Health Research, Battelle, participated in the presentation.

Mayor Margo and Representatives Annello, Hernandez, and Lizarraga commented.

Ms. Cindy Ramos Davidson, citizen, commented.

NO ACTION was taken on this item.

3. ORDINANCE 019097

AN EMERGENCY ORDINANCE
RE-ENACTING EMERGENCY ORDINANCE NO. 019035

EXTENDING A DISASTER DECLARATION DUE TO A PUBLIC HEALTH EMERGENCY

- **WHEREAS**, on March 13, 2020, the Governor of the State of Texas declared a state of disaster and the President of the United States of America declared a national emergency in relation to COVID-19; and
- **WHEREAS**, on March 13, 2020, the Mayor signed a Local Emergency Declaration and requested the aid of the State Government pursuant to Texas Government Code Section 418.108; and
- **WHEREAS**, pursuant to El Paso City Code Section 2.48.020(C), a local state of disaster declaration may not be continued or renewed for a period in excess of seven days except by or with the consent of City Council; and
- **WHEREAS**, City Charter Section 3.10 allows for the City Council to adopt an emergency ordinance to meet a public emergency affecting, life, health, property or the public peace; and
- **WHEREAS**, on March 17, 2020, the City Council adopted Emergency Ordinance No. 019035, Extending a Disaster Declaration Due to a Public Health Emergency; and
- WHEREAS, since March 2020, El Paso City Council has re-enacted Emergency Ordinance No. 019035 monthly, with the most recent extension taking place on August 31, 2020; and
- **WHERAS**, on September 7, 2020, Governor Abbott similarly renewed the State's COVID-19 Disaster Declaration; and
- **WHEREAS**, pursuant to City Charter Section 3.10, every emergency ordinance shall stand repealed automatically as of the 31<sup>st</sup> day following the date on which it was adopted, but may be re-enacted to continue a Disaster Declaration; and
- **WHEREAS**, Emergency Ordinance No. 019089 which re-enacts Emergency Ordinance No. 019035 is set to expire on September 30, 2020; and
  - WHEREAS, the number of COVID-19 active cases in El Paso is slightly over 3,000; and
- **WHEREAS**, though the community is beginning to see decreased spread of COVID-19, there is still no COVID-19 vaccine as the nation approaches flu season; and
- **WHEREAS**, on September 17, 2020, Governor Abbott reminded the state that as Texas reopens in the midst of COVID-19, increased spread is expected; and
- **WHEREAS**, the condition necessitating a declaration of a state of disaster continues to exist.

#### NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF EL PASO, TEXAS:

1. That the state of disaster proclaimed for the City of El Paso by the Mayor on March 13, 2020, and extended by Emergency Ordinance No. 019035, is hereby re-enacted and shall continue for thirty (30) days unless re-enacted in accordance with City Charter Section 3.10 or until terminated by City Council, whichever is sooner.

2. This ordinance is adopted as an emergency measure with the unanimous vote of the City Council Representatives present and the consent of the Mayor and pursuant to City Charter Section 3.10.

Representative Hernandez commented.

Ms. Karla Nieman, City Attorney, commented.

Motion made by Representative Hernandez, seconded by Representative Lizarraga, and unanimously carried to **ADOPT** the Emergency Ordinance.

AYES: Representatives Annello, Hernandez, Morgan, Salcido, Rodriguez, Rivera, and

Lizarraga

NAYS: None

ABSENT: Representative Svarzbein

Mayor Margo consented to the adoption of the Emergency Ordinance.

4.

#### ORDINANCE 019098

# AN EMERGENCY ORDINANCE RE-ENACTING EMERGENCY ORDINANCE NO. 019036; AS RE-ENACTED AND AMENDED BY EMERGENCY ORDINANCE NO.S 019062, 019068, 019081, AND 019090; PENALTY AS PROVIDED IN SECTION 8

**WHEREAS**, on March 13, 2020, the Governor of the State of Texas declared a state of disaster and the President of the United States of America declared a national emergency in relation to COVID-19; and

**WHEREAS**, by proclamation issued on March 13, 2020, the Mayor declared a local state of disaster for the City of El Paso resulting from a public health emergency; and

**WHEREAS**, on March 17, 2020, the City Council, pursuant to City Charter Section 3.10, adopted Emergency Ordinance No. 019036 to meet a public emergency affecting, life, health, property or the public peace; and

**WHEREAS**, on March 30, 2020, the City Council adopted Emergency Ordinance No. 019045, amending Emergency Ordinance No. 019036; and

**WHEREAS**, on April 13, 2020, the City Council adopted Emergency Ordinance No. 019051, an Emergency Ordinance Amending and Re-Enacting Emergency Ordinance No. 019036; and

**WHEREAS**, on May 11, 2020, the City Council adopted Emergency Ordinance No. 019056, an Emergency Ordinance Re-Enacting Emergency Ordinance No. 019036, as amended and

**WHEREAS**, on June 8, 2020, the City Council adopted Emergency Ordinance No. 019062, an Emergency Ordinance Re-Enacting and Amending Emergency Ordinance No. 019036, as amended and

**WHEREAS**, on July 8, 2020, the City Council adopted Emergency Ordinance No. 019068, an Emergency Ordinance Re-Enacting and Amending Emergency Ordinance No. 019036, as amended; and

**WHEREAS**, on August 4, 2020, the City Council adopted Emergency Ordinance No. 019081, an Emergency Ordinance Re-Enacting Emergency Ordinance No. 019036, as amended; and

**WHEREAS**, on August 31, 2020, the City Council adopted Emergency Ordinance No. 019090, an Emergency Ordinance Re-Enacting and Amending Emergency Ordinance No. 019036, as amended; and

**WHEREAS**, pursuant to City Charter Section 3.10, every emergency ordinance shall stand repealed automatically as of the 31<sup>st</sup> day following the date on which it was adopted, but may be re-enacted if the emergency still exists; and

**WHEREAS**, Emergency Ordinance No. 019090 which re-enacts Emergency Ordinance No. 019036, as amended, is set to expire on September 30, 2020; and

**WHEREAS**, a disaster continues to exist and requires that certain emergency measures be taken to meet a public emergency affecting life, health, property or the public peace; and

WHEREAS, the City Council desires to re-enact its March 17, 2020, Emergency Ordinance No. 019036, as amended by Emergency Ordinance Nos. 019062, 019068, 019081, and 019090, which shall remain in effect until October 28, 2020 or until otherwise terminated, re-enacted, or superseded by a conflicting El Paso Local Health Authority order, or state or federal law or order.

#### NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF EL PASO, TEXAS:

- Emergency Ordinance No. 019036, as amended by Emergency Ordinance Nos. 019062, 019068, 019081, and 019090, penalty as provided in Section 8, is re-enacted and shall remain in full force and effect and continue for thirty (30) days unless reenacted in accordance with Charter Section 3.10 or until terminated by the City Council, whichever is sooner;
- 2. This ordinance is adopted as an emergency measure with the unanimous vote of the City Council Representatives present and the consent of the Mayor, pursuant to City Charter Section 3.10.

Motion made by Alternate Mayor Pro Tempore Lizarraga, seconded by Representative Morgan, and unanimously carried to **ADOPT** the Emergency Ordinance.

AYES: Representatives Annello, Hernandez, Morgan, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

ABSENT: Representative Svarzbein

Mayor Margo consented to the adoption of the Emergency Ordinance.

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#### 5. ORDINANCE 019099

# AN EMERGENCY ORDINANCE RE-ENACTING EMERGENCY ORDINANCE NO. 019091, PENALTY AS PROVIDED IN SECTION 6

- **WHEREAS**, on March 13, 2020, the Governor of the State of Texas declared a state of disaster and the President of the United States of America declared a national emergency in relation to COVID-19; and
- **WHEREAS**, by proclamation issued on March 13, 2020, the Mayor declared a local state of disaster for the City of El Paso resulting from a public health emergency; and
- **WHEREAS**, on March 17, 2020, El Paso City Council adopted Emergency Ordinance No. 019035 extending the City's Disaster Declaration due to a Public Health Emergency; and
- WHEREAS, since March 2020, El Paso City Council has re-enacted Emergency Ordinance No. 019035 monthly, with the most recent extension taking place on August 31, 2020; and
- **WHEREAS**, on September 7, 2020, Governor Abbott similarly renewed the State's COVID-19 Disaster Declaration; and
- **WHEREAS**, Governor Abbott's Executive Order No. 30 ("GA-30") limits a majority of retail establishments, including restaurants' dine-in services, to 75% percent total listed occupancy, but does not restrict outdoor areas, events or establishments; and
- **WHEREAS**, El Paso City Charter Section 3.10 allows City Council to adopt an emergency ordinance to meet a public emergency affecting life, health, property, or the public peace; and
- WHEREAS, the EI Paso City Council desires to support restaurants and similar establishments in their efforts to safely operate during the COVID-19 pandemic by further facilitating outdoor service and dining opportunities; and
- WHEREAS, on August 31, 2020, City Council enacted an Emergency Ordinance Instituting Emergency Measures to Allow Temporary Uses on the Public Right of Way and Private Property by Suspending Various City Ordinances ("Emergency Ordinance No. 019091") which expires September 30, 2020; and
- **WHEREAS**, pursuant to City Charter Section 3.10, every emergency ordinance shall stand repealed automatically as of the 31<sup>st</sup> day following the date on which it was adopted, but may be re-enacted if the emergency still exists; and
- **WHEREAS**, a disaster continues to exist and requires that certain emergency measures be taken to meet a public emergency affecting life, health, property or the public peace; and
- **WHEREAS**, the City Council desires to re-enact its August 31, 2020, Emergency Ordinance No. 019091, which shall take effect immediately, and remain in effect until October

30, 2020, or until otherwise terminated, re-enacted, or superseded by a conflicting El Paso Local Health Authority order, or state or federal law or order.

#### NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF EL PASO, TEXAS:

- 1. That Emergency Ordinance No. 019091, penalty as provided in Section 6, is re-enacted and shall remain in full force and continue for thirty (30) days unless re-enacted in accordance with City Charter Section 3.10 or until terminated by the City Council, whichever is sooner:
- 2. This ordinance is adopted as an emergency measure with the unanimous vote of the City Council Representatives present and the consent of the Mayor and pursuant to City Charter Section 3.10.

Motion made by Representative Morgan, seconded by Representative Hernandez, and unanimously carried to **ADOPT** the Emergency Ordinance.

AYES: Representatives Annello, Hernandez, Morgan, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

ABSENT: Representative Svarzbein

Mayor Margo consented to the adoption of the Emergency Ordinance.

Discussion and action on options to amend Title 10 (Public Peace, Morals and Welfare), 6. Chapter 10.20 (Offenses by or Against Minors) to not criminally penalize minors for juvenile curfew violations.

Chief Zina Silva, Police Assistant Chief, presented a PowerPoint presentation (copy on file in the City Clerk's Office) and answered questions posed by Council members.

Representatives Annello, Hernandez, Rivera, and Lizarraga commented.

The following City staff members were available to answer questions from Council members:

- 1. Municipal Court Judge Enrique Holguin
- 2. Ms. Lilia Worrell, Municipal Court Clerk
- 3. Ms. Karla Nieman, City Attorney
- 4. Mr. Tommy Gonzalez, City Manager

**NO ACTION** was taken on this item.

#### **EXECUTIVE SESSION**

Motion made by Representative Rivera, seconded by Representative Morgan, and unanimously carried that the City Council retire into EXECUTIVE SESSION at 6:33 p.m. pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Sections 551.071 - 551.089 to discuss the following:

CONSULTATION WITH ATTORNEY Section 551.071

Section 551.072 DELIBERATION REGARDING REAL PROPERTY Section 551.087

DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS

AYES: Representatives Annello, Hernandez, Morgan, Salcido, Rodriguez, Henry and Lizarraga

NAYS: None

ABSENT: Representative Svarzbein

Motion made by Representative Rivera, seconded by Representative Morgan, and unanimously carried to adjourn the Executive Session at 8:17 p.m. and **RECONVENE** the meeting of the City Council at which time motions were made.

AYES: Representatives Annello, Hernandez, Morgan, Salcido, Rodriguez, Rivera and Lizarraga

NAYS: None

ABSENT: Representative Svarzbein

EX1. Application of El Paso Electric Company to Amend Its Distribution Cost Recovery Factor; Under the City's Original Jurisdiction and Public Utility Commission of Texas Docket No. 51348; Matter: 20-1008-155. (551.071) (551.087)

Motion made by Alternate Mayor Pro Tempore Lizarraga, seconded by Representative Morgan and unanimously carried to that the City of El Paso **AUTHORIZES** the City Attorney to file a Motion to Intervene in Public Utility Commission of Texas docket number 51348, *Application of El Paso Electric Company for a Distribution Cost Recovery Factor (DCRF)*.

This Motion is intended to grant broad authority to the City Attorney to take any action necessary to address these matters in consultation with the City Manager. This authorization also authorizes the City Attorney to retain outside Counsel and any other necessary consultants in connection with this matter.

AYES: Representatives Annello, Hernandez, Morgan, Salcido, Rivera, and Lizarraga

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Rodriguez

ABSENT: Representative Svarzbein

## EX2. AT&T Communications – Interstate Division, Special Privilege Debt. Matter No. 17-1044-795 (552.071)

Motion made by Alternate Mayor Pro Tempore Lizarraga, seconded by Representative Morgan and unanimously carried that the City Attorney, in consultation with the City Manager or his Designee, be **AUTHORIZED** settlement authority to negotiate a settlement and resolve the City of El Paso's claim against AT&T Texas regarding the payment delinquency of several special privilege licenses granted by the City.

The City Attorney in consultation with the City Manager or his Designee is authorized to negotiate a settlement agreement and sign all necessary documents to effectuate this authority under Matter No. 17-1044-795, as recommended by the City Attorney.

AYES: Representatives Annello, Hernandez, Morgan, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

ABSENT: Representative Svarzbein

.....

**EX3.** Acquisition of Real Property located on Far East El Paso. (551.071) (551.072)

	NO ACTION was taken on this item.
EX4.	Economic Incentives for a Warehouse Distribution Company to be located in the City of El Paso (19-1007-2515) (20-1003-1083) (551.071) (551.072) (551.087)
	NO ACTION was taken on this item.
	ADJOURN
	made by Representative Rivera, seconded by Representative Morgan and unanimously to <b>ADJOURN</b> this meeting at 8:23 p.m.
NAYS: ABSEN	Representatives Annello, Hernandez, Morgan, Salcido, Rodriguez, Rivera and Lizarraga None T: Representative Svarzbein
	OVED AS TO CONTENT:
 Laura l	D. Prine, City Clerk

#### El Paso, TX

#### **Legislation Text**

File #: 21-1275, Version: 1

## CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

#### **District 3**

Airport, Sam Rodriguez, (915) 212-7301

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

A Resolution to authorize the City Manager to sign an Air Cargo Building Lease Agreement between the City of El Paso ("Lessor") and Swissport SAUSA, LLC, a Delaware Limited Liability Company ("Lessee"), for office and warehouse space, loading dock, round service equipment parking apron and vehicle parking area, at 6415 Convair Road, El Paso, Texas, in Air Cargo Center Building #2. The annual rental fees are \$120,156.78 and the lease effective date will be November 9, 2021.

The initial term of this lease is of one (1) year plus four (4) automatic options of one (1) year each. The initial annual rent is \$120,156.78, which is the same rate under the recently expired lease. The rental fee will be adjusted at the exercise of the first option on November 9, 2022.

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

**DEPARTMENT:** Aviation

November 9, 2021 AGENDA DATE:

CONTACT PERSON NAME AND PHONE NUMBER: Samuel Rodriguez, PE, Director of Aviation (915-212-7301)

**DISTRICT(S) AFFECTED:** District 3

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

#### **SUBJECT:**

This item is a Resolution to authorize the City Manager to sign an Air Cargo Building Lease Agreement between the City of El Paso ("Lessor") and Swissport SAUSA, LLC, a Delaware limited liability company ("Lessee"), for office and warehouse space, loading dock, round service equipment parking apron and vehicle parking area, at 6415 Convair Road, El Paso, Texas, in Air Cargo Center Building #2. The annual rental fees are \$120,156.78 and the lease effective date will be November 9, 2021.

The initial term of this lease is of one (1) year plus four (4) automatic options of one (1) year each. The initial annual rent is \$120,156.78, which is the same rate under the recently expired lease. The rental fee will be adjusted at the exercise of the first option on November 9, 2022.

#### **BACKGROUND / DISCUSSION:**

The Department of Aviation is requesting approval of this item to allow Swissport SAUSA, LLC to continue to lease office and warehouse space to carry out its operations at the El Paso International Airport. Swissport manages cargo logistics and support for American Airlines and Delta Air Lines.

Term: One (1) year plus four (4) automatic one-year options unless Lessee provides 60 days' notice to vacate

Rental fees:

Office/warehouse	15,614 SF x \$7.00 per SF per year = \$109,298.00
Vehicle parking	7,800  SF x  \$0.726  per SF per year = \$5,662.80
Cargo ground service equipment parking	7,157  SF x  \$0.726  per SF per year = \$5,195.98

**Total Rental Fees** \$120,156.78

#### PRIOR COUNCIL ACTION:

10/30/2018 – Approval of Air Cargo Building Agreement expired 10/31/2021 8/22/2017 – Approval of Air Cargo Building Agreement expired 8/31/2018 1/22/2013 - Approval of Air Cargo Building Agreement expired 8/31/2017

#### AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue-generating item.

#### **BOARD / COMMISSION ACTION:**

Enter appropriate comments or N/A

N/A

**DEPARTMENT HEAD:** 

Samuel Rodriguez, P.E. **Director of Aviation** 

#### RESOLUTION

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

That the City Manager be authorized to sign an Air Cargo Building Lease Agreement between the City of El Paso ("Lessor") and Swissport SAUSA, LLC, a Delaware limited liability company ("Lessee"), for office and warehouse space, loading dock, round service equipment parking apron and vehicle parking area, at 6415 Convair Road, El Paso, Texas, in Air Cargo Center Building #2.

Dated this day of	, 2021.
	CITY OF EL PASO
ATTEST:	Oscar Leeser Mayor
Laura D. Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Ledie Ma-Ph	Jame Mitz
Leslie B. Jean-Pierre	Samuel Rodriguez, P.E.
Assistant City Attorney	Director of Aviation

# AIR CARGO BUILDING LEASE AGREEMENT 6415 Convair Road

El Paso International Airport El Paso, Texas

**Swissport SAUSA, LLC** 

November 9, 2021
Effective Date

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 $PL\ Matter\ 21-1003-1217/PL\ Doc\ \#1128123v.3/2021\ Air\ Cargo\ Building\ Lease\ Agreement\ -\ 6415\ Convair/lbj$ 

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**EXHIBIT "A" - The Premises** 

**EXHIBIT "B" - Office, Warehouse and Parking Spaces** 

#### EL PASO INTERNATIONAL AIRPORT

#### AIR CARGO BUILDING LEASE AGREEMENT

THIS AIR CARGO BUILDING LEASE AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of November, 2021, between the CITY OF EL PASO, TEXAS ("Lessor") and SWISSPORT SAUSA, LLC, a Delaware limited liability company ("Lessee").

#### WITNESSETH:

**WHEREAS,** the Municipal Airports Act of the State of Texas authorizes municipal airports, as governmental entities, to assess charges, rentals or fees for the privilege of supplying goods, commodities, things, services or facilities at municipal airports, with due regard to the property and improvements used and the expenses of operation to the municipality; and

**WHEREAS,** Lessor owns and operates the El Paso International Airport ("Airport") located in the County of El Paso, Texas which is managed by the Director of Aviation for the City of El Paso ("Director"); and

WHEREAS, Lessor has constructed an Air Cargo Building facility located on Airport property and has space therein and appurtenances thereto available for lease, and Lessee desires to lease space in said Air Cargo Building; and

**WHEREAS,** Lessee has indicated a willingness and ability to properly operate, keep and maintain such space in the Air Cargo Building leased hereunder in accordance with the standards established by Lessor; and

**WHEREAS,** in furtherance of its authority, Lessor desires to lease to Lessee certain facilities located at said Airport in accordance with the terms, covenants, and conditions hereinafter set forth in this Agreement;

**NOW THEREFORE,** for and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

#### ARTICLE I PREMISES AND PRIVILEGES

**Section 1.01** <u>Description of Premises Demised</u>. Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described premises located at 6415 Convair Rd., El Paso, El Paso County, Texas all of which will hereinafter be referred to as the "Premises":

A. That certain office and warehouse space containing <u>15,614 square feet</u>, more or less, as shown on **EXHIBIT "A"** attached hereto, and for Lessee's exclusive use as detailed on **EXHIBIT "B"** attached hereto, and

- B. The exclusive right to use the loading dock and to use <u>7,800 square feet</u>, more or less, of vehicle parking space directly in front of said Air Cargo Building as more fully described on **EXHIBIT** "B" attached hereto; and
- C. The non-exclusive right to use <u>7,157 square feet</u>, more or less, of the ground service equipment parking apron directly behind said Air Cargo Building as more fully described on **EXHIBIT "B"** attached hereto; and
- D. The non-exclusive right to use a portion of the vehicle parking area, and the roadway, located in front of and adjacent to said Air Cargo Building, such portion to be commensurate with Lessee's share of warehouse and office space leased to all Lessees that share common use of this vehicle parking area;

**Section 1.02** <u>Right of Ingress and Egress</u>. Lessor hereby grants to Lessee the rights of ingress to and egress from the Premises over and across the public roadways serving the Airport for Lessee, its agents and servants, patrons and invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application at the Airport.

**Section 1.03** Restrictions of Privileges, Uses and Rights. Lessee covenants and agrees that it shall use the Premises for Aviation Related Operations only. "Aviation Related Operations" is hereby defined as any activity related to aviation, including, but not limited to, cargo and maintenance operations.

Lessee shall not offer, or permit to be offered, retail services, sales or repairs of any type from the Premises, other than may be incidental to the conduct of Lessee's Operations. Fuel sales are specifically prohibited.

In connection with the exercise of its rights under this Agreement, Lessee:

- A. Shall not do or permit to be done anything at or about the Airport that may interfere with the effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, security system, fire hydrants and hoses, electrical system, natural gas, or other Airport systems installed or located on or within the Premises or the Airport.
- B. Shall not do or permit to be done any act or thing upon the Airport that will invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.
- C. Shall not dispose of and shall prohibit any employee, agent, contractor, or other person from disposing of any waste material taken from, or products used with respect to, its aircraft, equipment or otherwise related to Lessee's operations into the sanitary or storm sewers at the Airport or any other approved location on the Airport (whether liquid or solid), including but not limited to Hazardous Materials

as defined herein, unless such waste material or products first be properly treated by equipment installed with the approval of Lessor and all other administrative bodies having appropriate jurisdiction or may remain untreated if wastewater guidelines limitation of the El Paso Water Utilities Public Service Board are not exceeded.

- D. Shall not keep or store Hazardous Materials or articles including, without limitation, flammable liquids and solids, corrosive liquids, compressed gasses, and magnetized or radioactive materials on the Airport in excess of Lessee's working requirements during any twenty-four (24) hour period, except when the following conditions are met: (1) in accordance with standards established by the National Board of Fire Underwriters, any such liquids having a flash point of less than one hundred degrees Fahrenheit (100°F) shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said material shall be under the control and care of designated Lessee personnel; (3) said material shall be packaged and handled in compliance with applicable U. S. Department of Transportation, Environmental Protection Agency, or other such applicable regulations for transport and pre-transport of hazardous articles and materials; (4) said materials shall be stored in special storage areas designated by the Director or other authorized representative of Lessor while on the Airport.
- E. Shall not install fuel storage tanks or pumping facilities for use in fueling any aircraft, vehicles or other equipment on the Premises.
- F. Shall not maintain or operate on the Premises or elsewhere at the Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or beverages to the public or to its employees; nor shall Lessee provide for the sale or dispensing of food and beverages at the Airport except that the Lessee may provide vending machines solely for the sale of hot and cold beverages, food, and confections to Lessee's employees in areas not accessible to the general public.
- G. The rights and privileges granted Lessee under this Agreement with respect to the performance of ground services and activities in connection with its Operation at the Airport may be exercised by Lessee only for and on behalf of Lessee for regularly scheduled or unscheduled service. Lessee may, subject to the prior written approval of Lessor, and, where applicable, perform ground services for other air cargo operators conducting Operations at the Air Cargo Building provided said air cargo operators are signatories to an Air Cargo Use Agreement or Airline Operating Agreement with Lessor. It is understood and agreed that Lessor reserves the right to charge a fee or commission associated with controlling access to restricted areas, and to collect reasonable fees or commissions for ground transportation, ground support services for other Air Cargo operator(s), and other services or facilities provided by or for Lessee in competition with concessionaires and operators operating under an agreement with the Lessor.

**Section 1.04** <u>Conditions of Granting Agreement</u>. The granting of this Agreement and its acceptance by Lessee is conditioned upon the following covenants:

- A. That no functional alteration of the Premises shown on **EXHIBIT "A"** or functional change in the uses of such Premises shall be made without the specific written consent of Lessor herein; said consent to be at Lessor's sole discretion.
- B. That the right to use said public Airport facilities in common with others authorized to do so shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated under their authority with reference to aviation and air navigation; and all applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.
- C. That Lessee will utilize only the roadways or other direction, path, route, or form of travel Lessor may designate, from time to time, for Lessee's operation and movement on or about the Airport.

**Section 1.05** Exterior Fencing and Storage. Lessee may store stock, materials, and supplies on the Premises, however all stock, materials, and supplies located outside must be completely enclosed by fence. The placement and design of any exterior fencing and storage on the Premises shall be in accordance with plans and specifications prescribed by Lessor and shall be uniform throughout the entire Air Cargo Building, ramp, and associated areas.

## ARTICLE II OBLIGATIONS OF LESSOR

**Section 2.01 Quiet Enjoyment**. Lessor agrees that upon Lessee's paying rent and performing all of the covenants, conditions, and agreements herein set forth, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises hereby demised for the term hereby provided.

Section 2.02 <u>Lessor's Right of Entry</u>. Lessor reserves the right to enter into and upon the Premises at all times during business hours for the purpose of inspecting the condition thereof, or to perform maintenance or repairs as may be necessary in accordance with the provisions of this Agreement, or for the purpose of exhibiting the same to prospective Lessees, purchasers or others. The exercise of this right to enter the Premises shall not be deemed an eviction or disturbance of Lessee's use or possession, provided that Lessor shall exercise its best efforts not to interfere with Lessee's normal operations on the Premises.

**Section 2.03** <u>Condition and Maintenance of Premises</u>. Lessor shall bear responsibility for only those repairs and maintenance to the Structural Elements of the Air Cargo Building. "Structural Elements" shall mean the roof, foundation, load bearing columns and walls, exterior walls, exterior paint, and the ramp.

## ARTICLE III OBLIGATIONS OF LESSEE

**Section 3.01** <u>Net Agreement</u>. This Agreement in every sense shall be without cost to Lessor for the development, maintenance and improvement of the Premises. It shall be the sole responsibility of Lessee to keep, maintain, repair and operate the entirety of the Premises and all improvements and facilities placed thereon at Lessee's sole cost and expense.

Section 3.02 <u>Condition and Maintenance of Premises</u>. LESSEE ACCEPTS THE PREMISES IN "AS IS" CONDITION. Lessor has no responsibility as to the condition of the Premises and shall not be responsible for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition. Lessee shall be solely responsible for repairs and maintenance of the Premises except those required for the Structural Elements referenced in Section 2.03, and shall not cause any damage or impairment to any part of the Structural Elements.

**Section 3.03** <u>Internal Improvements</u>. Lessee may make internal improvements, additions and alterations to the Premises hereunder with the prior written approval of Lessor. Lessee guarantees that all construction work performed by contractors hired by Lessee shall be done in accordance with applicable building codes, laws and regulations and in a good, workmanlike manner, and all materials used by Lessee's contractors shall be of an appropriate grade and quality for the use for which they are employed.

Lessee shall submit to Lessor the internal construction plans and specifications for the written approval by Lessor. It is agreed that Lessor reserves the right to reject any plans and specifications. In the event such additions, alterations, or improvements shall be deemed to have been undertaken without the prior written approval of Lessor required herein, Lessee may be considered in default and Lessor may cancel this Agreement in accordance with the provisions of Article IX hereinafter set forth.

Subject to written approval of Lessor, all permanent improvements, if any, made by Lessee to said Air Cargo Building, of which the Premises are a part, shall become the property of Lessor upon the expiration, cancellation or early termination of this Agreement. All other improvements and fixtures of a non-permanent nature and all trade fixtures, machinery and equipment made or installed by Lessee may be removed from the Premises at any time by Lessee, subject to Lessor's lawful exercise of its Lessor's lien, and to the extent that it does not cause structural or cosmetic damage to the Premises or any other portion of Lessor's Air Cargo Building and facilities.

**Section 3.04** Performance and Payment Bonds. Prior to Lessee's commencement of any construction, Lessee at its own cost and expense, shall cause to be made, executed and delivered to Lessor two (2) separate bonds, as follows:

- A. A contract surety bond in a sum equal to the full amount of the contract awarded.
- B. A payment bond with Lessee's contractor(s) as principal, in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee payment

of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

Section 3.05 <u>Compliance With Laws</u>. Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any improvements thereon.

#### A. Definitions.

- "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

#### B. <u>Compliance</u>.

(1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its agents, employees, contractors, invitees, or a third party in

violation of any Environmental Law. Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its officers, directors, employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Agreement.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises or any improvements thereon, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.
- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the

Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.

- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the provisions of this Section 3.05 in any agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Agreement.

Notwithstanding any other provision in this Agreement to the contrary, Lessor shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of any law on, under or about the Premises, the cost of which shall be borne by Lessee.

The failure of Lessee, its agents, employees, contractors, invitees, or a third party to comply with any of the requirements and obligations of this Section shall constitute a material default of this Agreement and shall permit Lessor to pursue the remedies as set forth in Article IX hereinbelow, in addition to all other rights and remedies provided by law or otherwise provided in the Agreement, to which Lessor may resort cumulatively, or in the alternative.

#### C. Reporting.

- (1) At any time that Lessee submits any filing pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the FAA, the Environmental Protection Agency or the Texas Commission on Environmental Quality, Lessee shall, upon request of Lessor, provide duplicate copies of the filing(s) made, along with any related documents, to Lessor.
- (2) Upon expiration, termination or cessation of this Agreement for any reason, Lessee shall provide current environmental inspection and inventory reports on the Premises acceptable to Lessor; and if, in the opinion of Lessor, the

Premises shall require environmental remediation, Lessee shall perform same to return the Premises into a (like new) condition equal of better to that as of the date Lessee took possession of the Premises.

**Section 3.06** Maintenance. Lessee shall, at its sole cost and expense, maintain the Premises and the buildings, improvements and appurtenances thereto, in a presentable condition consistent with good business practice and equal in appearance and character to other similar improvements on said Airport. Lessee shall repair all damage to said Premises caused by its employees, patrons or its operation thereon. Lessee shall be responsible for the upkeep and cleanliness of the Premises. Lessee shall maintain and repair all equipment thereon, including, but not limited to any heating and cooling equipment or any buildings and improvements; and shall repaint the interior of the Premises as necessary. Lessee agrees not to paint the exterior of the improvements or anywhere on the Premises without the written consent of Lessor; said consent to be at Lessor's sole discretion. Lessor shall also be the sole judge of the quality and content of any painting submitted by Lessee for consideration.

Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within thirty (30) days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which shall be borne by Lessee.

Section 3.07 <u>Utilities</u>. Lessee shall pay for all costs or charges for utility services furnished to Lessee during the term hereof. Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; subject to approval by all appropriate departments of the City of El Paso, and Lessee shall pay for any and all service charges incurred thereof. If Lessor pays any utilities on Lessee's behalf, Lessee, upon receipt of a statement therefore, shall reimburse Lessor for Lessee's pro rata share thereof plus ten percent (10%) for administrative overhead. Said share shall be calculated on a pro rata basis utilizing the square footage of each Lessee's occupancy divided by the total square footage of the Air Cargo Building.

**Section 3.08** Trash, Garbage, and Other Refuse. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of the operation of its business. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner, on or about the Premises shall not be permitted.

**Section 3.09** Permitted Uses. Lessee covenants and agrees that in no event will it enter into any business activity on the Airport other than those specified in Article I.

**Section 3.10** Signage. The following regulations shall apply to all signs displayed for observation from outside a building whether displayed on, near or within a building:

- A. <u>Permitted Signs</u>. Signs on the Premises shall be limited to those identifying the uses conducted on the site and to those necessary for directional purposes. The size, design and location of all signs shall require the written approval of the Lessor prior to installation. Said written approval shall be at Lessor's sole discretion. Outdoor advertising, billboards or flashing lighting shall not be permitted.
- B. <u>Lighting and Construction</u>. All signs shall comply with all current or future building codes of the City of El Paso and with all current or future rules and regulations of the Federal Aviation Administration (FAA) and its successor agencies. Lessee is solely responsible for obtaining all necessary permits and licenses.

**Section 3.11** Approval of Plans. Approval of any and all improvements, plans, signs, or documents by the Director does not constitute approval of the City of El Paso or any other local, state, or federal agency. It is specifically understood that Airport is only one of numerous departments of the City of El Paso and that, in addition to obtaining approval of Director, Lessee shall be required to obtain the approval in accordance with the City of El Paso City Code.

Section 3.12 <u>Authorization to Enter Restricted Area</u>. Lessee understands that the Premises include access to a restricted area of the Airport and that Lessee and its agents, employees, servants or independent contractors must be authorized by the Lessor to enter restricted areas of the Airport prior to their entry thereon. The authorization to enter restricted areas of the Airport is not granted by this Agreement, but shall be granted to Lessee upon Lessee's completion of security clearance and identification badging requirements necessary of all persons entering restricted areas of the Airport. As Lessee is required to comply with all applicable rules and regulations, any violation of this provision or those security rules and regulations applicable to the restricted areas of the Airport, shall be considered to be a material violation of this Agreement and grounds for termination.

**Section 3.13** Penalties Assessed by Federal Agencies. Lessee understands and agrees that in the event any federal agency assesses a civil penalty against the Lessor or the Airport for any security violation as a result of or related to any act or failure to act on the part of Lessee, its agents, employees or independent contractors, Lessee shall reimburse the Lessor in the amount of the civil penalty assessed. Failure to reimburse the Lessor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

Lessee acknowledges that it is familiar with the restrictions imposed on Lessor by the Federal Aviation Regulations (FAR) Part 1542 and any amendments, and agrees to assume responsibility for compliance with said regulation as it relates to access and identification procedures on the Premises. To accomplish this compliance, Lessee agrees to develop a security plan and will submit same to the Transportation Security Administration (TSA) security office for required approval.

#### ARTICLE IV TERM OF LEASEHOLD

**Section 4.01** Term. The term of this Agreement shall commence on November 9, 2021 (the "Effective Date"), and shall continue until October 31, 2022 (hereinafter referred to as "Initial Term.

**Section 4.02** <u>Automatic Renewal</u>. In the event that Lessee is not in default of any terms of this Lease beyond any applicable notice and cure period, this Agreement shall automatically renew for four (4) one-year renewal periods upon the expiration of the Initial Term (or any previous one-year renewal period), on the same terms and conditions, except that Rental for each renewal period shall be readjusted as noted below provided that Tenant is not in default and there is no condition or event which, with notice from Landlord would become an event of default under this Agreement.

**Section 4.03** <u>Termination by Tenant</u>. This Agreement may be terminated by Tenant without cause by ninety (90) days prior written notice to Landlord.

Section 4.04 <u>Holding Over</u>. It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Agreement shall operate and be construed as a tenancy from month to month at a rental of one and one-half (1½) times the current monthly rental, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over after the expiration or cancellation of this Agreement, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

**Section 4.05** <u>National Emergency</u>. In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this Agreement shall be extended by the amount of the period of such suspension.

#### ARTICLE V RENTALS

**Section 5.01** <u>Rental</u>. For the purpose of computing the rental payments, Lessor and Lessee agree that the Premises are comprised of the following:

15,614 Sq. ft. of Office and Warehouse Space at \$7.00/Sq. ft./annum = \$109,298.00/yr.

7,800 Sq. ft. of Vehicle Parking and Loading Dock Space at \$0.726/Sq. ft./annum = \$5,662.80/yr.

7,157 Sq. ft. of Ground Service Equipment Parking Apron at \$0.726/Sq. ft./annum = \$5,195.98/yr.

Initially, therefore, the Initial Annual Rental shall be \$120,156.78 per year

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If an option to renew this Agreement is properly exercised and accepted, the annual rental for the Premises during the renewal period shall be the appraised market rent.

**Section 5.02** <u>Commencement of Rental</u>. Payment of rental by Lessee to Lessor as aforesaid shall commence on the Effective Date of this Agreement, as described in Section 4.01.

**Section 5.03** <u>Time of Payment</u>. All rental due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term or any extension of this Agreement.

Section 5.04 <u>Unpaid Rent, Fees and Charges</u>. Any installment of rentals, fees, or other charges or monies accruing under any provisions of this Agreement that are not received by Lessor by the 20th day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law from the date when the same was due according to the terms of this Agreement until paid by Lessee.

**Section 5.05** Place of Payment. All rental and other payments required herein shall be paid to Lessor at the following address:

Accounting Department El Paso International Airport P.O. Box 971278 El Paso, Texas 79997-1278

In lieu of payments being mailed to the above address, electronic payments may be made via any electronic payment system acceptable to Lessor.

#### ARTICLE VI INSURANCE AND INDEMNIFICATION

**Section 6.01** <u>Liability Insurance</u>. Lessee, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of Lessee with the Lessor as an additional insured, comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, Two Million Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Million Dollars (\$1,000,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

**Section 6.02** Fire and Extended Coverage Insurance. Lessor agrees that, at all times throughout the term of this Agreement, it will keep the Air Cargo Building insured under a Standard Policy of Fire and Extended Coverage Insurance for an amount equivalent to ninety percent (90%) of the replacement cost, such replacement cost to be re-determined every three (3)

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years. Upon receipt of a statement therefore, Lessee shall reimburse Lessor for Lessee's pro rata share thereof plus ten percent (10%) for administrative overhead. Said share shall be calculated on a pro rata basis utilizing the square footage of each Lessee's occupancy divided by the total square footage of the Air Cargo Building.

If the operations conducted by Lessee, or anyone holding under Lessee, on the Premises should require the payment of a greater premium for fire and extended coverage insurance than would customarily be payable for the conduct of the Air Cargo Operations permitted hereunder, then the amount of such additional premium cost shall also be reimbursed by Lessee to Lessor.

**6.03** Authorized Insurance Companies. All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld.

Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain:

- A. A statement of the coverage provided by the policy;
- B. A statement of the period during which the policy is in effect;
- C. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance;
- D. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days' prior written notice to Lessor; and
- E. A statement certifying the Lessor has been listed as an additional named insured on the policy.

#### **Section 6.04 INDEMNIFICATION**

A. INDEMNITY. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES", FROM AND AGAINST ALL COSTS, REASONABLE **EXPENSES** (INCLUDING ATTORNEYS' EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER ("CLAIMS), TO THE FULL EXTENT ARISING OUT OF (A) ANY BREACH OF THIS AGREEMENT BY LESSEE OR ITS AGENTS, EMPLOYEES, AFFILIATES, SUBLESSEES, OR CONTRACTORS, (COLLECTIVELY THE "LESSEE PARTIES"); (B) ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE LESSEE PARTIES HEREUNDER; OR (C) NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES IN CONNECTION WITH THIS AGREEMENT,

THE CONSTRUCTION, DEVELOPMENT, OPERATION OR USE OF THE LEASED PREMISES, OR THE AIRPORT.

IT IS THE INTENTION OF THIS INDEMNITY SECTION THAT THE JOINT AND CONCURRING RESPONSIBILITY OF CITY AND LESSEE BE BORNE COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS PROVISION SHALL NOT CREATE ANY CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST CITY OR LESSEE NOR SHALL IT ENLARGE IN ANY WAY THE LIABILITY OF CITY OR LESSEE, THIS PROVISION BEING INTENDED SOLELY TO PROVIDE FOR INDEMNIFICATION OF CITY FROM LIABILITY FOR DAMAGE TO THIRD PERSONS OR PROPERTY AS SET FORTH IN THIS PARAGRAPH.

LESSEE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. MAINTENANCE OF THE INSURANCE REQUIRED UNDER THIS AGREEMENT SHALL NOT AFFECT LESSEE'S INDEMNITY OBLIGATIONS. LESSEE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF CITY OR LESSEE, AS LESSEE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THAT THE EXPENSES THEREOF SHALL BE PAID BY LESSEE. IN NO EVENT MAY LESSEE ADMIT LIABILITY ON THE PART OF CITY WITHOUT THE PRIOR WRITTEN CONSENT OF THE EL PASO CITY ATTORNEY.

- B. WAIVER OF CONSEQUENTIAL DAMAGES. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR INCOME, CLAIMS OF LESSEE'S CUSTOMERS, SUBLESSEES, AND CONTRACTORS, AND OTHER SIMILAR CLAIMS OR DAMAGES.
- C. CLAIMS AGAINST LESSEE. IF ANY CLAIM, DEMAND, SUIT, OR OTHER ACTION IS MADE OR BROUGHT BY ANY PERSON OR ENTITY AGAINST THE LESSEE ARISING OUT OF OR CONCERNING THIS AGREEMENT, THE AIRPORT, OR THE LEASED PREMISES, LESSEE SHALL GIVE WRITTEN NOTICE THEREOF TO CITY WITHIN TEN (10) BUSINESS DAYS AFTER BEING NOTIFIED OF SUCH CLAIM, DEMAND, SUIT, OR ACTION. SUCH NOTICE SHALL ENCLOSE A TRUE COPY OF ALL SUCH CLAIMS, AND IF THE CLAIM IS NOT

WRITTEN OR THE INFORMATION IS NOT DISCERNABLE FROM THE WRITTEN CLAIM, THE WRITTEN NOTICE SHALL STATE THE DATE OF NOTIFICATION OF ANY SUCH CLAIM, DEMAND, SUIT, OR OTHER ACTION; THE NAMES AND ADDRESSES OF THE PERSON, FIRM, CORPORATION, OR OTHER ENTITY MAKING SUCH CLAIM OR THAT INSTITUTED OR THREATENED TO INSTITUTE ANY TYPE OF ACTION OR PROCEEDING; THE BASIS OF SUCH CLAIM, ACTION, OR PROCEEDING; AND THE NAME OF ANY PERSON AGAINST WHOM SUCH CLAIM IS BEING MADE OR THREATENED. SUCH WRITTEN NOTICE SHALL BE DELIVERED EITHER PERSONALLY OR BY MAIL AND SHALL BE DIRECTLY SENT TO THE EL PASO CITY ATTORNEY.

- D. NOTHING IN THIS SECTION SHALL BE INTERPRETED TO LIMIT CITY'S ABILITY TO ADJUST RENTAL RATES AND OTHER FEES IN ACCORDANCE WITH THE OTHER TERMS AND CONDITIONS OF THIS AGREEMENT, AND APPLICABLE LAWS AND REGULATIONS. FURTHERMORE, NO PROVISION IN THIS AGREEMENT IS INTENDED TO LIMIT CITY'S ABILITY TO ADJUST LANDING FEES OR IMPOSE OTHER FEES IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS.
- E. THOSE PROVISIONS OF THIS SECTION THAT APPLY TO THE LESSEE SHALL ALSO APPLY TO ANY PARTY HOLDING BY, THROUGH, OR UNDER THE LESSEE.
- F. CITY ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED IN OR ON THE LEASED PREMISES OR ANY PART THEREOF, AND CITY IS HEREBY EXPRESSLY RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY FOR ANY LOSS, INJURY OR DAMAGE TO PERSONS OR PROPERTY THAT MAY BE SUSTAINED BY REASON OF THE OCCUPANCY OF THE LEASED PREMISES UNDER THIS AGREEMENT, UNLESS SAME IS CAUSED BY THE NEGLIGENCE OR WILLFUL ACT OF CITY, ITS OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES.

#### ARTICLE VII CONDEMNATION

**Section 7.01** <u>Definitions</u>. The following definitions apply in construing the provisions of this Agreement relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final

- order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending.
- B. "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
  - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
  - 2. The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
  - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Agreement.
- D. "Partial taking" means the taking of a fee title that is not either a total or substantial taking.
- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Agreement. The notice is considered to have been received when a party to this Agreement receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking.
- G. "Award" means compensation paid for the taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

**Section 7.02** <u>Notice of Condemnation</u>. The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation

**Section 7.03** Rights of Parties During Condemnation Proceeding. Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Agreement relating to the condemnation.

Section 7.04 <u>Taking of Leasehold</u>. Upon a total taking, Lessee's obligation to pay rent and other charges hereunder together with Lessee's interest in the leasehold shall terminate on the Date of Taking. Upon a substantial taking, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the intended taking, elect to treat the taking as a total taking. If Lessee does not so notify Lessor, the taking shall be deemed a partial taking. Upon a partial taking, this Agreement shall remain in full force and effect covering the balance of the Premises not so taken, except that the rent payable hereunder shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

**Section 7.05** <u>Total Taking</u>. All of Lessee's obligations under the Agreement shall terminate as of the Date of Taking. Upon a total taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by the Lessee-owned improvements, but subject to the Agreement, shall be disbursed to Lessor.

**Section 7.06** Partial Taking. Upon a partial taking, all awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises as unencumbered by the improvements but subject to the Agreement.

**Section 7.07** Obligations of Lessee Under Partial Taking. Promptly after any such partial taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses

and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a partial taking in the last year of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor if its intention to that effect.

Section 7.08 <u>Taking of Temporary Use of Premises and Improvements</u>. Upon any taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such taking, Lessee shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such taking is for a period extending beyond the expiration date of the term, the taking shall be treated under the foregoing provisions for total, substantial and partial takings.

#### ARTICLE VIII ENCUMBRANCES

**Section 8.01** Encumbrance. As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiary under a deed of trust. Lessee may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage. The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

- A. The amount of the obligation secured by the Mortgage;
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Lessor shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Lessor upon Lessee under the terms and provisions of this Agreement so long as such Mortgage is in effect.

**Section 8.02** Mortgagee's Rights. Upon receipt of a notice or demand in accordance with Section 8.01 above, Mortgagee shall have one hundred and twenty (120) days after receipt of such notice within which, at Mortgagee's election, either:

A. To cure the default if it can be cured by the payment or expenditure of money;

- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot be cured within one hundred and twenty (120) days, to commence performance within such one-hundred-twenty-day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

**Section 8.03** <u>Rights on Foreclosure</u>. In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Lessee's interest in lieu of foreclosure shall succeed to all of Lessee's rights, interests, duties and obligations under this Agreement.

## ARTICLE IX EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

**Section 9.01** Expiration. This Agreement shall expire at the end of the term or any extension thereof.

**Section 9.02** <u>Cancellation</u>. Subject to the provisions of Article VIII above, this Agreement shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;
- E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Agreement canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

**Section 9.03** Repossessing and Reletting. In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Agreement, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and
- B. Either cancel this Agreement by notice or without canceling this Agreement, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Agreement, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

**Section 9.04** Assignment and Transfer. Lessee is not permitted to assign this Agreement; provided, that Lessee may assign this Agreement to its parent company upon Lessor's prior written consent. The foregoing notwithstanding, any person or entity to which this Agreement is assigned to pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Agreement on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

**Section 9.05 Subleasing.** Lessee is not permitted to sublease all or any part of the Premises.

**Section 9.06** Rights Upon Expiration. At the expiration of this Agreement, Lessor shall be entitled to have the Premises returned to Lessor clear of all improvements constructed by Lessee, or on Lessee's behalf. Lessee shall have sixty (60) days after expiration in which to remove such improvements; provided that any occupancy by Lessee for the purposes of removal shall be subject to the rental due hereunder. If Lessee fails to so remove said improvements, Lessor may remove same at Lessee's expense. Lessor may, at its option, take title to the improvements in lieu of removal by or for Lessee.

**Section 9.07** Lessor's Lien. It is expressly agreed that in the event of default in the payment of rentals or any other sum due from Lessee to Lessor under the terms of this Agreement, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for Rent due and to become due for the remainder of the Agreement term, which lien shall not be in lieu of or in any way affect the statutory Lessor's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a Lessor's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first the necessary proper expense of removing, storing and selling such property, then to the payment of any rentals or other sums due or to become due under this Agreement, with the balance, if any, to be paid to Lessee.

## ARTICLE X GENERAL PROVISIONS

**Section 10.01** Right of Flight. Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the Airport.

Lessor reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity

of the runways at the Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

Lessor reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from the Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

**Section 10.02** <u>Time is of the Essence</u>. Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

**Section 10.03** <u>Notices</u>. All notices provided to be given under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LESSOR: City Clerk

City of El Paso P.O. Box 1890

El Paso, Texas 79950-1890

COPY TO: Director of Aviation

El Paso International Airport

6701 Convair Road

El Paso, Texas 79925-1099

LESSEE: Swissport SAUSA, LLC

Attn: President

227 Fayetteville St., 9t Floor

Raleigh, NC 27601

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

**Section 10.04** <u>Attorney's Fees</u>. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

**Section 10.05** <u>Agreement Made in Texas</u>. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas.

**Section 10.06** <u>Nondiscrimination Covenant</u>. Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That in the event facilities are constructed, maintained, or otherwise operated on the Premises for the purpose for which DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said Regulations may be amended.
- B. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- C. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- D. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination 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. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 C.F.R Part 27.
- E. Economic Discrimination. To the extent that, under this Agreement, Lessee furnishes goods or services to the public at the Airport, Lessee agrees that it shall:
  - 1. Furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of the Airport; and
  - 2. Charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.
- F. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Agreement and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Agreement had never been made or issued.

**Section 10.07** <u>Affirmative Action</u>. Lessee assures that it will undertake an affirmative action program as required by 14 C.F.R. 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 for Airport use, or otherwise applicable to persons leasing

premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Lessee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

**Section 10.08** <u>Cumulative Rights and Remedies</u>. All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

**Section 10.09** <u>FAA Order 1400.11</u>. Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

- 1. A. Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in Federal Aviation Administration Order 1400.11, Appendix 4, as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  - B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix C]
- 2. A. The Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.
  - B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix D]

- 3. A. During the term of this Lease, Lessee for itself, its successors in interest, and assigns, as a part of the consideration hereof, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq).
  - B. In the event of breach of any of the covenants in this section 3, Lessor shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]

**Section 10.10** <u>Interpretation</u>. Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

**Section 10.11** <u>Agreement Made in Writing</u>. This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

**Section 10.12** <u>Paragraph Headings</u>. The Table of Contents and the captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

**Section 10.13** <u>Severability</u>. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**Section 10.14** <u>Successors and Assigns</u>. All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

**Section 10.15** <u>Taxes and Other Charges</u>. Lessee shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, during the term of this Agreement including any extensions or option periods granted thereto.

By March 1 of each year during the term of this Agreement, including any extensions or option periods granted thereto and no cost to Lessor, Lessee shall provide written proof satisfactory to the Director that all taxes and governmental charges of any kind have been paid in full.

Lessee further indemnifies the City from all tax liability including but not limited to ad valorem real property taxes and personal property taxes that may arise in relation to Lessee's activities in furtherance of this Agreement.

Lessee in good faith may contest any tax or governmental charge; provided that Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom.

Section 10.16 <u>Waiver of Warranty of Suitability</u>. LESSOR DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. LESSEE LEASES THE PREMISES AS-IS AND LESSOR DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE.

**Section 10.17** <u>Survival of Certain Provisions</u>. All provisions of this Agreement which expressly or impliedly contemplate or require performance after the expiration or termination of this Agreement hereunder shall survive such expiration or termination of this Agreement, including without limitation, Sections 3.05 and 6.03.

**Section 10.18** <u>Authorization To Enter Agreement</u>. If Lessee signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

**Section 10.19** Effective Date. Regardless of the date signed, this Agreement shall be effective as of the date in Section 4.01.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties ha of, 2021.	ve hereunto set their hands as of this day
	LESSOR: CITY OF EL PASO:
	Tomás González City Manager
APPROVED AS TO FORM:  Leslie B. Jean-Pierre	APPROVED AS TO CONTENT: Samuel Rodriguez, P.E.
Assistant City Attorney  LESSOR'S ACKNO	Director of Aviation  DWLEDGMENT
STATE OF TEXAS ) COUNTY OF EL PASO )	
This instrument was acknowledged before to the City of	me on this day of 2021, by El Paso, Texas (Lessor).
My Commission Expires:	Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

### LESSEE: SWISSPORT SAUSA, LLC,

a Delaware limited liability company

	Docusigned by: Frank Muna	Docusigned by:  Gun Erb
By:	14923BBDF7B7462	81D17FC29F8F427
Name:	Frank Mena	Glenn Erb
Title: _	President	CFO

#### LESSEE'S ACKNOWLEDGMENT

STATE OF	)			
COUNTY OF	)			
		lged before me on this, as	=	
	Delaware limited lial	bility company ( <b>Lesse</b>	e), on behalf of sa	aid limited liability
My Commission E	Expires:	Notary P	'ublic	

#### EXHIBIT "A"

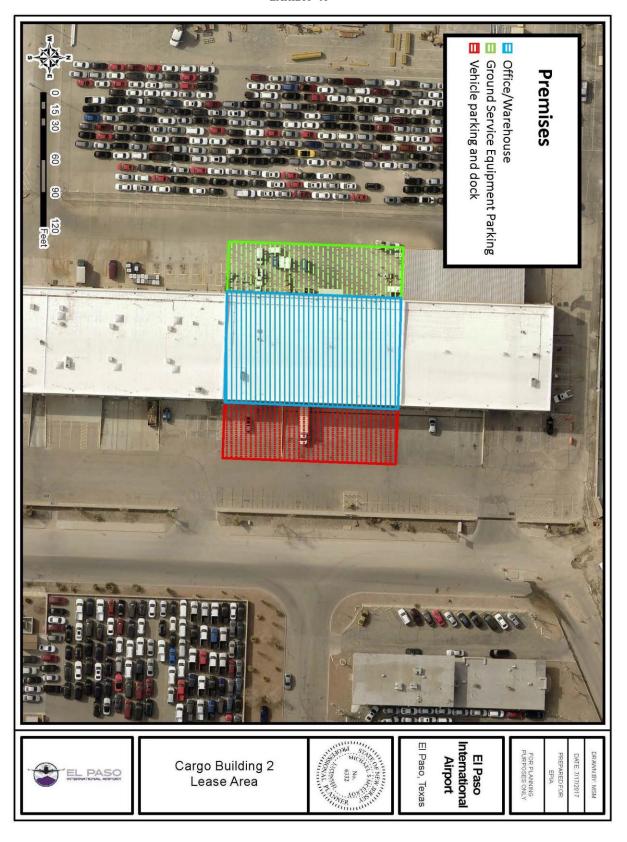
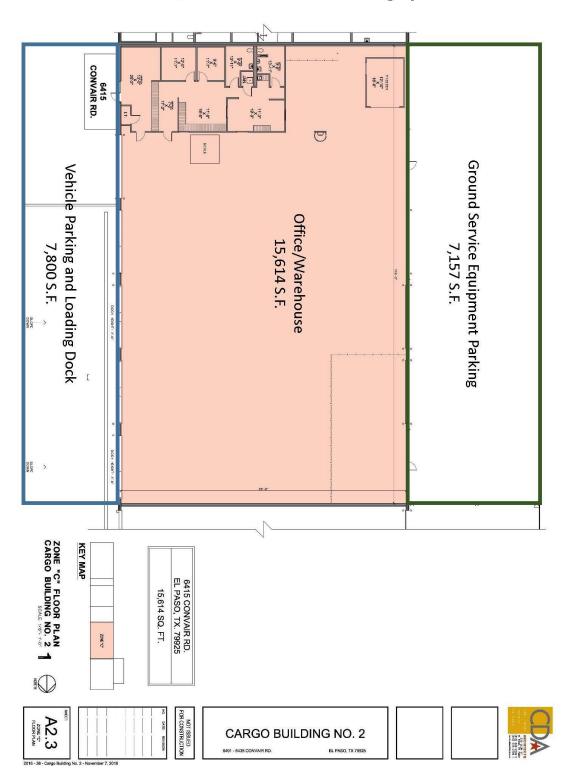


Exhibit "B"
Office, Warehouse and Parking Spaces



#### El Paso, TX

#### **Legislation Text**

File #: 21-1280, Version: 1

## CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

#### **District 2**

Airport, Sam Rodriguez, (915) 212-7301

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

A Resolution to authorize the City Manager to sign a First Amendment to Air Cargo Center Agreement ("First Amendment") with an effective date of November 9, 2021, by and between the City of El Paso ("Lessor") and DHL Express (USA), Inc. ("Lessee") to add the following described property:

That certain office and warehouse space containing approximately 12,325 square feet, more or less, in total as shown on Exhibit "C" to said First Amendment, known as the Air Cargo Center, 301 George Perry Blvd., Suite H, El Paso, El Paso County, Texas, together with portions of the loading dock and vehicle parking space, ground service equipment parking and the non-exclusive use of the roadway in front of the Air Cargo Center, all as set forth therein

That the First Amendment shall identify Lessor Additional Improvements and the rental rates for Suite H.

The term of this lease is five (5) years with one (1) year and three (3) months remaining plus one (1) option to extend the term by five (5) years. The new annual rental rate will be \$173,139.55, which is an increase of \$87,713.55 per year.

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

**DEPARTMENT:** 

Aviation

**AGENDA DATE:** 

November 9, 2021

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, (915) 212-7301

**DISTRICT(S) AFFECTED:** District 2

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

#### **SUBJECT:**

This is a Resolution to authorize the City Manager to sign a First Amendment to Air Cargo Center Agreement ("First Amendment") with an effective date of November 9, 2021, by and between the City of El Paso ("Lessor") and DHL Express (USA), Inc. ("Lessee") to add the following described property:

That certain office and warehouse space containing approximately 12,325 square feet, more or less, in total as shown on Exhibit "C" to said First Amendment, known as the Air Cargo Center, 301 George Perry Blvd., Suite H, El Paso, El Paso County, Texas, together with portions of the loading dock and vehicle parking space, ground service equipment parking and the non-exclusive use of the roadway in front of the Air Cargo Center, all as set forth therein.

That the First Amendment shall identify Lessor Additional Improvements and the rental rates for Suite H.

The term of this lease is five (5) years with one (1) year and three (3) months remaining plus one (1) option to extend the term by five (5) years. The new annual rental rate will be \$173,139.55, which is an increase of \$87,713.55 per year.

#### BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval of this item to support DHL Express's growth into the suite adjacent to its current leasehold in the Cargo Center. DHL Express will be expanding its operations at the El Paso International Airport (ELP) and is adding approximately thirty (30) part-time and full-time positions to support its growing operation. ELP will be completing the construction of a doorway to connect the two suites. DHL will reimburse ELP \$27,583.64 within thirty (30) days of the completion of the improvement.

Term: 5 years initial term plus one 5-year option

#### Rental Rate:

Suite G	Sq. Ft.	Annual Rate		<b>Annual Rent</b>		<b>Monthly Rent</b>	
Office/Whse	6,292	\$	7.1200	\$	44,799.04	\$	3,733.25
Veh Parking	2,600	\$	0.7260	\$	1,887.60	\$	157.30
GSE Parking	2,600	\$	0.7260	\$	1,887.60	\$	157.30
Aircraft Parking	50,760	\$	0.7260	\$	36,851.76	\$	3,070.98
Subtotal	62,252			\$	85,426.00	\$	7,118.83

Suite H	Sq. Ft.	Anı	nualRate 🛮	Aı	nnual Rent	Mo	onthly Rent
Office/Whse	12,325	\$	6.5100	\$	80,235.75	\$	6,686.31
Veh Parking	5,150	\$	0.7260	\$	3,738.90	\$	311.58
GSE Parking	5,150	\$	0.7260	\$	3,738.90	\$	311.58
Subtotal	5,150			\$	87,713.55	\$	7,309.46
TOTAL RENTAL FEE	67,402			\$	173,139.55	\$	14,428.30

PRIOR COUNCIL ACTION: 2/6/2018 – Air Cargo Center Lease Agreement approved

## AMOUNT AND SOURCE OF FUNDING: N/A: This is a revenue-generating item.

## BOARD / COMMISSION ACTION: N/A

#### **DEPARTMENT HEAD:**

Sam Rodriguez, J.E.
Chief Operation & Transportation Officer/Director of Aviation

#### RESOLUTION

WHEREAS, the City of El Paso ("Lessor") and DHL Express (USA), Inc. ("Lessee") entered into an Air Cargo Center Agreement with an effective date of February 6, 2018, to lease office, warehouse, loading dock, and ground service equipment parking space located at Suite G of the Air Cargo Center, 301 George Perry, Blvd., El Paso, El Paso County, Texas; and

WHEREAS, the Tenant desires to lease additional warehouse and ground service equipment parking space, and other space located at Suite H of the Air Cargo Center;

WHEREAS, the City is willing to lease the referenced space to Lessee, and to offer Landlord's Additional Improvements to Suite H.

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

 That the City Manager be authorized to sign a First Amendment to Air Cargo Center Agreement ("First Amendment") with an effective date of November 9, 2021, by and between the City of El Paso ("Lessor") and DHL Express (USA), Inc. ("Lessee") to add the following described property:

That certain office and warehouse space containing approximately 12,325 square feet, more or less, in total as shown on Exhibit "C" to said First Amendment, known as the Air Cargo Center, 301 George Perry Blvd., Suite H, El Paso, El Paso County, Texas, together with portions of the loading dock and vehicle parking space, ground service equipment parking and the non-exclusive use of the roadway in front of the Air Cargo Center, all as set forth therein.

2. That the First Amendment shall identify Lessor Additional Improvements and the rental rates for Suite H.

(Signature appear on following page)

Dated this day of	,2021.
	CITY OF EL PASO
	Oscar Leeser
	Mayor
ATTEST:	
Laura D. Prine	
City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
a flores	2) I For
Josette Flores	Samuel Rodriguez, P.E.
Senior Assistant City Attorney	Director of Aviation

STATE OF TEXAS	)	FIRST AMENDMENT
	)	TO AIR CARGO
COUNTY OF EL PASO	)	CENTER AGREEMENT

This First Amendment to the Air Cargo Center Agreement (the "First Amendment") is made and entered into this \_\_\_\_\_\_\_ day \_\_\_\_\_\_, 2021, by and between the CITY OF EL PASO, TEXAS, a municipal corporation existing under the laws of the State of Texas (the "Lessor"), and DHL Express (USA), Inc., a corporation organized and existing under the laws of the State of Ohio ("Lessee").

WHEREAS, Lessor and Lessee entered into an Air Cargo Center Agreement (the "Lease"), with an effective date of February 6, 2018, to lease space in the Air Cargo Center located at Suite G of the Air Cargo Center, 301 George Perry Blvd., El Paso International Airport (the "Airport"), El Paso, El Paso County, Texas, all as more particularly described therein as Suite G, and generally described as:

That certain office and warehouse space containing 6,292 square feet, more or less, as shown on Exhibit "A" attached hereto and incorporated herein by reference, and also known as Air Cargo Center, 301 George Perry Blvd., Suite G, for Lessee's exclusive use;

The exclusive use of the loading dock and 2,600 square feet, more or less, of vehicle parking space directly in front of the Air Cargo Center as shown on Exhibit "A";

The exclusive use of 53,360 square feet, more or less, of the aircraft parking apron and ground service equipment parking apron directly behind said Air Cargo Center as shown on Exhibit "A"; and

The use of a portion of the vehicle parking area, and the roadway, located in front of and adjacent to the Air Cargo Center, such portion to be commensurate with Lessee's share of warehouse and office space as to that leased to the tenants that share common use of this vehicle parking area, as shown on Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, Lessee desires to lease additional office, warehouse, ground service equipment parking space, loading dock and vehicle parking space located at Suite H of the Air Cargo Center, which space is adjacent to the existing Suite G Premises, with Suite H generally described as follows:

Approximately 12,325 square feet of office and warehouse space in the Air Cargo Center;

Approximately 5,150 square feet of vehicle parking area and the roadway, located in front of the Air Cargo Center;

Approximately 5,150 square feet of ground service equipment parking apron directly behind the Air Cargo Center; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to amend the Lease as follows:

1. Section 1.01, Description of Premises Demised, of the Lease is amended in its entirety as follows:

#### Section 1.01 Description of Premises Demised.

Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described Premises located in El Paso County, Texas:

- A. That certain office and warehouse space containing 6,292 square feet, more or less, as shown on Amended Exhibits "A" and "B" attached hereto and incorporated herein by reference, and also known as Air Cargo Center, 301 George Perry Blvd., Suite G ("Suite G"), for Lessee's exclusive use;
- B. The exclusive use of the loading dock and 2,600 square feet, more or less, of vehicle parking space directly in front of the Air Cargo Center as shown on Amended Exhibits "A" and "B";
- C. The exclusive use of 53,360 square feet, more or less, of the aircraft parking apron and ground service equipment parking apron directly behind said Air Cargo Center as shown on Amended Exhibit "A".

Subsection A, B, and C of this Section 1.01 of this Lease are defined as "Suite G Premises".

- D. Approximately 12,325 square feet of office and warehouse space as shown on the Amended Exhibits "A" and "B" attached hereto and incorporated herein by reference, and also known as Air Cargo Center, 301 George Perry Blvd., Suite H ("Suite H"), for Lessee's exclusive use;
- E. The exclusive use of the loading dock and approximately 5,150 square feet, more or less, of vehicle parking space directly in front of the Air Cargo Center as shown on the Amended Exhibits "A" and "B";
- F. The exclusive use of approximately 5,150 square feet of ground service equipment parking apron, directly behind said Air Cargo Center as shown on the Amended Exhibits "A" and "B"; and

Subsection D; E, and F of this Section 1.01 of this Lease are defined as "Suite H Premises"

G. The use of a portion of the vehicle parking area, and the roadway, located in front of and adjacent to the Air Cargo Center, such portion to be commensurate with Lessee's share of warehouse and office space as to that leased to the tenants that share common use of this vehicle parking area, as shown on Amended Exhibits "A" and "B" attached hereto and incorporated herein by reference;

H. All the premises described under this Section 1.01 of this Lease will hereinafter be referred to as the "Premises" or "Leased Premises".

#### 2. Section 2.04, Lessor Improvements, is added to the Lease to read as follows:

#### Section 2.04 Lessor Improvements.

Upon execution of this First Amendment, Lessor will, for the cost of \$27,583.64 plus a 10% administrative fee, create one 10 ft. x 10 ft. opening in the demising wall between Suites G and H to the Premises as identified in Exhibit "C", attached hereto and incorporated herein by this reference ("Lessor Additional Improvements"). Lessor shall substantially complete the Lessor Additional Improvements within ninety (90) days from the date that Lessor contracts with contractor engaged to perform Lessor Additional Improvements ("Lessor Additional Improvements Deadline"). Lessee shall be allowed to access and use the Suite H Premises as of the execution of this Amendment and while the Lessor Additional Improvements are being constructed.

Notwithstanding any other provision of the Lease to the contrary, Lessee shall not be required to remove any of the Lessor Improvements (including none of the Lessor Additional Improvements) at the expiration of the Initial Term and any extensions or renewals thereof. Lessor shall cause the Lessor Additional Improvements to be constructed in accordance with applicable laws and in a good and workman like manner. Further, Lessor shall coordinate the performance of the Lessor Additional Improvements with Lessee so as to avoid interference with Lessee's ongoing operations, and, at no additional cost to Lessee, shall cause all contractors and subcontractors performing any work with respect to the Lessor Additional Improvements to provide the customary one-year warranty with respect to the Lessor Additional Improvements.

#### 3. Section 5.01.1, Annual Rental for Suite H, is added to the Lease to read as follows:

#### Section 5.01.1 Annual Rental for Suite H.

In addition to paying rentals for the Suite G Premises, Lessee shall pay rentals for the Suite H Premises. For the purpose of computing the rental payments, Lessor and Lessee agree that the Suite H Premises and the initial annual rental rates for the Suite H Premises shall be as follows:

- 12,325 sq. ft. of Office and Warehouse Space at \$6.51 per. sq. ft. = \$80,235.75.
- 5,150 sq. ft. of Vehicle Parking space at \$0.7260 per sq. ft. = \$3,738.90;
- 5,150 square feet of Ground Service Equipment Parking Apron at \$0.7260 per sq. ft. = \$3,738.90; and

Therefore, the initial Annual Rental for the Suite H Premises shall be \$87,713.55 beginning on the effective date of this First Amendment, with the initial rental payment for Suite H Premises due upon Lessee's initial entry onto the Leased Premises or within thirty (30) days of the acceptance of Lessor Additional Improvements, whichever occurs first.

- 4. The Lease is amended to include Exhibit C, attached to this First Amendment and incorporated by reference.
- 5. Ratification. Except as herein amended, all other terms and conditions of the Lease, not specifically modified by this First Amendment shall remain unchanged and in full force and effect. As used in the Lease, the term "Lease" shall hereafter mean the original Lease as amended by this First Amendment.
- 6. Effective Date. This First Amendment shall be effective upon the date it is fully executed by both parties and approved by the El Paso City Council.
- 7. Suite H Premises Condition. Lessor agrees that the Suite H Premises will be delivered to Lessee on the effective date in broom clean condition, with all systems in good working order, and in a condition that does not violate any applicable laws or Airport regulations, with the exception of the electric metering system, which both parties acknowledge and agree that it will be resolved within twenty four (24) months from the effective date.

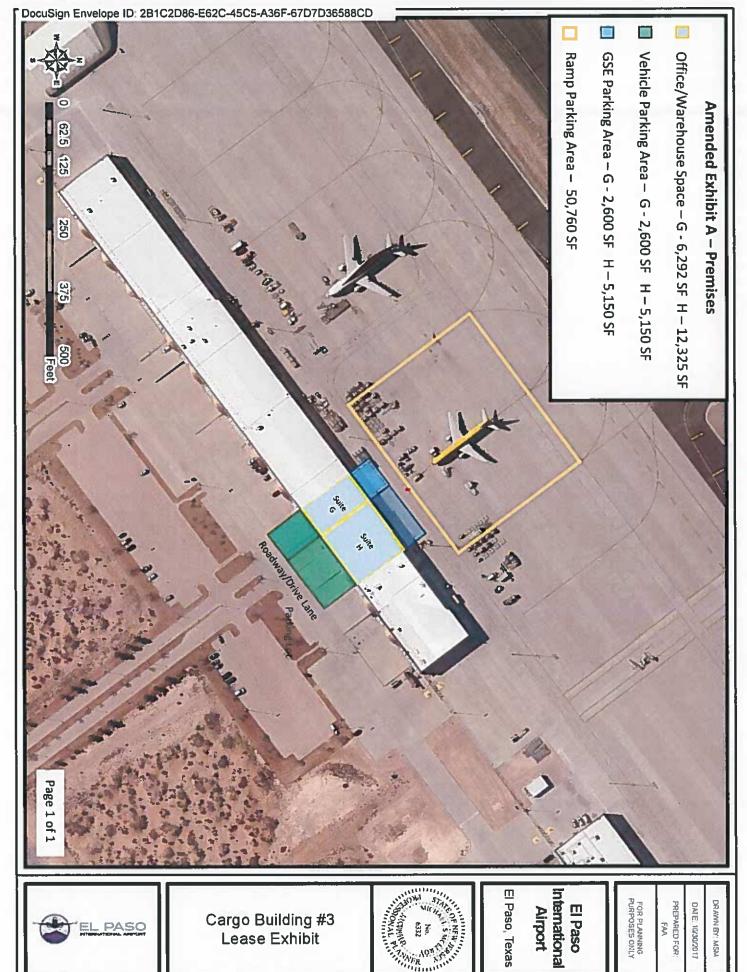
(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

EXECUTED this	_ day of	, 2021.	
		LESSOR: CITY OF EL PASO	
		Tomas Gonzalez City Manager	
APPROVED AS TO FOR	M:	APPROVED AS TO CONTENT:	
a Flores		21 V For	
Josette Flores Senior Assistant City Attorn	ev	Samuel Rodiguez, P.E. Director of Aviation	
	ACKNO	WLEDGMENT	
THE STATE OF TEXAS	)		
COUNTY OF EL PASO	) )		
This instrument was a	cknowledged be	efore me on this day of	, 2021,
by Tomás González as City N	/lanager of the C	City of El Paso, Texas (Lessor).	
		Notary Public, State of Texas	
ISIGNATI I	RES CONTINI	'E ON THE FOLLOWING PAGE]	

11-1003-005/PL#1083550v.7/DHL Express 1st Amendment to Air Cargo Lease

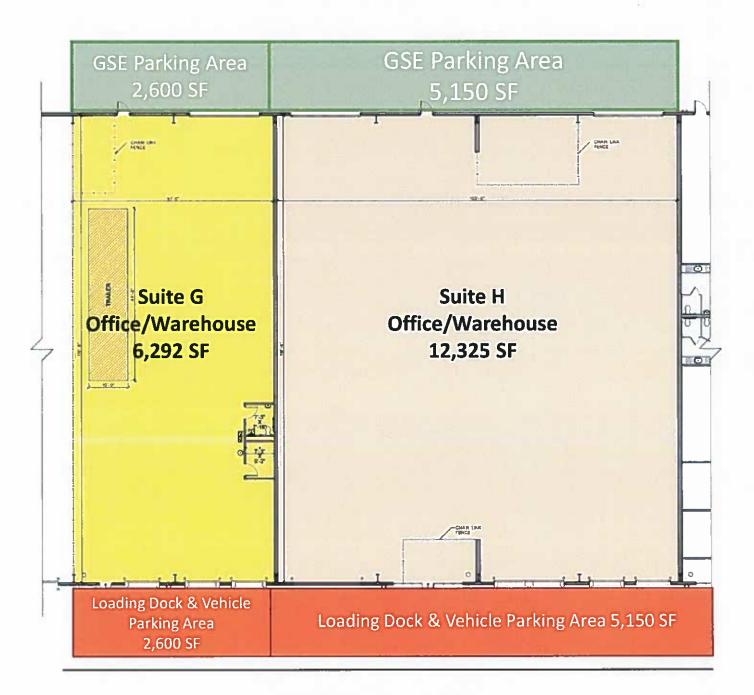
ATTEST:		LESSEE: DHL EXPRESS (USA), INC.	
Name: _	Scan Mays Sear Mays	Pablo Bradbury Patroner and the second secon	
Name:	DocuSigned by:  Scale Mays Sear Mays	Name:  Title: VP - Transaction Management	

[LESSEE TO APPEND NOTARY PAGES BEHIND THIS SIGNATURE PAGE.]



# **Exhibit B (Amended)**

301 George Perry Blvd.
Suite G and Suite H Premises



Roadway/Drive Lane

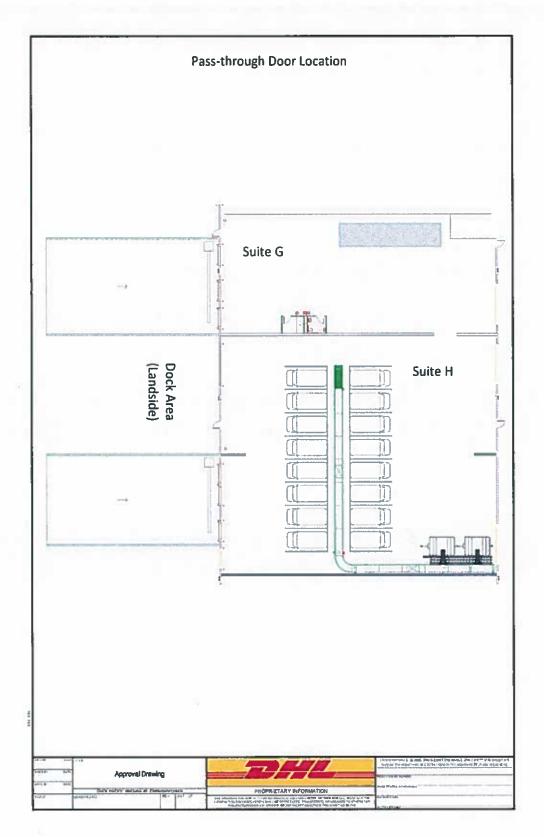
# Exhibit C Lessor's Additional Improvements

The City of El Paso (Lessor) agrees to construct the following additional improvements at the request of DHL Express (USA), Inc.:

- Pass-through door
  - One (1) 10' x 10' door from Suite G in the warehouse at Suite H in or about the location specified on page 2.

Lessor estimates that this work will be completed in approximately ninety (90) days from the issuance of a notice for the selected contractor. The above listed improvements and repairs will be completed by the Lessor and reimbursed by the Lessee within thirty (30) days of the issuance of the invoice for reimbursement of said additional improvements plus a ten percent (10%) administrative fee.

# Exhibit C Lessor's Additional Improvements



# El Paso, TX

### Legislation Text

File #: 21-1263, Version: 1

# **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

Police, Assistant Chief Zina Silva, (915) 212-4306

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

That the El Paso City Council authorizes the submission to the Office of the Governor of the State of Texas, Criminal Justice Division, grant application number 4365501, for the City of El Paso Police Department project identified as "Body Worn Camera Grant Program FY2022" to provide financial assistance to the City of El Paso. Requesting \$497,790.00, which requires a cash match by the City of \$165,930.00 for a total project amount of \$663,720.00. Grant period will be March 1, 2022 - February 28, 2023.

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

**AGENDA DATE: 11/09/21 PUBLIC HEARING DATE:** CONTACT PERSON(S) NAME AND PHONE NUMBER: Assistant Chief Silva 915-212-4306 DISTRICT(S) AFFECTED: All STRATEGIC GOAL: 2-Set the Standard for a Safe and Secure City SUBGOAL: 2.1-Maintain standing as one of the nation's top safest cities. SUBJECT: The El Paso City Council authorizes the submission to the Office of the Governor of the State of Texas, Criminal Justice Division, grant application number 4365501, for the City of El Paso Police Department project identified as "Body Worn Camera Grant Program FY2022" to provide financial assistance to the City of El Paso. Requesting \$497,790,00, which requires a cash match by the City of \$165,930.00 for a total project amount of \$663,720.00. Grant period will be March 1, 2022-February 28, 2023. **BACKGROUND / DISCUSSION:** The El Paso Police Department will utilize the Body Worn Camera Grant Program to fund the purchase of 700 Body Worn Cameras for its patrol and traffic officers. Providing Body Worn Cameras to all patrol and traffic officers. EPPD will have the ability to record and capture digital evidence of citizen and officer interactions. **PRIOR COUNCIL ACTION:** N/A **AMOUNT AND SOURCE OF FUNDING:** Cash Match-25% will be \$165,930.00. Cash match accounting string: 522150-15260-1000-P1517 HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? **PRIMARY DEPARTMENT: Police SECONDARY DEPARTMENT: IT** 

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

**DEPARTMENT HEAD:** Chief Gregory K. Allen

#### **RESOLUTION**

WHEREAS, the City of El Paso (the "City") is eligible to apply for grants through the Criminal Justice Division of the Office of the Governor of the State of Texas ("CJD");

WHEREAS, the El Paso City Council seeks to receive grant funding through the CJD grant/application number 4365501 for the El Paso Police Department project identified as "Body Worn Camera Grant Program FY2022"; and

WHEREAS, the El Paso City Council designated the City Manager or his designee as the City's authorized official.

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

- 1. THAT, the El Paso City Council authorizes the submission to the Office of the Governor of the State of Texas, Criminal Justice Division, grant application number 4365501, for the City of El Paso Police Department project identified as "Body Worn Camera Grant Program FY2022" to provide financial assistance to the City of El Paso.
- 2. THAT, the City of El Paso shall provide all matching funds for said grant if applicable.
- **THAT,** the City Manager or designee is authorized to apply for, accept, reject, alter and/or terminate said grant.
- 4. THAT, the City Council agrees that in the event of loss or misuse of said grant funds, the City of El Paso will return all funds for said grant to the State of Texas Office of the Governor, Criminal Justice Division.
- 5. BE IT FURTHER RESOLVED THAT, the City Manager or designee is authorized to sign any related paperwork, including but not limited to, the actual grant contract, the authorization of budget transfers, and/or revisions to the operation plan, as well as any grant amendments, corrections, or extensions of the grant agreement which increase, decrease, or de-obligate program funds, provided that no additional City funds are required.

# APPROVED this \_\_\_day of November, 2021.

	CITY OF EL PASO
	Oscar Leeser
ATTEST:	Mayor
ATTEST.	
Laura D. Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Justine 3	Dregoy K. Allen
Eric Gutierrez	Gregory K. Allen
Assistant City Attorney	Chief of Police

#### Print This Page

**Agency Name:** El Paso City of

**Grant/App:** 4365501 **Start Date:** 3/1/2022 **End Date:** 2/28/2023

**Project Title:** Body Worn Cameras **Status:** Application Pending Submission

#### **Eligibility Information**

#### Your organization's Texas Payee/Taxpayer ID Number:

17460007499014

#### **Application Eligibility Certify:**

Created on:9/10/2021 10:20:14 AM By:Jessica Vargas

#### **Profile Information**

**Applicant Agency Name:** El Paso City of **Project Title:** Body Worn Cameras

Division or Unit to Administer the Project: Strategic Planning Division El Paso Police Department

Address Line 1: 300 N. Campbell

**Address Line 2:** 

City/State/Zip: El Paso Texas 79901-1402

**Start Date:** 3/1/2022 **End Date:** 2/28/2023

Regional Council of Governments (COG) within the Project's Impact Area: Rio Grande Council of Governments

Headquarter County: El Paso

**Counties within Project's Impact Area:** 

#### **Grant Officials:**

### **Authorized Official**

Name: Elda Hefner

Email: rodriguez-hefnere@elpasotexas.gov

Address 1: 300 N. Campbell

Address 1:

City: El Paso, Texas 79901

Phone: 915-212-1795 Other Phone: 915-212-1162

Fax: Title: Ms. Salutation: Ms.

Position: Grants Administrator

#### **Financial Official**

Name: Margarita Munoz

**Email:** munozmm@elpasotexas.gov **Address 1:** 300 N. Campbell st

Address 1:

**City:** City of El Paso, Texas 79901 **Phone:** 915-212-1174 Other Phone:

Fax:
Title: Ms.
Salutation: Ms.
Position: Comptroller

#### **Project Director**

Name: Jeremiah Poust

Email: 2451@elpasotexas.gov Address 1: 911 N. Raynor

Address 1:

City: El Paso, Texas 79903

**Phone:** 915-212-4313 Other Phone:

Fax:

Title: Mr.

Salutation: Lieutenant

Position: Lieutenant, Planning & Research

**Grant Writer** 

Name: Jessica Vargas

**Email:** C1692@elpasotexas.gov Address 1: 106 Desert Lilly Ct.

Address 1:

City: Santa Teresa, New Mexico 88008 **Phone:** 915-212-4277 Other Phone:

Fax: Title: Ms. Salutation: Ms.

Position: Senior Grant Planner

#### **Grant Vendor Information**

Organization Type: Unit of Local Government (City, Town, or Village) **Organization Option:** applying to provide services to all others

Applicant Agency's State Payee Identification Number (e.g., Federal Employer's Identification (FEI)

Number or Vendor ID): 17460007499014

Data Universal Numbering System (DUNS): 058873019

#### **Narrative Information**

#### Introduction

The purpose of this announcement is to solicit applications from law enforcement agencies to equip peace officers with body-worn cameras.

The PSO's <u>eGrants User Guide to Creating an Application</u> guides applicants through the process of creating and submitting an application in eGrants. Information and guidance related to the management and use of grant funds can be found in the The PSO's Guide to Grants, located on the PSO Resource for Applicants and Grantees webpage.

#### **Program-Specific Questions**

#### **Organization Information**

The number of licensed officers directly employed by the applicant agency:

The number of licensed, front-line officers who are engaged in traffic or highway patrol or otherwise regularly detain or stop motor vehicles, or are primary responders who respond directly to calls for assistance from the public:

623

#### Certifications

In addition to the requirements found in existing statute, regulation, and the funding announcement, this program requires applicant organizations to certify compliance with the following:

#### **Constitutional Compliance**

Applicant assures that it will not engage in any activity that violates Constitutional law including profiling based upon race.

#### **Eligible Officers**

Applicant assures that grant funds will be used only to equip peace officers of a municipal police department or sheriff's office, who are engaged in traffic or highway patrol otherwise regularly detain or stop motor vehicles; or are primary responders who respond directly to calls for assistance from the public.

#### **Reporting Requirements**

Applicant assures that it will annually file reports with the Texas Commission on Law Enforcement (TCOLE), in a manner prescribed by TCOLE, regarding the costs of implementing a body worn camera program, including all known equipment costs and costs for data storage.

#### **Body-Worn Camera Policy**

Applicant assures that it will adopt a policy for the use of body-worn cameras which, at a minimum, includes all provisions described in Sec. 1701.655 of the Texas Occupations Code.

#### **Cybersecurity Training Requirement**

Local units of government, including counties, municipalities, special districts, school districts, junior college districts, or other political subdivisions of the state, must submit a written certification of the local government's compliance with the cybersecurity training required by Section 2054.5191 of the Texas Government Code. A determination of non-compliance with the cybersecurity training requirements will result in a refund of the original grant award as well as ineligibility of future grant awards until the second anniversary of the date the local government is determined ineligible.

#### **Criminal History Reporting**

Entities receiving funds from PSO must be located in a county that has an average of 90% or above on both adult and juvenile dispositions entered into the computerized criminal history database maintained by the Texas Department of Public Safety (DPS) as directed in the Texas Code of Criminal Procedure, Chapter 66. The disposition completeness percentage is defined as the percentage of arrest charges a county reports to DPS for which a disposition has been subsequently reported and entered into the computerized criminal history system.

Beginning January 1, 2021, counties applying for grant awards from the Office of the Governor must commit that the county will report at least 90 percent of convictions and other dispositions within five business days to the Criminal Justice Information System at the Department of Public Safety. Click here for additional information from DPS on this new reporting requirement.

#### **Uniform Crime Reporting (UCR)**

Eligible applicants operating a law enforcement agency must be current on reporting complete UCR data and the Texas specific reporting mandated by 411.042 TGC, to the Texas Department of Public Safety (DPS) for inclusion in the annual Crime in Texas (CIT) publication. To be considered eligible for funding, applicants must have submitted a full twelve months of accurate data to DPS for the most recent calendar year by the deadline(s) established by DPS. Due to the importance of timely reporting, applicants are required to submit complete and accurate UCR data, as well as the Texas-mandated reporting, on a no less than monthly basis and respond promptly to requests from DPS related to the data submitted. Note: UCR is transitioning from summary reporting to NIBRS only in 2021. Applicants are encouraged to transition to NIBRS as soon as possible in order to maintain their grant eligibility.

#### Compliance with State and Federal Laws, Programs and Procedures

Local units of government, including cities, counties and other general purpose political subdivisions, as appropriate, and institutions of higher education that operate a law enforcement agency, must comply with all aspects of the programs and procedures utilized by the U.S. Department of Homeland Security ("DHS") to: (1) notify DHS of all information requested by DHS related to illegal aliens in Agency's custody; and (2) detain such illegal aliens in accordance with requests by DHS. Additionally, counties and municipalities may NOT have in effect, purport to have in effect, or make themselves subject to or bound by, any law, rule, policy, or practice (written or unwritten) that would: (1) require or authorize the public disclosure of federal law enforcement information in order to conceal, harbor, or shield from detection fugitives from justice or aliens illegally in the United States; or (2) impede federal officers from exercising authority under 8 U.S.C. § 1226(a), § 1226(c), § 1231(a), § 1357(a), § 1366(1), or § 1366(3). Lastly, eligible applicants must comply with all provisions, policies, and penalties found in Chapter 752, Subchapter C of the Texas Government Code.

Each local unit of government, and institution of higher education that operates a law enforcement agency, must download, complete and then upload into eGrants the CEO/Law Enforcement Certifications and Assurances Form certifying compliance with federal and state immigration enforcement requirements. This Form is required for each application submitted to PSO and is active until August 31, 2022 or the end of the grant period, whichever is later.

#### **Civil Rights Liaison**

A civil rights liaison who will serve as the grantee's civil rights point of contact and who will be responsible for ensuring that the grantee meets all applicable civil rights requirements must be designated. The designee will act as the grantee's liaison in civil rights matters with PSO and with the federal Office of Justice Programs. Enter the Name of the Civil Rights Liaison:

Claudia Lujan

Enter the Address for the Civil Rights Liaison:

300 N. Campbell First Floor El Paso, Tx 79901

Enter the Phone Number for the Civil Rights Liaison [(999) 999-9999 x9999]:

915-212-1241

#### **Overall Certification**

Each applicant agency must certify to the specific requirements detailed above as well as all requirements within the PSO Funding Announcement, the eGrants application, the OOG's Guide to Grants, and the OOG's Grantee Conditions and Responsibilities to be eligible for this program.

X I certify to all of the application content and requirements.

#### **Project Abstract:**

The El Paso Police Department (EPPD) will utilize the Body-Worn Camera Grant Program to fund the purchase of 700 Body-Worn Cameras for its patrol and traffic officers. The cameras purchased with this grant will allow patrol and traffic officers to have full access to Body-Worn Cameras. Providing Body-Worn Cameras to all patrol and traffic officers will ensure that all officers in the field can record and capture digital video evidence of citizen and officer interactions.

#### **Problem Statement:**

The EPPD serves the El Paso community. El Paso is the 22nd largest city in the United States and the 6th largest city in Texas. It is the largest metropolitan city on the U.S.-Mexico border, covering over 255 square miles with a population of over 680,000 residents. El Paso is bordered by the city of Juarez, Mexico, and the State of New Mexico. The City of El Paso receives a large number of people visiting and working in our city daily. The EPPD is the largest local law enforcement agency in the area and consists of approximately 1,140 sworn law enforcement employees. These officers are distributed throughout the city in five regional command centers that handle the patrol functions of that particular area. Specialized units operate out of police headquarters or other locations throughout the city. Approximately 623 sworn personnel are assigned to either patrol operations or traffic duties and regularly detain or stop motor vehicles or respond directly to calls for assistance from the public. The 700 Body-Worn Cameras requested will also accommodate the two recruit classes that the EPPD anticipates graduating to patrol in February and July of 2022. Patrol and traffic operations are not currently using Body-Worn Cameras. The EPPD has a limited number of Body-Worn Cameras in use by two specialized units, the DWI Task Force and the Crisis Intervention Team. The EPPD recognizes that the use of Body-Worn Cameras will help improve the quality of service to the citizens of El Paso. The use of Body-Worn Cameras increases public safety and operational efficiency. Outfitting all patrol and traffic with Body-Worn Cameras will provide quality digital evidence to assist with the prosecution of offenses. Currently, patrol and traffic officers do not utilize Body-Worn Cameras and rely on an officer's account of an event for prosecution. Body-Worn Cameras can increase operational efficiency by allowing supervisors quick review of incidents for administrative purposes, use of force documentation, and other audit functions. The use of Body-Worn Cameras has

the potential to provide the following benefits. They can provide important crime-related evidence to assist in the prosecution of offenders. The use of Body-Worn Cameras allows for evidence and events to be captured and saved digitally to assist in the prosecution of offenses. Body-Worn Cameras provide for another means of documentation of an incident to corroborate an officer's testimony. Increasing the number of Body-Worn Cameras in the field will greatly increase the number of scenes, calls for service, and incidents that are recorded. Body-Worn Cameras can increase transparency and accountability of law enforcement to the communities they serve by providing a digital record of officers' interactions with the public available for review. This can improve public relations, confidence, and police legitimacy in the community. Lastly, Body-Worn Cameras can assist in the resolution of complaints against police officers. If officer's interactions are recorded, this allows the department quick review and objective analysis of an incident in question that either may substantiate or unfound a complaint of misconduct.

#### **Supporting Data:**

In 2020, the EPPD handled over 174,000 calls for service. Of these calls for service, there were 10,746 Part 1 crimes reported. Part 1 crimes include violent offenses and property crimes such as rape, robbery, aggravated assault, burglary, motor vehicle theft, arson, and theft. In addition, there were 136,540 instances of officer-initiated activity. There were a total of 16,156 arrests in 2020 made by EPPD. In 2020 the EPPD documented that its officers were involved in 1,148 use of force incidents involving its officers. In 2020 the department's Internal Affairs Division received 199 complaints of officer misconduct. In addition, there were also over 1,000 use of force incidents by officers, which were documented and reviewed by Internal Affairs.

#### **Project Approach & Activities:**

The funding requested would assist the EPPD in the acquisition and use of Body-Worn Cameras is consistent with the City of El Paso's goals of setting the standard for a safe and secure city, and the mission to deliver exceptional services to support a high quality of life and place for our community. Part of the City's goals includes maintaining standing as one of the nation's top safest cities and strengthen community involvement in resident safety. Body-Worn Cameras for which funding is being requested will assist the EPPD in reaching both these goals in the following ways:

• EPPD's objective is to provide a Body-Worn Camera to every officer working in patrol and traffic functions. The 700 Body-Worn Cameras would be issued directly to all patrol and traffic sections, and those units that respond directly to calls for assistance from the public.

• Increase the amount of officer and citizen interactions recorded to document incidents.

• Increase the amount and quality of digital evidence available for prosecutions of offenses and officer testimony.

• Increases accountability of officers and the public's confidence that officers are delivering exceptional services to citizens.

• Supervisors, Internal Affairs, and appropriate investigative sections will have direct access to view videos as necessary for quality control purposes and to ensure that events recorded are properly categorized by incident type and case number, submitted as evidence, and stored for appropriate retention periods.

• Body-Worn Camera video will be available to the District Attorney for prosecution and open records request to the public, media, and other interested parties.

#### **Capacity & Capabilities:**

EPPD is a Municipal Law Enforcement Agency in the City of El Paso. The EPPD employs approximately 1,140 commissioned police officers. Currently, the EPPD is operating 34 Body-Worn Cameras. The project began 2015 with the assistance of the 34th Judicial District Attorney's Office. This outfitted officers conducting DWI traffic enforcement with Body-Worn Cameras. In 2018 the EPPD increased its body-worn cameras to 34 and included the crisis intervention team with Body-Worn Cameras. Our current Body-Worn Camera system is integrated with a fleet of approximately 400 marked patrol units that are equipped with the WatchGuard in-car digital video system. The EPPD has experience in successfully operating and managing this system for three years. Currently, the EPPD is working on a project with District Attorney's Office to streamline the sharing of evidentiary videos to assist with the prosecution of criminal cases and eliminating the need to produce time consuming copies of the digital videos on disks.

#### **Performance Management:**

The goal of the EPPD with funding from this project is to deploy a Body-Worn Camera with every officer that is working in the field answering calls for service in a patrol function or proactively conducting traffic enforcement operations. Success would be measured by 100% deployment of officers in the field utilizing Body-Worn Cameras. The EPPD would track the Body-Worn Cameras through line supervisors conducting equipment inspections at shift briefings. Additionally, supervisors would have direct access to downloaded evidentiary digital evidence while approving offense reports. Supervisors will also have access to videos to conduct monthly audits of the camera's use and review of complaints. EPPD Planning and Research staff will manage the digital evidence library of Body-Worn Camera video.

#### Target Group:

The target group for this requested funding is the citizens and visitors to the City of El Paso that the EPPD serves

daily. The cameras purchased will be used by the EPPD in patrol operations and units regularly assigned to conduct traffic enforcement while keeping El Paso a safe and secure city. El Paso has a population of over 680,000 residents and is bordered by the city of Juarez, Mexico, and the State of New Mexico.

#### **Evidence-Based Practices:**

The EPPD Planning and Research division will ensure that the Body-Worn Cameras purchased will be deployed with patrol and traffic officers. This will be accomplished by assigning the devices to the respective sections and officers and expanding policy already in place. The EPPD has successfully managed an in-car digital video program and a limited number of Body-Worn Cameras and will employ similar strategies and methods with the purchase of Body-Worn Cameras for all patrol and traffic officers. Currently, the EPPD has recorded approximately 13,000 events with their existing Body-Worn Cameras and approximately 293,000 events with their in-car digital video systems. There are approximately 123,000 events that are traffic enforcement-related. To date in 2021, the EPPD has handled over 380 open records requests for Body-Worn Camera or in-car video. This amounts to approximately 177 TB of data that is currently stored on local servers. The EPPD currently is at approximately 72% of its total available storage capacity on the servers. Additionally, to increase efficiency the EPPD and the District Attorney's Office have recently begun a pilot program where events and digital evidence will be cloud shared. This reduces costs and labor for both the EPPD and District Attorney's Office. Digital evidence no longer has to be burned onto a DVD by supervisors and submitted to the property office and the District Attorney's Office no longer has to physically obtain the disk from the property office. The EPPD has learned through experience that cloud-based storage is the best approach for managing and storing this digital evidence. Cloud-based storage would be necessary for managing the increased amount of data and events documented with Body-Worn Cameras deployed across patrol and traffic operations.

#### **Project Activities Information**

#### Introduction

This section contains questions about your project. It is very important for applicants to review their funding announcement for guidance on how to fill out this section. Unless otherwise specified, answers should be about the EXPECTED activities to occur during the project period.

#### **Selected Project Activities:**

- oroston - reject rountings:		
ACTIVITY	PERCENTAGE:	DESCRIPTION
Body-Worn Camera Program Implementation	100.00	The El Paso Police Department (EPPD) will utilize the Body-Worn Camera Grant Program to fund the purchase of 700 Body-Worn Cameras for its patrol and traffic officers.

**CJD Purpose Areas** 

PERCENT DEDICATED	PURPOSE AREA	PURPOSE AREA DESCRIPTION
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#### **Measures Information**

#### **Objective Output Measures**

OUTPUT MEASURE	TARGET LEVEL
Number of body-worn cameras purchased with grant funds.	700

#### Objective Outcome Measures

**OUTCOME MEASURE** 

**TARGET LEVEL** 

**Custom Output Measures** 

CUSTOM OUTPUT MEASURE	TARGET LEVEL
-----------------------	--------------

Custom Outcome Measures

CUSTOM OUTCOME MEASURE TARGET LEVEL		CUSTOM OUTCOME MEASURE	TARGET LEVEL
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#### **Resolution from Governing Body**

Applications from nonprofit corporations, local units of governments, and other political subdivisions must include a resolution that contains the following:

- Authorization by your governing body for the submission of the application to the Public Safety Office (PSO) that clearly identifies the name of the project for which funding is requested;
- 2. A commitment to provide all applicable matching funds;
- 3. A designation of the name and/or title of an authorized official who is given the authority to apply for, accept, reject, alter, or terminate a grant (Note: If a name is provided, you must update the PSO should the official change during the grant period.); and
- 4. A written assurance that, in the event of loss or misuse of grant funds, the governing body will return all funds to PSO.

Upon approval from your agency's governing body, upload the <u>approved</u> resolution to eGrants by clicking on the **Upload Files** tab and following the instructions on *Uploading eGrants Files*.

#### **Contract Compliance**

Will PSO grant funds be used to support any contracts for professional services?

Select the appropriate response:

\_ Yes

X No

For applicant agencies that selected **Yes** above, describe how you will monitor the activities of the sub-contractor(s) for compliance with the contract provisions (including equipment purchases), deliverables, and all applicable statutes, rules, regulations, and guidelines governing this project.

Enter a description for monitoring contract compliance:

#### Lobbying

For applicant agencies requesting grant funds in excess of \$100,000, have any federally appropriated funds been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant loan, or cooperative agreement?

Select the appropriate response:



\_ N/A

For applicant agencies that selected either **No** or **N/A** above, have any non-federal funds been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress in connection with this federal contract, loan, or cooperative agreement?

Select the appropriate response:

Yes

X No

\_ N/A

#### **Fiscal Year**

Provide the begin and end date for the applicant agency's fiscal year (e.g., 09/01/20xx to 08/31/20xx).

Enter the Begin Date [mm/dd/yyyy]:

9/1/2021

Enter the End Date [mm/dd/yyyy]:

8/31/2022

#### **Sources of Financial Support**

Each applicant must provide the amount of grant funds expended during the most recently completed fiscal year for the following sources:

Enter the amount (in Whole Dollars \$) of Federal Grant Funds expended:

117426663

Enter the amount (in Whole Dollars \$) of State Grant Funds expended:

3787766

#### **Single Audit**

Applicants who expend less than \$750,000 in federal grant funding or less than \$750,000 in state grant funding are exempt from the Single Audit Act and cannot charge audit costs to a PSO grant. However, PSO may require a limited scope audit as defined in 2 CFR Part 200, Subpart F - Audit Requirements.

Has the applicant agency expended federal grant funding of \$750,000 or more, or state grant funding of \$750,000 or more during the most recently completed fiscal year?

Select the appropriate response:

X Yes

\_ No

Applicant agencies that selected **Yes** above, provide the date of your organization's last annual single audit, performed by an independent auditor in accordance with the State of Texas Single Audit Circular; or CFR Part 200, Subpart F - Audit Requirements.

Enter the date of your last annual single audit:

8/30/2020

#### **Debarment**

Each applicant agency will certify that it and its principals (as defined in 2 CFR Part 180.995):

- Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal Court, or voluntarily excluded from participation in this transaction by any federal department or agency;
- Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
- Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal. state, or local) with commission of any of the offenses enumerated in the above bullet; and have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

Select the	appropriate	response
Y I Certify		

\_ Unable to Certify

If you selected **Unable to Certify** above, please provide an explanation as to why the applicant agency cannot certify the statements.

#### **Fiscal Capability Information**

#### **Section 1: Organizational Information**

\*\*\* FOR PROFIT CORPORATIONS ONLY \*\*\*

Enter the following values in order to submit the application

Enter the Year in which the Corporation was Founded: 0

Enter the Date that the IRS Letter Granted 501(c)(3) Tax Exemption Status: 01/01/1900

Enter the Employer Identification Number Assigned by the IRS: 0

Enter the Charter Number assigned by the Texas Secretary of State: 0

Enter the Year in which the Corporation was Founded:

Enter the Date that the IRS Letter Granted 501(c)(3) Tax Exemption Status:

Enter the Employer Identification Number Assigned by the IRS:

Enter the Charter Number assigned by the Texas Secretary of State:

#### **Section 2: Accounting System**

\_ Yes \_ No

The grantee organization must incorporate an accounting system that will track direct and indirect costs for the organization (general ledger) as well as direct and indirect costs by project (project ledger). The grantee must establish a time and effort system to track personnel costs by project. This should be reported on an hourly basis, or in increments of an hour.

Is there a list of your organization's accounts identified by a specific number (i.e., a general ledger of accounts)?

Select the appropriate response: _ Yes _ No
Does the accounting system include a project ledger to record expenditures for each Program by required budget cost categories?
Select the appropriate response: _ Yes _ No
Is there a timekeeping system that allows for grant personnel to identify activity and requires signatures by the employee and his or her supervisor?
Select the appropriate response:

If you answered 'No' to any question above in the Accounting System section, in the space provided below explain what action will be taken to ensure accountability.

Enter your explanation:

#### **Section 3: Financial Capability**

Select the appropriate response:

Grant agencies should prepare annual financial statements. At a minimum, current internal balance sheet and income statements are required. A balance sheet is a statement of financial position for a grant agency disclosing assets, liabilities, and retained earnings at a given point in time. An income statement is a summary of revenue and expenses for a grant agency during a fiscal year.

Has the grant agency undergone an independent audit?

Select the appropriate response: _ Yes _ No
Does the organization prepare financial statements at least annually?
Select the appropriate response: _ Yes _ No
According to the organization's most recent Audit or Balance Sheet, are the current total assets greater than the liabilities?
Select the appropriate response: _ Yes _ No
If you selected 'No' to any question above under the Financial Capability section, in the space provided below explain what action will be taken to ensure accountability.
Enter your explanation:  Section 4: Budgetary Controls  Grant agencies should establish a system to track expenditures against budget and / or funded amounts. Are there budgetary controls in effect (e.g., comparison of budget with actual expenditures on a monthly basis) to include drawing down grant funds in excess of:
a) Total funds authorized on the Statement of Grant Award?  _ Yes No
<ul><li>b) Total funds available for any budget category as stipulated on the Statement of Grant Award?</li><li>Yes</li><li>No</li></ul>
If you selected 'No' to any question above under the Budgetary Controls section, in the space provided below please explain what action will be taken to ensure accountability.
Enter your explanation:
Section 5: Internal Controls
Grant agencies must safeguard cash receipts, disbursements, and ensure a segregation of duties exist. For example, one person should not have authorization to sign checks and make deposits. Are accounting entries supported by appropriate documentation (e.g., purchase orders, vouchers, receipts, invoices)?
Select the appropriate response: _ Yes _ No
Is there separation of responsibility in the receipt, payment, and recording of costs?

_	Yes
	Nο

If you selected 'No' to any question above under the Internal Controls section, in the space provided below please explain what action will be taken to ensure accountability.

Enter your explanation:

#### **Budget Details Information**

#### **Budget Information by Budget Line Item:**

CATEGORY	SUB CATEGORY	DESCRIPTION	oog	CASH MATCH	IN- KIND MATCH	GPI	TOTAL	UNIT/%
Supplies and Direct Operating Expenses	Network Server System and Accessories (\$5,000 or less per unit)	Transfer/Charging Stations Lease Fee 30 at \$2,064.00 each, total cost \$61,920.00.	\$46,440.00	\$15,480.00	\$0.00	\$0.00	\$61,920.00	0
Supplies and Direct Operating Expenses	Network Server System and Accessories (\$5,000 or less per unit)	Upload Servers Lease Fee for 100 at \$144.00 each, total cost \$14,400.00.	\$10,800.00	\$3,600.00	\$0.00	\$0.00	\$14,400.00	0
Supplies and Direct Operating Expenses	Network Server System and Accessories (\$5,000 or less per unit)	Extra Batteries 700 at \$99.00 each, total cost \$69,300.00 Extra Mobile Charging Station 700 at \$95.00 each, total cost \$66,500.00 Body Worn Camera Accessories 700 at \$50.00 each, total cost \$35,000.00 Grand Total of \$170,800.00	\$128,100.00	\$42,700.00	\$0.00	\$0.00	\$170,800.00	0
Supplies and Direct Operating Expenses	Installation of grant purchased equipment and technology.	Configuration and setup cost equals \$5,000.00	\$3,750.00	\$1,250.00	\$0.00	\$0.00	\$5,000.00	0
Supplies and Direct Operating Expenses	Body Camera and Accessories (\$5,000 or less per unit)	700 BWC for Patrol and Traffic at \$588.00 each, total cost \$411,600.00	\$308,700.00	\$102,900.00	\$0.00	\$0.00	\$411,600.00	0

#### **Source of Match Information**

#### **Detail Source of Match/GPI:**

DESCRIPTION	MATCH TYPE	AMOUNT
City of El Paso General Fund	Cash Match	\$165,930.00

#### **Summary Source of Match/GPI:**

Total Report	Cash Match	In Kind	<b>GPI Federal Share</b>	<b>GPI State Share</b>
\$165,930.00	\$165,930.00	\$0.00	\$0.00	\$0.00

#### **Budget Summary Information**

#### **Budget Summary Information by Budget Category:**

CATEGORY	OOG	CASH MATCH	IN-KIND MATCH	GPI	TOTAL
Supplies and Direct Operating Expenses	\$497,790.00	\$165,930.00	\$0.00	\$0.00	\$663,720.00

#### **Budget Grand Total Information:**

oog	CASH MATCH	IN-KIND MATCH	GPI	TOTAL
\$497,790.00	\$165,930.00	\$0.00	\$0.00	\$663,720.00

### **Condition Of Fundings Information**

Condition of Funding / Project Requirement	<b>Date Created</b>	Date Met	Hold Funds	Hold Line Item Funds
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You are logged in as **User Name**: JYVargas

Entity Name: City Of El Paso	Date:
Agency/Department Name: El Paso Police Depart	ment
Name of Chief Executive Officer: Tommy Gonza	alez, City Manager

### Certification Required by CEO and Head of Law Enforcement Agency

In our respective capacities as chief executive officer of City of El Paso ("Grantee") and as head of El Paso Police Department ("Agency"), we hereby each certify that Grantee and Agency participate fully, and will continue to participate fully from the date of this certification until the later of August 31, 2023 or the end of the grant project period, in all aspects of the programs and procedures utilized by the U.S. Department of Homeland Security ("DHS") to: (1) notify DHS of all information requested by DHS related to illegal aliens in Agency's custody; and (2) detain such illegal aliens in accordance with requests by DHS.

We further certify that Grantee and Agency do not have, and will continue not to have until the later of August 31, 2023 or the end of the grant project period, any policy, procedure, or agreement (written or unwritten) that in any way limits or impedes Agency's receipt or DHS's issuance of detainer requests, or in any way limits or restricts Grantee's and Agency's full participation in all aspects of the programs and procedures utilized by DHS to: (1) notify DHS of all information requested by DHS related to illegal aliens in Agency's custody; and (2) detain such illegal aliens in accordance with requests by DHS.

Additionally, we certify that neither Grantee nor Agency have in effect, purport to have in effect, or are subject to or bound by any law, rule, policy, or practice (written or unwritten) that would: (1) require or authorize the public disclosure of federal law enforcement information in order to conceal, harbor, or shield from detection fugitives from justice or aliens illegally in the United States; or (2) impede federal officers from exercising authority under 8 U.S.C. § 1226(a), § 1226(c), § 1231(a), § 1357(a), § 1366(1), or § 1366(3).

Lastly, we certify that Grantee and Agency will comply with all provisions, policies, and penalties found in Chapter 752, Subchapter C of the Texas Government Code.

We acknowledge that failure to comply with this certification may result in OOG, in its sole discretion, terminating any grant made by OOG to Grantee, and that Grantee must return all funds received from OOG for any grant terminated under this certification. We further acknowledge that Grantee will remain ineligible for OOG funding until it provides satisfactory evidence that the jurisdiction has complied with this certification for at least one year.

Signature

Assistant City Attorney

Chief Executive Officer for Grantee

APPROVED AS TO FORM:

IFROVED AS TO FORM

131

## El Paso, TX

### Legislation Text

File #: 21-1262, Version: 1

## **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

#### District 2

Planning and Inspections, Philip F. Etiwe, (915) 212-1553 Planning and Inspections, Klarissa Mijares, (915) 212-1544

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

That the closure of rights-of-way within the City of El Paso for the Sun Bowl Thanksgiving Day Parade from 3:00 a.m. to 2:00 p.m. on Thursday, November 25, 2021, serves a public purpose of providing cultural and recreational activities for the residents and visitors of the City of El Paso, and in accordance with 43 TAC, Section 22.12, the City Manager be authorized to sign an Agreement For The Temporary Closure of State Right Of Way (Form TEA 30A) by and between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation, for the temporary closure and use of State owned and operated street(s) in excess of four hours for portions of Copia St. between La Luz Ave. and Tularosa Ave. upon the issuance of required permits from the City of El Paso and substantial conformity to the finalized TEA30 agreement between the City of El Paso and State of Texas Department of Transportation. (CSEV21-00059)

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

AGENDA DATE: November 9, 2021

**PUBLIC HEARING DATE: N/A** 

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553

Klarissa Mijares, (915) 212-1544

**DISTRICT(S) AFFECTED**: District 2 and 8

STRATEGIC GOAL: #4 Enhance El Paso's quality of life through recreational, cultural and educational

environments

**SUBGOAL:** 4.2 Create innovative recreational, educational and cultural programs

#### SUBJECT:

That the closure of rights-of-way within the City of El Paso for the Sun Bowl Thanksgiving Day Parade from 3:00 a.m. to 2:00 p.m. on Thursday, November 25, 2021, serves a public purpose of providing cultural and recreational activities for the residents and visitors of the City of El Paso, and in accordance with 43 TAC, Section 22.12, the City Manager be authorized to sign an Agreement For The Temporary Closure of State Right Of Way (Form TEA 30A) by and between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation, for the temporary closure and use of State owned and operated street(s) in excess of four hours for portions of Copia St. between La Luz Ave. and Tularosa Ave. upon the issuance of required permits from the City of El Paso and substantial conformity to the finalized TEA30 agreement between the City of El Paso and State of Texas Department of Transportation. (CSEV21-00059)

#### **BACKGROUND / DISCUSSION:**

EVENT NAME: Sun Bowl Thanksgiving Day Parade

PERMIT CASE NUMBER: CSEV21-00059

EVENT DATE/HOURS: Thursday, November 25, 2021, at 10:00 a.m. to 2:00 p.m. Thursday, November 25, 2021, at 3:00 a.m. to 2:00 p.m. STATE ROW IN USE: Copia St. between La Luz Ave. and Tularosa Ave.

APPLICANT: The Sun Bowl Association

#### PRIOR COUNCIL ACTION:

N/A

#### AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

**PRIMARY DEPARTMENT:** Planning & Inspections, Planning Division

SECONDARY DEPARTMENT: N/A

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

<b>DEPARTMENT HEAD:</b>		

Philip Clive

#### RESOLUTION

WHEREAS, The Sun Bowl Association (hereinafter referred to as "Grantee") has submitted an application for a Special Event Permit as per Chapter 13.38 (Special Events) of the El Paso City Code, for the use and closure of rights-of-way within the City of El Paso's (hereinafter referred to as "the City") for the Sun Bowl Thanksgiving Parade from 3:00 a.m. to 2:00 p.m. on Thursday, November 25, 2021 (hereinafter referred to as the "Event"); and

WHEREAS, The Event will utilize both City and State rights-of-way: and

**WHEREAS,** The City of El Paso (hereinafter referred to as the "City") has found the Event serves a public purpose; and

WHEREAS, The State of Texas (hereinafter referred to as the "State") owns and operates a system of highways for public use and benefit, including Copia St. between La Luz Ave. and Tularosa Ave. within El Paso, Texas; and

**WHEREAS,** 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of portions of the State Highway System for periods of time exceeding four hours; and

WHEREAS, the State in recognition of the public purpose for the Event, provides a means of cooperating with the City for the temporary closure of State right-of-way, provided the closure is in accordance with the requirements of 43 TAC, Section 22.12 and the City enters into an Agreement for the Temporary Closure of State Right-of-Way for the Event (Form TEA 30A).

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

That the closure of rights-of-way within the City of El Paso for the Sun Bowl Thanksgiving Parade from 3:00 a.m. to 2:00 p.m. on Thursday, November 25, 2021, serves a public purpose of providing cultural and recreational activities for the residents and visitors of the City of El Paso, and in accordance with 43 TAC, Section 22.12, the City Manager be authorized to sign an Agreement For The Temporary Closure of State Right Of Way (Form TEA 30A) by and between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation, for the temporary closure and use of State owned and operated street (s) in excess of four hours for portions of Copia St. between La Luz Ave. and Tularosa Ave. upon the issuance of required permits from the City of El Paso and State of Texas Department of Transportation.

(Signatures Begin on Following Page)

<b>APPROVED</b> this day of _	, 2021.
	CITY OF EL PASO:
	Oscar Leeser Mayor
ATTEST:	
Laura D. Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Wendi N. Vineyard Assistant City Attorney	Philip Ctive Philip F. Etiwe, Director Planning & Inspections Department

STATE OF TEXAS §

COUNTY OF EL PASO §

#### AGREEMENT FOR THE TEMPORARY CLOSURE OF STATE RIGHT OF WAY

**THIS AGREEMENT** is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," and the City of El Paso, a municipal corporation, acting by and through its duly authorized officers, hereinafter called the "local government."

#### WITNESSETH

WHEREAS, the State owns and operates a system of highways for public use and benefit, including Copia St. between La Luz Ave. and Tularosa Ave., in El Paso, County; and

WHEREAS, the local government has requested the temporary closure of Copia St. between La Luz Ave. and Tularosa Ave., for the purpose of allowing Sun Bowl Thanksgiving Day Parade, from 3:00 a.m. on Thursday, November 25, 2021 to 2:00 p.m. on Thursday, November 25, 2021 as described in the attached "Exhibit A", hereinafter identified as the "Event;" and

WHEREAS, the Event will be located within the local government's incorporated area; and

**WHEREAS**, the State, in recognition of the public purpose of the Event, wishes to cooperate with the City so long as the safety and convenience of the traveling public is ensured and that the closure of the State's right of way will be performed within the State's requirements; and

WHEREAS, on the 9th day of November 2021, the El Paso City Council passed a Resolution, attached hereto and identified as "Exhibit B," establishing that the Event serves a public purpose and authorizing the local government to enter into this agreement with the State; and

WHEREAS, 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of a segment of the State highway system; and

**WHEREAS**, this agreement has been developed in accordance with the rules and procedures of 43 TAC, Section 22.12;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

#### AGREEMENT

#### Article 1. CONTRACT PERIOD

This agreement becomes effective upon final execution by the State and shall terminate upon completion of the Event or unless terminated or modified as hereinafter provided.

#### **Article 2. EVENT DESCRIPTION**

The physical description of the limits of the Event, including county names and highway numbers, the number of lanes the highway has and the number of lanes to be used, the proposed schedule of start and

stop times and dates at each location, a brief description of the proposed activities involved, approximate number of people attending the Event, the number and types of animals and equipment, planned, physical modifications of any man-made or natural features in or adjacent to the right of way involved and a location map is attached hereto as "Exhibit C," and incorporated as if fully set forth herein.

#### **Article 3. OPERATIONS OF THE EVENT**

- **A.** The local government shall assume all costs for the operations associated with the Event, including but not limited to; plan development, materials, labor, public notification, providing protective barriers and barricades, protection of highway traffic and highway facilities, and all traffic control and temporary signage.
- **B.** The local government shall submit to the State for review and approval: the construction plans, if construction or modifications to the State's right of way is required; the traffic control and signage plans; traffic enforcement plans, and; all other plans deemed necessary by the State. The State may require that any traffic control plan of sufficient complexity be signed, sealed and dated by a registered professional engineer. The traffic control plan shall be in accordance with the latest edition of the Texas Manual on Uniform Traffic Control Devices. All temporary traffic control devices used on state highway right of way must be included in the State's Compliant Work Zone Traffic Control Devices List. The State reserves the right to inspect the implementation of the traffic control plan, and if it is found to be inadequate, the local government will bring the traffic control into compliance with the originally submitted plan, upon written notice from the State noting the required changes, prior to the event. The State may request changes to the traffic control plan in order to ensure public safety due to changing or unforeseen circumstances regarding the closure.
- C. The local government will ensure that the appropriate law enforcement agency has reviewed the traffic control for the closures and that the agency has deemed them to be adequate. If the law enforcement agency is unsure as to the adequacy of the traffic control, it will contact the State for consultation no less than 10 workdays prior to the closure.
- **D**. The local government will complete all revisions to the traffic control plan as requested by the State within the required timeframe or that the agreement will be terminated upon written notice from the State to the local government. The local government hereby agrees that any failure to cooperate with the State may constitute reckless endangerment of the public and that the Texas Department of Public Safety may be notified of the situation as soon as possible for the appropriate action, and failing to follow the traffic control plan or State instructions may result in a denial of future use of the right of way for three years.
- **E.** The local government will not initiate closure prior to 24 hours before the scheduled Event and all barriers and barricades will be removed and the highway reopened to traffic within 24 hours after the completion of the Event.
- F. The local government will provide adequate enforcement personnel to prevent vehicles from stopping and parking along the main lanes of highway right of way and otherwise prevent interference with the main lane traffic by both vehicles and pedestrians. The local government will prepare a traffic enforcement plan, to be approved by the State in writing at least 48 hours prior to the scheduled Event. Additionally, the local government shall provide to the State a letter of certification from the law enforcement agency that will be providing traffic control for the Event, certifying that they agree with the enforcement plan and will be able to meet its requirements.

- **G.** The local government hereby assures the State that there will be appropriate passage allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the local government's traffic control plan.
- H. The local government will avoid or minimize damage, and will, at its own expense, restore or repair damage occurring outside the State's right of way and restore or repair the State's right of way, including, but not limited to, roadway and drainage structures, signs, overhead signs, pavement markings, traffic signals, power poles and pavement, etc. to a condition equal to that existing before the closure, and, to the extent practicable, restore the natural and cultural environment in accordance with federal and state law, including landscape and historical features.

#### Article 4. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this agreement, all documents prepared by the local government will remain the property of the local government. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

#### Article 5. TERMINATION

- **A.** This agreement may be terminated by any of the following conditions:
  - (1) By mutual written agreement and consent of both parties.
  - (2) By the State upon determination that use of the State's right of way is not feasible or is not in the best interest of the State and the traveling public.
  - (3) By either party, upon the failure of the other party to fulfill the obligations as set forth herein.
  - (4) By satisfactory completion of all services and obligations as set forth herein.
- **B.** The termination of this agreement shall extinguish all rights, duties, obligations, and liabilities of the State and local government under this agreement. If the potential termination of this agreement is due to the failure of the local government to fulfill its contractual obligations as set forth herein, the State will notify the local government that possible breach of contract has occurred. The local government must remedy the breach as outlined by the State within ten (10) days from receipt of the State's notification. In the event the local government does not remedy the breach to the satisfaction of the State, the local government shall be liable to the State for the costs of remedying the breach and any additional costs occasioned by the State.

#### **Article 6. DISPUTES**

Should disputes arise as to the parties' responsibilities or additional work under this agreement, the State's decision shall be final and binding.

#### Article 7. RESPONSIBILITIES OF THE PARTIES

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

#### Article 8. INSURANCE

- **A.** Prior to beginning any work upon the State's right of way, the local government and/or its contractors shall furnish to the State a completed "Certificate of Insurance" (TxDOT Form 1560, latest edition) and shall maintain the insurance in full force and effect during the period that the local government and/or its contractors are encroaching upon the State right of way.
- **B.** In the event the local government is a self-insured entity, the local government shall provide the State proof of its self-insurance. The local government agrees to pay any and all claims and damages that may occur during the period of this closing of the highway in accordance with the terms of this agreement.

#### **Article 9. AMENDMENTS**

Any changes in the time frame, character, agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by both the local government and the State.

#### Article 10. COMPLIANCE WITH LAWS

The local government shall comply with all applicable federal, state and local environmental laws, regulations, ordinances and any conditions or restrictions required by the State to protect the natural environment and cultural resources of the State's right of way.

#### Article 11. LEGAL CONSTRUCTION

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

#### **Article 12. NOTICES**

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

<b>Local Government:</b>	State:
City of El Paso	Texas Department of Transportation
Attn: Tomas Gonzalez	Attn: Tomas Treviño, P.E.
City Manager	El Paso District Engineer
300 N. Campbell- City 1, 2 <sup>nd</sup> Floor	13301 Gateway West
El Paso, Texas 79901	El Paso, Texas 79928-5410

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

#### **Article 13. SOLE AGREEMENT**

This agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral agreements respecting the within subject matter.

**IN TESTIMONY WHEREOF**, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE CITY OF EL PASO	
Executed on behalf of the local government by:	
	Date:
Tomás González	<u> </u>
City Manager	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Wendi N. Vineyard	Philis (Tiwe
Wendi N. Vineyard	Philip Ctive Philip F. Etiwe, Director
Assistant City Attorney	Planning and Inspections Department
THE STATE OF TEXAS	
	red for the Texas Transportation Commission for the out the orders, established policies or work programs Transportation Commission.
By:	Date:
Tomas Treviño, P.E.,	
El Paso District Engineer	



# City of El Paso Special Event Permit Parade



Permit No: CSEV21-00059

Event Name: SUN BOWL THANKSGIVING DAY PARADE

Issued: 10/25/2021 Expires: 11/25/2021

#### **Applicant**

BERNIE OLIVAS 4150 PINNAVLE SUITE 100 EL PASO, TX 79902

**Description:** Parade Route: Starts at Campbell and Montana ends at Montana and Copia. Pre-Staging: Montana Avenue between North Campbell Street and North Kansas Street, North Kansas Street and North Stanton Street, North Stanton Street and North Mesa Street, and left lane and half street closure on North Stanton Street between Wyoming Avenue and East Rio Grande Avenue.

**EPPD:** El Paso Police Department has no objections with this event. The Department will police the event with 192 officers and 72 vehicles. Traffic control times will be from 4:00 to 13:00 on 11/25/2021.

EPFD: Float and food truck inspections required. PSA's will be sent to PIO for dissemination.

Streetcar: Applicant has complied with the Track Access Program requirements and has been issued an approved Track Access Permit.

Event Type: Parade Park Use: No Amplification: Yes

Participants/Attendees: 4,000 Event Staff/Volunteers: 700

Vehicles: 100 Animals: No Other:

EVENT STREET MONITORING

Start Date: 11/25/2021 Start Date: 11/25/2021

Start Time: 10:00 Start Time: 03:00

End Date: 11/25/2021 End Date: 11/25/2021

End Time: 14:00 End Time: 14:00

#### \*\* NOTICE \*

Permittee shall comply with all applicable City, State and Federal rules and/or regulations in conjunction with the event, including, but not limited to, park, noise and alcohol. Permitte acknowledges all information presented and contained herein is factually accurate. Permittee understands any inaccurate or incomplete information provided may create additional costs and/or considerations in conjunction with the permit and/or the event.

THE CONTACT PERSON FOR THE EVENT SHALL CARRY THE PERMIT DURING THE EVENT.

Given under my hand and The City of El Paso Seal on this date:





#### Parades and Public Assemblies

#### All parade and public assembly requests shall comply with the following as conditions of the permit:

- 1. The permittee(s) shall comply with all provisions of Section 13.36 (Parades and Public Assemblies), permit directions, conditions and all applicable laws and ordinances.
- 2. The permittee(s) shall not allow the parade to begin, proceed or continue until such time as the applicable traffic control plan or method is set up and functioning.
- 3. The permittee(s) shall not make an exclusive use of any City-Controller park or park facility for a demonstration except in compliance with Section 13.24.200 of the City code.
- 4. The permittee(s) shall take all steps necessary to keep the area for the public assembly clean or the parade route clean and free of animal excrement during the event.
- 5. The permittee(s) shall, immediately upon the conclusion of the event, clean and remove all litter and debris left on the roadways, sidewalks, and other public right-of-ways by participants, animals, floats and vehicles used in the event and by spectators to the event.
- 6. The permittee(s) shall coordinate any requests for fireworks with the El Paso Fire Department prior to the issuance of the parade permit.
- 7. Use of animals, including but not limited to horses, dogs and cats shall be coordinated with the Animal Services Department. Permittee(s) are responsible for ensuring adequate cleaning is conducted in conjunction with the use of animal participants.
- 8. The permittee may, no later than fourteen business days prior to the day of the event, request the assistance of the City with such cleaning and if provided, the permittee shall be responsible for his costs of the City cleaning. Such request shall be made on a form provided by the City and filed with the permit official. In the event that the permittee does not request and receive the assistance of the City with such cleaning and the permittee fails to clean and remove all such litter and debris within four hours of the end of the event, the City may perform such cleaning and the permittee shall be responsible for payment of the city cleaning costs within 10 days of receipt of the bill from the Office of the Comptroller.
- 9. Payment of all costs of providing On-Duty Law Enforcement officers and any other traffic control costs, less the amount of deposit made under Section 13.36.050 C of this code when applicable, shall be due and payable within ten days of receipt of the bill from the Office of the Comptroller.
- 10. Parade and Public Assembly participants shall comply with section 13.36.090 of the City Code: 13.36.090 Duties of participants.
  - a. Upon the request of a peace officer, each participant who is operating a motor vehicle on a roadway pursuant to the laws of the State of Texas shall exhibit proof of financial responsibility as required under Chapter 601 of the Texas Transportation Code. A peace officer shall have the authority to prohibit the participation in a parade of any motor vehicle for which its operator cannot provide the required proof of financial responsibility.
  - b. During the course of the parade, each participant shall obey the directions of any peace officer who is directing or otherwise providing traffic control for that parade. A peace officer shall have the authority to prohibit the continued participation in a parade of any person who fails on more than one occasion to obey the directions of a peace officer.
  - c. Each participant shall remain responsible for the payment of any bridge-crossing tolls, should the parade route pass through a toll area.
  - All participants who enter or pass through an area under the control, direction or supervision of the United d. States Bureau of Customs and Border Protection shall comply with all laws, regulations and other requirements pertaining to the entry into and exit from such area.

#### **Park Information and Rules**

- 1. Electricity is not provided, unless event is held in a Reserve.
- 2. Water is not provided.
- 3. Portable restrooms are not provided; permanent restrooms are available at Reserves.
- 4. No excavation or placing of stakes into the ground.
- 5. Park Closed 11:00 p.m. 6:00 a.m. (Downtown Parks Closed from 1:00 a.m. 6:00 a.m.)
- 6. No vehicles will be driven or allowed onto park grass areas.
- 7. No restriction for the use of the areas or streets by the public shall be imposed.
- 8. Littering and dumping of waste prohibited.
- 9. Glass beverages containers prohibited
- 10. Alcoholic beverages are prohibited.
- 11. Illegal to mar, damage, or destroy city property.
- 12. Camping is prohibited.
- 13. Use of any projectile is prohibited (firearms, air rifles, sling shots, driving golf balls, rock throwing)
- 14. Remove pet droppings, use a leash.
- 15. No horses.
- 16. No amusement devises or jumping balloons without written permission.
- 17. Permit required for sale of goods or services.
- 18. Permit required for amplified public addressing.



### CITY OF EL PASO - STREETCAR

# TRACK ACCESS PERMIT CSSN21-00011

9154907255

Permit Type: Special Event

Permitee: **On-Site POC: Issued:** 10/22/2021

**BERNIE OLIVAS BERNIE OLIVAS** 4150 PINNACLE, SUITE 100 EL

PASO, TX 79902

Work Site Location: Street Intersection:

Arizona/Rio Grande and Yandell

Street:

Stanton from Arizona to Yandell

**Description of Permitted Work:** 

Thanksgiving Day Parade

Valid From: 11/25/2021 **Valid To:** 11/25/2021

Military Time: 05:00 - 14:00

# YOU MUST NOTIFY STREETCAR DISPATCH 30 MINUTES PRIOR TO ENTERING RIGHT-OF WAY (ROW), AND WHEN EXITING THE ROW at (915) 212-3454 OR (915)212-3425.

#### \*\*\* NOTICE \*\*\*

- 1. PERMITTEE AGREES, TO THE FULLEST EXTENT ALLOWED BY LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, MTD AND THE CITY'S AND MTD'S OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES, LOSS, DAMAGE, COSTS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES), WHETHER DIRECT OR INDIRECT, DUE TO BODILY OR PERSONAL INJURY, DEATH, SICKNESS, PROPERTY DAMAGE, OR PROPERTY LOSS ARISING OUT OF PERMITTEE'S ACTIONS, OMMISSIONS, AND/OR ACTIVITIES. IN THE EVENT A THIRD PARTY MAKES A CLAIM OR FILES A LAWSUIT AGAINST THE CITY AND/OR MTD FOR ANYTHING RELATED TO PERMITTEE'S ACTIONS, OMISSIONS, OR ACTIVITIES, THE PERMITTEE SHALL DEFEND SUCH CLAIM OR LAWSUITS ON BEHALF OF THE CITY AND/OR MTD AT PERMITTEE'S SOLE COST AND EXPENSE. PERMITTEE FURTHER AGREES TO REPAIR ANY DAMAGE OR DISTURBANCE TO CITY AND/OR MTD PROPERTY CAUSED BY PERMITTEE.
- 2. THIS PERMIT IS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE EL PASO STREETCAR TRACK ACCESS PROGRAM AND THE PERMITTEE, IN ACCEPTING IT, OBLIGATES THEM TO COMPLY FULLY WITH ALL PROVISIONS OF THE TRACK ACCESS PROGRAM AND OTHER APPLICABLE CODES AND ORDINANCES INSOFAR AS THEY AFFECT THIS PERMIT.
- 3. THIS TRACK ACCESS PERMIT, APPROVED TRACK ACCESS REQUEST FORM, AND APPROVED TRAFFIC CONTROL PLAN, OR A COPY THEREOF, SHALL BE KEPT ON THE WORK SITE OR IN THE POSSESSION OF THE ABOVE NAMED PERMITTEE UNTIL COMPLETION OF ALL WORK OR EVENT.
- 4. EL PASO STREETCAR MUST APPROVE ANY CHANGES IN PERMITTEE OR DEVIATION FROM APPROVED PLANS.
- 5. THIS PERMIT IS ONLY VALID FOR THE DATES AND TIMES SPECIFIED.
- 6. THIS PERMIT MAY BE REVOKED FOR VIOLATION OF ANY OF THE ABOVE PROVISIONS AND/OR ALL OTHER APPLICABLE LAWS.
- 7. PERMITEE, IN ACCEPTING THIS PERMIT ACKNOWLEDGES THEY HAVE READ THIS PERMIT AND STATE THAT THE ABOVE INFORMATION IS CORRECT, AND AGREE TO COMPLY WITH ALL CITY, STATE, AND FEDERAL LAWS REGULATING ACTIVITIES COVERED BY THE PERMIT.

Issued By: Vanessa Munoz

Vanessa Munoz

# **Submission Completeness Checklist: Special Events**

# REQUIRED DOCUMENTATION FOR STREETCAR TRACK ACCESS PERMIT

SUBMISSION DEADLINES – The following deadlines shall apply:
<ul> <li>Special Event activity – 30 calendar days minimum prior to the start of the event.</li> </ul>
FAILURE TO COMPLY WITH THE 30 – DAY REQUIREMENT WILL RESULT IN AN AUTOMATIC DENIAL OF THE TRACK ACCESS REQUEST APPLICATION.
TRACK ACCESS TRAINING – A track access training shall be completed PRIOR TO submittal of the Track Access Permit application. A valid ID# shall be required on the application at the time of submission. Track Access Training is available online through the Track Access Program Policy website: <a href="http://www.sunmetro.net/streetcar/track-access">http://www.sunmetro.net/streetcar/track-access</a> . For information regarding the online training/test, please reach out to 915-212-3465.
<u>APPLICATION</u> – Each item on this application shall be completed and all documentation required on this form shall be submitted before this application is accepted for processing, to include all signatures/initials. Submittal of an application does not constitute acceptance for processing until Streetcar staff reviews the application for accuracy and completeness.
<u>SITE PLAN/MAP</u> – Submit a site plan or map detailing the event limits or route for any "moving" events.
<b>RAIL INSURANCE</b> - All required insurance shall be submitted with the application as stipulated in Exhibit E of the Track Access Program Policy.
TRAFFIC CONTROL PLAN – A traffic control plan shall be submitted with the application as stipulated in Exhibit D of the Track Access Program Policy.
SAFETY MEETING SIGN-IN SHEET – A sign-in sheet shall be submitted after the issuance of a track access permit and prior to any work/special event taking place on the streetcar right-of-way. Refer to Exhibit K of the Track Access Program Policy for a sign-in sheet template or provide your own template with printed name and signature of all that attended

Sun Metro – El Paso Streetcar Planning Department – ROW Compliance 10151 Montana Ave. | El Paso, Texas 79925





# **Exhibit A1**Track Access Request - Special Event



**Accela CSSN** 

	:		Office Use	e Only
Date of Event:			DOWNTOWN	UPTOV
Hours of Event:	<u>From</u>	<u>To</u>	CSEV:	
				Use Only
Requestor:				
itle:				
Company:				
Address:				
Cell Number:				
Email Address:				
Description of Even	t:			
	ants:			
	_	ent area, example – Santa Fo	e from Franklin to Paisano or t	he
<b>Limit of Access</b> (desi	on una oniversity).			
	on and oniversity).			
	on una omversity).			
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	on una omversity).			

\*\*A Valid Track Access Training ID# is required at time of application submission, failure to provide a valid ID# will result in an automatic denial of application\*\*

Do you have a valid Track Access Training ID#?

☐ Yes, provide ID #: \_\_\_\_\_

7.0	Is your Special Event considered a "Moving" Special Event? (i.e., Walk, Run, Marathon, March, Parade)					
	☐ Yes ☐ No					
	If yes, Streetcar Specific Temporary Traffic Control as referenced in Exhibit D, Typical Applications is required at time of application submission. Failure to provide a Traffic Control Plan will result in an automatic denial of application.					
8.0	Does your event include the use of vehicles or parade floats? ☐ Yes ☐ No					
8.1	If Yes, provide a description of vehicle(s):					
8.2	Vehicle Height*: Vehicle Width: Number of Vehicles:*  * Vehicle height measured from ground level to top most element of vehicle or float.					
9.0	Does your event include the use of a stage, tent, canopy, elevated platform, or any temporary					
	structure?					
9.1	If Yes, provide a description of structure:					
9.2	Structure Height*: Structure Length: Structure Depth:					
	* Structure height measured from ground level to top most element.					
	Acknowledgements					
10.0	Operational Right-of-Way will require Streetcar Specific Temporary Traffic Control and the use of a Streetcar Flagger (if during revenue-service hours), as referenced in Exhibit D. I also understand that an approved Traffic Control Plan (TCP) or Pedestrian Control Plan (PCP) will also be required and that all flaggers and signage meet Texas Department of Transportation (TxDOT) standards incorporated in the most recent edition of the Texas Manual on Uniform Traffic Control Devices (TMUTCD). Furthermore, I understand that the City of El Paso will not furnish a Streetcar Flagger on my behalf, and that it is the sole responsibility of the applicant to contract with a traffic control provider (initials)					
10.2	I understand when there exists multiple permits, or requests for access to the ROW it shall be the policy of EPSC to accept/process requests on a first come, first serve basis. Only one (1) Permitee may occupy the same requested portion of the ROW at a time, subsequent requests for the use of an already allocated portion of the ROW will be denied regardless of permission obtained from other COEP departments, contractors, vendors, or other regulatory entity(initials)					
10.3	I understand that I must provide insurance as a condition of this permit application in accordance with Exhibit E.					

Applicant will coordinate with applicable City Departments, state, or federal agencies to obtain any necessary permits and approvals required for the proposed work and use of premises.

Applicant releases the City of El Paso ("City"), the Mass Transit Department for the City of El Paso ("MTD") and the City's and MTD's officers, employees, and agents from any liability and claims for illness, injuries, death, property damage, and/or property loss sustained by Applicant as a result of any inaction or action by the Applicant or third party on the public right-of-way.

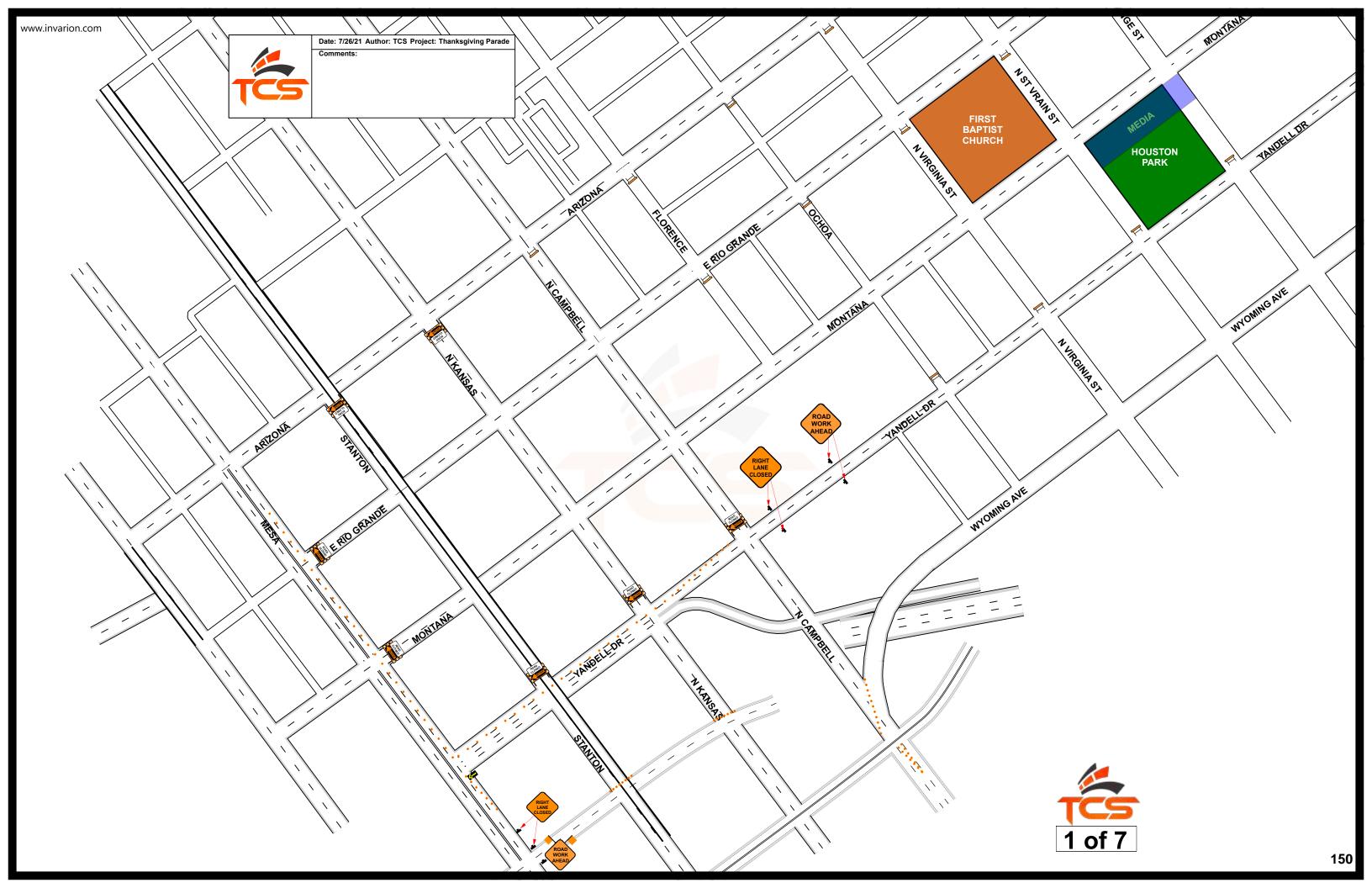
APPLICANT AGREES, TO THE FULLEST EXTENT ALLOWED BY LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF EL PASO (THE "CITY"), THE MASS TRANSIT DEPARTMENT FOR THE CITY OF EL PASO ("MTD") AND THE CITY'S AND MTD'S OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS JUDGEMENTS, FINES, PENALTIES, LOSS, DAMAGE, COST, OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES), WHETHER DIRECT OR INDIRECT, DUE TO BODILY OR PERSONAL INJURY, DEATH, SICKNESS, PROPERTY DAMAGE, OR PROPERTY LOSS ARISING OUT OF APPLICANT'S ACTIONS OMMISIONS, AND/OR ACTIVITIES. IN THE EVENT A THIRD PARTY MAKES A CLAIM OR FILES A LAWSUIT AGAINST THE CITY AND/OR MTD FOR ANYTHING RELATED TO APPLICANT'S ACTIONS, OMMISIONS, OR ACTIVITIES, THE APPLICANT SHALL DEFEND SUCH CLAIM OR LAWSUITS ON BEHALF OF THE CITY AND/OR MTD AT APPLICANT'S SOLE COST AND EXPENSE. APPLICANT FURTHER AGREES TO REPAIR ANY DAMAGE OR DISTURBANCE TO CITY AND/OR MTD PROPERTY CAUSED BY THE APPLICANTS. APPLICANT AGREES THAT FOR PURPOSES OF THIS PROVISION THE ACTIONS, OMISSIONS, AND/OR ACTIVITIES INCLUDE THOSE OF THE APPLICANT'S AGENTS, EMPLOYEES, OFFICERS, CONTRACTORS, AND SUBCONTRACTORS.

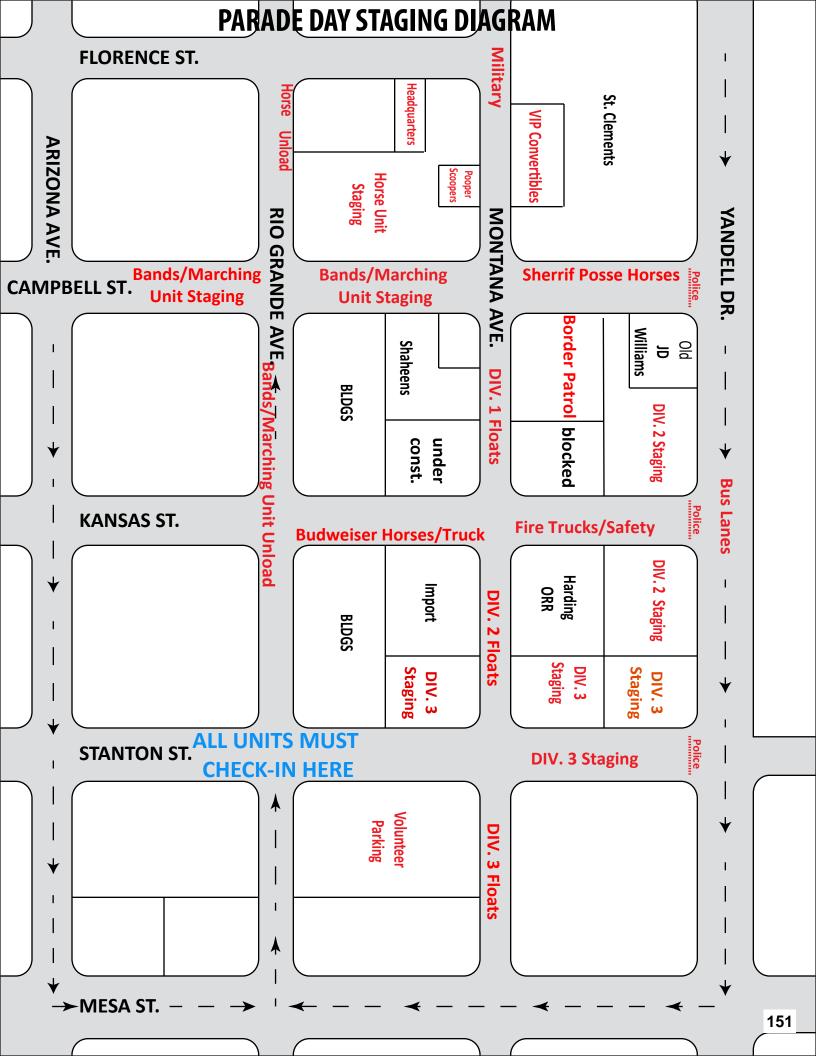
ACKNOWLEDGEMENT: I attest that this application is complete and accurate to the best of my knowledge. I understand that any inaccurate or incomplete information provided on this application may delay or be cause for denial of the Track Access Permit. Furthermore, I attest that I have read, fully understand, and accept all conditions and requirements of the Track Access Program Policy.

10.4	Applicant Name: _					
			(91.			
10.5	Applicant Signatu	re: Derivi	, Vhy	Da	ate:	
		7		_		

Submit Completed Applications through the City of El Paso Online Permitting System:

https://epermits.elpasotexas.gov/CitizenAccess/Default.aspx





ACORD...

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/21/21

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

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

PRODUCER	K & K Insurance Group, Inc.	CONTACT NAME:	SPORTS	
	P.O. Box 2338	PHONE (A/C, No. Ext):	800-441-3994 <b>FAX</b> (A/C, No):	260-459-5120
	Fort Wayne, In 46801	E-MAIL ADDRESS:	KK.SPORTS@KANDKINSURANCE.COM	
			INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A:	NATIONWIDE LIFE INSURANCE COMP	66869
INSURED	SUN BOWL ASSOCIATION, INC., TONY THE	INSURER B:	NATIONAL CASUALTY COMPANY	11991
	TIGER SUN BOWL	INSURER C:		
4150 PINNACLE, SUITE 100	, , , , , , , , , , , , , , , , , , ,	INSURER D:		
	EL PASO, TX 79902		·	
		INSURER F:		

**COVERAGES CERTIFICATE NUMBER:** 2042367 **REVISION NUMBER:** 

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

NC=NOT COVERED

INSR LTR		TYPE OF INSURANCE		SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	Х	COMMERCIAL GENERAL LIABILITY					,	EACH OCCURRENCE	1000000
В		CLAIMS-MADE X OCCUR				12:01AM	12:01AM	DAMAGE TO RENTED PREMISES (Ea occurrence	300000
		Owners & Contractors	Y	v	кко0008971300	11/07/21	11/07/22	MED EXP (Any one person)	5000
			_	_				PERSONAL & ADV INJURY	1000000
	GEN	L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	500000
		POLICY PROJECT X LOC						PRODUCTS-COMP/OP AGG	1000000
		OTHER:						Part Lgl Liab	1000000
	AUT	OMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea Accident)	1000000
В		ANY AUTO			KKO0008971300	12:01AM 11/07/21		BODILY INJURY (Per person)	
٦		OWNED AUTOS ONLY SCHEDULED AUTOS			14100000071200	11/0//21	,	BODILY INJURY (Per accident)	
	Х	HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	
		7.07.00 51121	1					(i o doordone)	
		UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	2000000
В	Х	EXCESS LIAB CLAIMS-MADE			XKO0008971400	12:01AM 11/07/21		AGGREGATE	2000000
		DED RETENTION	1			11/07/21	11/0//22		2.00000
		KERS COMPENSATION EMPLOYERS' LIABILITY Y/N						PER-STATUE OTHER	
	ANY	PROPRIETOR/PARTNER/ CUTIVE OFFICER/MEMBER						E.L. EACH ACCIDENT	
	EXC	UDED?	N/A					E.L. DISEASE - EA EMPLOYEE	
	lif ves	s, describe under CRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	
А		Participant Accident			BAX0031850300	12:01AM 11/07/21		AD&D Primary Medical Excess Medical Weekly Indemnity	NC NC 25000 NC

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

EXCESS POLICY #0EX70011250-00. CARRIER: HDI GLOBAL SPECIALTY SE. EFF 11/7/21 -11/7/22. LIMIT: \$7,000,000 EXCESS \$2,000,000.
- SEE ADDENDUM -

**CERTIFICATE HOLDER** 

CANCELLATION

THE CITY OF EL PASO ATTN: SUN METRO - EL PASO STREETCAR

10151 MONTANA AVENUE EL PASO, TX 79925

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

AUTHORIZED REPRE

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AGENCY CUSTOMER ID:

CERTIFICATE: 2042367 DATE ISSUED: 10/21/21

# ACORD<sub>TM</sub>

# **ADDITIONAL REMARKS SCHEDULE**

Page <u>1</u> of <u>1</u>

AGENCY K & K INSURANCE GROUP, INC.		NAMED INSURED SUN BOWL ASSOCIATION, INC., TONY THE TIGER SUN BOWL
POLICY NUMBER		4150 PINNACLE, SUITE 100
GL KKO0008971300		EL PASO, TX 79902
AL KKO0008971300 PA BAX0031850	0300	
EX XKO0008971400		
	NAIC CODE	
SEE ACORD 25		EFFECTIVE DATE: SEE ACORD 25

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THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  FORM NUMBER: ACORD 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE
THE CITY OF EL PASO, ITS OFFICIALS, EMPLOYEES, AGENTS AND CONTRACTORS ARE ADDITIONAL INSUREDS WITH RESPECT THE OPERATIONS OF THE NAMED INSURED.
RE: THANKSGIVING DAY SUN BOWL PARADE. DATE: 11/25/21.



# City of El Paso Streets and Maintenance Traffic Control Permit



Site Address: 170 MONTANA, EL PASO, TEXAS 79902

Permit No: EPTC21-04540 10/22/2021 Issued:

> 11/25/2021 Expires:

<u>Applicant</u> SUN BOWL ASSOCIATION **BERNIE OLIVAS** 4150 PINNACLE ST

Phone Number

Applicant: (915) 490-7255

Barricade: (915) 216-7296

Barricade Company TRAFFIC CONTROL SPECIALIST (TCS)

ADAM MIJARES

3120 TRAWOOD DR STE F EL PASO, TEXAS 799366

EL PASO, TEXAS 79902

WORK AUTHORIZED: CITY OF EL PASO 2021 THANKSGIVING DAY PARADE ROUTE TO START AT N MESA ST & MONTANA AVE INTERSECTION & TRAVELS EB ALONG MONTANA AVE ENDING AT MONTANA AVE & GATEWAY S BLVD FOR 1 DAY CITY OF EL PASO SPECIAL EVENT. TCS WILL BE PROVIDING TRAFFIC CONTROL DEVICES & SITE MAINTENANCE (ASSISTED BY EPPD) FRIDAY 11/25/2021

FROM 5:00AM-2:00PM ONLY.

**TYPE OF TRAFFIC CONTROL SET UP:**  1 DAY EVENT - ROAD & ALLEY WAY CLOSURES W/ DETOUR ROUTES ALONG A MULTI-LANE

ROADWAY & SIGNALIZED INTERSECTION

Start Date: 11/25/2021

**Expiration Date:** 11/25/2021

**Length of Term:** Short

**Event Times:** Thursday 5:00am-2:00pm

#### WORK SITE RECOMMENDATIONS (COVID-19)

Employees who have symptoms (i.e., fever, cough, or shortness of breath) should notify their supervisor and stay home Sick employees should follow CDC-recommended steps. Employees should not return to work until the criteria to discontinue home isolation are met, in consultation with healthcare providers and state and local health departments. Employees who are well but who have a sick family member at home with COVID-19 should notify their supervisor and follow CDC recommended precautions.

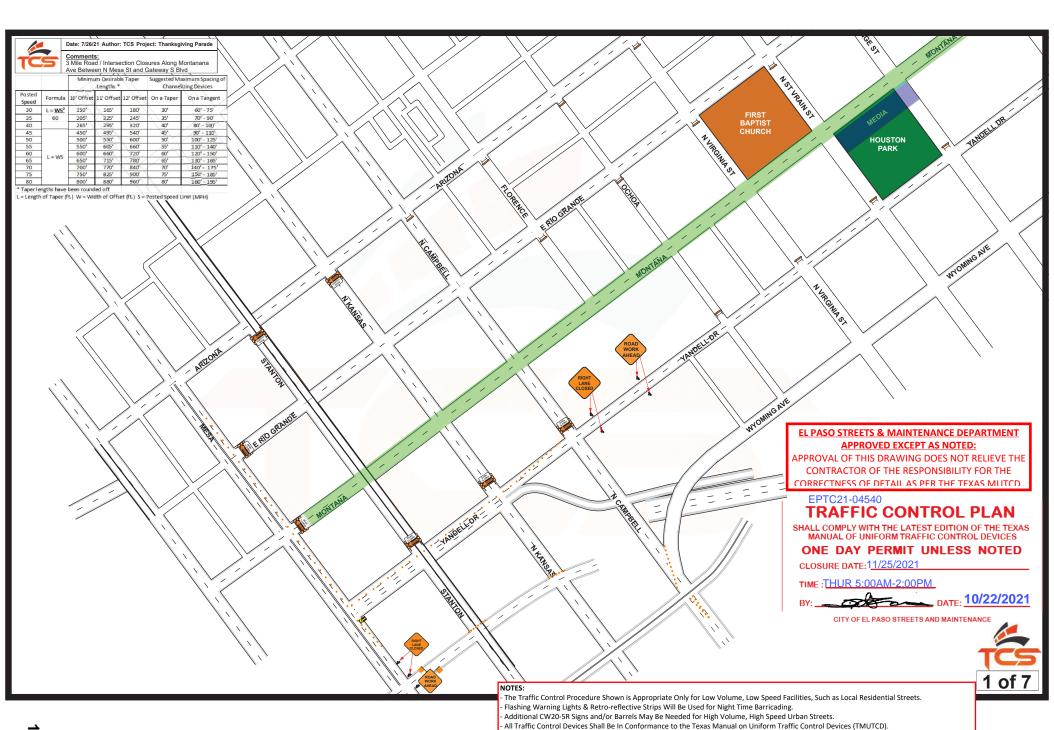
Clean AND disinfect frequently touched objects and surfaces such as workstations, keyboards, telephones, handrails, and doorknobs. Dirty surfaces can be cleaned with soap and water prior to disinfection. To disinfect, use products that meet EPA's criteria for use against SARSCoV-2 external icon, the cause of COVID-19, and are appropriate for the surface Avoid using other employees' phones, desks, offices, or other work tools and equipment, when possible. If necessary, clean and disinfect them before and after use.

Practice social distancing by avoiding large gatherings and maintaining distance (approximately 6 feet or 2 meters) from others when possible.

\*\*\* NOTICE \*\*\*

- 1. THIS PERMIT IS ISSUED IN ACCORDANCE WITH PROVISIONS OF CHAPTER 12.30 OF THE MUNICIPAL CODE AND CURRENT EDITION OF CHAPTER SIX OF THE TEXAS MANUAL OF UNIFORMED TRAFFIC CONTROL DEVICES AND THE APPLICANT, IN ACCEPTING IT, OBLIGATES THEM TO COMPLY FULLY WITH ALL THE PROVISIONS OF THE MUNICIPAL CODE.
- 2. THIS TRAFFIC CONTROL PERMIT AND APPROVED TRAFFIC CONTROL PLAN, OR A COPY THEREOF, SHALL BE KEPT ON THE JOB SITE UNTIL COMPLETION OF THE PROJECT.
- 3. I HEREBY ACKNOWLEDGE THAT I HAVE READ THIS PERMIT AND STATE THAT THE ABOVE INFORMATION IS CORRECT, AND AGREE TO COMPLY WITH ALL CITY, STATE AND FEDERAL LAWS REGULATING ACTIVITIES COVERED BY THIS PERMIT.

Sam Rodriguez		- also
City Engineer	Contractor's, Owner's or Agent's Signature	Issued By David A. Zamora

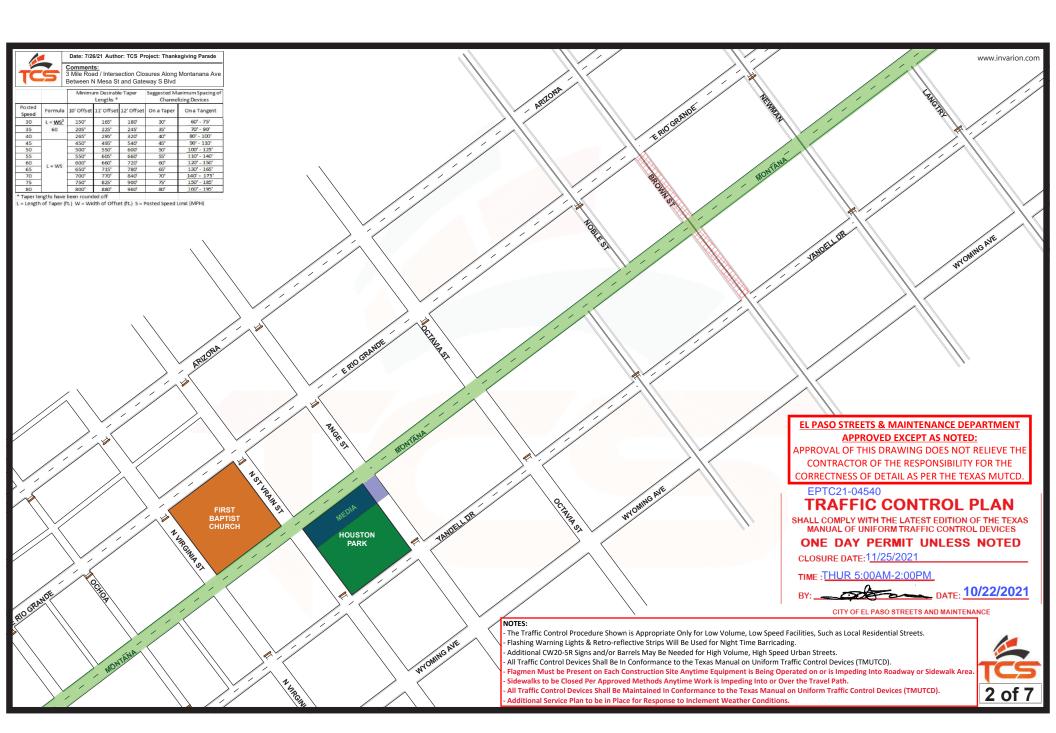


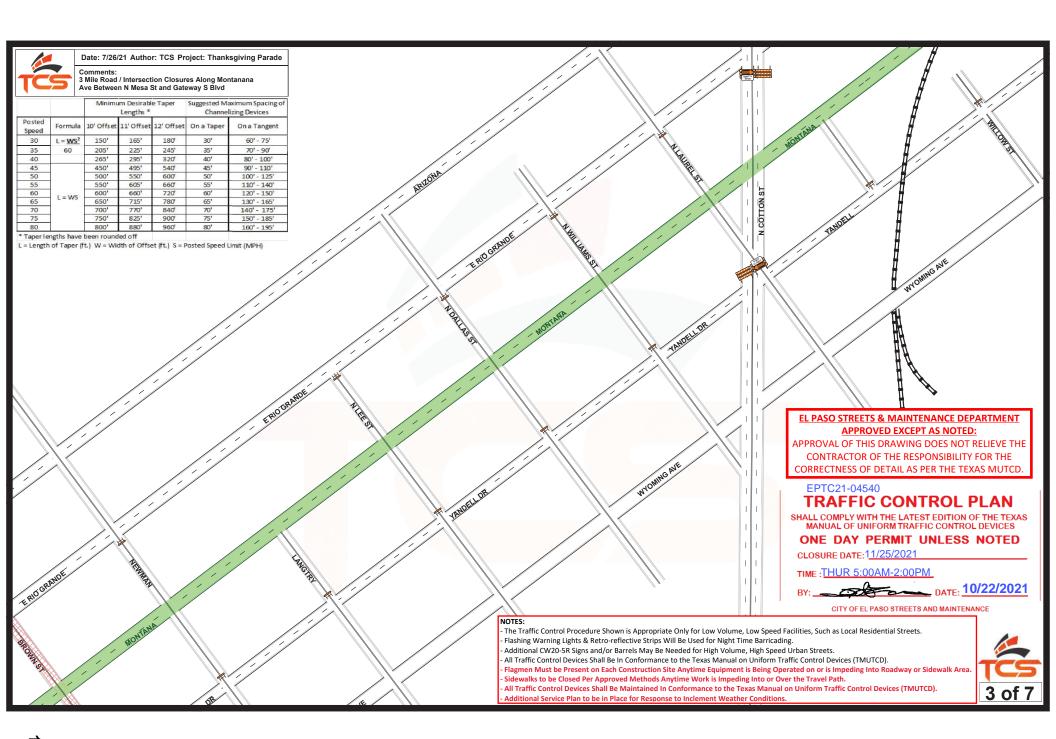
Flagmen Must be Present on Each Construction Site Anytime Equipment is Being Operated on or is Impeding Into Roadway or Sidewalk Area.

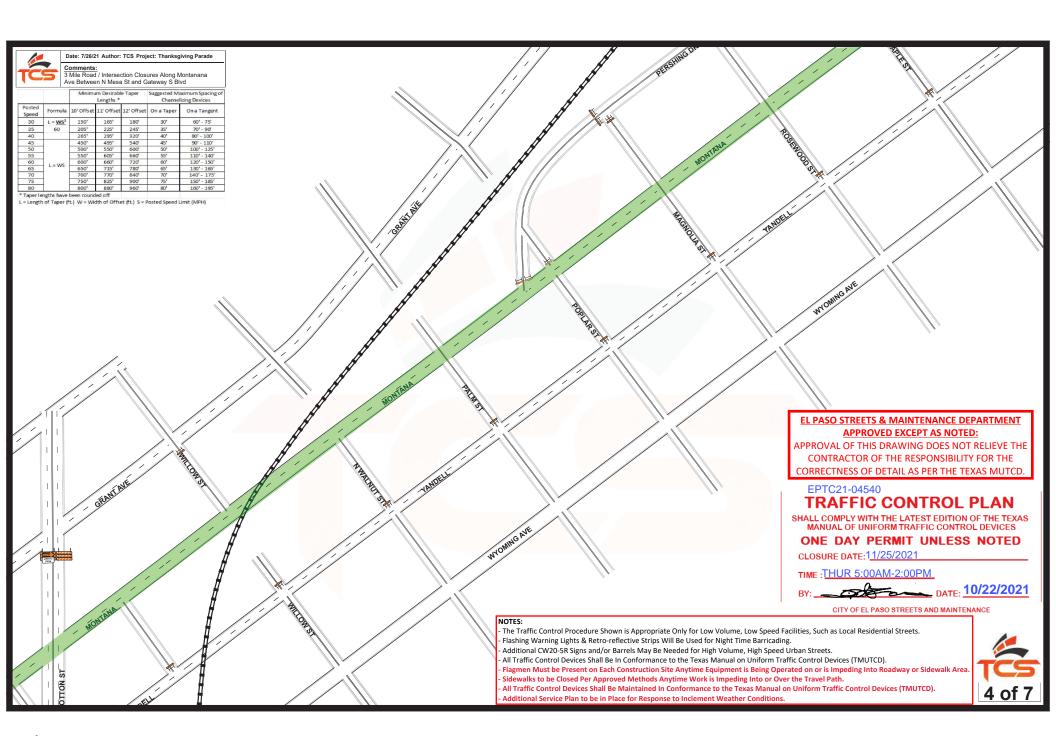
All Traffic Control Devices Shall Be Maintained In Conformance to the Texas Manual on Uniform Traffic Control Devices (TMUTCD).

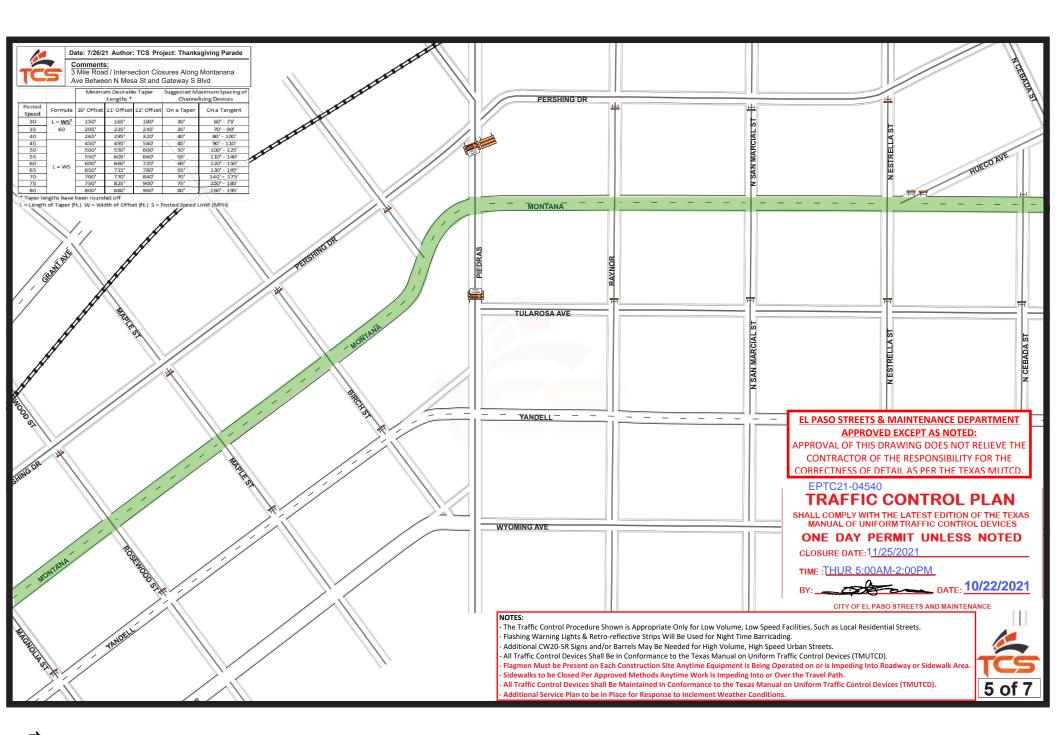
Sidewalks to be Closed Per Approved Methods Anytime Work is Impeding Into or Over the Travel Path.

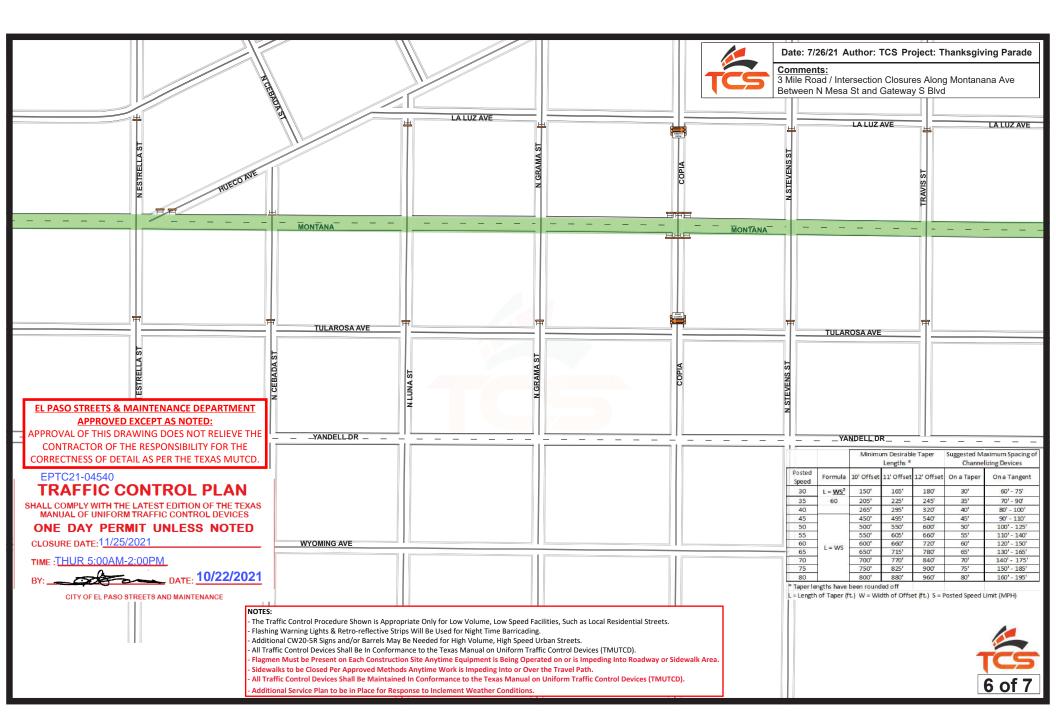
Additional Service Plan to be in Place for Response to Inclement Weather Conditions.

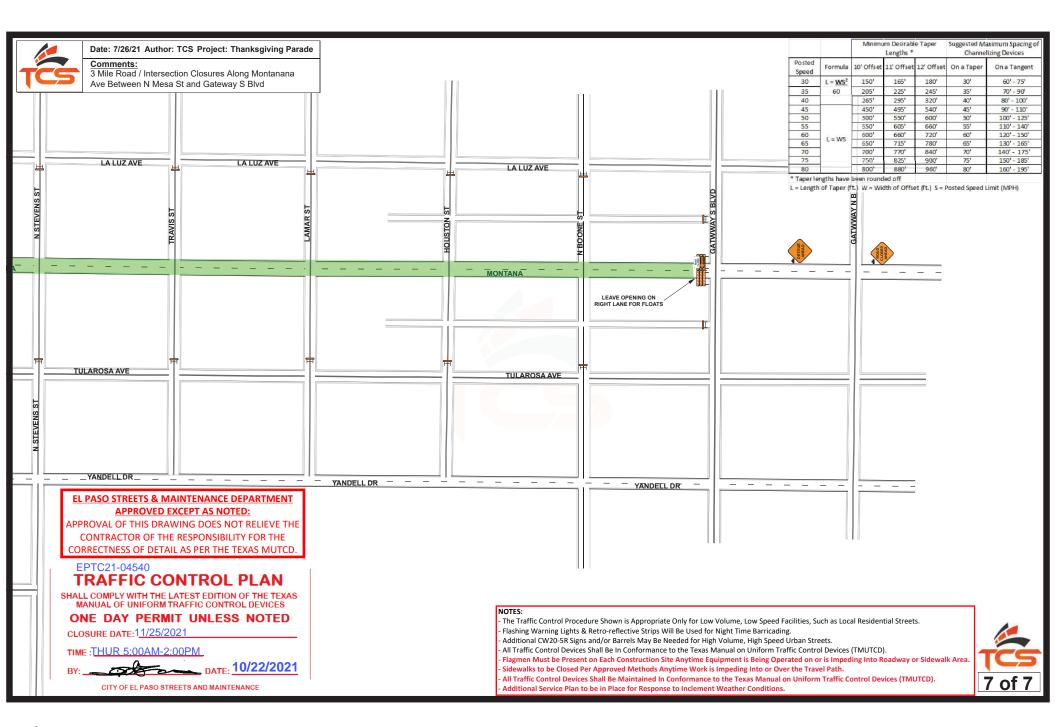


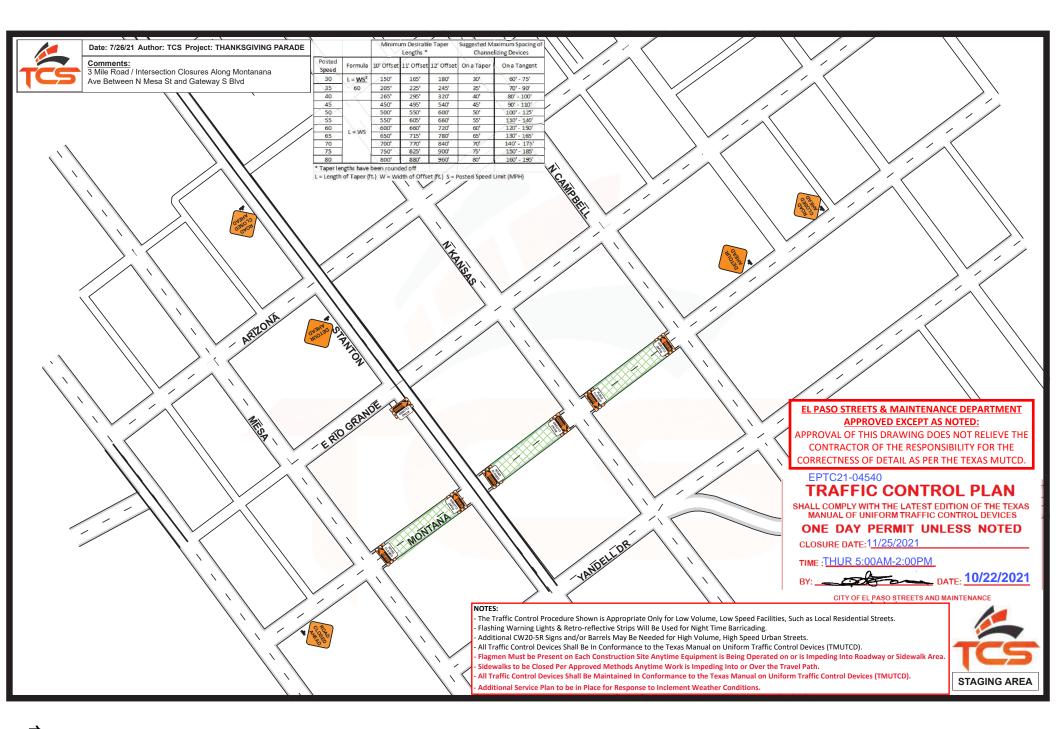


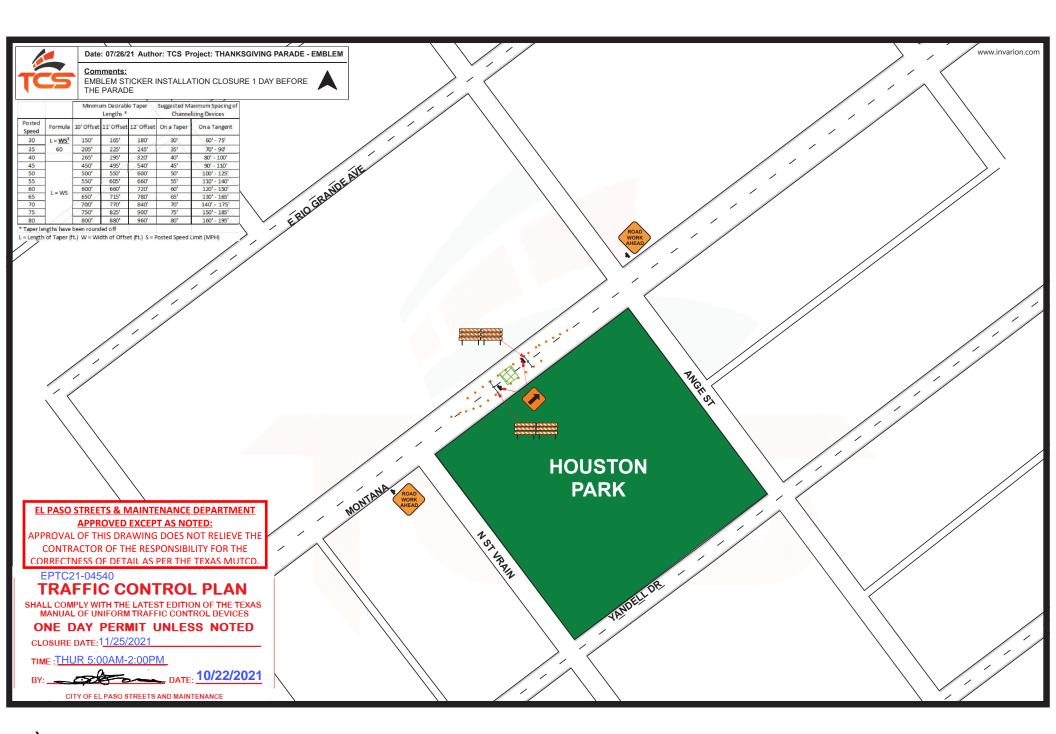












#### FIRST AMENDMENT TO LOCAL EMERGENCY DIRECTIVE

# (RECOMMENDATION ONLY)

**SECTION 5. Permitted Activities & Functions.** All of the following activities and functions are permitted. To the greatest extent feasible, these activities and functions shall comply **with Social Distancing Requirements** as defined in Section 1 and by all applicable orders. This Section also sets forth certain exemptions which shall also be permitted.

- d. **Critical Infrastructure.** For purposes of this Directive, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of "Critical Infrastructure," including, but not limited to, public works, construction personnel, and personnel listed on the Department of Homeland Security's Cybersecurity and Infrastructure Agency (CISA) list of "Essential Critical Infrastructure Workers," public works construction.
- i. The following also constitute critical infrastructure: airport operations, water, sewer, gas, electrical, oil refining, oil and gas extraction, coal mining, metal ore mining, nonmetallic mineral mining and quarrying, roads and highways, public transportation, solid waste collection and removal, hazardous materials, internet, cable, wireless and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with **Social Distancing Requirements** as defined in Section 1, to the extent possible. This also includes wired telecommunication carriers, wireless telecommunications carriers (except satellite), telecommunications resellers (except retailers selling devices at physical locations are not permitted), satellite telecommunications, cable and other program distribution, other telecommunications, data processing, hosting and related services, and other information services.
- ii. The following types of construction activities are permitted to include but not be limited to the following: residential and commercial construction, non-residential building construction, heavy and civil engineering, foundation, structure, and building exterior contractors, building equipment contractors, and building finishing contractors. This Directive shall not be construed to hinder the ability of the industries identified in the U.S. Department of Homeland Security Cyber and Infrastructure Security Agency's ("CISA") Essential Critical Infrastructure Workforce Memorandum dated March 19, 2020 to continue their operation appropriately modified to account for CDC workforce and consumer protection guidance, and the list of industries identified on that memorandum is incorporated here by reference.

### All employers involved in construction activity must institute or comply with following at all job sites:

- a) Comply with Social Distancing Requirements;
- b) Institute staggered shifts;
- c) Provide one (1) working flushing toilet for every fifteen (15) workers on site or one (1) outdoor portable toilet for every ten (10) workers on site;
- d) Provide onsite handwashing stations and portable restrooms stocked with hand soap and/or hand sanitizer with at least 60% alcohol;
- e) Mandate handwashing of at least twenty (20) seconds for workers during the following:
- 1. Before workers begin work;
- 2. After workers remove gloves;
- 3. Before and after the use of shared items such as tools or multi-user devices;
- 4. Before and after any meal or restroom breaks; and
- 5. After a worker's shift or work time ends.
- f) Provide mandatory rest breaks of at least fifteen (15) minutes for every four (4) hours worked so workers may follow hygiene guidelines;
- g) Take no adverse action against an employee who has been quarantined, or advised to self-quarantine, due to possible exposure to coronavirus;
- h) Perform mandatory temperature checks before a worker leaves home. If a worker has a fever of greater than 100 degrees Fahrenheit, then they are prohibited from going to work and must remain at home;
- i) Limit crossover of subcontractors;
- j) Prohibit gatherings during meals or breaks;
- k) Keep a 6 foot distance between people at all times, unless the work being performed requires multiple individuals for the safety of the workers;
- 1) Do not use a common water cooler. Provide individual water bottles or instruct workers to bring their own;
- m) Allow non-essential personnel to work from home when possible; and
- n) Designate a COVID-19 safety monitor on each site who has the authority to enforce these provisions.
- o) If possible, provide OSHA's COVID-19 training to all employees.

NOTE: FOR COMPLETE DOCUMENT VISIT: <a href="https://elpasoheraldpost.com/wp-content/uploads/2020/04/AMENDMENT-TO-LOCAL-EMERGENCY-DIRECTIVE\_ENGLISH.pdf">https://elpasoheraldpost.com/wp-content/uploads/2020/04/AMENDMENT-TO-LOCAL-EMERGENCY-DIRECTIVE\_ENGLISH.pdf</a>

STATE OF TEXAS	)	
	)	CONTRACT
COUNTY OF EL PASO	)	

THIS CONTRACT is entered into by and between the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as "the City", and the **The Sun Bowl Association** a Texas Nonprofit corporation, hereinafter referred to as "Contractor."

WHEREAS, on August 17, 2021, the City Council resolved to authorized the City Manager to execute agreements with event sponsors to support events pursuant to Section 53 of the Fiscal Year 2019 Budget Resolution; and,

WHEREAS, Contractor has applied and been qualified for City support under the established criteria for costs related to traffic control and public safety related to Contractor's event, the Sun Bowl Thanksgiving Day Parade, hereinafter referred to as "Event"; and,

**WHEREAS**, the City Council finds that participation by the City in the Event will provide direct benefits to the public and serve the municipal purpose of providing recreational, health and community activities and benefits for the residents and visitors to the City; and,

WHEREAS, the City agrees to provide support as set forth in this Contract.

**NOW, THEREFORE,** in consideration of the promises and mutual agreements hereinafter set forth, the parties hereto agree as follows:

**TERM.** This Contract shall be valid from the date signed by the last party in time to sign below, who shall affix that date onto the contract, and shall be effective for a period of 30 days from the date of the Event. The event shall take place on Thursday, November 25, 2021.

## 2 CONSIDERATION.

- **2.1** The Contractor agrees to provide the following services:
  - 2.1.1 Manage and operate the Event on Thursday, November 25, 2021, upon the route approved by the City through the Parade Permit No. CSEV21-00059, or as modified in writing by the parties.
  - **2.1.2** Comply with all terms of the Permit No. CSEV21-00059, attached hereto as Exhibit "A" and incorporated by reference as if set forth in full.
  - **2.1.3** Perform all street, sidewalk, and other right-of-way cleaning as required by Section 13.36.080 of the City Code and/or as required by the terms of this Contract.

- **2.1.4** Allow any person to participate in the Event, and may not make participation in the Event contingent upon the paying of an entry fee.
- 2.2 In exchange for Contractor's services, the City agrees to provide support of the Event by covering Contractor's costs related to production of the Event in the amount up to SIXTY-FIVE THOUSAND AND NO/100 DOLLARS (\$65,000.00) for public safety, park rental, fire permits, street cleaning, and solid waste removal fees imposed by the City. City shall send an invoice to the Contractor for any public safety, street cleaning and solid waste removal services performed by the City in excess of \$65,000.00 and Contractor shall pay such amount within 30 days of its receipt of the invoice.
  - **2.2.1** This assistance shall be as necessary as determined by the City in accordance with Section 13.36 of the City Code.
  - 2.2.2 If the City determines it appropriate, stand-by assistance from City Fire Department personnel and Emergency Medical Service personnel will present. Such personnel may inspect equipment involved in the Event and perform any other assignments as the City to be appropriate. However, nothing in this agreement shall create any additional legal duties or responsibilities other than those general duties to provide police, fire or emergency medical protection or assistance which may or may not already exist for the general public, and the City and its employees cannot and do not guarantee or otherwise provide any assurances as to the adequacy of or safety regarding any equipment which the City's employees may inspect.

### 3 IN-KIND ASSISTANCE AND PAYMENT OF CERTAIN FEES.

- 3.1 Contractor shall obtain the permits and pay for the Event as required the El Paso City Code as invoiced by the City.
- 3.2 Contractor shall pay the amount invoiced by the City within thirty (30) days of receipt of such invoice.
- 3.3 The City shall pay the public safety, street cleaning, park rental, fire permits and solid waste removal costs for the Event in an amount up to the dollar amount set forth herein (30) days of processing of such costs.
- 3.4 Contractor shall provide recognition of the City's support of the Event by including the City logo in the Event and/or advertisements of the Event, as possible, with the City's prior approval of such.
- 4 **LEGAL RELATIONSHIP**. Nothing in this Agreement shall be construed as creating a legal relationship of co-sponsorship or responsibility for the promotion, conducting, or operation of the Event on the part of the City. Contractor is an independent contractor, and nothing herein shall be construed as creating the relationship of employer and employee or principal and agent between the parties. The City's waiver of any or all fees for necessary police traffic-control assistance, to the extent such assistance is provided, shall not be

construed as the City's co-sponsorship of the Event nor as support of or opposition to any issue.

- 4.1 City shall not be liable for any and all demands, claims, damages, causes of action, costs or losses for personal injury, property damage, or death caused by or arising out of the negligence of Contractor while Contractor is promoting, conducting, or operating the Event, or which are caused by or arise from the failure of Contractor to abide by appropriate laws, rules and regulations.
- **EQUIPMENT.** All equipment used by the Contractor or which is permitted to be used in the Event by the Contractor shall be maintained in satisfactory working condition. The Contractor shall not intentionally or knowingly use any equipment in any manner that may cause injury to the property of the City or third parties or any persons.
- **SAFETY**. Contractor shall comply with all applicable laws, ordinances, and regulations and shall encourage its participants in the Event to comply with all applicable laws, ordinances, and regulations. Contractor shall exercise every precaution for the safety of public and private property and persons.
- 7 INSURANCE AND INDEMNIFICATION PROVISIONS. The Contractor acknowledges that its request to use the public right of way is solely for its benefit and not a use that benefits the City taxpayers as a whole. As a result, the Contractor agrees to provide the following as a condition of its use of the public right of way:
  - 7.1 LIABILITY INSURANCE. Contractor will maintain liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of One Million and No/100 Dollars (\$1,000,000.00) per person, and Two Million and No/100 Dollars (\$2,000,000.00) for each single occurrence, and, in addition, will provide property damage liability insurance in a minimum sum of One Million and No/100Dollars (\$1,000,000.00) for property damage growing out of any one accident or other cause. These amounts are not a limitation upon the Contractor's agreement to indemnify and hold harmless the City
    - 7.1.1 Because the granting of this Contract is solely for the benefit of the Contractor and recognizing that the City taxpayers should not incur any costs associated with the Contractor's enjoyment of this Contract, except as provided herein, the Contractor is required to purchase liability insurance on behalf of the City or, alternatively, may name the City as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the City, its agents, employees, or independent contractors, alleged or asserted by any individual, in connection with the performance of this agreement.
    - **7.1.2** The Contractor shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that

the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and the Contractor, its officers, agents, servants, or employees.

- 7.1.3 This Contract shall not be executed by the City until the Contractor files a copy of the policy or certificate of liability insurance as herein set forth with the Department of Transportation. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City, or without ten (10) calendar days prior written notice as to non-payment of insurance policy premiums. Failure to keep the policy in full force and effect throughout the term of the contract shall be grounds for cancellation of the Parade Permit and City Sponsorship. Certificates of Insurance that state the insurer shall endeavor to give notice and/or that there shall be no liability for the failure to give the notice required herein shall not meet the requirements of this section.
- 7.2 **INDEMNITY** AS CONDITION A OF THIS AGREEMENT, CONTRACTOR OR ITS INSURER SHALL INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE,) INCLUDING BUT NOT LIMITED TO ALL JUDGMENTS, SETTLEMENT AMOUNTS, ATTORNEYS' FEES, COURT COSTS AND EXPENSES INCURRED IN THE INVESTIGATION, HANDLING, DEFENSE AND LITIGATION OF ANY CLAIM OR SUIT, INCLUDING BUT NOT LIMITED TO ANY CLAIM OR SUIT FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON REGARDLESS OF THE MERITS OF OR OUTCOME OF SUCH CLAIM OR SUIT ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS INDEMNIFICATION PARAGRAPH SHALL APPLY EVEN WHERE SUCH BODILY OR PERSONAL INJURY, ILLNESS, LOSS OF SERVICES, PHYSICAL OR MENTAL IMPAIRMENT TO OR DEATH OF ANY PERSON, OR FOR DAMAGE OR DESTRUCTION TO ANY PROPERTY RESULTS FROM OR INVOLVES NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES. WITHOUT MODIFYING THE **CONDITIONS PRECEDENT FOR PRESERVING** DEFENSES, ASSERTING CLAIMS OR ENFORCING ANY LEGAL LIABILITY, AGAINST THE CITY AS REQUIRED BY THE CITY CHARTER OR ANY LAW, THE CITY SHALL PROMPTLY FORWARD TO ARTIST EVERY DEMAND, NOTICE, SUMMONS OR OTHER PROCESS RECEIVED BY THE CITY IN ANY CLAIM OR LEGAL PROCEEDING CONTEMPLATED HEREIN. ARTIST SHALL 1) INVESTIGATE OR CAUSE THE INVESTIGATION OF ACCIDENTS OR OCCURRENCES INVOLVING SUCH INJURIES OR DAMAGES; 2) NEGOTIATE OR CAUSE TO BE NEGOTIATED THE CLAIM AS ARTIST MAY DEEM EXPEDIENT; AND 3) DEFEND OR CAUSE TO BE DEFENDED ON

BEHALF OF THE CITY ALL SUITS FOR DAMAGES EVEN IF GROUNDLESS. FALSE OR FRAUDULENT, BROUGHT BECAUSE OF SUCH INJURIES OR DAMAGES. ARTIST SHALL PAY ALL JUDGMENTS IN ACTIONS DEFENDED BY ARTIST PURSUANT TO THIS SECTION ALONG WITH ALL ATTORNEYS' FEES AND COSTS INCURRED BY THE CITY INCLUDING INTEREST ACCRUING TO THE DATE OF PAYMENT BY ARTIST, AND PREMIUMS ON ANY APPEAL BONDS. THE CITY, AT ITS ELECTION SHALL HAVE THE RIGHT TO PARTICIPATE IN ANY NEGOTIATIONS OR LEGAL PROCEEDINGS TO THE EXTENT OF ITS INTEREST. THE CITY SHALL NOT BE RESPONSIBLE FOR ANY LOSS OF OR DAMAGE TO ARTIST'S PROPERTY FROM ANY CAUSE.

- **DISCRIMINATION.** Contractor, its officers, agents, servants, employees, volunteers, and third parties will not discriminate on account of race, color, religion, sex, or national origin, permit or allow any discrimination in the work done pursuant to this Contract in violation of the law.
- ACCESSIBILITY STANDARDS FOR DISABLED PERSONS. The Contractor agrees that in the performance of this Contract, it will comply with the Americans with Disabilities Act ("ADA"). The Contractor must file any Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons.
- 10 COMPLIANCE WITH LAWS. Contractor shall comply with all applicable federal, state and local laws and regulations. Failure to do so in any manner that materially impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder shall constitute a material breach of this Contract.

### 11 TERMINATION.

- 11.1 Termination by Mutual Consent. The parties may terminate this Contract by mutual consent upon such terms as they may agree in writing.
- 11.2 Termination by Any Party. It is further understood and agreed by the parties that any party to this Contract may terminate this Contract, in whole or in part, upon written notice if any of the other parties fails to perform any of its material obligations hereunder and fails to completely cure the breach.
- 11.3 Time of Performance Termination Force Majeure. No party to this Contract will be liable for failure to comply with any term of this Contract when such failure is caused by an event of war, fire, earthquake, flood, strike, any law, rule, regulation or act of governmental authority, or any other act, event, cause or occurrence rendering a party to this Contract unable to perform its obligations, which is not within its reasonable control. The party affected by such event will immediately notify the other parties in writing.
- 11.4 Termination Shall Not Be Construed as Release. Termination by any party shall not be construed as a release of any claims that may be lawfully asserted against

the terminating party(s). Further, the terminated party(s) shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Contract.

- 11.5 Upon termination of this Contract, except as otherwise provided herein, all duties and obligations of the parties to this Contract shall cease.
- AMENDMENTS AND WAIVER. The parties may amend this Contract at any time by mutual consent. Unless otherwise provided herein, this Contract may be amended only by written instrument duly executed on behalf of the City and the Contractor. No claim or right arising out of a breach of this Contractor can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
- 13 COMPLETE AGREEMENT. This Contract constitutes the entire agreement between the parties relating to the terms and conditions of the Contract. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Contract confers no rights on any person(s) or business entity(s) that is not a party hereto. This Contract shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Contract.
- **GOVERNING LAW.** This Contract shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter(s) and/or any ordinance of the City.
- **SEVERABILITY**. Every provision of this Contract is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Contract.
- NOTICES. All notices and communications under this Contract shall be either handdelivered or mailed, certified, postage prepaid in the United States Postal Services, return receipt requested, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

CITY: City Manager

City of El Paso PO BOX 1890

El Paso, Texas 79950-1890

WITH COPY TO: Planning & Inspections Department

City of El Paso PO BOX 1890

El Paso, TX 79950-1890

CONTRACTOR: The Sun Bowl Association

Attention: Bernie Olivas 4150 Pinnacle, Suite 100 El Paso, Texas 79902

- **ASSIGNABILITY**. This Contract, its rights, duties and responsibilities may not be assigned by any of the parties without the prior written consent of the City Council.
- WARRANTY OF CAPACITY TO EXECUTE CONTRACT. The people signing this Contract on behalf of the parties warrants that he/she has the authority to do so and to bind the party for which he/she has authority to sign this Contract and all the terms and conditions contained herein.

Each person signing below represents that he or she has read this Contract in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

19 EFFECTIVE DATE. This Contract is effective as of November , 2021

### WITNESS THE FOLLOWING SIGNATURES AND SEALS

THE CITY OF EL PASO:
Tomás González City Manager

**APPROVED AS TO FORM:** 

APPROVED AS TO CONTENT:

Wendi N. Vineyard
Assistant City Attorney

Philip Ctive
Philip F. Etiwe, Director

Planning & Inspections Department

# **ACCEPTANCE**

The attached instrument, with al	ll conditions thereof, is hereby accepted this 9th day of
November , 2021.	
	CONTRACTOR:
	Bernie Olivas  Bernie Olivas (Oct 29, 2021 09:17 MDT)
	Name Printed: Bernie Olivas
	Title: Executive Director



Sun Bowl Thanksgiving Day Parade

CSEV21-00059

Strategic Goal 4.

Enhance El Paso's quality of life through recreational, cultural and educational





# Background

# **State Right-of-Way Impacted:**

Copia St. between La Luz Ave. and Tularosa Ave.

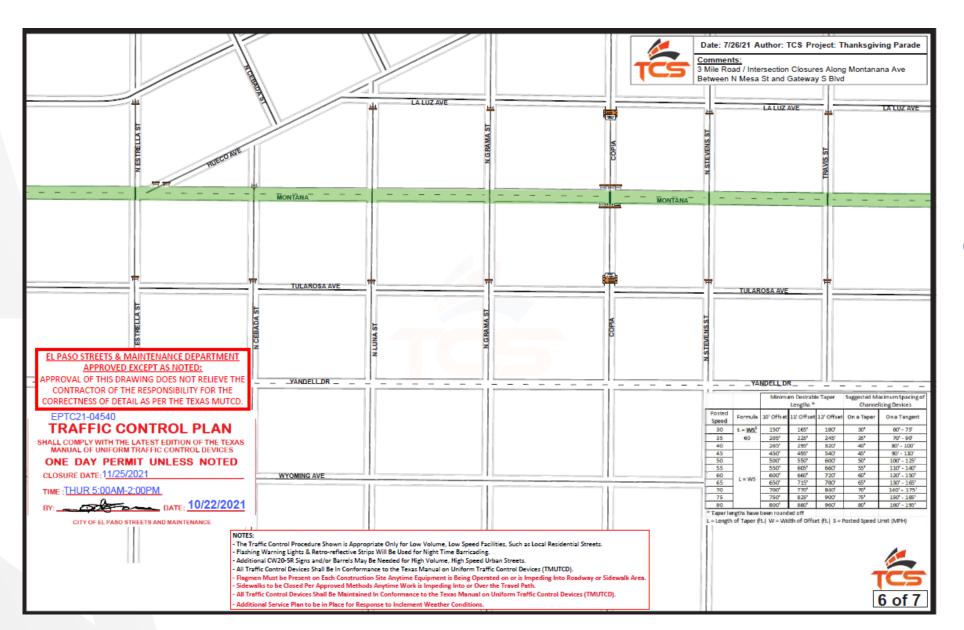
# **Event Dates and Times:**

Thursday, November 25, 2021, at 10:00 a.m. to 2:00 p.m.

# **Traffic Control Dates and Times:**

Thursday, November 25, 2021, at 3:00 a.m. to 2:00 p.m.







# Traffic Control Plan









Deliver exceptional services to support a high quality of life and place for our community

# Vision

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government

# ☆ Values

Integrity, Respect, Excellence, Accountability, People

# El Paso, TX

# **Legislation Text**

File #: 21-1266, Version: 1

# **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

City Clerk's Office, Laura D. Prine, (915) 212-0049

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Approve a Resolution that in conformity with Section 3.5 of the City Charter, the regular City Council meeting scheduled on December 21, 2021 is hereby rescheduled for Tuesday, December 14, 2021, and the related Agenda Review and Work Session will be held on Monday, December 13, 2021. The regular meetings of the City Council for the 2022 calendar year will resume on January 4, 2022.

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

**DEPARTMENT:** City Clerk

AGENDA DATE: November 9, 2021

N/ACONTACT PERSON NAME AND PHONE NUMBER: Laura D. Prine, (915) 212-0049

**DISTRICT(S) AFFECTED: All Districts** 

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

SUBGOAL: 6.8 Support transparent and inclusive government

#### SUBJECT:

Approve a Resolution that in conformity with Section 3.5 of the City Charter, the regular City Council meeting scheduled on December 21, 2021 is hereby rescheduled for Tuesday, December 14, 2021, and the related Agenda Review and Work Session will be held on Monday, December 13, 2021. The regular meeting of the City Council for the 2022 calendar year will resume on January 4, 2022.

### **BACKGROUND / DISCUSSION:**

In conformity with Section 3.5 of the City Charter Regular meetings of the Council shall be held in Council Chambers no less than once every other week at such times as may be prescribed by resolution.

### PRIOR COUNCIL ACTION:

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

Yes, on October 13, 2020 the meeting scheduled for December 22, 2020 was rescheduled to December 15, 2020.

#### AMOUNT AND SOURCE OF FUNDING:

No budgetary impact		
*****	**************************************	D AUTHORIZATION*************
DEPARTMENT HEAD:	Laura D. Prine	11/02/2021

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

# **Resolution**

WHEREAS, pursuant to the City's 2021 calendar year City Council regular meeting schedule, City Council is scheduled to meet on Tuesday, December 21, 2021; and

WHEREAS, the City Council desires to reschedule the December 21, 2021 meeting to Tuesday, December 14, 2021; and

WHEREAS, the City will resume its regular meetings of the City Council for the 2022 calendar year on Tuesday, January 4, 2022.

# NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCI OF THE CITY **OF EL PASO:**

That in conformity with Section 3.5 of the City Charter, the regular City Council meeting scheduled on December 21, 2021 is hereby rescheduled for Tuesday, December 14, 2021, and the related Agenda Review and Work Session will be held on Monday, December 13, 2021. The regular meeting of the City Council for the 2022 calendar year will resume on January 4, 2022.

<b>ADOPTED</b> this day of November,	, 2021.
	CITY OF EL PASO
	Oscar Leeser Mayor
ATTEST:	
Laura D. Prine City Clerk	

APPROVED AS TO FORM:

Kristen L. Hamilton-Karam Senior Assistant City Attorney

# El Paso, TX

# **Legislation Text**

File #: 21-1294, Version: 1

# **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

# **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

#### **District 8**

Capital Improvement Department, Sam Rodriguez, (915) 212-1845

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

A Resolution authorizing the City Manager, or designee, to exercise the first renewal option under a Lease Agreement entered on November 29, 2011 between the City of El Paso, Texas and Madison River Investments, LLC for the lease of the property commonly known as Suite 300 of the Wells Fargo Building located at 221 N. Kansas Street and to accept the Landlord's determination of the Market Base Rental Rate as provided in the lease.

With this renewal the current rent of \$11,391/month or \$136,700/year will be increased by 11% to \$12,065/month or \$151,563/year. The renewal rental rate will be in effect for the five year renewal term.

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

**AGENDA DATE**: 11/9/21

**PUBLIC HEARING DATE: 11/9/21** 

CONTACT PERSON(S) NAME AND PHONE NUMBER: Sam Rodriguez, (915) 212-1845

**DISTRICT(S) AFFECTED:** 8

STRATEGIC GOAL: No. #6: Set the standard for sound governance and fiscal management

SUBGOAL:

# SUBJECT:

Resolution authorizing the City Manager, or designee, to exercise the first renewal option under a Lease Agreement entered on November 29, 2011 between the City of El Paso, Texas and Madison River Investments, LLC for the lease of the property commonly known as Suite 300 of the Wells Fargo Building located at 221 N. Kansas Street and to accept the Landlord's determination of the Market Base Rental Rate as provided in the lease.

# **BACKGROUND / DISCUSSION:**

The City of El Paso desires to exercise the first renewal for the lease of the property commonly known as Suite 300 of the Wells Fargo Building located at 221 N. Kansas Street and to accept the Landlord's determination of the Market Base Rental Rate of \$19 per square foot.

The current lease, executed ten (10) years ago is an annual cost of \$136,700.16. The renewal constitutes an 11% increase to \$151,563. There is no provision for increases over the next five (5) year period.

# **PRIOR COUNCIL ACTION:**

No

#### AMOUNT AND SOURCE OF FUNDING:

Tax Office Operating Budget

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO x N/A

PRIMARY DEPARTMENT: N/A SECONDARY DEPARTMENT: N/A

erry DeMuro/for Sam Rodriguez

**DEPARTMENT HEAD:** 

(If Department Head Summary Form is initiated by Purchasing, client

department should sign also)

Revised 04/09/2021

#### RESOLUTION

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

That the City Manager, or designee, is authorized to exercise the first renewal option under a Lease Agreement entered on November 29, 2011 between the City of El Paso, Texas and Madison River Investments, LLC for the lease of the property commonly known as Suite 300 of the Wells Fargo Building located at 221 N. Kansas Street. Further, that the City Manager, or designee, is authorized to accept the Landlord's determination of the Market Base Rental Rate as provided in the lease. Further, that the City Manager, or designee, is authorized to exercise all rights and perform all obligations under the lease agreement. Further, that the City Manager, or designee, is authorized to execute any amendments to the lease without further City Council approval. Further, that the City Manager, or designee, is authorized to exercise the second renewal option and accept future Landlord determinations of Market Base Rental Rate if the City Manager determines that the renewal of the lease is required for operation purposes.

ADOPTED this day of _	, 2021.
	THE CITY OF EL PASO:
ATTEST:	Oscar Leeser Mayor
Laura D. Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Omar A. De La Rosa	Mary Lou Espinoza  Mary Lou Espinoza, Real Estate
Assistant City Attorney	Capital Improvement Department



October 7, 2021

Mary Lou Espinoza City of El Paso (Consolidated Tax Office) 221 N. Kansas, Suite 300 El Paso, TX 79901

Dear Mary Lou:

Franklin Mountain Property Services appreciates the opportunity to provide City of El Paso (Consolidated Tax Office) with this proposal for your consideration for an extension of the lease at Wells Fargo Plaza. The following are the proposed terms and conditions:

Landlord Mills Plaza Properties VII, LP ("Landlord")

Tenant City of El Paso (Consolidated Tax Office) ("Tenant")

Building Management Franklin Mountain Property Services ("FMPS")

201 E. Main, Suite 100 El Paso, TX 79901

Premises Wells Fargo Plaza at 221 N. Kansas

Suite 300 – 7,977 rentable square feet

Use The Premises shall be used for general office use.

#### **Lease Terms and Conditions**

Term Five (5) years

Lease Commencement/

Occupancy Date The **Second Amendment to Lease** Commencement Date shall be

immediately following the expiration of the First Amendment to

Lease, June 1, 2022.

Base Rent \$19.00/rsf based on current fair market value; 2% annual

increases thereafter.

Operating Costs The Base Operating Expense Year will be calculated on actual

2022 Base Year.

If Base Operating Costs per square foot of Total Building Rentable Area in the Premises for any calendar month during the Lease Term exceed the Operating Cost Base Year (the "Excess"), Tenant shall pay to Landlord as Additional Rent an amount equal to the Tenant's Rentable Square Feet times the Excess per rentable

square foot.

Tenant Improvements Landlord will provide a Tenant Improvement Allowance of \$10.00

per rentable square foot for a total amount of \$79,770.00.

# **Other Terms and Conditions**

Building Hours Standard operating hours are from 7:00 am to 6:00 pm, Monday-

Friday, except Holidays. Tenant shall be entitled to set and keep its own operating hours. Tenant is responsible for after-hours

HVAC as it relates to its premises.

Building Access System The Wells Fargo Plaza utilizes an electronic card access system

that will allow entry to the buildings on a 24/7 basis. Each of the

Tenants employees will be issued an access card.

Janitorial Services Routine janitorial services will continue to be provided Monday

through Friday, except state and federal holidays.

Parking Tenant shall continue to have the right to use twenty (20) parking

spaces, the cost of which is in the annual rent per the terms in

the First Amendment to Lease.

Brokerage Commissions A broker commission was not considered for this lease renewal

proposal.

This is a proposal only and is not intended to be legally binding on either party. If the City of El Paso (Consolidated Tax Office) is in agreement with the terms outlined in this letter, please execute below and Landlord will prepare a definitive Amendment to Lease Agreement containing the terms and conditions stated set forth above and other such items as may be requested and mutually agreed to by both parties.

This proposal can be withdrawn or amended at any time and will automatically be deemed stale and withdrawn November 7, 2021.

any questions or comments.	
	Sincerely,
	MILLS PLAZA PROPERTIES VII, LP
	Juura Sanchez
	Laura Sanchez
	Property Manager / Leasing
AGREED AND ACCEPTED:	
City of El Paso (Consolidated Tax Office)	
By:	
Name:	

Title:

We appreciate the opportunity to present this proposal to you. Please feel free to contact me if you have

CITY CLERK DEPT.

2011 NOV 21 PM 1: 04

# RESOLUTION

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

That the City Manager be authorized to sign a Lease Agreement between the CITY OF EL PASO and MADISON RIVER INVESTMENTS, LLC for Suite 300 at the Wells Fargo Building, 221 N. Kansas Street.

ADOPTED this 29th day of Movember, 2011.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTER

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

Bertha A. Ontiveros

Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E., Director

tene it kee

Engineering and Construction Management

Juan Sandoval Director

Consolidated Tax Office

11-1040-024 Reso Wells Fargo Lease Tax Office Doc#91674 BAO

# LEASE AGREEMENT

Between

MADISON RIVER INVESTMENTS, LLC ("Landlord")

and

CITY OF EL PASO, TEXAS, ('Tenant')

Dated as of Movember 29, 2011

#### LEASE AGREEMENT

THIS LEASE AGREEMENT is hereby made and entered into on this 2011, between MADISON RIVER INVESTMENTS, LLC ("Landlord"), and City of El Paso, Texas. ("Tenant").

#### LEASE OF PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to all of the terms and conditions set forth herein, those certain premises (the "Premises") described in Item 3 of the Basic Lease Provisions and as shown in the drawing attached hereto as Exhibit A-1. The Premises are located in the Building described in Item 2 of the Basic Lease Provisions. The Building is located on that certain land (the "Land") more particularly described on Exhibit A-2 attached hereto, which is also improved with landscaping, parking facilities and other improvements, fixtures and common areas and appurtenances now or hereafter placed, constructed or erected on the Land (sometimes referred to herein as the "Project").

#### BASIC LEASE PROVISIONS

1. Tenant: City of El Paso, Texas (Consolidated Tax Office) ("Tenant")

2. **Building:** The Wells Fargo Building

3. **Description of Premises:** Suite(s): 300

Rentable Area Square Footage: Approximately 7,977 square feet

**Building Size:** 309,814 square feet (subject to <u>Paragraph 18</u>)

4. **Tenant's Proportionate Share:** 2.57% (7,977 rsf / 309,814 rsf) (See <u>Paragraph 3</u>)

5. Basic Annual Rent and Parking Charges: (See Paragraph 2)

Months 1 to 24, inclusive:

Monthly Installment: \$10,110.14 (\$15.21/square foot of Rentable Area/annum)

Each Lease Year: \$121,321.65

Months 25 to 48, inclusive:

Monthly Installment: \$10,417.35 (\$15.67/square foot of Rentable Area/annum)

Each Lease Year: \$125,008.25

Months 49 to 72, inclusive:

Monthly Installment: \$10,730.97 (\$16.14/square foot of Rentable Area/annum)

Each Lease Year: \$128,771.60

Months 73 to 96, inclusive:

Monthly Installment: \$11,058.13 (\$16.64/square foot of Rentable Area/annum)

Each Lease Year: \$132,103.35

Months 97 to 120, inclusive:

Monthly Installment: \$11,391.68 (\$17.14/square foot of Rentable Area/annum)

Each Lease Year: \$136,700.17

6. **Installment Payable** 

**Upon Execution:** \$10,110.14 to include first month's rent

7. Security Deposit

Payable Upon Execution:

N/A

8. **Expense Stop for Operating Costs:**  Base Year 2012

9. Initial Term: One hundred twenty (120) months, commencing on the Commencement Date and ending on the last day of the month in which the 120th month anniversary of the Commencement Date occurs (See Paragraph 1)

10. **Estimated Commencement Date:**  April 1, 2012

11. **Estimated Termination Date:**  March 31, 2022

12. Broker(s) (See Paragraph 19(k)): N/A

Landlord's Broker:

Tenant's Broker:

13. **Number of Parking Spaces:**  Parking Allocation -- During the term of this Lease, Tenant shall have the right to use the following parking spaces, the cost of which is included in the annual rent stated above: Twenty (20) full time employee parking spaces shall be made available at all times in the detached parking garage located adjacent to the Wells Fargo Building. Landlord shall also make available an additional six (6) temporary employee parking spaces during the months of November through April, and two (2) temporary employee parking spaces during months of October through August. Temporary employees may park in the attached parking facility on an "as available" basis, or may be allocated to another Landlord controlled facility within walking distance of the Premises. (See Paragraph 18).

14. Addresses for Notices:

> To: TENANT:

LANDLORD: To:

Prior to occupancy of the Premises: City of El Paso, #2 Civic Center Plaza

El Paso, TX 79901 Attn: City Manager

Madison River Investments, LLC c/o BCT Property Services, LLC 201 E. Main, Suite 104 El Paso, Texas 79901

# After occupancy of the Premises:

With a copy to:

City of El Paso

ScottHulse, P.C.

El Paso, TX 79901

Attn: W. David Bernard

Attn: City Manager

1100 Chase Tower, 201 E. Main Drive

El Paso, Texas 79901

With Copy to:

City of El Paso 221 Kansas, Suite 300

El Paso, Texas 79901 Attn: Consolidated Tax Office

and.

City of El Paso

El Paso, Texas 79901

Attn: Capital Assets Manager

2 Civic Center Plaza

15. Place of Payment: All payments payable under this Lease shall be made out to the Landlord, and shall be sent to Landlord at 201 East Main,

Suite 104, El Paso, Texas 79901, or to such other address as

Landlord may designate in writing.

16. Guarantor: N/A

17. Date of this Lease: See cover page

18. Landlord's Construction Up to \$25.00 per square foot (See Exhibit B)

Allowance:

19. The "State" is the State of Texas.

This Lease consists of the foregoing introductory paragraphs and Basic Lease Provisions (consisting of Items 1 through 19), the provisions of the Standard Lease Provisions (the "Standard Lease Provisions") (consisting of Paragraphs 1 through 19 which follow) and Exhibits A-1 through A-2 and Exhibits B through Exhibit F, and Addendum One, all of which are incorporated herein by this reference. In the event of any conflict between the provisions of the Basic Lease Provisions and the provisions of the Standard Lease Provisions, the Standard Lease Provisions shall control. Addendum One shall control over any conflicting provisions of the Basic Lease Provisions or the Standard Lease Provisions.

#### STANDARD LEASE PROVISIONS

#### 1. TERM

- (a) The Initial Term of this Lease and the Rent (defined below) shall commence on the earliest of (i) the date that the Tenant Improvements are Substantially Completed, or (ii) the date the Tenant Improvements would have been Substantially Completed except for Tenant Delays, or (iii) the date that Tenant, or any person occupying any of the Premises with Tenant's permission, commences business operations from the Premises (the "Commencement Date"). Unless earlier terminated in accordance with the provisions hereof, the Initial Term of this Lease shall be the period shown in Item 9 of the Basic Lease Provisions. As used herein, "Lease Term" shall mean the Initial Term referred to in Item 9 of the Basic Lease Provisions, subject to any extension of the Initial Term hereof exercised in accordance with the terms and conditions expressly set forth herein. This Lease shall be a binding contractual obligation effective upon execution hereof by Landlord and Tenant, notwithstanding the later commencement of the Initial Term of this Lease. The terms "Tenant Improvements" and "Substantial Completion" or "Substantially Completed" are defined in the attached Exhibit B Work Letter. "Tenant Delays" consist of those delays defined in Exhibit B.
- (b) The Premises will be delivered to Tenant when the Tenant Improvements have been Substantially Completed. If the Commencement Date is delayed or otherwise does not occur on the Estimated Commencement Date, set forth in *Item 10* of the Basic Lease Provisions, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom.
- (c) Upon Substantial Completion of the Tenant Improvements, Landlord shall prepare and deliver to Tenant, Tenant's Initial Certificate in the form of <u>Exhibit E</u> attached hereto (the "Certificate") which Tenant's Authorized Representative shall acknowledge by executing a copy and returning it to Landlord. If Tenant fails to sign and return the Certificate to Landlord within ten (10) days of its receipt from Landlord, the Certificate as sent by Landlord shall be deemed to have correctly set forth the Commencement Date and the other matters addressed in the Certificate. Failure of Landlord to send the Certificate shall have no effect on the Commencement Date. For the purposes of this agreement, the City's Authorized Representative shall be the City Manager or such person as the City Manager may designate in writing.

#### 2. BASIC ANNUAL RENT

- (a) Tenant agrees to pay during each month of the Lease Term as Basic Annual Rent ("Basic Annual Rent") for the Premises the sums shown for such periods in *Item 5* of the Basic Lease Provisions. For purposes of this Lease, a "Lease Year" shall be each twelve (12) calendar month period commencing on the Commencement Date (or anniversary thereof).
- (b) Except as expressly provided to the contrary herein, Basic Annual Rent shall be payable in equal consecutive monthly installments, in advance, without demand, deduction or offset, commencing on the Commencement Date and continuing on the first day of each calendar month thereafter until the expiration of the Lease Term. The first full monthly installment of Basic Annual Rent payable under this Lease shall be paid upon Tenant's execution of this Lease. The obligation of Tenant to pay Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. If the Commencement Date is a day other than the first day of a calendar month, then the Rent for such partial month shall be calculated on a per diem basis. In the event Landlord delivers possession of the Premises to Tenant prior to the Commencement Date, Tenant agrees it shall be bound by and subject to all terms, covenants, conditions and obligations of this Lease during the period between the date possession is delivered and the Commencement Date, other than the payment of Basic Annual Rent, in the same manner as if delivery had occurred on the Commencement Date.
  - (c) Intentionally Deleted.
- (d) The parties agree that for all purposes hereunder the Premises shall be stipulated to contain the number of square feet of Rentable Area described in *Item 3* of the Basic Lease Provisions.

#### 3. ADDITIONAL RENT

- (a) If Operating Costs (defined below) per square foot of Rentable Area in the Project (subject to the gross-up of Paragraph 3(g) below) for any calendar year during the Lease Term exceed Expense Stop for Operating Costs, Tenant shall pay to Landlord as additional rent ("Operating Costs Additional Rent") an amount equal to Tenant's Proportionate Share (defined below) of such excess ("Operating Costs Excess").
- (b) "Tenant's Proportionate Share" is, subject to the provisions of <u>Paragraph 18</u>, the percentage number described in *Item 4* of the Basic Lease Provisions. Tenant's Proportionate Share represents, subject to the provisions of <u>Paragraph 18</u>, a fraction, the numerator of which is the number of square feet of Rentable Area in the Premises and the denominator of which is the number of square feet of Rentable Area in the Project, as determined by Landlord pursuant to <u>Paragraph 18</u>.
- (c) The term "Expense Stop for Operating Costs" shall be equal to the "per square foot" amount for the Rentable Area in the Project, as described in *Item 8* of the Basic Lease Provisions.
- (d) "Operating Costs" means all costs, expenses and obligations incurred or payable by Landlord in connection with the operation, ownership, management, repair or maintenance of the Building and the Project during or allocable to the Lease Term, including without limitation, the following:
  - The cost of fuel, supplies, equipment, tools, materials, service contracts, janitorial services, waste and refuse disposal, gardening and landscaping; insurance, including, but not limited to, public liability, fire, property damage, flood, rental loss, rent continuation, boiler machinery, business interruption, contractual indemnification and "comprehensive" coverage insurance for up to the full replacement cost of the Project and such other insurance as is customarily carried by operators of other similar class office buildings in the city in which the Project is located, to the extent carried by Landlord in its discretion, and the deductible portion of any insured loss otherwise covered by such insurance); the cost of compensation, including employment, welfare and social security taxes, paid vacation days, disability, pension, medical and other fringe benefits of all persons (including independent contractors) who perform services connected with the operation, maintenance, repair or replacement of the Project; personal property taxes on and maintenance and repair of equipment and other personal property used in connection with the operation, maintenance or repair of the Project; repair and replacement of window coverings provided by Landlord in the premises of tenants in the Project; such reasonable auditors' fees and legal fees as are incurred in connection with the operation, maintenance or repair of the Project; reasonable costs incurred for administration and management of the Project; the maintenance of any easements or ground leases benefiting the Project, whether by Landlord or by an independent contractor; a reasonable allowance for depreciation of personal property used in the operation, maintenance or repair of the Project; license, permit and inspection fees; all costs and expenses required by any governmental or quasi-governmental authority or by applicable law, for any reason, including capital improvements, whether capitalized or not, and the cost of any capital improvements made to the Project by Landlord that improve life-safety systems or reduce operating expenses (such costs to be amortized over such reasonable periods as Landlord shall reasonably determine); the cost of air conditioning, heating, ventilating, plumbing, elevator maintenance, and repair (to include the replacement of components) and other mechanical and electrical systems repair and maintenance; sign maintenance; and Common Area (defined below) repair, resurfacing, operation and maintenance; and the cost of providing security services, if any, deemed appropriate by Landlord.

The following items shall be excluded from Operating Costs:

- (A) leasing commissions, attorneys' fees, costs and disbursements and other expenses incurred in connection with leasing, renovating or improving vacant space in the Project for tenants or prospective tenants of the Project;
- (B) costs (including permit, license and inspection fees) incurred in renovating or otherwise improving or decorating, painting or redecorating space for tenants or vacant space;

- (C) Landlord's costs of any services sold to tenants for which Landlord is entitled to be reimbursed by such tenants as an additional charge or rental over and above the Basic Annual Rent and Operating Costs payable under the lease with such tenant or other occupant;
- (D) any depreciation or amortization of the Project except as expressly permitted herein;
- (E) costs incurred due to a violation of Law (defined below) by Landlord relating to the Project;
- (F) interest on debt or amortization payments on any mortgages or deeds of trust or any other debt for borrowed money;
- (G) all items and services for which Tenant or other tenants reimburse Landlord outside of Operating Costs;
- (H) repairs or other work occasioned by fire, windstorm or other work paid for through insurance or condemnation proceeds (excluding any deductible);
- (I) repairs resulting from any defect in the original design or construction of the Project; and
- (J) capital expenditures for work done on the Project (e.g., common area renovations, retail, workout facility, etc) or any capital improvements that are unrelated to the regular operations of the Project.
- (e) Operating Costs shall also include all real property taxes, assessments, license fees, excises, levies, charges, assessments, both general and special assessments, or impositions and other similar governmental ad valorem or other charges levied on or attributable to the Project or its ownership, operation or transfer, and all taxes, charges, assessments or similar impositions imposed in lieu of the same (collectively, "Real Estate Taxes"). Real Estate Taxes shall also include all taxes, assessments, license fees, excises, levies, charges or similar impositions imposed by any governmental agency, district, authority or political subdivision (A) on any interest of Landlord, any mortgagee of Landlord or any interest of Tenant in the Project, the Premises, or on the occupancy or use of space in the Project or the Premises; (B) for the provision of amenities, services or rights of use, whether or not exclusive, public, quasi-public or otherwise made available on a shared use basis, including amenities, services or rights of use such as fire protection, police protection, street, sidewalk, lighting, sewer or road maintenance, refuse removal or janitorial services or for any other service, without regard to whether such services were formerly provided by governmental or quasi-governmental agencies to property owners or occupants at no cost or at minimal cost; and (C) related to any transportation plan, fund or system instituted within the geographic area of the Project or otherwise applicable to the Premises, the Project or any portion thereof. Real Estate Taxes shall not include any estate, inheritance successor, transfer, gift, franchise, corporation, income or profit tax imposed by the State or federal government on Landlord unless such income, franchise, transfer or profit taxes are in substitution for any Real Estate Taxes payable hereunder. Real Estate Taxes shall expressly include any new taxes (including House Bill 3 and franchise taxes) levied against Landlord and/or the Project in lieu of or in substitution of any ad valorem taxes on the Project as a result of property tax reform in the State of Texas ("HB3"); and
- (f) Operating Costs shall also include Utilities. The term "Utilities" shall mean all electricity, gas, water, sewer and other utility costs incurred by Landlord in each calendar year in connection with operating the Building and the Project.
- (g) Operating Costs for any calendar year during which actual occupancy of the Project is less than ninety-five percent (95%) of the Rentable Area of the Project shall be appropriately adjusted to reflect ninety-five percent (95%) occupancy of the existing Rentable Area of the Project during such period. In determining Operating Costs, if any services or Utilities are separately charged to tenants of the Project or others, Operating Costs shall be adjusted by Landlord to reflect the amount of expense which would have been incurred for such services or Utilities on a full time basis for normal Project operating hours. In the event (i) the Commencement Date shall be a date other than January 1, (ii) the date fixed for the expiration of the Lease Term shall be a date other than December 31, (iii) of any early termination of this Lease, or (iv) of any increase or decrease in the size of the Premises, then in each such event, an appropriate adjustment in the application of this Paragraph 3 shall, subject to the provisions of

this Lease, be made to reflect such event on a basis determined by Landlord to be consistent with the principles underlying the provisions of this <u>Paragraph 3</u>.

- (h) Prior to the commencement of each calendar year of the Lease Term following the Commencement Date, Landlord shall have the right to give to Tenant a written estimate of Tenant's Proportionate Share of the Operating Costs Excess, if any, over the Expense Stop for Operating Costs for the Project for the ensuing year. Tenant shall pay such estimated amount to Landlord in equal monthly installments, in advance on the first day of each month. Within a reasonable period after the end of each calendar year, Landlord shall furnish Tenant a statement indicating in reasonable detail the excess of Operating Costs over the Expense Stop for Operating Costs for such period, and the parties shall, within thirty (30) days thereafter, make any payment or allowance necessary to adjust Tenant's estimated payments to Tenant's actual share of such excess as indicated by such annual statement. Any payment due Landlord shall be payable by Tenant within 30 days from date of written demand from Landlord. Any amount due Tenant shall be credited against installments next becoming due under this Paragraph 3(h) or refunded to Tenant, if requested by Tenant.
- (i) All capital levies or other taxes assessed or imposed on Landlord upon the rents payable to Landlord under this Lease and any excise, transaction, sales or privilege tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the Project or any portion thereof shall be paid by Tenant to Landlord monthly in estimated installments or upon demand, at the option of Landlord, as additional rent to be allocated to monthly Operating Costs.
- (j) Tenant is a municipal corporation and is exempt from all taxes and assessments (i) levied against any personal property, tenant improvements or trade fixtures of Tenant in or about the Premises and (ii) based upon this Lease or any document to which Tenant is a party creating or transferring an interest in this Lease or an estate in all or any portion of the Premises. If any such taxes or assessments are levied against Landlord or Landlord's property or if the assessed value of the Project is increased by the inclusion therein of a value placed upon such personal property or trade fixtures of Tenant, Landlord shall immediately notify Tenant and Tenant will challenge the assessment (on its behalf and on behalf of Landlord) for the taxes and assessments so levied against Landlord, or such taxes, levies and assessments resulting from such increase in assessed value. Landlord agrees it will reasonably cooperate with Tenant in the challenge of any taxes assessed in contravention of law.
- Any delay or failure of Landlord in (i) delivering any estimate or statement described in this Paragraph 3, or (ii) computing or billing Tenant's Proportionate Share of excess Operating Costs shall not constitute a waiver of its right to require an increase in Rent, or in any way impair the continuing obligations of Tenant under this Paragraph 3. In the event of any dispute as to any Additional Rent due under this Paragraph 3, an officer of Tenant or Tenant's certified public accountant shall have the right after reasonable notice and at reasonable times to inspect Landlord's accounting records at Landlord's accounting office. If after such inspection, Tenant still disputes such Additional Rent, upon Tenant's written request therefor, a certification as to the proper amount of Operating Costs and the amount due to or payable by Tenant shall be made by an independent certified public accountant mutually agreed to by Landlord and Tenant. If Landlord and Tenant cannot mutually agree to an independent certified public accountant, then the parties agree that Landlord shall choose an independent certified public accountant to conduct the certification as to the proper amount of Tenant's Proportionate Share of Operating Costs due by Tenant for the period in question; provided, however, such certified public accountant shall not be the accountant who conducted Landlord's initial calculation of Operating Costs to which Tenant is now objecting. Such certification shall be final and conclusive as to all parties. If the certification reflects that Tenant has overpaid Tenant's Proportionate Share of Operating Costs for the period in question, then Landlord shall credit such excess to Tenant's next payment of Operating Costs, Real Estate Taxes and/or Utilities and conversely, if Tenant has underpaid Tenant's Proportionate Share of Operating Costs, Tenant shall pay within 30 days from written demand from Landlord such additional Operating Costs to Landlord. Tenant agrees to pay the cost of such certification and the investigation with respect thereto. Tenant waives the right to dispute any matter relating to the calculation of Operating Costs or Additional Rent under this Paragraph 3 if any claim or dispute is not asserted in writing to Landlord within one hundred eighty (180) days after delivery to Tenant of the original billing statement with respect thereto.
- (1) Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Proportionate Share of excess Operating Costs for the year in which this Lease

terminates, Tenant shall pay any increase due over the estimated Operating Costs paid within 30 days from written demand from Landlord, and conversely, any overpayment made by Tenant shall be promptly refunded to Tenant by Landlord.

- (m) Landlord and Tenant agree that each provision of this Lease for determining charges, amounts, and Additional Rent payments by Tenant is commercially reasonable, and as to each such charge or amount, constitutes a "method by which the charge is to be computed" for purposes of Section 93.012 (Assessment of Charges) of the Texas Property Code, as such section now exists or as it may be hereafter amended or succeeded.
- (n) The Basic Annual Rent, as adjusted pursuant to <u>Paragraphs 2, 3 and 7</u>, and other amounts required to be paid by Tenant to Landlord hereunder (including the Operating Costs Excess), are sometimes collectively referred to as, and shall constitute, "Rent".

# 4. <u>IMPROVEMENTS AND ALTERATIONS</u>

- (a) Effective on and as of the Commencement Date, Landlord shall deliver to Tenant, and Tenant agrees to accept from Landlord, the Premises in its "AS-IS", "WHERE-AS" and "WITH ALL FAULTS" condition and Landlord shall have no obligation to make any improvements or refurbishments to the Premises throughout the Initial Term; provided, however, notwithstanding any of the foregoing to the contrary and if applicable, Landlord and Tenant hereby agree that Landlord, at Tenant's sole cost and expense (except for Landlord's Construction Allowance), shall perform (or cause to be performed) the work described in the Work Letter attached hereto as Exhibit B (such work being defined in said Exhibit B as the "Tenant Improvements") in accordance with, and subject to the terms of, said Exhibit B.
- Subsequent to the completion of Tenant Improvements, any alterations, additions, or improvements made by or on behalf of Tenant to the Premises ("Alterations") shall be subject to Landlord's prior written consent. Tenant shall cause, at its sole cost and expense, all Alterations to comply with insurance requirements and with Laws and shall construct, at its sole cost and expense, any alteration or modification required by Laws as a result of any Alterations. All Alterations shall be constructed at Tenant's sole cost and expense and in a good and workmanlike manner by contractors reasonably acceptable to Landlord and only good grades of materials shall be used. All plans and specifications for any Alterations shall be submitted to Landlord for its approval, which approval will not be unreasonably withheld, delayed or conditioned. Landlord may monitor construction of the Alterations. Tenant shall pay Landlord upon demand a reasonable fee not to exceed fifteen percent (15%) to compensate Landlord for its review of the plans and specifications and monitoring of the construction. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with applicable laws, codes, rules and regulations. Landlord shall have the right, in its sole discretion, to instruct Tenant to remove those Alterations from the Premises which (i) were not approved in advance by Landlord. (ii) were not built in conformance with the plans and specifications approved by Landlord, or (iii) Landlord specified during its review of plans and specifications for Alterations would need to be removed by Tenant upon the expiration of this Lease. Landlord shall not unreasonably withhold or delay its approval with respect to what Alterations Landlord may require Tenant to remove at the expiration of the Lease. If upon the termination of this Lease Landlord requires Tenant to remove any or all of such Alterations from the Premises, then Tenant, at Tenant's sole cost and expense, shall promptly remove such Alterations and Tenant shall repair and restore the Premises to its original condition as of the Commencement Date, reasonable wear and tear excepted. Any Alterations remaining in the Premises following the expiration of the Lease Term or following the surrender of the Premises from Tenant to Landlord, shall become the property of Landlord unless Landlord notifies Tenant otherwise. Tenant shall provide Landlord with the identities and mailing addresses of all persons performing work or supplying materials, prior to beginning such construction, and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall assure payment for the completion of all work free and clear of liens and shall provide certificates of insurance for worker's compensation from all of Tenant's contractors and subcontractors and other coverage in amounts and from an insurance company reasonably satisfactory to Landlord protecting Landlord against liability for bodily injury or property damage during construction. Upon completion of any Alterations and upon Landlord's reasonable request, Tenant shall deliver to Landlord sworn statements setting forth the names of all contractors and subcontractors who did work on the Alterations and final lien waivers from all such contractors and subcontractors.

- (c) Tenant shall keep the Premises, the Building and the Project free from any and all liens arising out of any Alterations, work performed, materials furnished, or obligations incurred by or for Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a bond in a form and issued by a surety acceptable to Landlord, Landlord shall have the right, but not the obligation, to cause such lien to be released by such means as it shall deem proper (including payment of or defense against the claim giving rise to such lien); in such case, Tenant shall reimburse Landlord for all amounts so paid by Landlord in connection therewith, together with all of Landlord's costs and expenses, with interest thereon at the Default Rate (defined below). Such rights of Landlord shall be in addition to all other remedies provided herein or by law.
- (d) Landlord shall furnish Tenant with two (2) keys for the Building corridor doors entering the Premises. Additional keys will be furnished by Landlord upon an order signed by Tenant and payment by Tenant of Landlord's charge therefor. All such keys shall remain the property of Landlord. No additional locks shall be allowed on any door of the Premises without providing keys to Landlord, and Tenant shall not make or permit to be made any duplicate keys, except those furnished by Landlord. Upon termination of this lease, Tenant shall surrender to Landlord all keys to any locks on doors entering or within the Premises, and give to Landlord the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, in the Premises.
- (e) Tenant acknowledges that a Confirmatory Asbestos Survey ("Environmental Report") of the Building dated January 23, 1993, prepared by Fugro McClelland for Landlord, indicates that there are asbestos containing materials in the Building. By its execution of this Lease, Tenant acknowledges that it has received a copy of the Environmental Report and agrees that Landlord shall in no event have any obligation to Tenant hereunder to remove such materials. Tenant agrees to cooperate and comply with any reasonable requirements of Landlord in connection with the asbestos management system of Landlord for the Building. Tenant further acknowledges that the asbestos has been encapsulated and that Landlord has implemented an Operation and Management Program ("O&M Program") in order to manage the presence of such materials in the Building in accordance with all federal requirements. Tenant further acknowledges and agrees that all construction and maintenance activities performed by Tenant or its employees, agents or contractors must be coordinated through the manager of the Building, and only trained and licensed personnel will be allowed access to the service areas of the Building. Tenant also acknowledges and agrees that in the event Tenant or its agents, employees or contractors come into contact with such materials in connection with Tenant's construction and/or installation of any Alterations to the Premises hereunder. Tenant is and shall be solely responsible for the encapsulation and containment of same and any and all remedial actions which may be necessary by virtue of such contact. In no event shall Landlord be liable for any increase in the cost of such Alterations which may result by virtue of the existence of such asbestos-containing materials and the necessary handling and treatment of same.

#### 5. REPAIRS

- (a) Landlord shall keep the Common Areas of the Building and the Project in a clean and neat condition. Subject to <u>subparagraph (b)</u> below, Landlord shall make all necessary repairs, within a reasonable period following receipt of notice of the need therefor from Tenant, to the exterior walls, exterior doors, exterior locks on exterior doors and windows of the Building, and to the Common Areas and to public corridors and other public areas of the Project not constituting a portion of any tenant's premises and shall use reasonable efforts to keep all Building standard equipment used by Tenant in common with other tenants in good condition and repair and to replace same at the end of such equipment's normal and useful life, reasonable wear and tear and casualty loss excepted. Except as expressly provided in <u>Paragraph 9</u> of this Lease, there shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Premises, the Building or the Project.
- (b) Tenant, at its expense, (i) shall keep the Premises and all fixtures contained therein in a safe, clean and neat condition, and (ii) shall bear the cost of maintenance and repair, by contractors selected by Tenant and approved by Landlord, of all facilities which are not expressly required to be maintained or repaired by Landlord and which are located in the Premises, including, without limitation, lavatory, shower, toilet, wash basin and kitchen facilities, and supplemental heating and air conditioning systems (including all plumbing connected to said facilities or systems installed by or on behalf of Tenant or existing in the Premises at the time of Landlord's delivery of the Premises to Tenant). Tenant shall make all repairs to the Premises not required to be made by Landlord under

subparagraph (a) above with replacements of any materials to be made by use of materials of equal or better quality. Tenant shall do all decorating, remodeling, alteration and painting required by Tenant during the Lease Term. Tenant shall pay for the cost of any repairs to the Premises, the Building or the Project made necessary by any negligence or willful misconduct of Tenant or any of its assignees, subtenants, employees or their respective agents, representatives, contractors, or other persons permitted in or invited to the Premises or the Project by Tenant. If Tenant fails to make such repairs or replacements within fifteen (15) days after written notice from Landlord, Landlord may at its option make such repairs or replacements, and Tenant shall upon demand pay Landlord for the cost thereof, including, without limitation, an additional reasonable charge not to exceed fifteen percent (15%).

(c) Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in a safe, clean and neat condition, normal wear and tear excepted. Except as otherwise set forth in Paragraph 4(b) of this Lease, Tenant shall remove from the Premises all trade fixtures, furnishings and other personal property of Tenant and all computer and phone cabling and wiring from the Premises, shall repair all damage caused by such removal, and shall restore the Premises to its original condition, reasonable wear and tear excepted. In addition to all other rights Landlord may have, in the event Tenant does not so remove any such fixtures, furnishings or personal property, Tenant shall be deemed to have abandoned the same, in which case Landlord may store the same at Tenant's expense, appropriate the same for itself, and/or sell the same in its discretion.

### 6. <u>USE OF PREMISES</u>

- (a) Tenant shall use the Premises only for general office uses for the Consolidated Tax Office and shall not use the Premises or permit the Premises to be used for any other purpose, without the prior written consent of the Landlord. Landlord shall have the right to deny its consent to any change in the permitted use of the Premises in its sole and absolute discretion.
- the Premises in violation of any law, statute, ordinance or any governmental rule, regulation or order (collectively, "Law" or "Laws") and Tenant shall, upon written notice from Landlord, discontinue any use of the Premises which is declared by any governmental authority to be a violation of Law. If any Law shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to (i) modification or other maintenance of the Premises, the Building or the Project, or (ii) the use, alteration or occupancy thereof, Tenant shall comply with such Law at Tenant's sole cost and expense. This Lease shall be subject to and Tenant, to the extent that Tenant has notice thereof, shall comply with, all financing documents encumbering the Building or the Project and all covenants, conditions and restrictions affecting the Premises, the Building or the Project, including, but not limited to, Tenant's execution of any subordination agreements requested by a mortgagee of the Premises, the Building or the Project.
- (c) Tenant shall not at any time use or occupy the Premises in violation of the certificates of occupancy issued for or restrictive covenants pertaining to the Building or the Premises, and in the event that any architectural control committee or department of the State or the city or county in which the Project is located shall at any time contend or declare that the Premises are used or occupied in violation of such certificate or certificates of occupancy or restrictive covenants, Tenant shall, upon five (5) days' notice from Landlord or any such governmental agency, immediately discontinue such use of the Premises (and otherwise remedy such violation). The failure by Tenant to discontinue such use shall be considered a default under this Lease and Landlord shall have the right to exercise any and all rights and remedies provided herein or by Law. Any statement in this Lease of the nature of the business to be conducted by Tenant in the Premises shall not be deemed or construed to constitute a representation or guaranty by Landlord that such business will continue to be lawful or permissible under any certificate of occupancy issued for the Building or the Premises, or otherwise permitted by Law.
- (d) Tenant shall not do or permit to be done anything which may invalidate or increase the cost of any fire, comprehensive or other insurance policy covering the Building, the Project and/or property located therein and shall comply with all rules, orders, regulations and requirements of the appropriate fire codes and ordinances or any other organization performing a similar function. In addition to all other remedies of Landlord, Landlord may require Tenant, promptly upon demand, to reimburse Landlord for the full amount of any additional premiums charged for such policy or policies by reason of Tenant's failure to comply with the provisions of this <u>Paragraph 6</u>.

- (e) Tenant shall not in any way interfere with the rights or quiet enjoyment of other tenants or occupants of the Premises, the Building or the Project. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain, or permit any nuisance in, on or about the Premises, the Building or the Project. Tenant shall not place weight upon any portion of the Premises exceeding the structural floor load (per square foot of area) which such area was designated (and is permitted by Law) to carry or otherwise use any Building system in excess of its capacity or in any other manner which may damage such system or the Building. Tenant shall not create within the Premises a working environment with a density of greater than five (5) employees per 1,000 square feet of Rentable Area. Business machines and mechanical equipment shall be placed and maintained by Tenant, at Tenant's expense, in locations and in settings sufficient in Landlord's reasonable judgment to absorb and prevent vibration, noise and annoyance. Tenant shall not commit or suffer to be committed any waste in, on, upon or about the Premises, the Building or the Project.
- (f) Tenant shall take all reasonable steps necessary to adequately secure the Premises from unlawful intrusion, theft, fire and other hazards, and shall keep and maintain any and all security devices in or on the Premises in good working order, including, but not limited to, exterior door locks for the Premises and smoke detectors and burglar alarms located within the Premises and shall cooperate with Landlord and other tenants in the Project with respect to access control and other safety matters.
- (g) As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State or the United States Government, including, without limitation, any material or substance which is (A) defined or listed as a "hazardous waste," "pollutant," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance" or "hazardous material" under any applicable federal, state or local Law or administrative code promulgated thereunder, (B) petroleum, (C) asbestos, or (D) polychlorobiphenyls ("PCBs").
  - (i) Tenant agrees that all operations or activities upon, or any use or occupancy of the Premises, or any portion thereof, by Tenant, its assignees, subtenants, and their respective agents, servants, employees, representatives and contractors (collectively referred to herein as "Tenant Affiliates"), throughout the term of this Lease, shall be in all respects in compliance with all federal, state and local Laws then governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, release, spillage, leakage, dumping, discharge or disposal of any Hazardous Materials.

#### (ii) Intentionally Deleted.

- (iii) In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the "Remedial Work") is required under any applicable federal, state or local Law, by any judicial order, or by any governmental entity as the result of operations or activities upon, or any use or occupancy of any portion of the Premises by Tenant or Tenant Affiliates, Landlord shall perform or cause to be performed the Remedial Work in compliance with such Law or order at Tenant's sole cost and expense. All Remedial Work shall be performed by one or more contractors, selected and approved by Landlord, and under the supervision of a consulting engineer, selected by Tenant and approved in advance in writing by Landlord. All costs and expenses of such Remedial Work shall be paid by Tenant, including, without limitation, the charges of such contractor(s), the consulting engineer, and Landlord's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work.
- (iv) Each of the covenants and agreements of Tenant set forth in this <u>Paragraph 6(g)</u> shall survive the expiration or earlier termination of this Lease.

# 7. <u>UTILITIES AND SERVICES</u>

(a) Provided that Tenant is not in default hereunder, Landlord shall furnish, or cause to be furnished to the Premises, the utilities and services described in <u>Exhibit C</u> attached hereto, subject to the conditions and in accordance with the standards set forth therein and in this Lease.

- (b) Tenant agrees to cooperate fully at all times with Landlord and to comply with all regulations and requirements which Landlord may from time to time prescribe for the use of the utilities and services described herein and in <u>Exhibit C</u>. Landlord shall not be liable to Tenant for the failure of any other tenant, or its assignees, subtenants, employees, or their respective invitees, licensees, agents or other representatives to comply with such regulations and requirements.
- If Tenant requires utilities or services in quantities greater than or at times other than that generally furnished by Landlord pursuant to Exhibit C, Tenant shall pay to Landlord, upon receipt of a written statement therefor, Landlord's charge for such use. In the event that Tenant shall require additional electric current, water or gas for use in the Premises and if, in Landlord's judgment, such excess requirements cannot be furnished unless additional risers, conduits, feeders, switchboards and/or appurtenances are installed in the Building, subject to the conditions stated below, Landlord shall proceed to install the same at the sole cost of Tenant, payable upon demand in advance. The installation of such facilities shall be conditioned upon Landlord's consent, and a determination that the installation and use thereof (i) shall be permitted by applicable Law and insurance regulations, (ii) shall not cause permanent damage or injury to the Building or adversely affect the value of the Building or the Project, and (iii) shall not cause or create a dangerous or hazardous condition or interfere with or disturb other tenants in the Building. Subject to the foregoing, Landlord shall, upon reasonable prior notice by Tenant, furnish to the Premises additional elevator, heating, air conditioning and/or cleaning services upon such reasonable terms and conditions as shall be determined by Landlord, including payment of Landlord's charge therefor. In the case of any additional utilities or services to be provided hereunder, Landlord may require a switch and metering system to be installed so as to measure the amount of such additional utilities or services. The cost of installation, maintenance and repair thereof shall be paid by Tenant upon demand.
- (d) Landlord shall not be liable for, and Tenant shall not be entitled to, any damages, abatement or reduction of Rent, or other liability by reason of any failure to furnish any services or utilities described herein or in Exhibit C for any reason (other than Landlord's gross negligence or willful misconduct), including, without limitation, when caused by accident, breakage, repairs, Alterations or other improvements to the Project, strikes, lockouts or other labor disturbances or labor disputes of any character, governmental regulation, moratorium or other governmental action, inability to obtain electricity, water or fuel, or any other cause beyond Landlord's control. Landlord shall be entitled to cooperate with the energy conservation efforts of governmental agencies or utility suppliers. No such failure, stoppage or interruption of any such utility or service shall be construed as an eviction of Tenant, nor shall the same relieve Tenant from any obligation to perform any covenant or agreement under this Lease. In the event of any failure, stoppage or interruption thereof, Landlord shall use reasonable efforts to attempt to restore all services promptly. No representation is made by Landlord with respect to the adequacy or fitness of the Building's ventilating, air conditioning or other systems to maintain temperatures as may be required for the operation of any computer, data processing or other special equipment of Tenant.
- (e) Landlord reserves the right from time to time to make reasonable and nondiscriminatory modifications to the above standards (including, without limitation, those described in *Exhibit C*) for utilities and services.

#### 8. NON-LIABILITY OF LANDLORD; INSURANCE

Landlord shall not be liable for any injury, loss or damage suffered by Tenant or to any person or property occurring or incurred in or about the Premises, the Building or the Project from any cause, EVEN IF SUCH LIABILITIES ARE CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF LANDLORD OR LANDLORD'S DESIGNATED PROPERTY MANAGEMENT COMPANY, OR EITHER OF THEIR PARTNERS, MEMBERS, SHAREHOLDERS, OWNERS, OFFICERS, DIRECTORS, TRUSTEES, EMPLOYEES, CONTRACTORS, AGENTS, AND REPRESENTATIVES (COLLECTIVELY "RELEASED PARTIES"), BUT NOT TO THE EXTENT SUCH LIABILITIES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY SUCH RELEASED PARTIES. Without limiting the foregoing, neither Landlord nor any of the Released Parties shall be liable for and there shall be no abatement of Rent (except in the event of a casualty loss or a condemnation as set forth in Paragraphs 9 and 10 of this Lease) for (i) any damage to Tenant's property stored with or entrusted to Affiliates of Landlord, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or the Project or

from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Building or the Project or from any other cause whatsoever, (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Building, whether within or outside of the Project, or (v) any latent or other defect in the Premises, the Building or the Project. Tenant shall give prompt notice to Landlord in the event of (i) the occurrence of a fire or accident in the Premises or in the Building, or (ii) the discovery of a defect therein or in the fixtures or equipment thereof. This Paragraph 8(a) shall survive the expiration or earlier termination of this Lease.

- (b) Intentionally Deleted.
- (c) Intentionally Deleted.
- (d) <u>Insurance</u>.
- Tenant at all times during the Lease Term shall, at its own expense, keep in full force and effect (A) commercial general liability insurance providing coverage against bodily injury and property damage to a combined single limit of \$1,000,000,000 each occurrence, \$2,000,000 general aggregate, which shall include provision for contractual liability coverage insuring Tenant for the performance of its indemnity obligations set forth in this Paragraph 8 and in Paragraph 6(g)(ii) of this Lease, (B) worker's compensation insurance to the statutory limit, if any, and employer's liability insurance to the limit of \$1,000,000 per occurrence, (C) property insurance covering full replacement value of all of Tenant's personal property, trade fixtures and improvements in the Premises and (D) flood insurance covering full replacement value of all of Tenant's personal property, trade fixtures and improvements in the Premises. Landlord and its designated property management firm shall be named an additional insured on each of said policies (excluding the worker's compensation policy) and said policies shall be issued by an insurance company or companies authorized to do business in Texas and which carry an A. M. Best Key rating of at least A-VIII or better (latest edition in effect as of the Effective Date of this Lease and subsequently in effect as of the date of renewal of the required policies). Landlord agrees that Tenant may self-insure against the risks described in clauses (A) and/or (B) above. EACH OF SAID THIRD-PARTY POLICIES SHALL ALSO INCLUDE A WAIVER OF SUBROGATION PROVISION OR ENDORSEMENT IN FAVOR OF LANDLORD, AND AN ENDORSEMENT PROVIDING THAT LANDLORD SHALL RECEIVE THIRTY (30) DAYS PRIOR WRITTEN NOTICE OF ANY CANCELLATION OF, NONRENEWAL OF, REDUCTION OF COVERAGE OR MATERIAL CHANGE IN COVERAGE ON SAID POLICIES. Tenant hereby waives its right of recovery against Landlord and any of the Released Parties of any amounts paid by Tenant or on Tenant's behalf to satisfy applicable worker's compensation laws. The policies or duly executed certificates showing the material terms for the same, together with satisfactory evidence of the payment of the premiums therefor, shall be deposited with Landlord on the date Tenant first occupies the Premises and upon renewals of such policies not less than fifteen (15) days prior to the expiration of the term of such coverage. If certificates are supplied rather than the policies themselves, Tenant shall allow Landlord, at all reasonable times, to inspect the policies of insurance required herein.
- (ii) It is expressly understood and agreed that the coverages required represent Landlord's minimum requirements and such are not to be construed to void or limit Tenant's other obligations contained in this Lease. Neither shall (A) the insolvency, bankruptcy or failure of any insurance company carrying Tenant, (B) the failure of any insurance company to pay claims occurring nor (C) any exclusion from or insufficiency of coverage be held to affect, negate or waive any of Tenant's obligations under this Paragraph 8 and Paragraph 6(g)(ii) or any other provision of this Lease. With respect to insurance coverages, except worker's compensation, maintained hereunder by Tenant and insurance coverages separately obtained by Landlord, all insurance coverages afforded by policies of insurance maintained by Tenant shall be primary insurance as such coverages apply to Landlord, and such insurance coverages separately maintained by Landlord shall be excess, and Tenant shall have its insurance policies so endorsed. The amount of liability insurance under insurance policies maintained by Tenant shall not be reduced by the existence of insurance coverage under policies separately maintained by Landlord. Landlord shall cooperate with Tenant and Landlord's insurers in the adjustment of any insurance claim

pertaining to such coverage. Tenant shall be solely responsible for any premiums, assessments, penalties, deductible assumptions, retentions, audits, retrospective adjustments or any other kind of payment due under its policies.

- (iii) Tenant's occupancy of the Premises without delivering the certificates of insurance shall not constitute a waiver of Tenant's obligations to provide the required coverages. If Tenant provides to Landlord a certificate that does not evidence the coverages required herein, or that is faulty in any respect, such shall not constitute a waiver of Tenant's obligations to provide the proper insurance.
- (iv) Throughout the Lease Term, Landlord agrees to maintain (i) property insurance on the insurable portions of Building and the remainder of the Project in an amount not less than the fair replacement value thereof, subject to reasonable deductibles (ii) boiler and machinery insurance amounts and with deductibles that would be considered standard for similar class office building in El Paso, Texas metropolitan area and (iii) commercial general liability insurance with a combined single limit coverage of at least \$1,000,000.00 per occurrence. All such insurance shall be obtained from insurers Landlord reasonably believes to be financially responsible in light of the risks being insured. The premiums for any such insurance shall be a part of Operating Costs.
- (e) Mutual Waivers of Recovery. Landlord and Tenant, on behalf of themselves and all parties claiming by, through or under them each mutually release and discharge each other from responsibility for that portion of any loss or damage paid or reimbursed by an insurer of Landlord or Tenant under any fire, extended coverage or other property insurance policy maintained by Tenant with respect to its Premises or by Landlord with respect to the Building or the Project (or which would have been paid had the insurance required to be maintained hereunder been in full force and effect), no matter how caused, including negligence, and each waives any right of recovery from the other including, but not limited to, claims for contribution or indemnity, which might otherwise exist on account thereof. Any fire, extended coverage or property insurance policy maintained by Tenant with respect to the Premises, or Landlord with respect to the Building or the Project, shall contain, in the case of Tenant's policies, a waiver of subrogation provision or endorsement in favor of Landlord, and in the case of Landlord's policies, a waiver of subrogation provision or endorsement in favor of Tenant, or, in the event that such insurers cannot or shall not include or attach such waiver of subrogation provision or endorsement, Tenant and Landlord shall obtain the approval and consent of their respective insurers, in writing, to the terms of this Lease. The mutual releases, discharges and waivers contained in this provision shall apply even if the loss or damage to which this provision applies is caused solely or in part by the negligence of Landlord or Tenant.
- (f) <u>Business Interruption</u>. Landlord shall not be responsible for, and Tenant releases and discharges Landlord from, and Tenant further waives any right of recovery from Landlord for, any loss for or from business interruption or loss of use of the Premises suffered by Tenant in connection with Tenant's use or occupancy of the Premises, even if such loss is caused solely or in part by the negligence of landlord.
- (g) Adjustment of Claims. Tenant shall cooperate with Landlord and Landlord's insurers in the adjustment of any insurance claim pertaining to the Building or the Project or Landlord's use thereof.
- (h) <u>Increase in Landlord's Insurance Costs</u>. Tenant agrees to pay to Landlord any increase in premiums for Landlord's insurance policies resulting from Tenant's use or occupancy of the Premises, provided that Landlord can establish by satisfactory evidence that such increase is the result of Tenant's use.
- (i) Failure to Maintain Insurance. Any failure of Tenant to obtain and maintain the insurance policies and coverages required hereunder or failure by Tenant to meet any of the insurance requirements of this Lease shall constitute an event of default hereunder, and such failure shall entitle Landlord to pursue, exercise or obtain any of the remedies provided for in Paragraph 12(b), and Tenant shall be solely responsible for any loss suffered by Landlord as a result of such failure. In the event of failure by Tenant to maintain the insurance policies and coverages required by this Lease or to meet any of the insurance requirements of this Lease, Landlord, at its option, and without relieving Tenant of its obligations hereunder, may obtain said insurance policies and coverages or perform any other insurance obligation of Tenant, but all costs and expenses incurred by Landlord in obtaining such insurance or performing Tenant's insurance obligations shall be reimbursed by Tenant to Landlord, together with interest on same from the date any such cost or expense was paid by Landlord until reimbursed by Tenant, at the rate

of interest provided to be paid on judgments, by the law of the jurisdiction to which the interpretation of this Lease is subject.

#### 9. FIRE OR CASUALTY

- (a) Subject to the provisions of this <u>Paragraph 9</u>, in the event the Premises, or access thereto, is wholly or partially destroyed by fire or other casualty, Landlord shall (to the extent permitted by Law and covenants, conditions and restrictions then applicable to the Project) rebuild, repair or restore the Premises and access thereto to substantially the same condition as existing immediately prior to such destruction and this Lease shall continue in full force and effect. Notwithstanding the foregoing, (i) Landlord's obligation to rebuild, repair or restore the Premises shall not apply to any personal property, above-standard tenant improvements or other items installed or contained in the Premises, and (ii) Landlord shall have no obligation whatsoever to rebuild, repair or restore the Premises with respect to any damage or destruction occurring during the last twelve (12) months of the term of this Lease or any extension of the term.
- Landlord may elect to terminate this Lease in any of the following cases of damage or destruction to the Premises, the Building or the Project: (i) where the cost of rebuilding, repairing and restoring (collectively, "Restoration") of the Building or the Project, would, regardless of the lack of damage to the Premises or access thereto, in the reasonable opinion of Landlord, exceed twenty percent (20%) of the then replacement cost of the Building; (ii) where, in the case of any damage or destruction to any portion of the Building or the Project by uninsured casualty, the cost of Restoration of the Building or the Project, in the reasonable opinion of Landlord, exceeds \$500,000; or (iii) where, in the case of any damage or destruction to the Premises or access thereto by uninsured casualty, the cost of Restoration of the Premises or access thereto, in the reasonable opinion of Landlord, exceeds twenty percent (20%) of the replacement cost of the Premises; or (iv) if Landlord has not obtained appropriate zoning approvals for reconstruction of the Project, Building or Premises. Any such termination shall be made by thirty (30) days' prior written notice to Tenant given within ninety (90) days of the date of such damage or destruction. If this Lease is not terminated by Landlord and as the result of any damage or destruction, the Premises, or a portion thereof, are rendered untenantable, the Basic Annual Rent shall abate reasonably during the period of Restoration (based upon the extent to which such damage and Restoration materially interfere with Tenant's business in the Premises). This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises, the Building or the Project. Notwithstanding anything in this Paragraph 9 to the contrary, in the event that the damages to the Premises or access thereto are such that, in the reasonable opinion of Landlord, such Restoration cannot be completed within six (6) months following the date of such damage or destruction, then Tenant may elect to terminate this Lease by giving Landlord written notice of its election to terminate on or before the earlier of (i) thirty (30) days from the date that Landlord notifies Tenant in writing that the Restoration cannot be completed within six (6) months from the date of the damage or destruction, or (ii) the expiration of six (6) months from the date of damage or destruction, if the Restoration is not then completed.

# 10. <u>EMINENT DOMAIN</u>

In the event the whole of the Premises, the Building or the Project shall be taken under the power of eminent domain, or sold to prevent the exercise thereof (collectively, a "Taking"), this Lease shall automatically terminate as of the date of such Taking. In the event of any Taking of a portion of the Project, the Building or the Premises shall, in the reasonable opinion of Landlord, substantially interfere with Landlord's operation thereof, Landlord may terminate this Lease upon thirty (30) days' written notice to Tenant given at any time within sixty (60) days following the date of such Taking. For purposes of this Lease, the date of Taking shall be the earlier of the date of transfer of title resulting from such Taking or the date of transfer of possession resulting from such Taking. In the event that a portion of the Premises is so taken and this Lease is not terminated, Landlord shall, with reasonable diligence, use commercially reasonable efforts to proceed to restore (to the extent permitted by Law and covenants, conditions and restrictions then applicable to the Project) the Premises (other than Tenant's personal property and fixtures, and above-standard tenant improvements) to a complete, functioning unit. In such case, the Basic Annual Rent shall be reduced proportionately based on the portion of the Premises so taken. If all or any portion of the Premises is the subject of a temporary Taking, this Lease shall remain in full force and effect and Tenant shall continue to perform each of its obligations under this Lease; in such case, Tenant shall be entitled to receive the entire award allocable to the temporary Taking of the Premises. Except as provided herein, Tenant shall not assert any claim against Landlord or the condemning authority for, and hereby assigns to Landlord, any

compensation in connection with any such Taking, and Landlord shall be entitled to receive the entire amount of any award therefor, without deduction for any estate or interest of Tenant. Nothing contained in this <u>Paragraph 10</u> shall be deemed to give Landlord any interest in, or prevent Tenant from seeking any award against the condemning authority for the Taking of personal property, fixtures, above standard tenant improvements of Tenant or for relocation or moving expenses recoverable by Tenant from the condemning authority. This <u>Paragraph 10</u> shall be Tenant's sole and exclusive remedy in the event of a Taking.

# 11. <u>ASSIGNMENT AND SUBLETTING</u>

- (a) Tenant shall not directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, assign, sublet, mortgage, hypothecate or otherwise encumber all or any portion of its interest in this Lease or in the Premises or grant any license in or suffer any person other than Tenant or its employees to use or occupy the Premises or any part thereof without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld. Any such attempted assignment, subletting, license, mortgage, hypothecation, other encumbrance or other use or occupancy without the consent of Landlord shall be null and void and of no effect. Any mortgage, hypothecation or encumbrance of all or any portion of Tenant's interest in this Lease or in the Premises and any grant of a license or sufferance of any person other than Tenant or its employees to use or occupy the Premises or any part thereof shall be deemed to be an "assignment" of this Lease. In addition, as used in this Paragraph 11, the term "Tenant" shall also mean any entity that has guaranteed Tenant's obligations under this Lease, and the restrictions applicable to Tenant contained herein shall also be applicable to such guarantor. Landlord's agreement to not unreasonably withhold its consent shall only apply to the first assignment or sublease under the Lease.
- (b) No assignment or subletting in violation of the terms of this Lease shall relieve Tenant of its obligation to pay the Rent and to perform all of the other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any subletting or assignment. Consent by Landlord to one subletting or assignment shall not be deemed to constitute a consent to any other or subsequent attempted subletting or assignment. If Tenant desires at any time to assign this Lease or to sublet the Premises or any portion thereof, it shall first notify Landlord of its desire to do so and shall submit in writing to Landlord all pertinent information relating to the proposed assignment or sublease, and all such financial information as Landlord may reasonably request concerning the proposed assignee or subtenant. Any approved assignment or sublease shall be expressly subject to the terms and conditions of this Lease.
- (c) At any time within thirty (30) days after Landlord's receipt of the information specified in subparagraph (b) above, Landlord may by written notice to Tenant elect to terminate this Lease as to the portion of the Premises so proposed to be subleased or assigned (which may include all of the Premises), with a proportionate abatement in the Rent payable hereunder.
- (d) Tenant acknowledges that it shall be reasonable for Landlord to withhold its consent to a proposed assignment or sublease in any of the following instances:
  - (i) The assignee or sublessee is not, in Landlord's reasonable opinion, sufficiently creditworthy to perform the obligations such assignee or sublessee will have under this Lease;
  - (ii) The intended use of the Premises by the assignee or sublessee is not the same as set forth in this Lease or otherwise reasonably satisfactory to Landlord;
  - (iii) The intended use of the Premises by the assignee or sublessee would materially increase the pedestrian or vehicular traffic to the Premises or the Building;
  - (iv) Occupancy of the Premises by the assignee or sublessee would, in the good faith judgment of Landlord, violate any agreement binding upon Landlord, the Building or the Project with regard to the identity of tenants, usage in the Building, or similar matters:

- (v) The assignee or sublessee is then negotiating with Landlord or has negotiated with Landlord within the previous six (6) months, or is a current tenant or subtenant within the Building or Project:
- (vi) The identity or business reputation of the assignee or sublessee will, in the good faith judgment of Landlord, tend to damage the goodwill or reputation of the Building or Project; or
- (vii) In the case of a sublease, the subtenant has not acknowledged that the Lease controls over any inconsistent provision in the sublease.

The foregoing criteria shall not exclude any other reasonable basis for Landlord to refuse its consent to such assignment or sublease.

- (e) In the event that Landlord approves of any assignment or sublease as set forth herein, Tenant shall be released from any and all liability under this Lease accruing from and after the date of such permitted assignment.
- (f) If this Lease is assigned or if the Premises is subleased (whether in whole or in part), or in the event of the mortgage, pledge, or hypothecation of Tenant's leasehold interest, or grant of any concession or license within the Premises, or if the Premises are occupied in whole or in part by anyone other than Tenant, then upon a default by Tenant hereunder Landlord may collect Rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and, except to the extent set forth in the preceding paragraph, apply the amount collected to the next Rent payable hereunder; and all such Rent collected by Tenant shall be held in deposit for Landlord and immediately forwarded to Landlord. No such transaction or collection of Rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder.
- (g) Should Tenant request of Landlord the right to assign or sublet, Landlord shall charge Tenant Seven Hundred Fifty and No/100 Dollars (\$750.00) as an administration fee.
- (h) Notwithstanding any provision of this Lease to the contrary, in the event this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute the property of Tenant or Tenant's estate within the meaning of the Bankruptcy Code. All such money and other consideration not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid or delivered to Landlord.

# 12. **DEFAULT**

Default by Tenant. The following events shall be deemed to be events of default (herein so called) by Tenant under this Lease: (i) Tenant shall fail to pay Rent or any other rental or sums payable by Tenant hereunder when due; (ii) Tenant shall fail to comply with or observe any other provision of this Lease and such failure shall continue for thirty (30) days after written notice to Tenant (or, in the case of Tenant's failure to comply with or observe any other single provision of this Lease more than two (2) times during the Lease Term, upon the occurrence of the third and all subsequent such failures, without notice from Landlord); (iii) Tenant or any guarantor of Tenant's obligations hereunder shall make a general assignment for the benefit of creditors; (iv) any petition shall be filed by or against Tenant or any guarantor of Tenant's obligations hereunder under the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, and such petition shall not be dismissed within sixty (60) days of filing, or Tenant or any guarantor of Tenant's obligations hereunder shall be adjudged bankrupt or insolvent in proceedings filed thereunder; (v) a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations hereunder, and such appointment shall not be vacated or otherwise terminated, and the action in which such appointment was ordered dismissed, within sixty (60) days of filing; (vi) Tenant shall fail to take possession of or shall desert, abandon or vacate the Premises; (vii) the death of any guarantor; or (viii) the occurrence of an event described in clause (iv) or (v) of this Paragraph (without regard to any cure periods contained therein), and the failure thereafter of Tenant (A) to timely and fully make any payment of Rent or any other sum of money due hereunder or (B) to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder. Notwithstanding the foregoing, if the nature of Tenant's default under <u>Paragraph 12(a)(ii)</u> above is such that more than thirty (30) days are reasonably required for its performance, Tenant shall not be in default if Tenant commences to cure such default within the thirty (30) day period and thereafter diligently prosecutes the same to completion.

- (b) Remedies for Tenant's Default. Upon the occurrence of any event of default specified in this Lease, Landlord shall have the option to pursue any (i) one or more of the following remedies without any notice or demand whatsoever and without releasing Tenant from any obligation under this Lease; or (ii) other remedy offered Landlord in law or in equity:
  - (i) Landlord may enter the Premises without terminating this Lease and perform any covenant or agreement or cure any condition creating or giving rise to an event of default under this Lease and Tenant shall pay to Landlord on demand, as additional rent, the amount expended by Landlord in performing such covenants or agreements or satisfying or observing such condition. Landlord, or its agents or employees, shall have the right to enter the Premises, and such entry and such performance shall not terminate this Lease or constitute an eviction of Tenant.
  - (ii) Landlord may terminate this Lease by written notice to Tenant (and not otherwise or Landlord may terminate Tenant's right of possession without terminating this Lease). In either of such events Tenant shall surrender possession of and vacate the Premises immediately and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter the Premises, in whole or in part, with or without process of law and to expel or remove Tenant and any other person, firm or entity who may be occupying the Premises or any part thereof and remove any and all property therefrom, using such lawful force as may be necessary.
  - (iii) In the event Landlord elects to re-enter or take possession of the Premises after Tenant's default, with or without terminating this Lease, Landlord may change locks or alter security devices and lock out, expel or remove Tenant and any other person who may be occupying all or any part of the Premises without being liable for any claim for damages.
  - (iv) Notwithstanding anything herein to the contrary, if Landlord terminates Tenant's right to possession without terminating this Lease after an event of default, Landlord shall use commercially reasonable efforts to relet the Premises and mitigate damage as set forth in <u>Paragraph 12(c)</u> below.
  - (v) Notwithstanding any prior election by Landlord to not terminate this Lease, Landlord may at any time, including subsequent to any re-entry or taking of possession of the Premises as allowed hereinabove, elect to terminate this Lease. Tenant shall be liable for and shall immediately pay to Landlord the amount of all Basic Annual Rent and other sums of money due under this Lease as may have accrued as of the date of termination. Tenant shall also immediately pay to Landlord, as agreed upon liquidated damages, an amount of money equal to the Basic Annual Rent and other amounts due for the remaining portion of the Lease Term (had such term not been terminated by Landlord prior to the expiration of the Lease Term), less the fair rental value of the Premises for the residue of the Lease Term, both discounted to their present value based upon an interest rate of eight percent (8%) per annum. In determining fair rental value, Landlord shall be entitled to take into account the time and expenses necessary to obtain a replacement tenant or tenants, including lost rental revenues and anticipated expenses hereinafter described relating to recovery, preparation and reletting of the Premises. If Landlord elects to relet the Premises, or any portion thereof, before presentation of proof of such liquidated damages, the amount of rent reserved upon such reletting shall be deemed prima facie evidence of the fair rental value of the portion of the Premises so relet.

Landlord and Tenant agree that because of the difficulty or impossibility of determining Landlord's damages from the loss of anticipated Additional Rent and other lease charges from the Tenant, there shall be included as a component of Tenant's annual total rent obligation (for the calculation of Landlord's remedies), an amount equal to the average monthly Additional Rent paid by Tenant for the

- twelve (12) full calendar months immediately preceding the event of default (or such lesser period of the term if the event of default occurs prior to the twelfth (12<sup>th</sup>) full calendar month of the term) multiplied by the number of months remaining in the Lease Term.
- (vi) In addition to any sum provided to be paid above, Tenant shall also be liable for and shall immediately pay to Landlord all broker's fees incurred by Landlord in connection with any reletting of the whole or any part of the Premises, the costs of removing and storing Tenant's or any other occupant's property, the cost of repairing, altering, remodeling, renovating or otherwise putting the Premises into a condition acceptable to a new tenant or tenants, the cost of removal and replacement of Tenant's signage and all reasonable expenses by Landlord in enforcing Landlord's remedies, including reasonable attorneys' fees.

#### (c) Mitigation of Damages.

- (i) In the event of a default under the Lease, Landlord and Tenant shall each use commercially reasonable efforts to mitigate any damages resulting from a default of the other party under this Lease.
- (ii) Landlord's obligation to mitigate damages after a default by Tenant shall be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:
- (A) Landlord shall have no obligation to solicit or entertain negotiations with any other prospective tenant for the Premises until Landlord obtains full and complete possession of the Premises including, without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant.
- (B) Landlord shall not be obligated to offer the Premises to a Substitute Tenant when other premises in the Project suitable for that prospective tenant's use are (or soon will be) available.
- (C) Landlord shall not be obligated to lease the Premises to a Substitute Tenant for a rental less than the current fair market rental then prevailing for similar space, nor shall Landlord be obligated to enter into a new lease under other terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space.
- (D) Landlord shall not be obligated to enter into a lease with any proposed tenant whose use would:
  - Disrupt the tenant mix or balance of the Project;
  - b. Violate any restriction, covenant, or requirement contained in the lease of another tenant of the Project;
  - c. Adversely affect the reputation of the Project; or
  - d. Be incompatible with the operation of the Project.
- (E) Landlord shall not be obligated to enter into a lease with any proposed Substitute Tenant (a "Substitute Lease") which does not have, in Landlord's reasonable opinion, sufficient financial resources or operating experience to operate the Premises in a first-class manner.
- (F) Landlord shall not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:

- a. Tenant pays any such sum to Landlord in advance of Landlord's execution of a Substitute Lease with such Substitute Tenant (which payment shall not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease); or
- b. Landlord, in Landlord's sole discretion, determines that any such expenditure is financially justified in connection with entering into any such Substitute Lease.
- (iii) Upon compliance with the above criteria regarding the releasing of the Premises after a default by Tenant, Landlord shall be deemed to have fully satisfied Landlord's obligation to mitigate damages under this Lease and under any law or judicial ruling in effect on the date of this Lease or at the time of Tenant's default, and Tenant waives and releases, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord, unless and to the extent Landlord maliciously or in bad faith fails to act in accordance with the requirements of this Paragraph 12(c).
- (iv) Tenant's right to seek damages from Landlord as a result of a default by Landlord under this Lease shall be conditioned on Tenant taking all actions reasonably required, under the circumstances, to minimize any loss or damage to Tenant's property or business, or to any of Tenant's officers, employees, agents, invitees, or other third parties that may be caused by any such default of Landlord.
- (d) <u>Effect of Suit or Partial Collection</u>. Institution of a forcible detainer action to re-enter the Premises shall not be construed to be an election by Landlord to terminate this Lease. Landlord may collect and receive any Rent due from Tenant and the payment thereof shall not constitute a waiver of or affect any notice or demand given, suit instituted or judgment obtained by Landlord, or be held to waive or alter the rights or remedies which Landlord may have at law or in equity or by virtue of this Lease at the time of such payment.
- (e) <u>Remedies Cumulative</u>. All rights and remedies of Landlord herein or existing at law or in equity are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other.
- (f) <u>Late Payment Charge and Interest Payable</u>. Landlord may, without further notice to Tenant, impose a late payment charge equal to five percent (5%) of any amount due if any amount due under this Lease is not paid within five (5) days from the date required to be paid hereunder. In addition, any payment due under this Lease not paid within ten (10) days after the date herein specified to be paid shall bear interest from the date such payment is due to the date of actual payment at the rate of eighteen percent (18%) per annum or the highest lawful rate of interest permitted by Texas or federal law, whichever rate of interest is lower.
- (g) <u>Cashier's Check</u>. If Tenant fails to timely make two (2) consecutive payments of Basic Annual Rent or any two (2) such payments are returned for insufficient funds, then, in addition to any other remedy Landlord may have, Landlord may require that all future payments be made by cashier's check or money order.
- (h) <u>Default by Landlord</u>. Landlord shall in no event be charged with default in any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days after written notice to Landlord from Tenant specifically describing such failure (except if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be in default if it commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion). If Landlord shall continue in default in the performance of any of the covenants or agreements herein contained after the time limit for the curing thereof, then, Tenant shall have the right to notify Landlord of its intent to terminate this Lease by giving written notice of such intention ("Termination Notice") to Landlord and any lender designated by Landlord, if Landlord has notified Tenant of its desire for Tenant to give Termination Notices or other notices of default hereunder to such lender. If Landlord fails to cure such default within thirty (30) days of the giving of the Termination Notice, then Tenant shall have the right to terminate this Lease, seek the remedy of

specific performance, money damages, or any other remedy available at law or in equity.

#### 13. <u>ACCESS; CONSTRUCTION</u>

Landlord reserves the right to use the roof and exterior walls of the Premises and the area beneath, adjacent to and above the Premises, together with the right to install, use, maintain, repair, replace and relocate equipment, machinery, meters, pipes, ducts, plumbing, conduits and wiring through the Premises, which serve other portions of the Building or the Project in a manner and in locations which do not unreasonably interfere with Tenant's use of the Premises. In addition, Landlord shall have free access to any and all mechanical installations of Landlord or Tenant, including, without limitation, machine rooms, telephone rooms and electrical closets. Tenant agrees that there shall be no construction of partitions or other obstructions which materially interfere with or which threaten to materially interfere with Landlord's free access thereto, or materially interfere with the moving of Landlord's equipment to or from the enclosures containing said installations. Upon at least twenty-four (24) hours' prior notice (except in the event of an emergency, when no notice shall be necessary), Landlord reserves and shall at any time and all times have the right to enter the Premises to inspect the same, to supply janitorial service and any other service to be provided by Landlord to Tenant hereunder, to exhibit the Premises to prospective purchasers, lenders or tenants, to post notices of non-responsibility, to alter, improve, restore, rebuild or repair the Premises or any other portion of the Building, or to do any other act permitted or contemplated to be done by Landlord hereunder, all without being deemed guilty of an eviction of Tenant and without liability for abatement of Rent or otherwise. For such purposes, Landlord may also erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed. Landlord shall conduct all such inspections and/or improvements, alterations and repairs so as to minimize, to the extent reasonably practical and without additional expense to Landlord, any interruption of or interference with the business of Tenant. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of such purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises (excluding Tenant's vaults and safes, access to which shall be provided by Tenant upon Landlord's reasonable request). Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency in order to obtain entry to the Premises or any portion thereof, and Landlord shall have the right, at any time during the Lease Term, to provide whatever access control measures it deems reasonably necessary to the Project, without any interruption or abatement in the payment of Rent by Tenant. Any entry into the Premises obtained by Landlord by any of such means shall not under any circumstances be construed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Tenant from the Premises or any portion thereof. No provision of this Lease shall be construed as obligating Landlord to perform any repairs, Alterations or decorations to the Premises or the Project except as otherwise expressly agreed to be performed by Landlord pursuant to the provisions of this Lease.

#### 14. BANKRUPTCY

- (a) If at any time on or before the Commencement Date there shall be filed by or against Tenant in any court, tribunal, administrative agency or any other forum having jurisdiction, pursuant to any applicable law, either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver, trustee or conservator of all or a portion of Tenant's property, or if Tenant makes an assignment for the benefit of creditors, this Lease shall ipso facto be canceled and terminated and in such event neither Tenant nor any person claiming through or under Tenant or by virtue of any applicable law or by an order of any court, tribunal, administrative agency or any other forum having jurisdiction, shall be entitled to possession of the Premises and Landlord, in addition to the other rights and remedies given by Paragraph 12 hereof or by virtue of any other provision contained in this Lease or by virtue of any applicable law, may retain as damages any Rent, Security Deposit or moneys received by it from Tenant or others on behalf of Tenant.
- (b) If, after the Commencement Date, or if at any time during the term of this Lease, there shall be filed against Tenant in any court, tribunal, administrative agency or any other forum having jurisdiction, pursuant to any applicable law, either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver, trustee or conservator of all or a portion of Tenant's property, and the same is not dismissed after sixty (60) calendar days, or if Tenant makes an assignment for the benefit of creditors, this Lease, at the option of Landlord exercised within a reasonable time after notice of the happening of any one or more of such events, may be canceled and terminated and in such event neither Tenant nor any person

claiming through or under Tenant or by virtue of any statute or of an order of any court shall be entitled to possession or to remain in possession of the Premises, but shall forthwith quit and surrender the Premises, and Landlord, in addition to the other rights and remedies granted by <u>Paragraph 12</u> hereof or by virtue of any other provision contained in this Lease or by virtue of any applicable law, may retain as damages any Rent, Security Deposit or moneys received by it from Tenant or others on behalf of Tenant.

In the event of the occurrence of any of those events specified in this Paragraph 14, if Landlord shall not choose to exercise, or by applicable law, shall not be able to exercise, its rights hereunder to terminate this Lease upon the occurrence of such events, then, in addition to any other rights of Landlord hereunder or by virtue of applicable law, (i) Landlord shall not be obligated to provide Tenant with any of the utilities or services specified in Paragraph 7, unless Landlord has received compensation in advance for such utilities or services, and the parties agree that Landlord's reasonable estimate of the compensation required with respect to such services shall control, and (ii) neither Tenant, as debtor-in-possession, nor any trustee or other person (hereinafter collectively referred to as the "Assuming Tenant") shall be entitled to assume this Lease unless on or before the date of such assumption, the Assuming Tenant (x) cures, or provides adequate assurance that the latter will promptly cure, any existing default under this Lease, (y) compensates, or provides adequate assurance that the Assuming Tenant will promptly compensate Landlord for any pecuniary loss (including, without limitation, attorneys' fees and disbursements) resulting from such default, and (z) provides adequate assurance of future performance under this Lease, it being covenanted and agreed by the parties that, for such purposes, any cure or compensation shall be effected by the immediate payment of any monetary default or any required compensation, or the immediate correction or bonding of any nonmonetary default. For purposes of this Lease, (i) any "adequate assurance" of such cure or compensation shall be effected by the establishment of an escrow fund for the amount at issue or by the issuance of a bond, and (ii) "adequate assurance" of future performance shall be effected by the establishment of an escrow fund for the amount at issue or by the issuance of a bond.

# 15. SUBSTITUTION OF PREMISES

Subject to the conditions specified in this <u>Paragraph 15</u>, Landlord reserves the right without Tenant's consent, on ninety (90) days' prior written notice to Tenant, to substitute other premises within the Project for the Premises. In each such case, the substituted premises shall (a) contain at least the same Rentable Area as the Premises, (b) contain comparable tenant improvements, and (c) be made available to Tenant at the then current rental rate for such space, which in no event, shall exceed the per square foot rental rate in effect at the time of such substitution. Landlord shall pay all reasonable moving expenses of Tenant incidental to such substitution of premises.

#### 16. SUBORDINATION; ATTORNMENT; ESTOPPEL CERTIFICATES

Tenant agrees that this Lease and the rights of Tenant hereunder shall be subject and subordinate (a) to any and all deeds of trust, security interests, mortgages, master leases, ground leases or other security documents and any and all modifications, renewals, extensions, consolidations and replacements thereof (collectively, "Security Documents") which now or hereafter constitute a lien upon or affect the Project, the Building or the Premises, Such subordination shall be effective without the necessity of the execution by Tenant of any additional document for the purpose of evidencing or effecting such subordination. In addition, Landlord shall have the right to subordinate or cause to be subordinated any such Security Documents to this Lease and in such case, in the event of the termination or transfer of Landlord's estate or interest in the Project by reason of any termination or foreclosure of any such Security Documents, Tenant shall, notwithstanding such subordination, attorn to and become the Tenant of the successor in interest to Landlord at the option of such successor in interest. Furthermore, Tenant shall within fifteen (15) days of demand therefor execute any instruments or other documents which may be required by Landlord or the holder of any Security Document and specifically shall execute, acknowledge and deliver within fifteen (15) days of demand therefor a subordination of lease or subordination of deed of trust, in the form required by the holder of the Security Document requesting the document; the failure to do so by Tenant within such time period shall be a material default hereunder; provided, however, the new landlord or the holder of any Security Document shall agree that Tenant's quiet enjoyment of the Premises shall not be disturbed as long as Tenant is not in default under this Lease.

(b) If any proceeding is brought for default under any ground or master lease to which this Lease is subject or in the event of foreclosure or the exercise of the power of sale under any mortgage, deed of trust or other Security Document made by Landlord covering the Premises, at the election of such ground lessor, master lessor or purchaser at foreclosure, Tenant shall attorn to and recognize the same as Landlord under this Lease, provided such successor expressly agrees in writing to be bound to all future obligations by the terms of this Lease, and if so requested, Tenant shall enter into a new lease with that successor on the same terms and conditions as are contained in this Lease (for the unexpired term of this Lease then remaining).

#### (c) Intentionally Deleted.

(d) Tenant shall, upon not less than fifteen (15) days' prior notice by Landlord, execute, acknowledge and deliver to Landlord a written statement, reasonably acceptable to Landlord, certifying to those facts for which certification has been requested by Landlord or any current or prospective purchaser, holder of any Security Document, ground lessor or master lessor, including, but without limitation, that (i) this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) the dates to which the Basic Annual Rent, Additional Rent and other charges hereunder have been paid, if any, and (iii) whether or not to the best knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge. Tenant's failure to execute and deliver such statement within such time shall, at the option of Landlord, constitute a material default under this Lease and, in any event, shall be conclusive upon Tenant that this Lease is in full force and effect without modification except as may be represented by Landlord in any such certificate prepared by Landlord and delivered to Tenant for execution. Any statement delivered pursuant to this Paragraph 16 may be relied upon by any prospective purchaser of the fee of the Building or the Project or any mortgagee, ground lessor or other like encumbrancer thereof or any assignee of any such encumbrance upon the Building or the Project.

# 17. SALE BY LANDLORD; TENANT'S REMEDIES; NONRECOURSE LIABILITY

- (a) In the event of a sale or conveyance by Landlord of the Building or the Project, Landlord shall be released from any and all liability under this Lease. If the Security Deposit has been made by Tenant prior to such sale or conveyance, Landlord shall transfer the Security Deposit to the purchaser, and upon delivery to Tenant of notice thereof, Landlord shall be discharged from any further liability in reference thereto.
- (b) Landlord shall not be in default of any obligation of Landlord hereunder unless Landlord fails to perform any of its obligations under this Lease within thirty (30) days after receipt of written notice of such failure from Tenant; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, Landlord shall not be in default if Landlord commences to cure such default within the thirty (30) day period and thereafter diligently prosecutes the same to completion. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder.
- (c) Any liability of Landlord for a default by Landlord under this Lease, or a breach by Landlord of any of its obligations under the Lease, shall be limited solely to its interest in the Project, and in no event shall any personal liability be asserted against Landlord and/or any Landlord Indemnitee in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord. Tenant's sole and exclusive remedy for a default or breach of this Lease by Landlord shall be either (i) an action for damages, or (ii) an action for injunctive relief; Tenant hereby waiving and agreeing that Tenant shall have no offset rights or right to terminate this Lease on account of any breach or default by Landlord under this Lease. Under no circumstances whatsoever shall Landlord ever be liable for punitive, consequential or special damages or loss of profits under this Lease and Tenant waives any rights it may have to such damages under this Lease in the event of a breach or default by Landlord under this Lease.
- (d) As a condition to the effectiveness of any notice of default given by Tenant to Landlord, Tenant shall also concurrently give such notice under the provisions of <u>Paragraph 17(b)</u> to each beneficiary under a Security

Document encumbering the Project of whom Tenant has received written notice (such notice to specify the address of the beneficiary). In the event Landlord shall fail to cure any breach or default within the time period specified in subparagraph (b), then prior to the pursuit of any remedy therefor by Tenant, each such beneficiary shall have an additional thirty (30) days within which to cure such default, or if such default cannot reasonably be cured within such period, then each such beneficiary shall have such additional time as shall be necessary to cure such default, provided that within such thirty (30) day period, such beneficiary has commenced and is diligently pursuing the remedies available to it which are necessary to cure such default (including, without limitation, as appropriate, commencement of foreclosure proceedings).

#### 18. PARKING; COMMON AREAS

- Tenant shall have the right to the nonexclusive use of the number of parking spaces located in the parking areas of the Project specified in Item 13 of the Basic Lease Provisions for the parking of operational motor vehicles used by Tenant, its officers and employees only. Landlord reserves the right, at any time upon written notice to Tenant, to designate the location of Tenant's parking spaces as determined by Landlord in its reasonable discretion. The use of such spaces shall be subject to the rules and regulations adopted by Landlord from time to time for the use of the parking areas. Landlord further reserves the right to make such changes to the parking system as Landlord may deem necessary or reasonable from time to time; i.e., Landlord may provide for one or a combination of parking systems, including, without limitation, self-parking, single or double stall parking spaces, and valet assisted parking. Tenant's use of the parking spaces allocated in Item 13 of the Basic Lease Provisions is subject to availability, in Landlord's reasonable discretion, and Landlord shall have the right to relocate such allocated parking spaces to other parking facilities controlled by Landlord which are in reasonably close proximity to the Building. Tenant shall pay such reasonable amounts as may be charged by Landlord to Tenant for such right of use from time to time. Tenant agrees that Tenant, its officers and employees shall not be entitled to park in any reserved or specially assigned areas designated by Landlord from time to time in the Project's parking areas. Landlord may require execution of an agreement with respect to the use of such parking areas by Tenant and/or its officers and employees in form satisfactory to Landlord as a condition of any such use by Tenant, its officers and employees. A default by Tenant, its officers or employees in the payment of such charges, the compliance with such rules and regulations, or the performance of such agreement(s) shall constitute a material default by Tenant hereunder. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's officers, employees, suppliers, shippers, customers or invitees to be loaded, unloaded or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described in this Paragraph, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.
- Subject to subparagraph (c) below and the remaining provisions of this Lease, Tenant shall have the nonexclusive right, in common with others, to the use of such entrances, lobbies, restrooms, elevators, ramps, drives, stairs, and similar access ways and service ways and other common areas and facilities in and adjacent to the Building and the Project as are designated from time to time by Landlord for the general nonexclusive use of Landlord, Tenant and the other tenants of the Project and their respective employees, agents, representatives, licensees and invitees ("Common Areas"). The use of such Common Areas shall be subject to the rules and regulations contained herein and the provisions of any covenants, conditions and restrictions affecting the Building or the Project. Tenant shall keep all of the Common Areas free and clear of any obstructions created or permitted by Tenant or resulting from Tenant's operations, and shall use the Common Areas only for normal activities, parking and ingress and egress by Tenant and its employees, agents, representatives, licensees and invitees to and from the Premises, the Building or the Project. If, in the reasonable opinion of Landlord, unauthorized persons are using the Common Areas by reason of the presence of Tenant in the Premises, Tenant, upon demand of Landlord, shall correct such situation by appropriate action or proceedings against all such unauthorized persons. Nothing herein shall affect the rights of Landlord at any time to remove any such unauthorized persons from said areas or to prevent the use of any of said areas by unauthorized persons. Landlord reserves the right to make such changes, alterations, additions, deletions, improvements, repairs or replacements in or to the Building, the Project (including the Premises) and the Common Areas as Landlord may reasonably deem necessary or desirable, including, without limitation, constructing new buildings and making changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading areas, landscaped areas and walkways; provided, however, that there shall be no unreasonable permanent obstruction of access to or use of the Premises resulting therefrom. In the

event that the Project is not completed on the date of execution of this Lease, Landlord shall have the sole judgment and discretion to determine the architecture, design, appearance, construction, workmanship, materials and equipment with respect to construction of the Project. Notwithstanding any provision of this Lease to the contrary, the Common Areas shall not in any event be deemed to be a portion of or included within the Premises leased to Tenant and the Premises shall not be deemed to be a portion of the Common Areas. This Lease is granted subject to the terms hereof, the rights and interests of third parties under existing liens, ground leases, easements and encumbrances affecting such property, all zoning regulations, rules, ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction over the Project or any part thereof.

Notwithstanding any provision of this Lease to the contrary, Landlord specifically reserves the right to redefine the term "Project" for purposes of allocating and calculating Operating Costs so as to include or exclude areas as Landlord shall from time to time determine or specify (and any such determination or specification shall be without prejudice to Landlord's right to revise thereafter such determination or specification). In addition, Landlord shall have the right to contract or otherwise arrange for amenities, services (the cost of which is included within Operating Costs) or Utilities to be on a common or shared basis to both the Project (i.e., the area with respect to which Operating Costs and Utilities are determined) and adjacent areas not included within the Project, so long as the basis on which the cost of such amenities, services or Utilities is allocated to the Project is determined on an arms-length basis or some other basis reasonably determined by Landlord. In the case where the definition of the Project is revised for purposes of the allocation or determination of Operating Costs, Tenant's Proportionate Share shall be appropriately revised to equal the percentage share of all Rentable Area contained within the Project (as then defined) represented by the Premises. Notwithstanding the foregoing, Landlord agrees that in no event shall Tenant's Proportionate Share of Operating Costs increase due to Landlord redefining the term "Project." Landlord shall have the sole right to determine which portions of the Project and other areas, if any, shall be served by common management, operation, maintenance and repair. Landlord shall also have the right, in its sole discretion, to allocate and prorate any portion or portions of the Operating Costs on a building-by-building basis, on an aggregate basis of all buildings in the Project, or any other reasonable manner, and if allocated on a building-bybuilding basis, then Tenant's Proportionate Share shall, as to the portion of the Operating Costs so allocated, be based on the ratio of the Rentable Area of the Premises to the Rentable Area of the Building.

# 19. MISCELLANEOUS

- (a) Attorneys' Fees. In the event of any legal action or proceeding brought by either party against the other arising out of this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs (including, without limitation, court costs and expert witness fees) incurred in such action. Such amounts shall be included in any judgment rendered in any such action or proceeding.
- (b) <u>Waiver</u>. No waiver by either party of any provision of this Lease or of any breach by the other party hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by the other party. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval under this Lease shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act of Tenant. No act or thing done by Landlord or Landlord's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, unless in writing signed by Landlord. The delivery of the keys to any employee or agent of Landlord shall not operate as a termination of the Lease or a surrender of the Premises. The acceptance of any Rent by Landlord following a breach of this Lease by Tenant shall not constitute a waiver by Landlord of such breach or any other breach unless such waiver is expressly stated in a writing signed by Landlord.
- (c) <u>Notices</u>. Any notice, demand, request, consent, approval, disapproval or certificate ("Notice") required or desired to be given under this Lease shall be in writing and given by certified mail, return receipt requested, by personal delivery or by Federal Express or a similar nationwide overnight delivery service providing a receipt for delivery. Notices may not be given by facsimile. The date of giving any Notice shall be deemed to be the date upon which delivery is actually made by one of the methods described in this <u>Section 19(c)</u> (or attempted if said delivery is refused or rejected). If a Notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day. All notices, demands, requests, consents, approvals, disapprovals, or certificates shall be addressed at the address specified in *Item 14* of the Basic Lease Provisions or to such other

addresses as may be specified by written notice from Landlord to Tenant and if to Tenant, at the Premises. Either party may change its address by giving reasonable advance written Notice of its new address in accordance with the methods described in this Paragraph; provided, however, no notice of either party's change of address shall be effective until fifteen (15) days after the addressee's actual receipt thereof.

- (d) Access Control. Landlord shall be the sole determinant of the type and amount of any access control or courtesy guard services to be provided to the Project, if any. In all events, Landlord shall not be liable to Tenant, and Tenant hereby waives any claim against Landlord, for (i) any unauthorized or criminal entry of third parties into the Premises, the Building or the Project, (ii) any damage to persons, or (iii) any loss of property in and about the Premises, the Building or the Project, by or from any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction and/or insufficiency of the access control or courtesy guard services provided by Landlord.
- (e) <u>Storage</u>. Nothing contained herein shall be construed as a grant from Landlord to Tenant to use any storage space located in the Project. If Landlord grants Tenant the right to use any such storage space, such use shall be pursuant to the terms and conditions of a separate written agreement between the parties.
- (f) Holding Over. If Tenant retains possession of the Premises after the termination of the Lease Term, unless otherwise agreed in writing, such possession shall be subject to immediate termination by Landlord at any time, and all of the other terms and provisions of this Lease (excluding any expansion or renewal option or other similar right or option) shall be applicable during such holdover period, except that Tenant shall pay Landlord from time to time, upon demand, as Basic Annual Rent for the holdover period, an amount equal to double the Basic Annual Rent in effect on the termination date, computed on a monthly basis for each month or part thereof during such holding over. All other payments shall continue under the terms of this Lease. In addition, Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Paragraph shall not be construed as consent for Tenant to retain possession of the Premises.
- (g) <u>Condition of Premises</u>. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, LANDLORD HEREBY DISCLAIMS ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED PURPOSE OR USE, WHICH DISCLAIMER IS HEREBY ACKNOWLEDGED BY TENANT. THE TAKING OF POSSESSION BY TENANT SHALL BE CONCLUSIVE EVIDENCE THAT TENANT:
  - (i) ACCEPTS THE PREMISES, THE BUILDING AND LEASEHOLD IMPROVEMENTS AS SUITABLE FOR THE PURPOSES FOR WHICH THE PREMISES WERE LEASED:
  - (ii) ACCEPTS THE PREMISES AND PROJECT AS BEING IN GOOD AND SATISFACTORY CONDITION;
  - (iii) WAIVES ANY DEFECTS IN THE PREMISES AND ITS APPURTENANCES EXISTING NOW OR IN THE FUTURE, EXCEPT THAT TENANT'S TAKING OF POSSESSION SHALL NOT BE DEEMED TO WAIVE LANDLORD'S COMPLETION OF MINOR FINISH WORK ITEMS THAT DO NOT INTERFERE WITH TENANT'S OCCUPANCY OF THE PREMISES; AND
  - (iv) WAIVES ALL CLAIMS BASED ON ANY IMPLIED WARRANTY OF SUITABILITY OR HABITABILITY.
- (h) <u>Quiet Possession</u>. Upon Tenant's paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the term hereof without hindrance or ejection by any person lawfully claiming under Landlord, subject to the provisions of this Lease and to the provisions of any

- (i) covenants, conditions and restrictions, (ii) master lease, or (iii) Security Documents to which this Lease is subordinate or may be subordinated.
- (i) Matters of Record. Except as otherwise provided herein, this Lease and Tenant's rights hereunder are subject and subordinate to all matters affecting Landlord's title to the Project recorded in the Real Property Records of the County in which the Project is located, prior to and subsequent to the date hereof, including, without limitation, all covenants, conditions and restrictions. Tenant agrees for itself and all persons in possession or holding under it that it will comply with and not violate any such covenants, conditions and restrictions or other matters of record. Landlord reserves the right, from time to time, to grant such easements, rights and dedications as Landlord deems necessary or desirable, and to cause the recordation of parcel maps and covenants, conditions and restrictions affecting the Premises, the Building or the Project, as long as such easements, rights, dedications, maps, and covenants, conditions and restrictions do not materially interfere with the use of the Premises by Tenant. At Landlord's request, Tenant shall join in the execution of any of the aforementioned documents.
- (j) <u>Successors and Assigns</u>. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns. Tenant shall attorn to each purchaser, successor or assignee of Landlord.
- (k) <u>Brokers</u>. Tenant warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only the brokers named in *Item 12* of the Basic Lease Provisions and that it knows of no other real estate broker or agent who is or might be entitled to a commission in connection with this Lease.
- (l) Name. Landlord shall have the exclusive right at all times during the Lease Term to change, modify, add to or otherwise alter the name, number, or designation of the Building and/or the Project, and Landlord shall not be liable for claims or damages of any kind which may be attributed thereto or result therefrom.
- (m) <u>Examination of Lease</u>. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.
  - (n) <u>Time</u>. Time is of the essence of this Lease and each and all of its provisions.
- (o) <u>Defined Terms and Marginal Headings</u>. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular and for purposes of <u>Articles 5, 7, 13 and 18</u>, the term Landlord shall include Landlord, its employees, contractors and agents. If more than one person is named as Tenant the obligations of such persons are joint and several. The marginal headings and titles to the articles of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof. The pronouns of any gender shall include the other gender, and either the singular or the plural shall include the other.
- (p) <u>Conflict of Laws; Prior Agreements; Severability.</u> This Lease shall be governed by and construed pursuant to the laws of the State of Texas. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease. No prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The illegality, invalidity or unenforceability of any provision of this Lease shall in no way impair or invalidate any other provision of this Lease, and such remaining provisions shall remain in full force and effect.
- (q) <u>Authority</u>. Tenant is a municipal corporation and political subdivision of the State of Texas and acts through the City Council of the City of El Paso. Tenant hereby covenants and warrants that Tenant has full right and authority to enter into this Lease, and that the City Manager (or any person designated by the City Manager in writing) is the only person signing on behalf of the Tenant that is authorized to do so.

- (r) Event of Nonappropriation. Notwithstanding anything in this Lease to the contrary, Tenant's obligation to make the rental and other payments due hereunder is subject to appropriation by the El Paso City Council and/or other governing body of the City of El Paso of funds lawfully available to make such payments. Tenant shall provide Landlord (and if directed by Landlord, Landlord's designated lender) written notice within seventy-two (72) hours of (i) the presentation of any proposed budget to the City Council which does not include sufficient funds to meet the Tenant's payment obligations due hereunder, or (ii) the occurrence of any action by the El Paso City Council which would make unavailable or reduce any previously appropriated monies below the amounts necessary to permit Tenant to meet its payment obligations hereunder ("Notice of Nonappropriation"). Either Landlord or Tenant may elect to terminate this Lease by giving notice of such election to the other within sixty (60) days from the date of such Notice of Nonappropriation.
- (s) <u>Rental Allocation</u>. For purposes of Section 467 of the Internal Revenue Code of 1986, as amended from time to time, Landlord and Tenant hereby agree to allocate all Rent to the period in which payment is due, or if later, the period in which Rent is paid.
- (t) <u>Rules and Regulations</u>. Tenant agrees to comply with all rules and regulations of the Building and the Project imposed by Landlord as set forth on <u>Exhibit D</u> attached hereto, as the same may be changed from time to time upon reasonable notice to Tenant. Landlord shall not be liable to Tenant for the failure of any other tenant or any of its assignees, subtenants, or their respective agents, employees, representatives, invitees or licensees to comply with such rules and regulations.
- (u) <u>Joint Product</u>. This Lease is the result of arms-length negotiations between Landlord and Tenant and their respective attorneys. Accordingly, neither party shall be deemed to be the author of this Lease and this Lease shall not be construed against either party.
- (v) <u>Financial Statements</u>. Upon Landlord's written request, Tenant shall promptly furnish Landlord, from time to time, with the most current audited financial statements prepared in accordance with generally accepted accounting principles, certified by Tenant and an independent auditor to be true and correct, reflecting Tenant's then current financial condition.
- (w) Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorism, terrorist activities, inability to obtain services, labor, or materials or reasonable substitutes therefore, governmental actions, civil commotions, fire, flood, earthquake or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease and except as to Tenant's obligations under Paragraphs 6 and 8 of this Lease and Paragraph 19(f) of this Lease and any extension of the Construction Termination Date as set forth in Paragraph (d) of Exhibit B to this Lease (collectively, a "Force Majeure"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.
- (x) <u>Counterparts</u>. This Lease may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- (y) <u>APPRAISED VALUE</u>. TENANT HEREBY WAIVES ALL RIGHTS TO PROTEST THE APPRAISED VALUE OF THE PROJECT OR TO APPEAL THE SAME AND ALL RIGHTS TO RECEIVE NOTICES OF REAPPRAISALS AS SET FORTH IN SECTIONS 41.413 AND 42.015 OF THE TEXAS TAX CODE.
- (z) <u>DTPA WAIVER (WAIVER OF CONSUMER RIGHTS)</u>. IT IS THE UNDERSTANDING AND INTENTION OF THE PARTIES THAT TENANT'S RIGHTS AND REMEDIES WITH RESPECT TO THE TRANSACTIONS PROVIDED FOR AND CONTEMPLATED IN THIS LEASE (COLLECTIVELY, THIS "TRANSACTION") AND WITH RESPECT TO ALL ACTS OR PRACTICES OF LANDLORD, PAST, PRESENT OR FUTURE, IN CONNECTION WITH THIS TRANSACTION, ARE AND SHALL BE GOVERNED BY LEGAL PRINCIPLES OTHER THAN THE TEXAS DECEPTIVE TRADE PRACTICES

- CONSUMER PROTECTION ACT (THE "DTPA"). ACCORDINGLY, TENANT HEREBY (A) AGREES THAT PURSUANT TO SECTIONS 17.42 AND 17.49(F) OF THE DTPA, THIS TRANSACTION IS NOT GOVERNED BY THE DTPA AND (B) CERTIFIES, REPRESENTS AND WARRANTS TO LANDLORD THAT (I) TENANT IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION WITH LANDLORD, (II) TENANT HAS BEEN REPRESENTED BY LEGAL COUNSEL IN CONNECTION WITH THIS TRANSACTION WHO HAS NOT BEEN DIRECTLY OR INDIRECTLY IDENTIFIED, SUGGESTED OR SELECTED BY LANDLORD, ITS AGENTS OR REPRESENTATIVES AND (III) THE PREMISES WILL NOT BE OCCUPIED BY TENANT AS TENANT'S FAMILY RESIDENCE. BY ITS EXECUTION OF THIS LEASE, TENANT FURTHER AGREES TO THE FOLLOWING:

TENANT WAIVES ITS RIGHTS UNDER THE DTPA, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF TENANTS OWN SELECTION, TENANT VOLUNTARILY CONSENTS TO THIS WAIVER.

TENANT EXPRESSLY RECOGNIZES THAT THE TOTAL CONSIDERATION AS AGREED TO BY LANDLORD HAS BEEN PREDICATED UPON THE INAPPLICABILITY OF THE DTPA TO THIS TRANSACTION AND THAT LANDLORD, IN DETERMINING TO PROCEED WITH THE ENTERING INTO OF THIS LEASE, HAS EXPRESSLY RELIED ON THE INAPPLICABILITY OF THE DTPA TO THIS TRANSACTION.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the Date of this Lease.

'LANDLORD':

"TENANT":

MADISON RIVER INVESTMENTS, LLC,

a Texas limited liability company

CITY OF EL PASO, TEXAS a Municipal

Corporation

By:

Name: Joyce Wilson

Title:

City Manager

#### EXHIBITS:

Exhibit A-1 Floor Plan(s)

Exhibit A-2 Legal Description of the Project

Exhibit B Work Letter

Exhibit C Utilities and Services

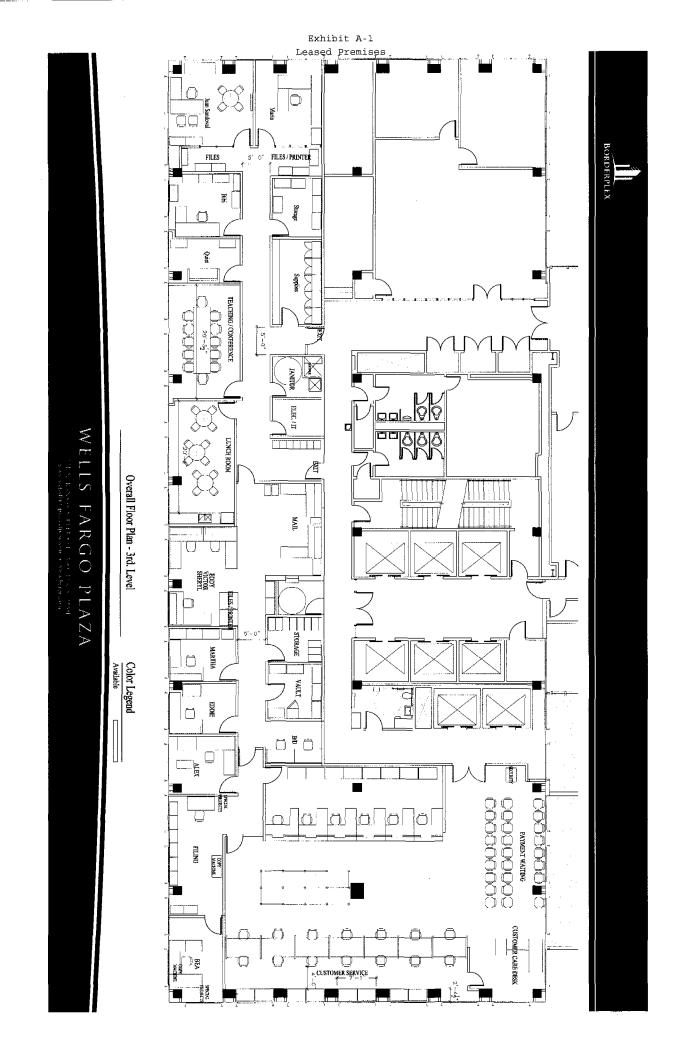
Exhibit D **Building Rules and Regulations** 

Exhibit E Tenant's Initial Certificate

Exhibit F ADA and TABA

Addendum One

2011 NOV 23 AN 11: 38



# Exhibit A-2 Legal Description of the Project SCHEDULE 1

PARCEL 1: A portion of Block 11, ANSON MILLS MAP, an addition to the City of El Paso, El Paso County, Texas, being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof.

PARCEL 2: All of Block 41 and rights in and to the alley which was vacated and closed, ANSON MILLS MAP (a/k/a MILLS ADDITION), an addition to the City of El Paso, El Paso County, Texas, being more particularly described by metes and bounds in Exhibit "B", attached hereto and made a part hereof, SAVE and EXCEPT that portion conveyed to EL PASO COUNTY 911 DISTRICT in Deed dated 7/21/05, filed 7/29/05 under file No. 20050067589, Real Property Records, El Paso County, Texas.

PARCEL 3: The franchise rights in and to an underground tunnel in and across Kansas Street by virtue of Ordinance No. 4422 dated 6/11/70, of record in Volume 305, Page 1730, Real Property Records, El Paso County, Texas; and a subsequent ordinance, passed and approved on 6/27/00, and filed in Volume 3824, Page 1125, Real Property Records, El Paso County, Texas.

#### EXHIBIT B WORK LETTER

THIS WORK LETTER constitutes the further agreement between Landlord and Tenant as follows:

- (a) <u>Tenant Improvements</u>. Landlord, as provided in Paragraph 4(a) of the Lease, agrees to furnish or perform those items of design and/or construction and those improvements (the "Tenant Improvements") specified in the Final Plans to be agreed to by Landlord and Tenant as set forth in <u>Paragraph (b)</u> below; provided, however, Landlord shall (i) pay for the cost of such Tenant Improvements up to the extent of Landlord's Construction Allowance as set forth in <u>Paragraph (e)</u> below. Tenant shall designate a Project Manager from the Tenant's Engineering and Construction Management Department to coordinate and oversee the Tenant Improvements with the Landlord.
- (b) Planner. Landlord has retained PERSPECTIVA (the "Planner") to prepare certain plans, drawings and specifications (the "Temporary Plans") for the construction of the Tenant Improvements to be installed in the Premises by a general contractor selected by Landlord pursuant to this Work Letter. Tenant shall deliver to Space Planner within ten (10) days after the execution of this Lease all necessary information required by the Space Planner to complete the Temporary Plans. Tenant shall have five (5) business days after its receipt of the proposed Temporary Plans to review the same and notify Landlord in writing of any comments or required changes, or to otherwise give its approval or disapproval of such proposed Temporary Plans. If Tenant fails to give written comments to or approve the Temporary Plans within such five (5) business day period, then Tenant shall be deemed to have approved the Temporary Plans as submitted. Landlord shall have five (5) business days following its receipt of Tenant's comments and objections to redraw the proposed Temporary Plans in compliance with Tenant's request and to resubmit the same for Tenant's final review and approval or comment within five (5) business days of Tenant's receipt of such revised plans. Such process shall be repeated twice and if at such time final approval by Tenant of the proposed Temporary Plans has not been obtained, then Landlord shall complete such Temporary Plans, at Tenant's sole cost and expense, and it shall be deemed that Tenant has approved the Temporary Plans. Once Tenant has approved or has been deemed to have approved the Temporary Plans, then the approved (or deemed approved) Temporary Plans shall be thereafter known as the "Final Plans". The Final Plans shall include the complete and final layout, plans and specifications for the Premises showing all doors, light fixtures, electrical outlets, telephone outlets, wall coverings, plumbing improvements (if any), data systems wiring, floor coverings, wall coverings, painting, any other improvements to the Premises beyond the shell and core improvements provided by Landlord and any demolition of existing improvements in the Premises. The improvements shown in the Final Plans shall (i) utilize Landlord's building standard materials and methods of construction, (ii) be compatible with the shell and core improvements and the design, construction and equipment of the Premises, and (iii) comply with all applicable laws, rules, regulations, codes and ordinances.
- General Contractor. As soon as practicable following the approval of the Final Plans, Landlord shall (i) obtain a written non-binding itemized estimate of the costs of all Tenant Improvements shown in the Final Plans as prepared by a general contractor selected by Landlord, and (ii) if required by applicable law, codes or ordinances, submit the Final Plans to the appropriate governmental agency for the issuance of a building permit or other required governmental approvals prerequisite to commencement of construction of such Tenant Improvements ("Permits"). Tenant acknowledges that any cost estimates are prepared by the general contractors and Landlord shall not be liable to Tenant for any inaccuracy in any such estimate. Within five (5) business days after receipt of the written nonbinding cost estimates prepared by the general contractors, Tenant shall either (A) give its written approval thereof and authorization to proceed with construction or (B) immediately request the Planner to modify or revise the Plans in any manner desired by Tenant to decrease the cost of the Tenant Improvements. If Tenant is silent during such five (5) business day period, then Tenant shall be deemed to have approved such non-binding cost estimate as set forth in Clause (A) above. If the Final Plans are revised pursuant to Clause (B) above, then Landlord shall request that the general contractor provide a revised cost estimate to Tenant based upon the revisions to the Final Plans. Such modifications and revisions shall be subject to Landlord's reasonable approval and shall be in accordance with the standards set forth in Paragraph (b) of this Work Letter. Within ten (10) business days after receipt of the general contractor's original written cost estimates and the description, if any, of any Tenant Delay, Tenant shall give its final approval of the Final Plans to Landlord which shall constitute authorization to commence the construction of the Tenant Improvements in accordance with the Final Plans, as modified or revised. Tenant shall

signify its final approval by signing a copy of each sheet or page of the Final Plans and delivering such signed copy to Landlord.

- (d) Construction. Construction of the Tenant Improvements shall commence within ten (10) days following the later of (i) the approval of the Final Plans, or (ii) the receipt of any, if required, building permit or other governmental approval required by applicable law, codes or ordinances as a prerequisite to commencement of construction of such Tenant Improvements ("Permits"). Landlord shall diligently pursue completion of construction of the Tenant Improvements and use its commercially reasonable efforts to complete construction of the Tenant Improvements as soon as reasonably practicable, and, subject to Tenant Delays shall endeavor to substantially complete construction of the Tenant Improvements by the Estimated Commencement Date. The term "Tenant Delay" shall include, without limitation, any delay in the completion of construction of Tenant Improvements resulting from (i) Tenant's failure to comply with the provisions of this Work Letter, (ii) any additional time as reasonably determined by Landlord required for ordering, receiving, fabricating and/or installing items or materials or other components of the construction of Tenant Improvements, including, without limitation, mill work, (iii) delay in work caused by submission by Tenant of a request for any change order (defined below) following Tenant's approval of the Final Plans, or for the implementation of any change order, or (iv) any delay by Tenant in timely submitting comments or approvals to the Temporary Plans. The failure of Tenant to take possession of or to occupy the Premises shall not serve to relieve Tenant of obligations arising on the Commencement Date or delay the payment of Rent by Tenant. The construction work to be performed by the general contractor shall be covered by the one (1) year warranty contained in the construction contract and such warranty shall be for the benefit of Tenant.
- (e) <u>Construction Allowance</u>. Subject to the terms and provisions of this Work Letter, Landlord shall pay the cost of the Tenant Improvements ("Work") up to the amount of the Construction Allowance (\$197,500.00 based upon \$25.00 per rentable square foot). If the actual cost of the Tenant Improvements is less than the Construction Allowance, then Tenant shall not receive any credit whatsoever for the difference between the actual cost of the Tenant Improvements and the Construction Allowance.

Any payments made by Landlord in excess of the Construction Allowance shall be paid by Tenant to Landlord in lump sum payment, within thirty (30) days of notice of cost overage. The cost of the permits, working drawings, hard construction costs, mechanical and electrical planning, fees, permits, general contract overhead shall be payable out of the Construction Allowance and shall be included in the cost of the Work. The cost of the Work shall not include Landlord's construction manager or any other fees payable to Landlord. Notwithstanding the foregoing, Tenant acknowledges and agrees that Landlord shall not be required to make any payments in excess of the Construction Allowance.

- Change Order. If Tenant shall desire any changes to the Final Plans, Tenant shall so advise Landlord in writing and Landlord shall determine whether such changes can be made in a reasonable and feasible manner. Any and all costs of reviewing any requested changes, and any and all costs of making any changes to the Tenant Improvements which Tenant may request and which Landlord may agree to shall be at Tenant's sole cost and expense, and shall be paid to Landlord on demand before execution of the Change order. In no event shall Landlord be obligated to accept any change order which would extend the construction period past April 1, 2012, unless such extension is mutually agreed to in writing by Landlord and Tenant prior to the commencement of said construction. If Landlord approves Tenant's requested change, addition, or alteration, the Planner, at Tenant's sole cost and expense, shall complete all working drawings necessary to show the change, addition or alteration being requested by Tenant.
- (g) <u>Substantial Completion</u>. "Substantial Completion" of construction of the Tenant Improvements shall be defined as the date upon which the Planner or another consultant engaged by Landlord provides an AIA approved written substantial completion certificate stating that the Tenant Improvements have been substantially completed in accordance with the Final Plans, except for such items that constitute minor defects or adjustments which can be completed after occupancy without causing material interference with Tenant's use of the Premises ("Punch List Items"). After substantial completion of the Tenant Improvements, Tenant shall, upon request, execute and deliver to Landlord a letter of acceptance of the Tenant Improvements constructed on the Premises, subject to the Punch List Items.

#### EXHIBIT C STANDARDS FOR UTILITIES AND SERVICES

The following are the Project Standards for Utilities and Services. Landlord reserves the right to adopt such reasonable, nondiscriminatory modifications and additions hereto as it deems appropriate.

- 1. As long as Tenant is not in default under any of the terms, covenants, conditions, provisions or agreements of this Lease, Landlord shall, subject to the limitations and provisions hereinafter set forth in this *Exhibit C*:
  - (a) Provide automatic elevator facilities on Monday through Friday from 7:00 a.m. to 6:00 p.m. and Saturday from 8:00 a.m. to 12:00 Noon, excepting state and federal holidays (hereinafter referred to as "Business Hours"), and provide one (1) automatic elevator at all other times.
  - (b) Landlord will furnish Building standard heating, ventilating and air conditioning (HVAC) during Tenant's business hours, but only to the extent the same occur between 7 a.m. and 6 p.m. on weekdays (from Monday through Friday, inclusive) and Saturdays between 8 a.m. and 12 noon, all exclusive of Holidays (defined below). Landlord will provide sufficient heating, ventilating and air conditioning to maintain an ambient temperature in the leased premises between 70 degrees Fahrenheit and 78 degrees Fahrenheit. Upon request of Tenant made in accordance with the rules and regulations for the Building, Landlord will furnish air conditioning and heating at other times (that is, at times other than the times specified above), upon request of Tenant made in accordance with the rules and regulations for the Building, in which event Tenant shall reimburse Landlord for furnishing such services at the Building standard charge therefor in effect from time to time. The current charge for providing overtime air conditioning and heating is fifty-five dollars (\$55.00) per hour per air handling unit which is activated to provide the air conditioning or heating service.

The following dates shall constitute "Holidays" as said term is used in this Lease:

- (1) New Year's Day
- (2) Memorial Day
- (3) Independence Day
- (4) Labor Day
- (5) Thanksgiving Day
- (6) Friday following Thanksgiving Day
- (7) Christmas Day
- (8) Martin Luther King Day

If in the case of any holiday described in (1) through (10) above, a different day shall be observed than the respective day above-described, then the day which constitutes the day observed by national banks in El Paso, Texas, on account of such holiday shall constitute the holiday under this lease.

- (c) Furnish to the Premises, during Business Hours, electric current for routine lighting and the operation of general office machines such as computers, printers, copiers, televisions, and the like, which use 110 volt electric power, ("Office Equipment") not to exceed the reasonable capacity of Building standard office lighting and receptacles, and not in excess of limits imposed or recommended by governmental authority.
- (d) Provide janitorial services to the Premises Monday through Friday (except state and federal holidays), provided the same are used exclusively for the uses permitted under the foregoing Lease, and are kept reasonably in order by Tenant. Tenant shall pay to Landlord the cost of removal of any of Tenant's refuse and rubbish, to the extent that the same exceeds the refuse and rubbish which generally would be produced by the use of the Premises for general office purposes.
- 2. No data processing equipment, other special electrical equipment (excluding Office Equipment utilizing 110 volt electric power), air conditioning or heating units, or plumbing additions shall be installed, nor shall any changes to the Building HVAC, electrical or plumbing systems be made without the prior written consent of 959109 v3

Landlord, which consent shall be subject to Landlord's sole and absolute discretion. In the case of any such change, Landlord reserves the right to designate and/or approve the contractor to be used. Any permitted installations shall be made under Landlord's supervision.

- 3. Landlord shall not provide reception outlets or television or radio antennas for television or radio broadcast reception, and Tenant shall not install any such equipment without prior written approval from Landlord.
- 4. Tenant will not, without the prior written consent of Landlord, use any apparatus, machine or device in the Premises, including, without limitation, any Office Equipment and machines using current in excess of 110 volts, which will in any way increase the amount of electricity or water usually furnished or supplied for use of the Premises as general office space, nor connect with electric current, except through existing electrical outlets in the Premises, any apparatus or device for the purpose of using electric current in excess of that usually furnished or supplied for use of the Premises as general office space.
- 5. Tenant agrees to cooperate fully at all times with Landlord, and to abide by all regulations and requirements which Landlord may prescribe for the proper functioning and protection of the Building HVAC, electrical, plumbing and other systems. Tenant shall comply with all laws, statutes, ordinances and governmental rules and regulations now in force or which may hereafter be enacted or promulgated in connection with Building services furnished to the Premises, including, without limitation, any governmental rule or regulation relating to the heating and cooling of the Building.

### EXHIBIT D BUILDING RULES AND REGULATIONS

- 1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways and corridors of halls shall not be obstructed or used for any purpose other than ingress and egress. The halls, passages, entrances, elevators, stairways, balconies and roof are not for the use of the general public, and the Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence, in the judgment of the Landlord, shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom the Tenant normally deals only for the purpose of conducting its business in the Premises (such as clients, customers, office suppliers and equipment vendors, and the like) unless such persons are engaged in illegal activities. No tenant and no employees of any tenant shall go upon the roof of the Building without the written consent of Landlord.
- 2. No awnings or other projections shall be attached to the outside walls of the Building. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises other than Landlord standard window coverings. All electrical ceiling fixtures hung in offices or spaces along the perimeter of the Building must be fluorescent, of a quality, type, design and bulb color approved by Landlord. Neither the interior nor the exterior of any windows shall be coated or otherwise sunscreened without the written consent of Landlord.
- 3. No sign, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by any tenant on, about or from any part of the Premises, the Building or the Project without the prior written consent of the Landlord. If the Landlord shall have given such consent at the time, whether before or after the execution of this Lease, such consent shall in no way operate as a waiver or release of any of the provisions hereof or of this Lease, and shall be deemed to relate only to the particular sign, advertisement or notice so consented to by the Landlord and shall not be construed as dispensing with the necessity of obtaining the specific written consent of the Landlord with respect to each and every such sign, advertisement or notice other than the particular sign, advertisement or notice, as the case may be, so consented to by the Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove or stop same without any liability, and may charge the expense incurred in such removal or stopping to such tenant. Interior signs on doors and the directory tablet shall be inscribed, painted or affixed for each tenant by the Landlord at the expense of such tenant, and shall be of a size, color and style acceptable to the Landlord. The directory tablet will be provided exclusively for the display of the name and location of tenants only and Landlord reserves the right to exclude any other names therefrom. Nothing may be placed on the exterior of corridor walls or corridor doors other than Landlord's standard lettering.
- 4. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into halls, passageways or other public places in the Building shall not be covered or obstructed by any tenant, nor shall any bottles, parcels or other articles be placed on the window sills. Tenant shall see that the windows, transoms and doors of the Premises are closed and securely locked before leaving the Building and must observe strict care not to leave windows open when it rains. Tenant shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage. Tenant shall cooperate with Landlord in obtaining maximum effectiveness of the cooling system by closing window coverings when the sun's rays fall directly on the windows of the Premises. Tenant shall not tamper with or change the setting of any thermostats or temperature control valves.
- 5. The toilet rooms, water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were considered, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose subtenants, assignees or any of their servants, employees, agents, visitors or licensees shall have caused the same.
- 6. No tenant shall mark, paint, drill into, or in any way deface any part of the Premises, the Building or the Project. No boring, cutting or stringing of wires or laying of linoleum or other similar floor coverings shall be permitted, except with the prior written consent of the Landlord and as the Landlord may direct.
- 7. No bicycles, vehicles, birds or animals of any kind shall be brought into or kept in or about the Premises, and no cooking shall be done or permitted by any tenant on the Premises, except that the preparation of coffee, tea, hot chocolate and similar items (including those suitable for microwave heating) for tenants and their

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employees shall be permitted, provided that the power required therefor shall not exceed that amount which can be provided by a 30 amp circuit. No tenant shall cause or permit any unusual or objectionable odors to be produced or permeate the Premises. Smoking or carrying lighted cigars, cigarettes or pipes in the Building is prohibited.

- 8. The Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the permitted use of the Premises. No tenant shall occupy or permit any portion of the Premises to be occupied as an office for a public stenographer or typist, or for the manufacture or sale of liquor, narcotics, or tobacco (except by a cigarette vending machine for use by Tenant's employees) in any form, or as a medical office, or as a barber or manicure shop, or as an employment bureau, without the express written consent of Landlord. No tenant shall engage or pay any employees on the Premises except those actually working for such tenant on the Premises nor advertise for laborers giving an address at the Premises. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purposes.
- 9. No tenant shall make, or permit to be made any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way. No tenant shall throw anything out of doors, windows or skylights or down the passageways.
- No tenant, subtenant or assignee nor any of their servants, employees, agents, visitors or licensees shall at any time bring or keep upon the Premises any inflammable, combustible or explosive fluid, chemical or substance.
- 11. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any tenant, nor shall any changes be made in existing locks or the mechanisms thereof. Each tenant must, upon the termination of his tenancy, restore to Landlord all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such tenant and in the event of the loss of keys so furnished, such tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such changes.
- 12. All removals, or the carrying in or out of any safes, freight, furniture, or bulky matter of any description must take place during the hours which Landlord shall determine from time to time, without the express written consent of Landlord. The moving of safes or other fixtures or bulky matter of any kind must be done upon previous notice to the Project Management Office and under its supervision, and the persons employed by any tenant for such work must be acceptable to the Landlord. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building all safes, freight or other bulky articles which violate any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part. Landlord reserves the right to prescribe the weight and position of all safes, which must be placed upon supports approved by Landlord to distribute the weight.
- 13. No tenant shall purchase spring water, ice, towel, janitorial maintenance or other similar services from any person or persons not approved by Landlord.
- 14. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's opinion, tends to impair the reputation of the Building or the Project or its desirability as an office location, and upon written notice from Landlord, any tenant shall refrain from or discontinue such advertising.
- 15. Landlord reserves the right to exclude from the Building between the hours of 6:00 P.M. and 7:00 A.M. and at all hours on Saturday, Sunday and legal holidays all persons who do not present a pass or card key to the Building approved by the Landlord. Each tenant shall be responsible for all persons who enter the Building with or at the invitation of such tenant and shall be liable to Landlord for all acts of such persons. Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of an invasion, mob riot, public excitement or other circumstances rendering such action advisable in Landlord's opinion, Landlord reserves the right, without abatement of Rent, to require all persons to vacate the Building and to prevent access to the Building during the continuance of the same for the safety of the tenants, the protection of the Building, and the property in the Building.
- 16. Any persons employed by any tenant to do janitorial work shall, while in the Building and outside of the Premises, be subject to and under the control and direction of the Project Management Office (but not as an agent or servant of said Office or of the Landlord), and such tenant shall be responsible for all acts of such persons.

- 17. All doors opening onto public corridors shall be kept closed, except when in use for ingress and egress.
- 18. The requirements of Tenant will be attended to only upon application to the Project Management Office.
- 19. Canvassing, soliciting and peddling in the Building are prohibited and each tenant shall report and otherwise cooperate to prevent the same.
- 20. All office equipment of any electrical or mechanical nature shall be placed by Tenant in the Premises in settings approved by Landlord, to absorb or prevent any vibration, noise or annoyance.
- 21. No air conditioning unit or other similar apparatus shall be installed or used by any tenant without the written consent of Landlord.
- 22. There shall not be used in any space, or in the public halls of the Building, either by any tenant or others, any hand trucks, except those equipped with rubber tires and rubber side guards.
- 23. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of Landlord.
  - 24. The scheduling of tenant move-ins shall be subject to the reasonable discretion of Landlord.
- 25. If the Tenant desires telephone or telegraph connections, the Landlord will direct electricians as to where and how the wires are to be introduced. No boring or cutting for wires or otherwise shall be made without direction from the Landlord.
- 26. The term "Personal Goods or Services Vendors" as used herein means persons who periodically enter the Building of which the Premises are a part for the purpose of selling goods or services to a tenant, other than goods or services which are used by the Tenant only for the purpose of conducting its business in the Premises. "Personal Goods or Services" include, but are not limited to, drinking water and other beverages, food, barbering services and shoe shining services. Landlord reserves the right to prohibit personal goods and services vendors from access to the Building except upon Landlord's prior written consent and upon such reasonable terms and conditions, including, but not limited to, the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Building, the preservation of good order thereon, and the relief of any financial or other burden on Landlord or other tenants occasioned by the presence of such vendors or the sale by them of personal goods or services to the Tenant or its employees. If necessary for the accomplishment of these purposes, Landlord may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time in the Building.
- 27. Non-Smoking Building. The Building is a non-smoking building. Smoking is prohibited at all times within the entire Building, including all leased premises, as well as all public/common areas. This prohibition applies during business and non-business hours to restrooms, elevators, elevator lobbies, first floor lobby, stairwells, common hallways, the lunch room and any other public/common area, as well as to all areas within the Leased Premises by Tenants. Smoking is only permitted in the designated smoking area outside the Building and away from the entrances to the Building. At any time during the Lease Term, upon thirty (30) days prior written notice to the tenants of the Building, Landlord can designate the Project as a "no smoking building", and enforce a no smoking rule within the Project.
- Weapons Prohibited. The Building and Project is a weapons free environment. No tenant, owner of a tenant, officer or employee of a tenant, visitor of tenant, contractor or subcontractor of tenant, or any other party shall carry weapons (concealed or not) of any kind in the building, or parking areas. This prohibition applies to all public areas, including without limitation, restrooms, elevators, elevator lobbies, first floor lobby, stairwells, common hallways, all areas within the leased premises of tenants, all surface parking areas and the surrounding land related to the building.

### EXHIBIT E TENANTS INITIAL CERTIFICATE

MAD	MADISON RIVER INVESTMENTS, LLC, a Texas limited liability company ("Landlord")			
El Paso, Texas 79901				
d into be	between MADISON RIVER INVESTMENTS, L			
1.	The undersigned has accepted possession and the Lease.	entered into occupancy of the Premises described in		
2.	The Commencement Date of the Lease was	·		
3.	The expiration date of the Lease is			
4.	The Lease is in full force and effect and has no	t been modified or amended.		
<ol> <li>Landlord has performed all of its obligations to improve the Premises for occuundersigned.</li> </ol>		o improve the Premises for occupancy by the		
	V	ery truly yours,		
	ā			
v	В	y:		
		ame:itle:		
	The linto and li	The undersigned, as the Tenant under that certain Lead into between MADISON RIVER INVESTMENTS, Lead undersigned, as Tenant, hereby certifies that:  1. The undersigned has accepted possession and the Lease.  2. The Commencement Date of the Lease was  3. The expiration date of the Lease is  4. The Lease is in full force and effect and has not undersigned.  V  B N  B N		

## EXHIBIT F <u>AMERICANS WITH DISABILITIES ACT</u> AND TEXAS ARCHITECTURAL BARRIERS ACT

Subject to any changes in either Act, Tenant agrees to comply with all requirements of the Americans With Disabilities Act of 1990 (Public Law 101-336 {July 26, 1990}) ("ADA") and the Texas Architectural Barriers Act (Article 9102, Tex. Rev. Civ. St. {1990}) ("TABA") applicable to the Premises and the Project to accommodate its employees, invitees and customers. Tenant acknowledges that it shall be wholly responsible for any accommodations or alterations which need to be made to the Premises. No provision in this Lease should be construed in any manner as permitting, consenting to or authorizing Tenant to violate requirements under either such Act and any provision to the Lease which could arguably be construed as authorizing a violation of either Act shall be interpreted in a manner which permits compliance with such Act and is hereby amended to permit such compliance.

# Addendum One to Lease Agreement dated Member 29, 2011 ("Lease") by and between Madison River Investments, LLC as Landlord and City of El Paso, Texas (Consolidated Tax Office), as Tenant

This Addendum One ("Addendum") is executed simultaneously with the Lease and is attached to and part of the Lease. Notwithstanding anything in the Lease to the contrary, Landlord and Tenant agree as follows, which terms shall control over any contrary terms and provisions set forth in the Lease:

- 1. <u>Defined Terms</u>. Capitalized terms used in this Addendum and not otherwise defined shall have the same meaning as such terms are given in the Lease
- 2. <u>Peak Season</u>. Landlord and Tenant acknowledge that Tenant will have a very high customer volume each year during the Lease Term during the period from January 15<sup>th</sup> through January 31<sup>st</sup> on account of taxpayers paying their taxes in person at the Premises. The period from January 15<sup>th</sup> through January 31<sup>st</sup> of each year during the Lease Term is hereinafter referred to as the "Peak Season". Tenant further acknowledges that the high volume of customers physically visiting the Premises during the Peak Season will require that Tenant retain extra personnel to provide security and traffic control during the Peak Season. Accordingly, Landlord and Tenant agree that Tenant will provide such additional personnel as hereinafter specified in paragraphs 3 and 4 below.
- Customer Parking. Tenant acknowledges that the parking available in the detached parking garage located adjacent to the Building ("Parking Garage") will not be available to Tenant's customers during Peak Season, and that parking for customers of Tenant in the Parking Garage, while available to Tenant's customers during times of the year other than Peak Season, may not be adequate for Tenant's customer volume. Accordingly, Tenant acknowledges that Landlord does not provide for or guarantee the adequacy of hourly parking availability to Tenant's customers in the Parking Garage. Tenant agrees to provide sufficient traffic control personnel during Peak Season to insure that all of Tenant's customers are directed (i) not to park in the Parking Garage, and (ii) to park in off-premises parking. Landlord shall have the right to notify Tenant at any time during the term of this Lease that its traffic management control is not adequate, in which event Tenant agrees to take prompt and reasonable measures to provide an adequate level of parking control such that Tenant's customer volume does not impede, impair or otherwise adversely affect ingress and egress to the Parking Garage and/or other areas of the Building.

#### 4. Security:

Tenant acknowledges that it has inspected the Premises and that Tenant is not relying (a) upon Landlord to provide security to the Premises or otherwise for the benefit of Tenant, its employees, agents, customers, invitees, contractors, or licensees. Tenant acknowledges that Tenant is responsible for its own security at the Premises. Tenant has not relied upon any statement or representation made by Landlord or any of its agents or employees regarding the adequacy or existence of any security measures or services on the Premises or within the Project. Tenant expressly waives any claim against Landlord its agents or employees arising out of Landlord's failure to provide security, or the inadequacy of any such service if provided. Tenant acknowledges that Landlord has no express or implied duty to provide any security measures whatsoever. Landlord has voluntarily elected, at Landlord's sole option, to provide general security in some Common Areas of the Building as of the Commencement Date of this Lease, but reserves the right, in its sole discretion, to replace such security with access control systems or other security monitoring systems and to modify, increase, and/or terminate such on site security altogether without liability to Tenant, its employees, agents, invitees contractors or licensees. Landlord will have no duty to notify Tenant of such changes to or termination of on-site security. Tenant is advised by Landlord to employ adequate security personnel, guards and employees, and to install all necessary alarms, devices and other security measures for Tenant's benefit at Tenant's sole cost and expense. Any such measures or devices must comply with all applicable laws, ordinances and local guidelines governing their installation and monitoring, including but not limited to, the payment of any and all fees or charges assessed by any governmental agency in connection therewith. Landlord has no responsibility to prevent, and is not liable to Tenant for, any loss to Tenant, its employees, agents, customers, or invitees due to theft, burglary, or damages, including injury or death to persons or property, caused or done by persons gaining access to the Premises or the Building or parking areas.

(b) During Peak Season, and at any other times as may be required, Tenant shall also provide additional security personnel, guards or employees for the purpose of crowd control into and out of the Premises, the Building and areas adjoining the Project to the extent affected by Tenant's customer flow to and from the Premises.

#### 5. Renewal Option.

- (a) Subject to the terms and conditions contained in this Addendum One, Tenant is hereby granted two (2) options (the "Renewal Option") to renew the term of this Lease for a period of five (5) additional years each (the "Renewal Term"), to commence on the day immediately following the date of the expiration of the Initial Term of this Lease (the "Renewal Term Commencement Date"). Tenant shall exercise its option to renew by delivering written notice (the "Preliminary Notice") of such election to Landlord no earlier than nine (9) months prior to expiration of the current term and no later than six (6) months prior to the expiration of the then current term.
- (b) The renewal of this Lease shall be for the entire Premises (as then constituted) and upon the same terms and conditions of this Lease, except that (i) the Basic Annual Rent during the Renewal Term shall be the prevailing Market Base Rental Rate (as hereinafter defined) for similar space in the downtown El Paso, Texas area at the time the applicable Renewal Term commences, (ii) Tenant shall have no option to renew this Lease beyond the expiration of the first Renewal Term, and (iii) the Premises will be provided in their then existing condition (on an "as is" basis) at the time the Renewal Term commences.
- (c) Within thirty (30) days following its receipt of the Preliminary Notice, Landlord shall notify Tenant in writing of Landlord's good faith determination of the Market Base Rental Rate for leases commencing as of the applicable Renewal Term Commencement Date, and Tenant shall have an additional period of thirty (30) days after receipt of such notice to make one of the following elections by written notice (the "Final Notice") to Landlord:
- (i) accept Landlord's determination of the Market Base Rental Rate for purposes of determining the annual Base Rental rate during the Renewal Term and confirm Tenant's exercise of the applicable Renewal Option by the El Paso City Council; or
- withdraw its exercise of the applicable Renewal Option, in which event this Lease shall terminate and expire at the end of the initial term of this Lease or the then current Renewal Term, as applicable. The term "Market Base Rental Rate" as used herein shall mean the rate charged to tenants for space of comparable size, location and condition, and for a comparable term, in other first class office buildings in the downtown El Paso area under leases and/or renewals entered into within the twelve (12) months immediately preceding the date Landlord receives the Preliminary Notice. In determining the Market Base Rental Rate, consideration shall be given to the location, quality and age of each building (including the Building), use of the space in question, location and/or floor level within each building, definition of "rentable" area, leasehold improvements or improvement allowances to be provided, abatements (including with respect to base rental, Operating Costs and taxes, and parking charges), lease takeovers/assumptions, moving/relocation allowances, space planning allowances, refurbishment and repainting allowances and other concessions, extent of services provided or to be provided, distinction between "gross" and "net" lease, base year or dollar amount for escalation purposes (inclusive of operating costs, management fees and ad valorem/real estate taxes), and other adjustments (including by way of indexes) to base rental, leasing or brokerage commissions, credit standing and financial stature of the tenant, term or length of lease, and the time the particular rental rate under consideration was agreed upon and became or is to become effective, or any other relevant term or condition contained in comparable lease transactions.

[signature page follows]

Executed by Landlord and Tenant as of Slamble 7, 2011.

Landlord:

Madison River Investments, LLC

By: Stew Long

Title: VP

Date:  $\frac{12}{7}$ 

Tenant:

City of El Paso, Texas

By:

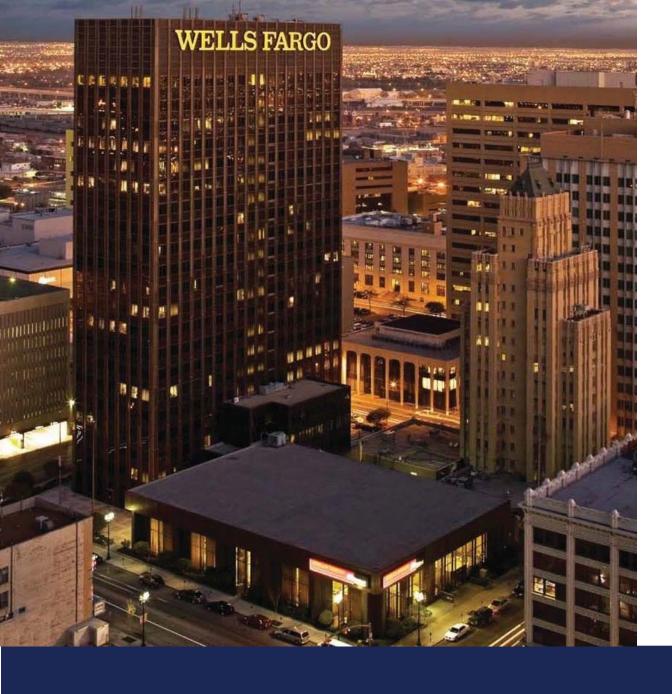
Title: City Manager

### Tax Office Lease – 221 Kansas, Ste 300

Sam Rodriguez, P.E., CM, CFM, CNU-A – City Engineer

Council – November 9, 2021





# **Property Overview**



• Location: Wells Fargo Plaza

• Address: 221 Kansas, Suite 300

• Size: 7,977 Rentable Square Feet



### OVERVIEW OF CURRENT TAX OFFICE LEASE



- User Department: Tax Office
- Landlord: Mills Plaza Properties / Franklin Mountain Properties
- **Initial Term:** 10 years
- Effective Date: June 1, 2012
- Expiration Date: May 31, 2022
- Options to Renew: Two (2) options; five (5) years each
- No Days to Exercise Option: One hundred eighty (180) days prior to expiration
- Current Rental Rate: \$11,391.68/month or \$136,700.16/year
- Renewal Rental Rate: \$12,630.25/month or \$151,563.00/year; 11% increase
- Renewal Term: 5 years



# Proposed Approach



- Renew lease agreement to allow time to identify & evaluate leases held by the City for various departments
- Masterplan potential future relocation to a City owned facility









### **Mission**

Deliver exceptional services to support a high quality of life and place for our community

### Vision

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government

### ☆ Values

Integrity, Respect, Excellence, Accountability, People

#### **Legislation Text**

File #: 21-1234, Version: 1

#### **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

Districts 3, 5, 6 and 7

Capital Improvement Department, Sam Rodriguez, (915) 212-1808

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

That the City Manager, or designee, be authorized to sign a First Amendment to Agreement for Professional Services by and between the CITY OF EL PASO and GRV Integrated Engineering Solutions, LLC., a Texas Limited Liability Corporation, for a project known as "YARBROUGH, GEORGE DIETER AND LEE TREVINO ARTERIAL LIGHTING AND LANDSCAPE IMPROVEMENTS" to allow additional basic services for construction administration increasing the contract amount by \$63,405 extending the contract amount from \$503,956.76 to \$567,361.76. Further, that the City Engineer is authorized to approve Additional Services for an amount not to exceed \$36.595 if such services are necessary for the proper execution of the project and that the increased amounts are within the appropriate budgets of the project for a total amount of \$603,956.76; and that the City Manager is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for the execution of the Agreement.

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

**AGENDA DATE: November 9,2021** 

**PUBLIC HEARING DATE: N/A** 

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

(915) 212-1808

DISTRICT(S) AFFECTED: 3, 5, 6 & 7

STRATEGIC GOAL: No.7: Enhance and Sustain El Paso's Infrastructure Network

SUBGOAL: 7.5 Set one standard for infrastructure across the city.

#### **SUBJECT:**

That the City Manager, or designee, be authorized to sign a First Amendment to Agreement for Professional Services by and between the CITY OF EL PASO and GRV Integrated Engineering Solutions, LLC., a Texas Limited Liability Corporation, for a project known as "YARBROUGH, GEORGE DIETER AND LEE TREVINO ARTERIAL LIGHTING AND LANDSCAPE IMPROVEMENTS" to allow additional basic services for construction administration increasing the contract amount by \$63,405 extending the contract amount from \$503,956.76 to \$567,361.76. Further, that the City Engineer is authorized to approve Additional Services for an amount not to exceed \$36,595 if such services are necessary for the proper execution of the project and that the increased amounts are within the appropriate budgets of the project for a total amount of \$603,956.76; and that the City Manager is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for the execution of the Agreement.

#### **BACKGROUND / DISCUSSION:**

The Yarbrough, George Dieter and Lee Trevino Roadway segments are part of the City of El Paso's Top 25 Arterials earmarked for Safety and Landscape Improvements. Funding was approved by City Council on April 30, 2018 and the rollout was provided to City Council on August 21, 2018. This Contract was presented to CC on November 13, 2018.

#### PRIOR COUNCIL ACTION:

April 30, 2018 – City Council approved the funding for the 2019 Capital Plan November 13, 2018 – City Council approved the funding for the engineering services

#### **AMOUNT AND SOURCE OF FUNDING:**

\$8,327,600.00 – 2019 Capital Plan

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES\_\_\_NO

**PRIMARY DEPARTMENT:** Capital Improvement Department

**SECONDARY DEPARTMENT:** Streets & Maintenance

#### 

#### **DEPARTMENT HEAD:**

Sam Rodriguez, P.E., City Engineer

#### RESOLUTION

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

That the City Manager, or designee, be authorized to sign a First Amendment to Agreement for Professional Services by and between the CITY OF EL PASO and **GRV Integrated Engineering Solutions, LLC.**, an Texas Limited Liability Corporation, for a project known as "YARBROUGH, GEORGE DIETER AND LEE TREVINO ARTERIAL LIGHTING AND LANDSCAPE IMPROVEMENTS" to allow additional basic services for construction administration increasing the contract amount by \$63,405 extending the contract amount from \$503,956.76 to \$567,361.76. Further, that the City Engineer is authorized to approve Additional Services for an amount not to exceed \$36,595 if such services are necessary for the proper execution of the project and that the increased amounts are within the appropriate budgets of the project for a total amount of \$603,956.76; and that the City Manager is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for the execution of the Agreement.

ADOPTED THIS DAY	OF2021.
	CITY OF EL PASO:
	Oscar Leeser, Mayor
ATTEST:	
Laura D. Prine	
City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:  Serry DeMuro/for
Omar De La Rosa	Samuel Rodriguez, P.E., City Engineer
Assistant City Attorney	Capital Improvement Department

THE STATE OF TEXAS )	FIRST AMENDMENT
)	AGREEMENT
COUNTY OF EL PASO )	FOR PROFESSIONAL SERVICES

This First Amendment to that certain Agreement for Professional Services ("First Amendment") is made this \_\_ day of \_\_, 2021, by and between the City of El Paso, a Texas municipal corporation (the "Owner"), and GRV Integrated Engineering Solutions, LLC, (the "Consultant").

**WHEREAS**, on November 13, 2018, the Owner entered into an Agreement for Professional Services for (the "*Agreement*") with the Consultant for a Project known as "Yarbrough, George Dieter, and Lee Trevino Arterial Lighting and Landscape Improvements" (the "*Project*");

**WHEREAS**, the parties hereto further desire to amend the Agreement to increase the contract amount by \$63,405 extending the contract amount from \$503,956.76 to \$567,361.76 to allow additional basic services for construction administration.

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

- **Scope of Services.** The Owner hereby authorizes the Consultant to continue to perform the Services as described in Attachment "A" of the Agreement.
- **2. Payments to Consultant.** Section 3.1 of the Agreement (Payment to Consultant) is amended to read as follows:

**3.1 PAYMENT TO CONSULTANT.** The Owner shall pay the Consultant an amount not to exceed \$567,361.76 for all basic services and reimbursables performed pursuant to this Agreement.

If authorized in advance by the City Engineer, in a form approved by the City Attorney, the consultant may perform Additional Services as enumerated within **Attachment "C'** in an amount not to exceed \$36,595, if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding \$36,595 must have prior approval by City Council through written amendment to this Agreement.

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

Payments to the Consultant shall be made pursuant to Attachment "D".

3.	<u>Terms and Conditions</u> . All terms and conditions of the Agreement and a Amendments thereto, except as herein revised, shall remain in full force and		
	WITNESS THE FOLLOWING	SIGNATURES AND SEALS:	
		THE CITY OF EL PASO	
		Tomás González, City Manager	
APP	PROVED AS TO FORM:	APPROVED AS TO CONTENT:	
	ar De La Rosa stant City Attorney	Sam Rodriguez, PE City Engineer Capital Improvement Dept.	
	ACKN	OWLEDGEMENTS	
	E STATE OF TEXAS \$  \$ UNTY OF EL PASO \$		
by <b>T</b>	This instrument was acknowledge comás González, as City Manager of	ed before me on this day of, 2021, of the City of El Paso, Texas.	
		Notary Public, State of Texas	
My	commission expires:		

#### **CONSULTANT**

Name: Marvin H. Gomez

Title: Principal

THE STATE OF TEXAS §

COUNTY OF EI PASO §

This instrument was acknowledged before me on this <u>No</u> day of <u>October</u>, 2021, by <u>Marvin</u> of GRV Integrated

Engineering Solutions, LLC.

Notary Public, State of Texas

My commission expires:

JUANITA ROBLES GOMEZ Notary Public, State of Texas My Commission Expires February 12, 2025

### ATTACHMENT "A" SCOPE OF SERVICES

#### <u>SECTION I – PROJECT DESCRIPTION</u>

The City of El Paso is requesting Statements of Qualification from interested and qualified firms to provide architect and engineering services for the Yarbrough Drive, George Dieter Drive and Lee Trevino Drive arterial lighting and median and parkway landscape improvements project. The primary objective is to improve the visual impression of the community and enhance the regional comprehensive transportation system. The selected consultant will contract directly with the City of El Paso and will work cooperatively with the City and other project members to successfully provide the full scope of professional services required.

#### **CONSTRUCTION BUDGET: \$5,412,940**

#### **SECTION II – SCOPE OF SERVICES**

The scope of services will provide median and parkway landscape improvements throughout the project limits on George Dieter Drive and Lee Trevino Drive, and arterial lighting and median and parkway landscape improvements throughout the project limits on Yarbrough Drive.

PROJECT LIMITS: Yarbrough Drive from Loop 375 to I-10

George Dieter Drive from Zaragoza Road to Montana Avenue Lee Trevino Drive from North Loop Drive to Montana Avenue

#### Yarbrough Drive

Loop 375 to North Loop – Roadway lighting and median landscape North Loop to I-10 – Roadway lighting, median and parkway landscape

#### **George Dieter**

Zaragoza Road to Vista Del Sol Drive – Median and parkway landscape Montwood Drive to Montana Avenue – Parkway landscape

#### Lec Trevino

North Loop to I-10 – Median landscape I-10 to Rojas Drive – Median and parkway landscape Rojas Drive to Montana Avenue – Parkway landscape

#### Scope of Landscape Work on Medians

- Trees spaced at 30-foot intervals
- Shrubs placed at intervals in accordance with the City's Capital Improvement Department Median and Parkway Landscape Standards
- Trees placed in a double row configuration in areas where median width is sufficient
- Shrubs shall maintain consistent pattering throughout the median
- Automatic drip irrigation system
- Weed barrier fabric
- Rock aggregate at 3-inch depth

#### Scope of Landscape Work on Parkways

- Trees spaced at 30-foot intervals
- Shrubs placed between trees
- Automatic drip irrigation system

- Weed barrier fabric
- Rock aggregate at 3-inch depth

#### **DESIGN CRITERIA**

#### **Arterial Lighting**

The project includes the design and construction of roadway lighting in compliance with the current City of El Paso Roadway Lighting Standards, utilizing full cutoff light fixtures or cutoff light fixtures within the existing medians on Yarbrough Drive. The plans shall include electrical distribution, trenching at existing medians and boring under streets between medians. Illumination shall be dark-sky compliant utilizing LED, and must be based on photometric studies that provide full roadway illumination in accordance with City Code requirements. Any utilities serving illumination poles shall be located underground.

#### Landscaping

The project includes the design and construction of median and parkway landscape improvements on Yarbrough Drive, George Dieter Drive and Lee Trevino Drive.

#### Tree and Plant Selection

Trees and plants shall be selected from the City's approved tree and plant list. Honey Mesquite trees, Chinese Pistache trees, or similar trees shall be the predominant tree used in the median. Shrubs shall consist of various flowering varieties throughout different seasons, such as Lynn's Legacy Sage, Yellow Bells, Red Bird of Paradise, Rosemary, Autumn Sage, Turpentine Bush, Damianita, and other similar plants. No cactus, yucca, or century plant shall be utilized. Trees shall be a minimum of 3-inch caliper. Shrubs shall be a minimum of five gallon.

#### **Green Infrastructure Elements**

The consultant, where feasible, shall provide options for water harvesting elements and other green infrastructure.

#### Other Requirements and Information

Installation of new water meters shall be based on coordination with El Paso Water. Door-to-door outreach will be conducted by City staff.

#### SERVICES REQUIRED

#### Investigation

The consultant is responsible for meeting with stakeholders to obtain, at a minimum, copies of the City's Design Standards for Construction.

#### Utility Investigation, Services and Coordination

The consultant shall coordinate the project design with all utility companies that will be affected by the improvements. The purpose is to minimize utility relocation without compromising design standards. The consultant shall submit all applications to the utilities on behalf of the City, however, the City will pay all utility service fees. It is not the consultant's responsibility to pull the installation of the service, all activities required as part of the installation of the service will be coordinated and performed by the contractor doing the work.

All utility service requests shall be completed and submitted by the consultant before the construction documents are submitted for bid advertisement. The consultant shall prepare all metes and bounds descriptions for utility easements and/or vacations. The consultant shall coordinate easements and/or vacations with City staff and the respective utility companies. All documents and coordination efforts by the consultant shall be completed by or before the final design phase due date.

The consultant shall pothole all utilities to determine both the vertical and horizontal alignments. This information will allow for a more complete project design and will minimize the potential conflicts during construction.

The consultant shall obtain all available horizontal and vertical information on utility lines, valves, covers, manholes, etc. from the different utility companies during the preliminary design phase, and these existing utility structures shall be shown on the preliminary design phase plan submittal.

The consultant shall correspond and meet with all affected utility companies to discuss the proposed design and to determine if a relocation is needed. If a relocation is required, the extent of the relocation will be determined. If a dispute arises, the consultant shall promptly set up a meeting between the City Project Manager and the utility company to discuss and resolve the issue.

The consultant, on behalf of the City, shall request that all affected utility companies relocate the services that are in conflict with the project improvements. However, each utility company can request that the City include, as part of the street and drainage improvement bid package, the relocation of their utility lines, provided that the utility company enters into an agreement with the City and provides the funding. The consultant shall coordinate this effort with the utility companies and advise them of the City's policy to minimize pavement cuts on new roadways.

All correspondence and meeting minutes shall be submitted to the City when each design phase is due. The construction documents shall show all utility company contacts, and shall clearly show all existing and proposed utility lines. All documents and coordination efforts by the consultant shall be completed by or before the final design phase due date. The consultant shall submit all utility clearance letters from each utility company by or before the project is advertised for bid.

#### Planning

The consultant shall assist the City by providing schedules for obtaining utility easements, utility services lines and other permits.

#### Soils Investigation

The consultant shall provide a soil investigation report for this project, including analyses performed, and recommendations for needed soil amendments to make the soil adequate for tree, shrub and sod growth.

#### Surveys

The consultant shall provide all topographic and horizontal surveys necessary to complete the design. The existing City right-of-way limits and easements shall be provided and shall be identified on the plans.

#### Design Analysis and Project Design

The consultant shall perform a design analysis for each project to ensure public safety. Furthermore, all design analysis must comply with all applicable City, County, State, and Federal laws and regulations.

Design shall meet all City requirements for the project and shall be performed in phases as presented in the Project Schedule.

The consultant is responsible for the submittal of a turnkey design product. The consultant shall determine the discipline of the State of Texas licensed designers that will be required by the state to perform this type of project design. The irrigation design shall be designed by a licensed irrigator registered in the State of Texas and shall comply with the City of El Paso Design Standards for Construction.

Besides complying with local codes, the consultant shall comply, at a minimum, with the City of El Paso's Design and Construction Standards, the City's Grading Ordinance, the City's Capital Improvement Department Drawing Guidelines, the National Association of City Transportation Official's guidance and the Dark Sky Ordinance as applicable.

The consultant shall ensure that the project design is completed in compliance with all federal, state and local regulations and ordinances.

Early in the design the consultant shall coordinate the selection of materials and equipment with the appropriate City support departments.

#### Bidding

The consultant shall submit the following for bidding:

- Full and complete sealed set of drawings both in hard copy and electronic format
- Full and complete sealed set of technical specifications both in hard copy and electronic format
- Detailed scope of work both in hard copy and electronic format
- Detailed unit price bid proposal form both in hard copy and electronic format
- Detailed real world value cost estimate in hard copy

During the bidding process, the consultant shall assist the City with, but not limited to the following items: respond to all questions from perspective bidders, attend a pre-bid conference, and if required prepare addendums. The bids shall be advertised as a unit price contract and selection of the bidders shall be a "CSP", Competitive Sealed Proposal, selection.

#### Construction

During the construction phase, the City may request that the consultant provide construction observation services, billable on a time and materials basis, which may include but not limited to:

- Attendance at the weekly construction meeting scheduled by the City Project Manager.
- Conduct weekly project site visits and produce a project observations report within three (3) business days of the project site visit.
- Respond to Requests for Information (RFIs) from the project contractor.
- Review and approve contractor technical submittals within a schedule previously established by the City Project Manager.
- · Providing advice and recommendation to the City.
- Participate in punch list inspections and produce punch lists for submittal to the City.
- Produce a set of reproducible (24"X36") and electronic format "as-built" drawings.

#### **Technical Specifications**

The consultant shall prepare and provide technical specifications. The specifications shall be based on accepted national specifications. *Sole sourcing will not be allowed*. All specifications must include type of materials listed in the construction drawings, placement method and quality control and quality assurance testing. The specifications shall correlate with unit price format. All specifications must comply with established specification standards and formats. The consultant shall provide both design and performance specifications.

#### Building Permits, Special Permits, and Other Land Use Permits

The consultant shall comply with all local, state, and federal building codes. The consultant shall submit the required number of plan sets to the City of El Paso Planning and Inspections Department. The Landscaping, Roadway Lighting and Irrigation Plans, as applicable, shall be submitted for review and approval during the final design phase period. The consultant shall be responsible for obtaining the required approvals from the City of El Paso Planning and Inspections Department before the construction documents are submitted for bid advertisement. As applicable, it shall be the responsibility of the consultant to follow up on the review and approval process with the City of El Paso Planning and Inspections Department. The consultant shall not be responsible for pulling the permit. The pulling of the permit shall be the responsibility of the contractor. It is the responsibility of the City of El Paso Planning and Inspections Department to review the grading and drainage, storm water pollution prevention plan, and electrical permit requirements.

The consultant shall prepare all documents that include, but are not limited to, metes and bounds descriptions, site plans, elevations, layouts, and applications for permits. The consultant shall represent the City to make presentations and answer questions at the open house meetings and at City Council meetings.

#### Storm Water Pollution Prevention Plan

The consultant shall prepare and provide a storm water pollution prevention plan. The consultant shall be responsible to be knowledgeable on the storm water pollution prevention plan requirements. The storm water pollution prevention plan shall be submitted to the City of El Paso Planning and Inspections Department for review and approval.

#### Public Involvement

The consultant shall assist the City throughout public outreach activities in providing plans/exhibits showing the improvements and how improvements will affect adjacent property owners and in identification of stakeholders. Community meetings will be held for the design phase and the consultant shall be responsible to attend and make a presentation of the improvements and answer questions.

#### Construction Sequencing Plan

The consultant shall prepare a construction sequencing plan and submit it at all design phase submittals for review. The City will review and approve the sequencing plan. The contractor shall not be given the option of developing the sequence of construction.

#### **Construction Schedule**

The consultant shall meet with the City Project Manager and Construction Manager to determine the construction schedule for each phase, order of work, and which phases will be done concurrently. The meeting shall be held after pre-final plans are submitted but before the final design notice to proceed is issued. The information will allow the consultant to prepare a current market cost estimate at the final design phase submittal.

#### PRODUCTS REQUIRED

**Drawings and Specifications** 

#### **Preliminary Design**

During the preliminary design phase, the consultant shall obtain or perform all boundary, topographic and horizontal surveys necessary for the project.

Upon completion of the preliminary design phase, the consultant shall submit five (5) hard copies and five (5) copies in PDF format (on five (5) individual CDs or flash drives) of the preliminary design documents for review and comments in accordance with the schedule. Within three (3) business days of submitting the preliminary design plans, the consultant shall schedule a meeting with the City to discuss the comments.

The consultant shall submit the following preliminary design phase submittal:

- Coversheet (90% complete)
- Landscape Architectural Plan and Details (50% complete)
- Electrical Plan and Details (50% complete)
- Horizontal Control Plan (90% complete)
- Demolition Plan (90% complete)
- Construction Notes (50% complete)
- Storm Water Pollution Prevention Plan (75% complete)
- Typical Construction Details (75% complete)
- Site Plan (75% complete)
- Grading Plan (50% complete)
- Landscape Plan (50% complete)
- Typical Landscape Details (75% complete)
- Preliminary Irrigation Layout (40% complete)

- Typical Irrigation Details (75% complete)
- Outline of Specs (90% complete)

If the City determines that the submittal does not comply with the above required completion percentages, the consultant shall resubmit in accordance with the above requirements.

After the comments have been provided by City staff and addressed by the consultant, the consultant shall submit five (5) copies of the revised preliminary design package to the City within five (5) business days.

The City Project Manager and the consultant shall attend the City Design Review (CDR) meetings to present and address any comments and/or issues by the review board in order for CID to give direction to the project manager and the consultant to proceed with the next phase of the project.

## Pre-Final Design

Upon completion of the pre-final design phase, the consultant shall submit five (5) hard copies and five (5) copies in PDF format (on five (5) individual CDs or flash drives) of the preliminary design documents for review and comments in accordance with the schedule. Within three (3) business days of submitting the preliminary design plans, the consultant shall schedule a meeting with the City to discuss the comments.

The consultant shall submit the following pre-final design phase submittal:

- Coversheet (100% complete)
- Architectural Plan and Details (75% complete)
- Electrical Plan and Details (75% complete)
- Horizontal Control Plan (100% complete)
- Demolition Plan (100% complete)
- Construction Notes (90% complete)
- Storm Water Pollution Prevention Plan (100% complete)
- Typical Construction Details (100% complete)
- Special Construction Details (75% complete)
- Site Plan (95% complete)
- Grading Plan (95% complete)
- Landscape Plan (95% complete)
- Typical Landscape Details (100% complete)
- Special Landscape Details (75% complete)
- Pre-final Irrigation Layout (75% complete)
- Typical Irrigation Details (100% complete)
- Special Irrigation Details (75% complete)
- Outline of Specs (100% complete)
- Technical Specification (75% complete)

If the City determines that the submittal does not comply with the above required completion percentages, the consultant shall resubmit in accordance with the above requirements.

After the comments have been provided by City staff and addressed by the consultant, the consultant shall submit five (5) copies of the revised pre-final design package to the City within five (5) business days.

The City Project Manager and the consultant shall attend the CDR (City Design Review) meeting to present and answer any comments and/or issues by the review board in order for CID to give direction to the project manager and the consultant to proceed with the next phase of the project.

## Final Design

Upon completion of the final design phase, the consultant shall submit five (5) hard copies and five (5) copies in PDF format (on five (5) individual CDs or flash drives) of the preliminary design documents for review, comments and approval in accordance with the schedule. Within three (3) business days of submitting the preliminary design plans, the consultant shall schedule a meeting with the City to discuss the comments.

The consultant shall submit, at a minimum, the following final design phase submittal, as applicable:

- Cover Sheet (100% complete)
- Architectural Plan and Details (100% complete)
- Electrical Plan and Details (100% complete)
- Horizontal Control Plan (100% complete)
- Demolition Plan (100% complete)
- Construction Notes (100% complete)
- Storm Water Pollution Prevention Plan (100% complete)
- Typical Construction Details (100% complete)
- Special Construction Details (100% complete)
- Site Plan (100% complete)
- Grading Plan (100% complete)
- Landscape Plan (100% complete)
- Typical Landscape Details (100% complete)
- Special Landscape Details (100% complete)
- Pre-final Irrigation Layout (100% complete)
- Typical Irrigation Details (100% complete)
- Special Irrigation Details (100% complete)
- Outline of Specifications (100% complete)
- Technical Specifications (100% complete)

If the City determines that the submittal does not comply with the above required completion percentages, the consultant shall resubmit in accordance with the above requirements.

The City Project Manager and the consultant shall attend the CDR (City Design Review) meeting to present and answer any comments and/or issues by the review board in order for CID to give direction to the project manager and the consultant to proceed with the next phase of the project.

## **Bidding and Construction**

For bidding purposes the consultant shall submit a CD or flash drive consisting of PDFs and AutoCAD files of the sealed construction drawings, sealed technical specifications, scope of work, and unit price bid proposal form.

Before bid opening the consultant shall provide a CD or flash drive consisting of PDFs of the revised sealed construction drawings, revised sealed technical specifications, revised scope of work, revised unit price bid proposal form, and written bid clarifications.

After bid opening and before preconstruction meeting the consultant shall provide a CD or flash drive consisting of PDFs of the revised sealed construction drawings, revised sealed technical specifications, revised scope of work, revised unit price bid proposal form, and written bid clarifications. The consultant shall also provide ten (10) paper plan sets of the revised sealed construction drawings, revised sealed technical specifications, revised scope of work, revised unit price bid proposal form, and written bid clarifications.

During construction project closeout the consultant shall produce and provide a set of reproducible (24"X36") and PDF format "as-built" drawings.

#### Cost Estimates

The consultant shall develop and submit the construction cost estimates in each design phase. The construction cost estimate is expected to be within ten percent (10%) of the bid for base bid item expected from the lowest responsible bidder. The consultant's final estimate shall take into account all labor costs that shall be based on the current City prevailing wage rates as adopted by the City Council.

#### **Design Analysis**

Design analysis shall include all engineering calculations for review by the City, governmental authorities who may have jurisdiction over each construction contract, and public utilities.

#### Reproduction

The consultant shall be responsible for printing for the different phases and for code review requirements.

## OTHER CONSIDERATIONS

- Work to be coordinated with the Capital Improvement Department, Streets and Maintenance Department, and affected stakeholders not specifically mentioned.
- Design shall follow the City's Information Technology Department requirements for computer and telephone systems, if applicable.

## PROJECT SCHEDULE:

Preliminary Design Phase:

Pre-Final Design Phase: Final Design Phase:

45 consecutive calendar days

60 consecutive calendar days 20 consecutive calendar days

# ATTACHMENT "B" CONSULTANT'S FEE PROPOSAL AND HOURLY RATES

PREPARED: 6/4/2021 Revised: 10/06/2021

958.50

Subtotals

\$2,274.84 **\$2,274.84** 

\$2,402.64

\$2,402.64 \$2,351.52 \$4,965.03 \$7,207.92 \$5,993.82

\$22,920.93

\$25,195.77

From May 2021 to February 2022 (10 Months)	Senior PM		Techncial Reviewer		Project Engineer		CAD/Survey Tech			Admin
	Hours		Hours		Hours		Hours		Hours	
SCOPE OF WORK		\$204.48				\$95.85		\$63.90		\$79.88
ENGINEERING SERVICES										
TASK 100 - PROJECT MANAGEMENT										
100.1 Perform contract administration and management duties, prepare monthly										
progress reports, and invoices.	8	\$1,635.84	0	\$0.00	0	\$0.00	0	\$0.00	8	\$639.00
Subtotal Hours and Salary Cost	8	\$1,635.84	0	\$0.00	0	\$0.00	0	\$0.00	8	\$639.00
TASK 600 - CONSTRUCTION ADMINISTRATION										
600.1 Attend Bi-weekly Meetings	8	\$1,635.84		\$0.00	8	\$766.80	0	\$0.00	0	\$0.00
600.2 Provide responses to RFIs	4	\$817.92		\$0.00	16	\$1,533.60	0	\$0.00	0	\$0.00
600.3 Coordinate with Construction Manager	21	\$4,294.08		\$0.00	7	\$670.95	0	\$0.00	0	\$0.00
600.3 Site Visit to verify constructed improvements	24	\$4,907.52		\$0.00	24	\$2,300.40	0	\$0.00	0	\$0.00
600.3 Prepare Record Drawings	4	\$817.92		\$0.00	24	\$2,300.40	40	\$2,556.00	4	\$319.50
Subtotal Hours and Salary Cost	61	\$12,473.28	0	0	79	\$ 7,572.15	40	\$2,556.00	4	\$319.50
Totals for Hours and Salary Cost	69	\$14,109.12	0	\$ -	79	\$ 7,572.15	40	\$ 2,556.00	12	\$ 958.50
•							•	•		•
TOTAL LABOR		\$25,195.77			<b>PROJEC</b>	T COSTS	UNIT	BILLING RATE	QTY	TOTAL
			_		Mileage		mile	\$0.55	50	\$27.50
DIRECT COSTS		\$27.50			Copying	(Letter Size)	page	\$0.10	0	\$0.00
			_		11x17 Cd	ppies	sheet	\$0.30	0	\$0.00
SUBCONSULTANTS (construction administration services subs)					Blackline	s (24 x 36)	sheet	\$1.75	0	\$0.00
					Mylars (2	4x36)	sheet	\$12.00	0	\$0.00
Greenway (Attend Coordination Meetings, Conduct Final Site Visits and Record	d Drawing	\$31,795.00								
Dannenbaum (prepare record drawings for Yarbrough Illumination)		\$6,387.20								
								TOTAL DIRECT	COSTS	\$27.50
TOTAL SUBS		\$38,182.20								
	-									
TOTAL ENGINEERING SERVICES FEE		\$63,405,47	I							

## ATTACHMENT "C" CONSULTANT'S BASIC AND ADDITIONAL SERVICES

For the "YARBROUGH, GEORGE DIETER AND LEE TREVINO ARTERIAL LIGHTING AND LANSCAPE IMPROVEMENTS" hereinafter referred to as the Project, the Consultant will provide the Basic and Additional Services as noted herein.

## BASIC SERVICES OF THE CONSULTANT

## **GENERAL**

- 1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated.
- 2. The Consultant shall comply with the City of El Paso Engineering Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under this Agreement.
- 3. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.
- 4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with oversight and management of the Project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

## **REPORT PHASE**

- 1. Upon receipt of the Owner's written authorization to proceed with the **Report Phase**, the Consultant shall:
  - a. Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.
  - **b.** Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.
  - c. (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory testing, and (d) Inspection on other special sequeltation (2).
  - (d) Inspection or other special consultation; (2) Act as the Owner's representative in

connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

- d. Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant's recommendations.
- e. As per Attachment "D", furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.
- 2. Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 3. As identified in the Scope of Work in Attachment "A", the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

## PHASE I - PRELIMINARY DESIGN PHASE

The Consultant shall do the following:

- 1. Consult with the Owner to determine the Owner's requirements for the Project.
- 2. Provide at the Consultant's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not

limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

- 3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.
- 4. Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.
- 5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.
- 6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.
- 8. Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.
- 9. As per Attachment "D", furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

## PHASE II - PRE-FINAL DESIGN PHASE

The Consultant shall do the following separately:

1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant's assistance in obtaining such approvals shall

include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.

- 2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the "Drawings," to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called "Specifications." These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.
- 3. Advise the Owner of any adjustment to the Consultant's previous opinion of probable construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant's cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor's method of pricing and that the Consultant's opinion of probable construction costs are made on the basis of professional judgment and experience. The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.
- 4. Prepare proposal forms.
- 5. As per Attachment "D", furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

## **PHASE III - FINAL DESIGN PHASE**

The Consultant shall do the following:

- 1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.
- 2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility company comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.
- 3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.
- 4. As per Attachment "D", furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.
- 5. As per Attachment "D", furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.
- 6. Additional copies of the drawings and specifications beyond those identified in Attachment "D", required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

### **BIDDING PHASE**

Upon receipt of Owner's written request, the Consultant shall provide any of the following services during the Bidding Phase:

- 1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.
- 2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.
- 3. Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.
- 4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment "D", deliver copies of all addenda to the Owner for appropriate action.

- As identified in Attachment "A", assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.
- 6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

## **CONSTRUCTION PHASE**

At Owner's request, the Consultant shall provide any of the following services associated with the Construction Phase:

- 1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.
- 2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.
- 3. Unless otherwise stipulated in Attachment "A", Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.
- 4. Visit each construction site at least once each week or more frequently, if necessary, to observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

- 5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. Such review must be complete within ten City working days following receipt of submittal documents. The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.
- 6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner's approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract documents, subject to the Owner's interpretation of such terms and conditions. If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.
- Passed on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.
- 8. Conduct with the Owner and construction contractor no more than two brief preliminary inspections, at times requested by the construction contractor to determine if the Project is ready for final inspection.
- 9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the

construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The "punch list" shall be furnished to the construction contractor and the Owner within two City working days after the final inspection.

- 10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within two City working days after the final inspection.
- 11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.
- 12. Furnish the Owner one set of reproducible (D format) "record" drawings on Mylar showing changes made during the construction process, based on the marked-up prints, drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format
- 13. Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.
- 14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.
- 15. Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.
- 16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.
- 17. Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.
- 18. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.
- 19. Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.
- 20. Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.

- 21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.
- 22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.
- 23. Provide additional or extended services during construction made necessary by: a) work damaged by fire or other cause during construction; b) prolongation of the construction contract time by more than twenty-five percent provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Consultant; c) Acceleration of the work schedule involving services beyond normal city working hours; or d) the construction contractor's default under the construction contract due to delinquency or insolvency.
- 24. Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.
- 25. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

## ADDITIONAL SERVICES OF THE CONSULTANT

## GENERAL

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

- 1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.
- 2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner's scope or budget, except where the Consultant's preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant's final design cost opinions by ten percent or more.
- 3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.

- 4. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.
- 5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

## **RESIDENT PROJECT SERVICES**

- 1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.
- 2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.
- 3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

## ATTACHMENT "D" PAYMENT SCHEDULE

For the "YARBROUGH, GEORGE DIETER AND LEE TREVINO ARTERIAL LIGHTING AND LANSCAPE IMPROVEMENTS", hereinafter referred to as the Project, the Owner will compensate the Consultant an amount not to exceed FIVE HUNDRED THREE THOUSAND NINE HUNDRED FIFTY SIX AND 76/100 DOLLARS (\$503,956.76) for all Basic Services and reimbursables noted within the Agreement and its attachments.

#### PAYMENT SCHEDULE

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

## **Lump Sum Payment to Consultant**

Report Phase	\$ 0.00
<b>Preliminary Design Phase</b>	\$ 255,506.63
Pre-Final Design Phase	\$ 137,848.71
Final Design Phase	\$ 77,624.41
Bidding Phase	\$ 12,477.89
Construction Phase	\$ 20,499.12

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

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

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

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

Receipts: Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable*.

No single invoice may include items for both August and September of any given year. The Owner's fiscal year begins on September 1<sup>st</sup> of each year and ends on August 31<sup>st</sup> of each year. The Consultant's invoices must be separated into items that end August 31<sup>st</sup> and those that begin on Septembers 1<sup>st</sup> of any given year, to coincide with the Owner's fiscal year.

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

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

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

#### DELIVERABLE SCHEDULE

#### REPORT PHASE

The services called for in the Report Phase of this Agreement shall be completed concurrently with the preliminary design phase and **five** (5)copies of the Preliminary Study and Report shall be submitted within 67 consecutive calendar days following the written authorization from the Owner for the Consultant to proceed. The time frame set forth in the written authorization from the Owner for the Consultant to proceed.

### PHASE I—PRELIMINARY DESIGN PHASE

The services called for in **Phase I** of this Agreement shall be completed and **ten** (10) **copies** of any required documents and opinion of probable construction costs shall be submitted within 67 **consecutive calendar** days following written authorization from the Owner for the Consultant to proceed. The time frame set forth in the written authorization from the Owner for the Consultant to proceed. If Owner does not approve the preliminary design documents, the Consultant shall furnish **five** (5) **copies** of the resubmitted design documents.

## PHASE II—PRE-FINAL DESIGN PHASE

The services called for in **Phase II** of this Agreement shall be completed and **ten** (10) **copies** the required documents and services shall be submitted within **76 consecutive calendar** days following written authorization from the Owner for the Consultant to proceed. The time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE III—FINAL DESIGN PHASE

The services called for in Phase III of this Agreement shall be completed and ten (10) copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within 37 consecutive calendar days following written 18-1004-909/PL#838832

Yarbrough, George Dieter and Lee Trevino Arterial Lighting & Landscape Improvements Professional Services Agreement GRV Integrated Engineering Solutions, LLC.//SMC

authorization from the Owner for the Consultant to proceed. After review, the Consultant shall submit to Owner Three (3) copies of the final revised design documents and specifications for final check. Upon the approval of the final design documents, the Consultant shall furnish ten (10) copies of the final design documents and specifications for bidding to the Owner within 5 consecutive calendar days following written authorization from the Owner for the Consultant to proceed. The time frame set forth in the written authorization from the Owner for the Consultant to proceed.

## PHASE IV—BIDDING PHASE

Provide services as authorized by Owner during the bid phase as described in Attachment "C" and submit one (1) copy of all addenda to the Owner for appropriate action within two (2) consecutive calendar days.

## PHASE V - CONSTRUCTION PHASE

Provide services as authorized by Owner during construction phase as described in Attachment "C" and submit one set of Mylar and one set of electronic media format copies of all record drawings to the Owner within sixty (60) days from the date of substantial completion.

## ATTACHMENT "E" INSURANCE CERTIFICATE

Client#: 1067205 GRVINTEG

## $ACORD_{\cdot\cdot\cdot}$

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 9/17/2021

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 any rights to the certificate holder in lieu of such endorsement(s).

, ,	· /	
PRODUCER	CONTACT NAME:	
USI Southwest	PHONE (A/C, No, Ext): 713 490-4600	FAX (A/C, No): 713-490-4700
9811 Katy Freeway, Suite 500	E-MAIL ADDRESS:	[ (AG, NO).
Houston, TX 77024	INSURER(S) AFFORDING COVERAG	GE NAIC#
713 490-4600	INSURER A: Sentinel Insurance Company Ltd.	11000
INSURED	INSURER B : Hartford Fire Insurance Company	19682
GRV Integrated Eng. Solutions, LLC	INSURER C : Beazley Insurance Company, Inc.	37540
11385 James Watt Dr., Ste. B-13 El Paso, TX 79936	INSURER D: Hartford Accident & Indemnity Compa	any 22357
	INSURER E :	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

	CONTRACTOR CONTRACTOR CONTRACTOR				DI 1700 CE/O		
	TYPE OF INSURANCE			(MM/DD/YYYY)	(MM/DD/YYYY)	LIMIT	S
Х	COMMERCIAL GENERAL LIABILITY		61SBARU2546	01/09/2021	01/09/2022	EACH OCCURRENCE	\$1,000,000
	CLAIMS-MADE X OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
						MED EXP (Any one person)	\$10,000
						PERSONAL & ADV INJURY	\$1,000,000
GEN	N'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE	\$2,000,000
	POLICY PRO- JECT LOC					PRODUCTS - COMP/OP AGG	\$2,000,000
	OTHER:						\$
AUT	TOMOBILE LIABILITY		61UECHF5039	01/09/2021	01/09/2022	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
X	ANY AUTO					BODILY INJURY (Per person)	\$
	OWNED SCHEDULED AUTOS					BODILY INJURY (Per accident)	\$
Χ	HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident)	\$
							\$
X	UMBRELLA LIAB X OCCUR		61SBARU2546	01/09/2021	01/09/2022	EACH OCCURRENCE	\$2,000,000
	EXCESS LIAB CLAIMS-MADE					AGGREGATE	\$2,000,000
	DED X RETENTION \$10000						\$
	RKERS COMPENSATION		61WBCAJ9180	01/29/2021	01/29/2022	X PER STATUTE OTH-	
ANY	PROPRIETOR/PARTNER/EXECUTIVE T / N	N/A				E.L. EACH ACCIDENT	\$1,000,000
(Mai	ndatory in NH)					E.L. DISEASE - EA EMPLOYEE	\$1,000,000
						E.L. DISEASE - POLICY LIMIT	\$1,000,000
Pro	ofessional Liab		C2C83C210201	09/23/2021	09/23/2022	\$2,000,000 per claim	1
Cla	nims Made &		See Above			\$2,000,000 annl agg	r.
Re	ported Pol						
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Professional Liability Retro: 9/23/13 \$1M/\$1M 9/23/20 \$2M/\$2M

The General Liability and Auto Liability policy(s) includes an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder when there is a written contract that requires such status, and only with regard to work performed on behalf of the named insured. All policies provide an automatic Waiver of Subrogation when required by written contract. Umbrella follows form. (See Attached Descriptions)

CERTIFICATE HOLDER	CANCELLATION
The City of El Paso, Capital Improvement Department City 2, 218 N. Campbell, 2nd	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
floor	AUTHORIZED REPRESENTATIVE
El Paso, TX 79901	Jenus Ce. Jonnever
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DESCRIPTIONS (Continued from Page 1)
RE: Yarbrough, George Dieter & Lee Trevino Arterial Lighting & Landscape Improvements. Additional Insured includes: Owner.



First Amendment For Construction Administration for the Yarbrough, George Dieter & Lee Trevino Landscaping and Lighting Services Contract

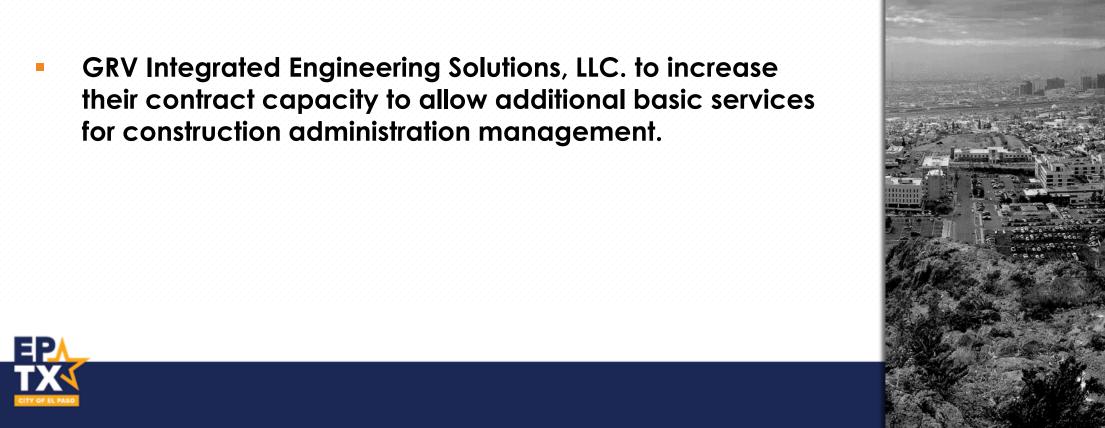
November 9th, 2021

Strategic Goal No. 7 Set one standard for infrastructure across the city





# Completion of YARBROUGH, GEORGE DIETER AND LEE TREVINO ARTERIAL LIGHTING AND LANDSCAPE IMPROVEMENTS:





# Yarbrough, George Dieter & Lee Trevino



Location:	Yarbrough, George Dieter & Lee Trevino Corridors (various locations)
Districts:	3,5,6 and 7
Initial NTE Capacity:	\$303,730.76
	\$63,595.00
Total Budget Capacity	\$8,327,600
Funding Source:	2019 Capital Plan CO
Schedule:	Unchanged, Spring 2022

## EPA TX CITY OF EL PASO

# **Procurement Summary**

- Recommendation
  - Increase the capacity of existing YARBROUGH, GEORGE DIETER AND LEE TREVINO ARTERIAL LIGHTING AND LANDSCAPE IMPROVEMENTS contract with:
    - GRV Integrated Engineering Solutions, LLC., in the amount of \$63,595 for a total contract amount not to exceed \$567,361.76;
    - Authorized to approve Additional Services for an amount not to exceed \$36,595 if such services are necessary for the proper execution of the project for a total amount of \$603,956.76.
- Rationale
  - Work has already commenced and the additional capacity gives the firm the ability to complete the project.







# Mission

Deliver exceptional services to support a high quality of life and place for our community

# Vision

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government

# ☆ Values

Integrity, Respect, Excellence, Accountability, People







Brindar servicios excepcionales para respaldar una vida y un lugar de alta calidad para nuestra comunidad

## Visión

Desarrollar una economía regional vibrante, vecindarios seguros y hermosos y oportunidades recreativas, culturales y educativas excepcionales impulsadas por un gobierno de alto desempeño

# ☆ Valores

Integridad, Respeto, Excelencia, Responsabilidad, Personas



## El Paso, TX

300 N. Campbell El Paso, TX

## **Legislation Text**

File #: 21-1272, Version: 1

## **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

## **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

Community and Human Development, Nicole Ferrini, (915) 212-1659

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

That the Mayor of the City of El Paso, Texas be authorized to sign a Resolution of no objection for a 2021 4% Non-Competitive, Low Income Housing Tax Credit (LIHTC) application submitted by EP Salazar II, LP to the Texas Department of Housing and Community Affairs (TDHCA) for the rehabilitation of approximately 302 affordable rental housing units at 311 S. Eucalyptus Street, El Paso, Texas 79905 (aka Salazar Apartments).

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

AGENDA DATE: 11/9/2021 (consent)

**PUBLIC HEARING DATE: N/A** 

CONTACT PERSON(S) NAME AND PHONE NUMBER: Nicole Ferrini, 915-212-1659

**DISTRICT(S) AFFECTED:** All Districts

**STRATEGIC GOAL:** Goal 8 – Nurture and promote a healthy, sustainable community

**SUBGOAL:** 8.2 – Stabilize neighborhoods through community, housing and ADA improvements.

## **SUBJECT:**

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the Mayor of the City of El Paso, Texas be authorized to sign a resolution of no objection for a 2021 4% Non-Competitive, Low Income Housing Tax Credit (LIHTC) application submitted by EP Salazar II, LP to the Texas Department of Housing and Community Affairs (TDHCA) for the rehabilitation of approximately 302 affordable rental housing units at 311 S. Eucalyptus Street, El Paso, Texas 79905 (aka Salazar Apartments).

## **BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Pursuant to Tex. Gov't Code §2306.67071, Tax-Exempt Bond Applications applying for Housing Tax Credits after September 1, 2013 must submit a resolution of no objection from the applicable Governing Body. Such resolution must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. For an application with a Development Site that is located within a municipality, the resolution must come from the Governing Body of that municipality. The proposed project will rehabilitate approximately 302 affordable housing units at 311 S. Eucalyptus Street, El Paso, Texas 79905 (aka Salazar Apartments).

## **PRIOR COUNCIL ACTION:**

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

## AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer? N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

**PRIMARY DEPARTMENT:** Department of Community + Human Development **SECONDARY DEPARTMENT:** N/A

## **DEPARTMENT HEAD:**

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

## RESOLUTION

WHEREAS, EP Salazar II, LP has proposed a development for affordable rental housing of approximately 302 units that will be located at 311 S. Eucalyptus Street in the City of El Paso; and

WHEREAS, EP Salazar II, LP has submitted an application to the Texas Department of Housing and Community Affairs for 2021 Housing Tax Credits for Salazar Apartments;

It is hereby

**RESOLVED**, that in accordance with the requirements of Tex. Gov't Code §2306.67071 and 10 TAC §11.204(4), it is hereby found that:

- 1. Notice has been provided to the Governing Body in accordance with Tex. Gov't Code, \$2306.67071(a); and
- 2. The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development; and
- 3. The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code, §2306.67071(b); and
- 4. After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application; and

**FURTHER RESOLVED** that for and on behalf of the Governing Body, Laura Prine, City Clerk is hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs.

APPROVED this day of	2021.
	THE CITY OF EL PASO:
ATTEST:	Oscar Leeser Mayor
Laura D. Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Wendi N. Vineyard Assistant City Attorney	Nicole M. Ferrini, Director Community and Human Development



## 2022 LOW INCOME HOUSING TAX CREDIT REQUEST FOR MUNICIPAL RESOLUTION

The City of El Paso requires the following information in order to process a request for support resolution for the Texas Dept. of Housing and Community Affairs as part of the 2022 Low Income Housing Tax Credit (LIHTC) application process.

All 9% LIHTC applicants must fill out Sections A, B, and D. Section C is for 9% LIHTC applicants seeking City financial support.

4% HTC applicants must fill out sections A, B and D only.

• The deadline for 9% Housing Tax Credit Requests for Municipal Resolution is Friday, November 5, 2021 by 5:00 pm (MST)

SECTION A. PROPERTY AND CONTACT INFORMATION
Applicant/Developer: EP Salazar II, LP
2. Contact Person: Tom Deloye
3. Applicant Address: 304 Texas Avenue, Suite 1600
Phone: (847) 769-4173 E-Mail: tdeloye@ephome.org
4. Name of Proposed Development: Salazar Apartments
5. Proposed Development Address/Location: 311 S. Eucalyptus Avenue, El Paso, TX
6. Type of Tax Credit requested of TDHCA (ex. 9% Statewide At-Risk or 9% Regional Competitive): 4% Non-Competitive LIHTC

#### SECTION B. PROJECT INFORMATION

- 1. Project type (rehabilitation, new construction, adaptive reuse, etc.): Rehabilitation
- 2. Provide a written narrative explaining why the particular type of tax credit is being requested and how the proposed development meets TDHCA criteria and the City of El Paso adopted Evaluation Criteria for Requests for Local Government Support of LIHTC Proposals. To accomplish this, the narrative should include detailed descriptions of how the proposed development meets each of the criteria for Value Statements 2, 3, 4, and 5 in the City's adopted evaluation criteria (attached to this form). Narrative must be no more than 10 pages, single-spaced, 12 pt. Arial or Calibri font, 1" margins. Submit as Attachment B-2.
- 3. Total cost of development (as prepared by an Architect, Engineer or Contractor): \$54,229,189
- 4. Cost per square foot: \$\frac{183}{}
- 5. Amount of tax credits being requested of TDHCA: \$2,670,244
- 6. Number of units & housing mix for proposed development (1, 2 or 3 bedroom) and Number of Affordable Units

Units/bedroom Size:	Total Quantity	Market Rate	80% AMI	60% AMI	50% AMI	30% AMI
1 Bedroom	16			16		
2 Bedroom	81			81		
3 Bedroom	118			118		
4 Bedroom	87			87		
Totals	302			302		

7. Is the proposed development site properly zoned for pro	posed development? Yes V No No
a. Current Zoning: A-2	
8. Are property taxes current for the site? Yes	No
If yes, provide a copy of current property tax receipt, or p	rint-out from:
https://actweb.acttax.com/act_webdev/elpaso/index.jsp	Submit as Attachment B-8.
9. Is the property located in a flood zone? Yes	No V
10. Submit location map showing the project site. Submit a	as Attachment B-10.
11. Submit project Site Plan (and renderings if available). S	submit as Attachment B-11.
SECTION C. FOR THOSE PROJECTS SEEKING FINA	NCIAL SUPPORT FROM CITY FUNDS
1. Total amount of funds requested from City HOME/CDBG	funds: \$0.00
Or, total amount of requested fee waiver from the C	ity of El Paso: <u>\$ 0.00</u>
2. Indicate use of all funds by category and amount (for the	se requesting HOME/CDBG funds):
Acquisition:	\$
Design/Soft Costs:	\$
New Construction of Housing Units:	\$
Rehabilitation/Conversion of Housing Units:	\$
Funds from other sources:	\$
Total Project Cost:	\$
3. Relocation of Tenants (for rehabilitation and/or reconstru	action developments):
How many of the existing dwelling units are occupie	od? 0 Vacant? 286
If completely vacant, how long has the property bee	
Are any of the units owner-occupied? None	
Will Temporary or permanent relocation be required	<sub>I?</sub> No
4. Section 3 Agreement (for those requesting HOME/CDBC	G funds): If the project construction amount totals more than
\$200,000, the owner/contractor agrees to meet or exceed S	, , , , , ,
•	Section 3 businesses; and (2) offering 50% of new employment
	ion of the Housing and Urban Development (HUD) Act of 1968
that requires that recipients of certain HUD financial assista	
·	ow income residents in connection with projects and activities
	nistered by the City necessitate following Section 3 provisions.
Do you agree to meet or exceed the Section 3 requ	
<ul><li>5. Submit the following financial documents (for those reque</li></ul>	
a. Applicant's financial statement or most rec	·
h Applicant's Current Income Tay Return S	

- 6. Submit the following Relocation documents (if applicable):
  - a. Copy of Relocation Plan. Submit as Attachment C-6.a.
  - b. Proof of approval of Relocation Plan by HUD. Submit as Attachment C-6.b.
  - List of all households to be displaced, list must include date of issuance of General Information Notices
    and date of issuance of Relocation Notices for all households. Submit as Attachment C-6.c.

**Please note:** Phase I Environmental Assessment must be submitted to Community & Human Development for review prior to execution of any HOME or CDBG funding agreements.

### SECTION D. CERTIFICATIONS

## RETURN COMPLETED 9% LIHTC REQUESTS FOR MUNICIPAL RESOLUTION WITH ALL ATTACHMENTS NO LATER THAN NOVEMBER 5, 2021 BY 5:00 PM (MST).

Submittals received after 5:00 pm on November 5, 2021 MST will not be considered for support.

Applications must be submitted by emailing a link to your application contained within a file sharing service. Please notify DCHD staff by emailing **housingprograms@elpasotexas.gov** that your application has been stored with a file sharing service to include the link for access. DCHD must receive this email prior to the application deadline. Applications must be submitted electronically unless a waiver has been issued allowing you to submit your application in paper form. Instructions for submitting your paper application will be contained in the waiver for electronic submission.

## 4% HTC REQUESTS FOR MUNICIPAL RESOLUTION WILL BE ACCEPTED ON A ROLLING BASIS THROUGHOUT THE YEAR

Person authorized to sign on behalf of proposed development:

I/we declare that I/we have examined this request and, to the best of my/our knowledge and belief, the information contained therein is true, correct, and complete.

Signature (required):  Thomas J. Deloye  Printed Name/Title:	 <sub>Date:</sub> <u>10-15-21</u>
FOR STAFF USE ONLY: Received by:	Date:
Review for Completeness by:	





VICINITY MAP SCALE: 1" = 1000'

**LEGEND** 

G TELEPHONE PEDESTAL TP CITY MONUMENT

> CENTER LINE MAILBOX

WATER BOX

GURAD POST

IRON FENCE TRAFFIC LIGHT

CHAIN FENCE

CAR STOPPER

HANDICAP SYMBOL

TRAFFIC LIGHT BOX

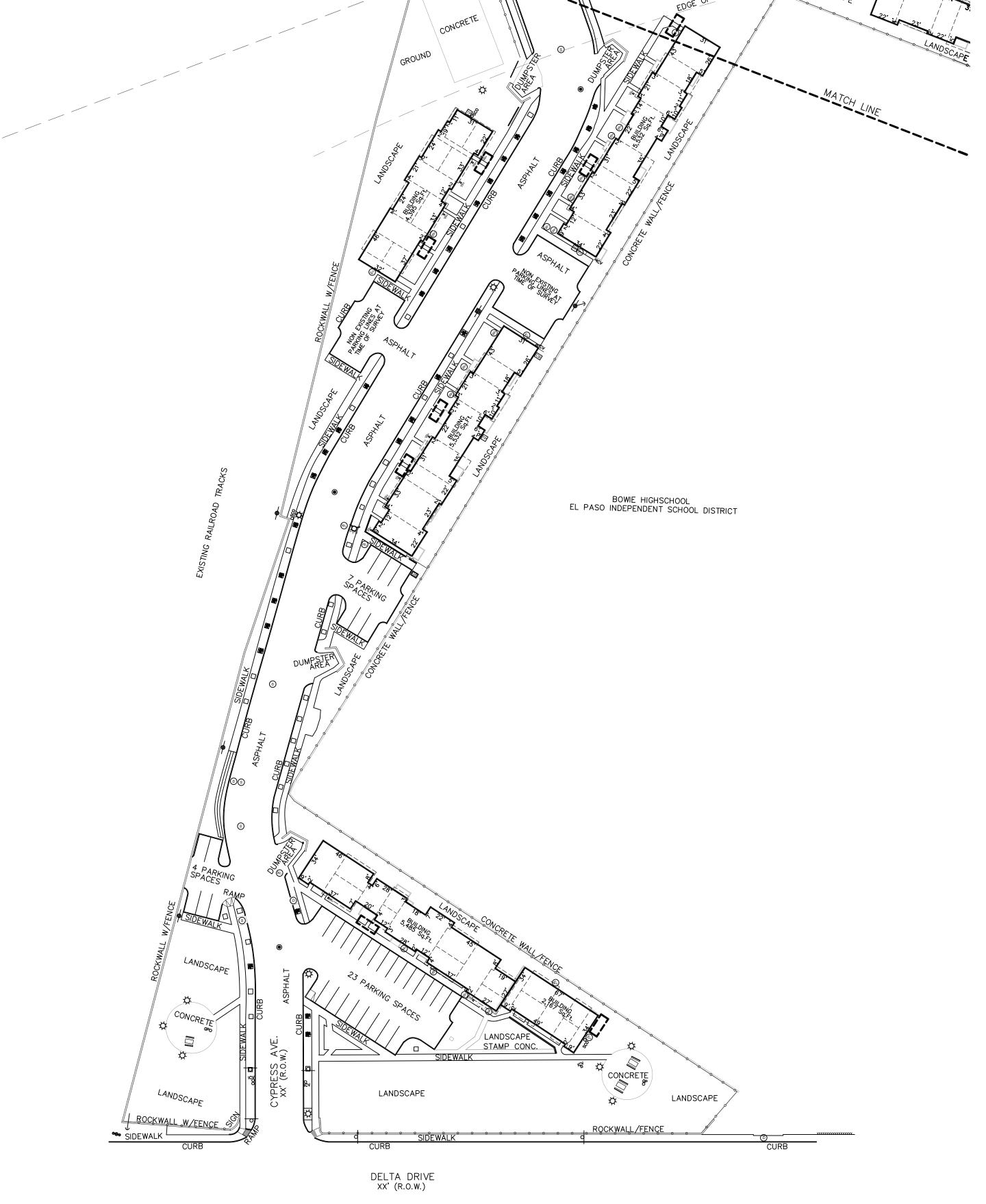
**─** 

CANOPY/OVERHANG — — —

BENCH

ICVO

SIGN LIGHT POLE



## PARKING SPACE TABLE

WATER METER ELECTRIC METER SANITARY SEWER MANHOLE

GAS VALVE

CABLE BOX

HANDRAIL

PALM

TREE BUSH

FIRE HYDRANT

SEWER CLEAN OUT

IRRIGATION CONTROL VALVE

WATER VALVE

ELECTRIC BOX

TELEPHONE BOX

CROSSING LIGHT

TRAFFIC RAIL ROAD

GAS BOX

STORM SEWER MANHOLE

SERVICE POLE W/LIGHT

TYPE OF SPACE	NO. WITHIN FEE OWNED LAND
REGULAR	445
HANDICAP	0
COMPACT	N/A
TOTAL	445

## USEFUL NUMBERS

915-790-4200 915-594-5687 STORM WATER UTILITIES: EL PASO WATER UTILITIES: 1154 HAWKINS, 79961-0511 915-594-5330 SEWER SERVICE: WATER SERVICE: 915-594-5330 CITY OF EL PASO: E.P.E. COMPANY

300 N. CAMPBELL, 79901 915-212-0000 915-543-5711

## NOTES CORRESPONDING TO ZONING

•PROPERTY IS CURRENTLY ZONED A-2 (APARTMENTS) MINIMUM SET BACKS REQUIRED FOR A-2: •FRONT YARD... •REAR YARD... •CUMULATIVE FRONT & REAR YARD.....N/A ·SIDE YARD .. •SIDE STREET .. \*MAXIMUM HEIGHT...

# Copyright © 2016 SLI Engineering, Inc.

This map and survey are being provided solely for the use of <u>all parties listed in the</u> certification and their assigns and no license has been created, expressed or implied, to copy the surveys and/or map(s) except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon <u>JULY 2016</u>.

## SURVEYOR'S CERTIFICATION

This is to certify that this map or plat and the survey on which it is based were made in accordance with "Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys", established in 2016, and includes items 1, 2, 3, 4, 6, 7a, 7b1, 7b2, 7c, 8, 9, 10, 11b, 16, 17, 18 and 20 of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA/NSPS, and in effect on the date of this certification, undersigned further certifies that proper field procedures, instrumentation, and adequate survey personnel were employed in order to achieve results comparable to those outlined in the "Minimum Angle, Distance, and Closure Requirements for Survey Measurements Which Control Land Boundaries for ALTA/NSPS Land Title Surveys".

> GUILLERMO LICON, R.P.L.S. REGISTERED PROFESSIONAL LAND SURVEYOR TEXAS LICENSE NO. 2998

> > DATE: \_\_\_\_\_

Reg. No. F-1902 SURVEYING Reg. No. 100120-00 SHEET TITLE

SLI ENGINEERING, INC.

ALTA / ACSM

LAND TITLE SURVEY

2 OF 2































# El Paso, TX

## Legislation Text

File #: 21-1273, Version: 1

# **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

## **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

## **All Districts**

Community and Human Development, Nicole Ferrini, (915) 212-1659

### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

That the Mayor of the City of El Paso, Texas be authorized to sign a Resolution acknowledging that the census tract within which the 2021 4% Non-Competitive, Low Income Housing Tax Credit (LIHTC) application submitted by EP Salazar II, LP to the Texas Department of Housing and Community Affairs (TDHCA) for the rehabilitation of approximately 302 affordable rental housing units at 311 S. Eucalyptus Street, El Paso, Texas 79905 (aka Salazar Apartments) is within a census tract with a poverty rate greater than 55%; and confirming that the City Council has voted specifically to authorize the Development to move forward.

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

AGENDA DATE: 11/9/2021 (consent)

**PUBLIC HEARING DATE: N/A** 

CONTACT PERSON(S) NAME AND PHONE NUMBER: Nicole Ferrini, 915-212-1659

**DISTRICT(S) AFFECTED:** All Districts

**STRATEGIC GOAL:** Goal 8 – Nurture and promote a healthy, sustainable community

**SUBGOAL:** 8.2 – Stabilize neighborhoods through community, housing and ADA improvements.

## **SUBJECT:**

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the Mayor of the City of El Paso, Texas be authorized to sign a resolution acknowledging that the census tract within which the 2021 4% Non-Competitive, Low Income Housing Tax Credit (LIHTC) application submitted by EP Salazar II, LP to the Texas Department of Housing and Community Affairs (TDHCA) for the rehabilitation of approximately 302 affordable rental housing units at 311 S. Eucalyptus Street, El Paso, Texas 79905 (aka Salazar Apartments) is within a census tract with a poverty rate greater than 55%; and confirming that the City Council has voted specifically to authorize the Development to move forward.

## **BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Pursuant to 10 TAC §11.101(a)(3) of the Qualified Allocation Plan for 2021 Low Income Housing Tax Credits (LIHTCs), applicants are required to disclose a Development Site that is located within a census tract that has a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13). Mitigation must be in the form of a resolution from the Governing Body of the appropriate municipality or county containing the Development, acknowledging the high poverty rate and authorizing the Development to move forward.

The proposed project will rehabilitate approximately 302 affordable housing units at 311 S. Eucalyptus Street, El Paso, Texas 79905 (aka Salazar Apartments).

## PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?  $\ensuremath{\text{N/A}}$ 

## **AMOUNT AND SOURCE OF FUNDING:**

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? \_X\_\_ YES \_\_\_NO

**PRIMARY DEPARTMENT:** Department of Community + Human Development

**SECONDARY DEPARTMENT: N/A** 

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

## RESOLUTION

WHEREAS, EP Salazar II, LP has proposed a development for affordable rental housing at 311 S. Eucalyptus Street named Salazar Apartments in the City of El Paso; and

WHEREAS, EP Salazar, LP has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for 2021 Housing Tax Credits funds for Salazar Apartments; and

It is hereby

**RESOLVED**, that as provided for in 10 TAC §11.101(a)(3) of the Qualified Allocation Plan, it is hereby acknowledged that the proposed Development is located in a census tract that has a poverty rate above 55% for Developments in regions 13 for individuals; and

**FURTHER RESOLVED**, that the **City of El Paso** hereby confirms that its Governing Body has voted specifically to authorize the Development to move forward; and

**FURTHER RESOLVED** that for and on behalf of the Governing Body, Laura Prine, City Clerk is hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs.

**APPROVED this** day of 2021.

	THE CITY OF EL PASO:
ATTEST:	Oscar Leeser Mayor
Laura Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Wed N. Vigad	Viole
Wendi N Vinevard	Nicole M. Ferrini Director

**Assistant City Attorney** 

Community and Human Development



# 2022 LOW INCOME HOUSING TAX CREDIT REQUEST FOR MUNICIPAL RESOLUTION

The City of El Paso requires the following information in order to process a request for support resolution for the Texas Dept. of Housing and Community Affairs as part of the 2022 Low Income Housing Tax Credit (LIHTC) application process.

All 9% LIHTC applicants must fill out Sections A, B, and D. Section C is for 9% LIHTC applicants seeking City financial support.

4% HTC applicants must fill out sections A, B and D only.

• The deadline for 9% Housing Tax Credit Requests for Municipal Resolution is Friday, November 5, 2021 by 5:00 pm (MST)

SECTION A. PROPERTY AND CONTACT INFORMATION
Applicant/Developer: EP Salazar II, LP
2. Contact Person: Tom Deloye
3. Applicant Address: 304 Texas Avenue, Suite 1600
Phone: (847) 769-4173 E-Mail: tdeloye@ephome.org
4. Name of Proposed Development: Salazar Apartments
5. Proposed Development Address/Location: 311 S. Eucalyptus Avenue, El Paso, TX
6. Type of Tax Credit requested of TDHCA (ex. 9% Statewide At-Risk or 9% Regional Competitive): 4% Non-Competitive LIHTC

## SECTION B. PROJECT INFORMATION

- 1. Project type (rehabilitation, new construction, adaptive reuse, etc.): Rehabilitation
- 2. Provide a written narrative explaining why the particular type of tax credit is being requested and how the proposed development meets TDHCA criteria and the City of El Paso adopted Evaluation Criteria for Requests for Local Government Support of LIHTC Proposals. To accomplish this, the narrative should include detailed descriptions of how the proposed development meets each of the criteria for Value Statements 2, 3, 4, and 5 in the City's adopted evaluation criteria (attached to this form). Narrative must be no more than 10 pages, single-spaced, 12 pt. Arial or Calibri font, 1" margins. Submit as Attachment B-2.
- 3. Total cost of development (as prepared by an Architect, Engineer or Contractor): \$\frac{54,229,189}{}
- 4. Cost per square foot: \$\frac{183}{}
- 5. Amount of tax credits being requested of TDHCA:  $\frac{2,670,244}{}$
- 6. Number of units & housing mix for proposed development (1, 2 or 3 bedroom) and Number of Affordable Units

Units/bedroom Size:	Total Quantity	Market Rate	80% AMI	60% AMI	50% AMI	30% AMI
1 Bedroom	16			16		
2 Bedroom	81			81		
3 Bedroom	118			118		
4 Bedroom	87			87		
Totals	302			302		

7. Is the proposed development site properly zoned for propos	ed development? Yes Vo No L
a. Current Zoning: A-2	
8. Are property taxes current for the site? Yes Ve	
If yes, provide a copy of current property tax receipt, or print	-out from:
https://actweb.acttax.com/act_webdev/elpaso/index.jsp_Substitute_new_act_new_a	omit as Attachment B-8.
9. Is the property located in a flood zone? Yes No	
10. Submit location map showing the project site. Submit as A	uttachment B-10.
11. Submit project Site Plan (and renderings if available). Subm	nit as Attachment B-11.
SECTION C. FOR THOSE PROJECTS SEEKING FINANC	IAL SUPPORT FROM CITY FUNDS
Total amount of funds requested from City HOME/CDBG fun	nds: \$ 0.00
Or, total amount of requested fee waiver from the City	of El Paso: <u>\$</u> 0.00
2. Indicate use of all funds by category and amount (for those	requesting HOME/CDBG funds):
Acquisition:	\$
Design/Soft Costs:	\$
New Construction of Housing Units:	\$
Rehabilitation/Conversion of Housing Units:	\$
Funds from other sources:	\$
Total Project Cost:	\$
,	<u> </u>
Relocation of Tenants (for rehabilitation and/or reconstruction)	on developments).
How many of the existing dwelling units are occupied?	
If completely vacant, how long has the property been v	
Are any of the units owner-occupied? None	acant:
	 No
Will Temporary or permanent relocation be required?	<u></u>
4. Section 3 Agreement (for those requesting HOME/CDBG fu	nds): If the project construction amount totals more than
\$200,000, the owner/contractor agrees to meet or exceed Sect	ion 3 requirements by: (1) awarding at least 20% of the
total dollar amount of all covered construction contracts to Sect	ion 3 businesses; and (2) offering 50% of new employment
opportunities to Section 3 businesses. Section 3 is a provision	of the Housing and Urban Development (HUD) Act of 1968
that requires that recipients of certain HUD financial assistance	, to the greatest extent feasible, provide job training,
employment, and contracting opportunities for low- or very-low	income residents in connection with projects and activities
in their neighborhoods. The HOME and CDBG funds administe	ered by the City necessitate following Section 3 provisions.
Do you agree to meet or exceed the Section 3 requiren	nents noted above? Yes 🔽 No
5. Submit the following financial documents (for those requesting	ng HOME/CDBG funds):
a. Applicant's financial statement or most recent	audit. Submit as Attachment C-5.a.
b Applicant's Current Income Tax Return Subn	uit as Attachment C-5 h

- 6. Submit the following Relocation documents (if applicable):
  - a. Copy of Relocation Plan. Submit as Attachment C-6.a.
  - b. Proof of approval of Relocation Plan by HUD. Submit as Attachment C-6.b.
  - c. List of all households to be displaced, list must include date of issuance of General Information Notices and date of issuance of Relocation Notices for all households. Submit as Attachment C-6.c.

**Please note:** Phase I Environmental Assessment must be submitted to Community & Human Development for review prior to execution of any HOME or CDBG funding agreements.

## SECTION D. CERTIFICATIONS

# RETURN COMPLETED 9% LIHTC REQUESTS FOR MUNICIPAL RESOLUTION WITH ALL ATTACHMENTS NO LATER THAN NOVEMBER 5, 2021 BY 5:00 PM (MST).

Submittals received after 5:00 pm on November 5, 2021 MST will not be considered for support.

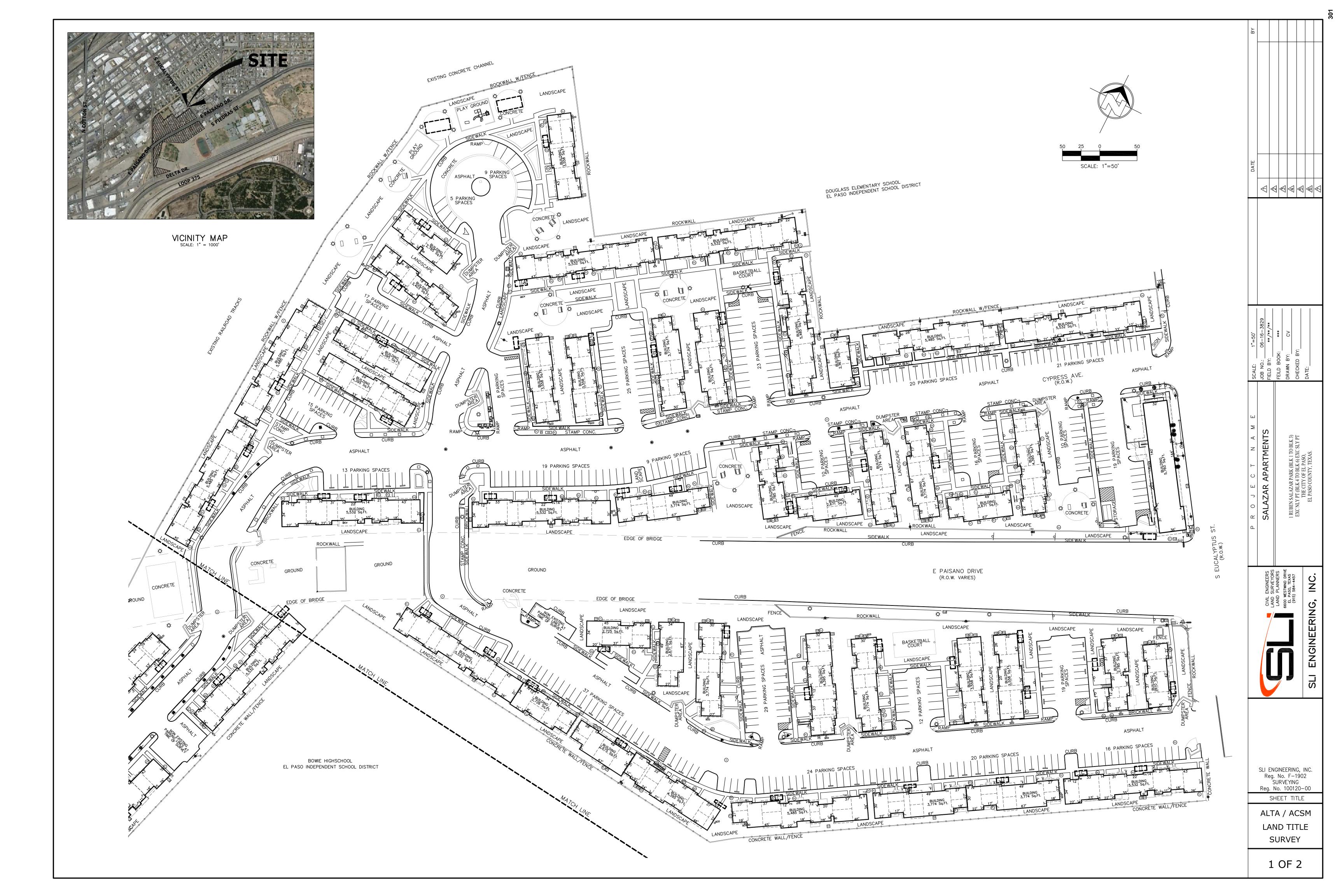
Applications must be submitted by emailing a link to your application contained within a file sharing service. Please notify DCHD staff by emailing **housingprograms@elpasotexas.gov** that your application has been stored with a file sharing service to include the link for access. DCHD must receive this email prior to the application deadline. Applications must be submitted electronically unless a waiver has been issued allowing you to submit your application in paper form. Instructions for submitting your paper application will be contained in the waiver for electronic submission.

# 4% HTC REQUESTS FOR MUNICIPAL RESOLUTION WILL BE ACCEPTED ON A ROLLING BASIS THROUGHOUT THE YEAR

Person authorized to sign on behalf of proposed development:

I/we declare that I/we have examined this request and, to the best of my/our knowledge and belief, the information contained therein is true, correct, and complete.

Signature (required):  Thomas J. Deloye  Printed Name/Title:	 <sub>Date:</sub> <u>10-15-21</u>
FOR STAFF USE ONLY: Received by:	Date:
Review for Completeness by:	





VICINITY MAP SCALE: 1" = 1000'

**LEGEND** 

G TELEPHONE PEDESTAL TP

CITY MONUMENT

CENTER LINE MAILBOX

LIGHT POLE

WATER BOX

GURAD POST

IRON FENCE TRAFFIC LIGHT

CHAIN FENCE

CAR STOPPER

HANDICAP SYMBOL

TRAFFIC LIGHT BOX

ICVO

BENCH

 $\Rightarrow$ 

**─** 

CANOPY/OVERHANG — — —

SIGN

# BOWIE HIGHSCHOOL EL PASO INDEPENDENT SCHOOL DISTRICT LANDSCAPE LANDSCAPE BOCKWALL W/FENCE DELTA DRIVE XX' (R.O.W.)

SURVEYOR'S CERTIFICATION

based were made in accordance with "Minimum Standard Detail

17, 18 and 20 of Table A thereof. Pursuant to the Accuracy

This is to certify that this map or plat and the survey on which it is

Requirements for ALTA/NSPS Land Title Surveys", established in 2016, and includes items 1, 2, 3, 4, 6, 7a, 7b1, 7b2, 7c, 8, 9, 10, 11b, 16,

Standards as adopted by ALTA/NSPS, and in effect on the date of this certification, undersigned further certifies that proper field

employed in order to achieve results comparable to those outlined in

the "Minimum Angle, Distance, and Closure Requirements for Survey

Measurements Which Control Land Boundaries for ALTA/NSPS Land Title Surveys".

GUILLERMO LICON, R.P.L.S. REGISTERED PROFESSIONAL LAND SURVEYOR

TEXAS LICENSE NO. 2998

DATE: \_\_\_\_\_

procedures, instrumentation, and adequate survey personnel were

SLI ENGINEERING, INC. Reg. No. F-1902 SURVEYING Reg. No. 100120-00

SHEET TITLE

ALTA / ACSM LAND TITLE SURVEY

2 OF 2

WATER METER

GAS VALVE

CABLE BOX

HANDRAIL

PALM

TREE BUSH

FIRE HYDRANT

SEWER CLEAN OUT

IRRIGATION CONTROL VALVE

WATER VALVE

ELECTRIC BOX

TELEPHONE BOX

CROSSING LIGHT

TRAFFIC RAIL ROAD

GAS BOX

ELECTRIC METER SANITARY SEWER MANHOLE

STORM SEWER MANHOLE

SERVICE POLE W/LIGHT

PARKING	SPACE TABLE
TYPE OF SPACE	NO. WITHIN FEE OWNED LAND
REGULAR	445
HANDICAP	0
COMPACT	N/A
TOTAL	445

USEFUL NUMBERS 915-790-4200 915-594-5687 STORM WATER UTILITIES: EL PASO WATER UTILITIES: 1154 HAWKINS, 79961-0511 915-594-5330 SEWER SERVICE: 915-594-5330 WATER SERVICE: CITY OF EL PASO:

300 N. CAMPBELL, 79901 915-212-0000 E.P.E. COMPANY 915-543-5711

NOTES CORRESPONDING TO ZONING

•PROPERTY IS CURRENTLY ZONED A-2 (APARTMENTS) MINIMUM SET BACKS REQUIRED FOR A-2: •FRONT YARD... •REAR YARD... •CUMULATIVE FRONT & REAR YARD.....N/A ·SIDE YARD .. •SIDE STREET .. \*MAXIMUM HEIGHT...

Copyright © 2016 SLI Engineering, Inc.

This map and survey are being provided solely for the use of <u>all parties listed in the</u> certification and their assigns and no license has been created, expressed or implied, to copy the surveys and/or map(s) except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon <u>JULY 2016</u>.











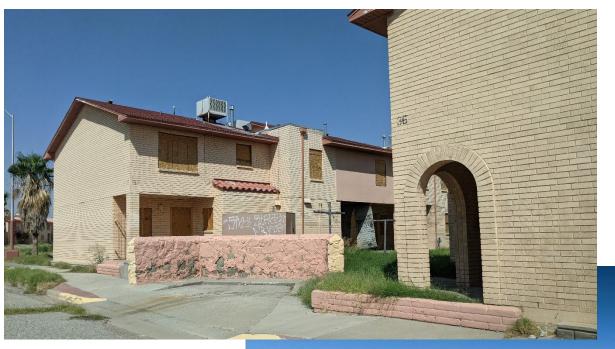




















## Legislation Text

File #: 21-1276, Version: 1

# **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

## **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

## **All Districts**

Public Health, Angela Mora, (915) 212-6502

## AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

That the Mayor be authorized to sign an Interlocal Agreement between the City of El Paso, Texas and the City of Anthony, Texas, for the period of September 1, 2021 through August 31, 2022, for the provision of public health and environmental services by the City of El Paso to the City of Anthony, for which the City of Anthony shall pay to the City of El Paso an annual amount of FIFTY-ONE THOUSAND THREE HUNDRED FOUR DOLLARS AND NO/100 (\$51,304.00).

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

AGENDA DATE: November 9, 2021

PUBLIC HEARING DATE: n/a

CONTACT PERSON(S) NAME AND PHONE NUMBER: Angela Mora, 915-212-6502

**DISTRICT(S) AFFECTED: All Districts** 

STRATEGIC GOAL: 8: Nurture and Promote a Healthy, Sustainable Community

SUBGOAL: 8.1: Deliver Prevention, intervention, and mobilization services to promote a healthy, productive and safe community.

## SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the Mayor be authorized to sign an Interlocal Agreement between the City of El Paso, Texas and the City of Anthony, Texas, for the period of September 1, 2021 through August 31, 2022, for the provision of public health and environmental services by the City of El Paso to the City of Anthony, for which the City of Anthony shall pay to the City of El Paso an annual amount of FIFTY-ONE THOUSAND THREE HUNDRED FOUR DOLLARS AND NO/100 (\$51,304.00).

## **BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

This item is a renewal of an interlocal agreement with Anthony, Texas. This renewal happens yearly.

## PRIOR COUNCIL ACTION:

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

Yes, this interlocal has been voted on by council previously, as this is renewed each year.

## **AMOUNT AND SOURCE OF FUNDING:**

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

DEPARTMENT HEAD:

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

Revised 04/09/2021

## RESOLUTION

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

That the Mayor be authorized to sign an Interlocal Agreement between the City of El Paso, Texas and the City of Anthony, Texas, for the period of September 1, 2021 through August 31, 2022, for the provision of public health and environmental services by the City of El Paso to the City of Anthony, for which the City of Anthony shall pay to the City of El Paso an annual amount

of	FIFTY-ONE	THOUSAND	THREE	HUNDRED	FOUR	DOLLARS	AND	NO/100
(\$5	1,304.00).							
	APPROVI	ED this	day of	f		2021		
				CITY	OF EL P	PASO		
AT	ΓEST:			Oscar Mayo	Leeser			
	ra D. Prine y Clerk			_				
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19-1	1052-778   11000	66   F Y22 ESD&D	PH RESO –	City of Anthony	,			

STATE OF TEXAS	)	
	)	INTERLOCAL AGREEMENT
COUNTY OF EL PASO	)	

THIS AGREEMENT is entered into on the last listed approved date below between the CITY OF EL PASO, TEXAS ("City of El Paso") and the CITY OF ANTHONY, TEXAS ("City of Anthony") by and through its duly authorized officials, pursuant to the Interlocal Cooperation Act.

## RECITALS

WHEREAS, the City of El Paso and City of Anthony are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code; and

WHEREAS, the City of El Paso has both a Department of Public Health and a Department of Environmental Services; and

WHEREAS, this Agreement for Interlocal cooperation for the City of El Paso to provide certain public health and environmental services to the City of Anthony is necessary for the mutual advancement of the health and general welfare of the citizens of all jurisdictions concerned; and

WHEREAS, the City of Anthony desires to have the City of El Paso's appointed health authority serve as the City of Anthony's health authority; and

WHEREAS, the City of Anthony will make available and/or transfer to the City of El Paso certain information, in conjunction with goods or services that are being provided by the City of El Paso to the, which is confidential and must be afforded special treatment and protection; and

WHEREAS, the City of El Paso will also have access to and/or receive from the City of Anthony certain information that can be used or disclosed only in accordance with this Agreement, the Texas Medical Records Privacy Act and the HHS Privacy Regulations; and

WHEREAS, the City of El Paso will include the City of Anthony in public health research projects, to examine health conditions in the City of Anthony, when funded by the State of Texas or the federal government and when research protocols are indicated for areas beyond the urban borders of the City of El Paso.

**FOR THESE REASONS,** and in consideration of the mutual promises contained in this Agreement, the City of Anthony and the City of El Paso mutually agree as follows:

## 1. SCOPE OF SERVICES.

- 1.1 The City of El Paso shall perform the following public health related services by and through its Department of Public Health under the terms and conditions hereinafter stated, and the City of Anthony hereby accepts and agrees to the following terms and conditions:
  - 1.1.1 The City of El Paso will issue permits and provide inspection services of food establishments at a frequency and in accordance with recommended protocols as established by the Texas Department of State Health Services (DSHS). The City of El Paso will provide enforcement of applicable State laws and regulations as appropriate to help reduce the risk of food borne illnesses in said establishments. Appropriate and customary fees will be charged to the establishments, as permitted by law.
    - 1.1.1.1 The City of El Paso will provide food handler and food manager training in accordance with the Texas Food Establishment Rules found at 25 TAC 228.
  - 1.1.2 The City of El Paso will provide public health related complaint investigation/enforcement services as determined to be appropriate by City of El Paso staff for those conditions that violate the Texas Health and Safety Code and applicable City of Anthony ordinances.
  - 1.1.3 The City of El Paso will provide communicable disease investigation services for the purpose of tracking communicable diseases and helping to reduce transmission in accordance with appropriate epidemiological intervention. Services will be provided in a manner and at a frequency that is consistent with standard public health practices.
  - 1.1.4 The City of El Paso will provide immunization services to residents of the City of Anthony to include but not be limited to adult, adolescent and childhood immunizations as recommended by the Texas DSHS. Appropriate and customary fees will be charged to those receiving these services.
  - 1.1.5 The City of El Paso will provide tuberculosis and sexually transmitted disease control services to residents of the City of Anthony. Services may

- include testing, treatment and investigation of contacts, as appropriate. Appropriate and customary fees will be charged to those receiving these services.
- 1.1.6 The City of El Paso will provide Women, Infants and Children (WIC) Nutrition services to residents of the City of Anthony in accordance with Texas DSHS requirements. Services may include medical health assessment, nutrition, breast-feeding promotion, social service referral, and food benefit issuances, as appropriate.
- 1.1.7 The City of El Paso will provide pediatric dental services to residents living in the City of Anthony in accordance with Texas Title V requirements and in accordance with Texas Medicaid waiver guidelines. Services may be provided in the Department of Public Health's licensed dental facility in the City of El Paso or by use of the City of El Paso's Mobile Dental clinic beyond the City limits.
- 1.1.8 The City of El Paso will provide informational programs including but not limited to injury prevention, asthma, diabetes, abstinence, maturation/puberty, and tobacco use prevention. These services are generally provided to the City of Anthony's residents at local school facilities through the City of El Paso's Health Education Program.
- 1.1.9 The City of El Paso will provide Family Planning Services to qualified individuals in accordance with US Health and Human Services/Office of Population Affairs Title X, which encompasses reproductive and sexual wellness education; infertility counseling; basic wellness checks; breast exam, annual pelvic exam, Pap smear, and pregnancy testing for women; hormonal and barrier birth control methods; testing and treatment for Sexually Transmitted Infections (STIs); HIV testing and linkage to care, referral to vasectomy services for men; Pre-Exposure Prophylaxis (PrEP) HIV prevention; Hepatitis C (HCV) testing and linkage to care; referral to primary care and diagnostics; and patient navigation/social services. These clinical and social services are provided through a sliding fee scale at the

- City of El Paso Department of Public Health Main Campus. Services will not be denied based on the client's inability to pay.
- 1.1.10 The City of El Paso will provide Family Planning community health education in accordance with US Health and Humans Services/Office of Population Affairs Title X, which encompasses, but not limited to, human anatomy, reproductive health, birth control, prevention and treatment of STIs, effective communication and coercion avoidance for adults and youth. Family Planning community health education may be provided at various pre-determined safe community locations upon request.
- 1.2 The City of El Paso shall perform the following environmental services by and through its Department of Environmental Services under the terms and conditions hereinafter stated, and the City of Anthony hereby accepts and agrees to the following terms and conditions:
  - 1.2.1 The City of El Paso will provide mosquito control services, including but not limited to, collecting and identifying mosquito species, larviciding, adulticiding, providing enforcement of violations that create mosquito harborage as appropriate, tracking of vector-borne disease, and educating the public regarding disease prevention strategies. Services will be provided in a manner and at a frequency that is consistent with standard public health practices.
  - 1.2.2 The City of El Paso will include the jurisdictional areas of the City of Anthony within its programs and services for the purpose of the enhancement of the air quality, to include but not be limited to, routine ambient air monitoring, analysis of gasoline samples to ensure compliance with oxygen content, and investigation and enforcement of air related nuisances and other requirements as set forth by the Texas Commission on Environmental Quality and/or the United States Environmental Protection Agency as appropriate.
- 1.3 The City of El Paso agrees that in accordance with the provisions of any and all grants from federal and state agencies that are awarded on a county-wide basis, the City of El Paso will provide services in the jurisdictional areas of the City of Anthony as

required under these grant provisions. Provided, however, nothing in this Agreement shall obligate the City of El Paso to perform services if the grant funds relating to a particular grant are not currently being paid to the City of El Paso, and, in any such instances, the Director of the City of El Paso's Department of Public Health or the Director of the City of El Paso's Department of Environmental Services shall give written notice to the City of Anthony that the City of El Paso is not providing the particular services for the reason that it has not received funding under the applicable grant. The City of El Paso will provide written notice to the City of Anthony of grant funding which becomes discontinued or terminated, and any election by the City of El Paso not to seek the renewal of grants existing at the effective date of this Agreement.

- 1.4 To the extent allowed by law, the City of Anthony agrees to pass all ordinances and resolutions necessary to give the City of El Paso and City of El Paso personnel jurisdiction to provide public health and environmental service functions in the City of Anthony pursuant to the terms of this Agreement, including its extraterritorial jurisdiction, if any, where the providing of public health and other services is authorized by law, and including the power to issue citations for violations of any ordinances pertaining to the protection of the public health and that pertain to services the City of El Paso agrees to render in accordance with the terms of this Agreement.
- 1.5 The City of El Paso agrees that it will file citations, complaints and violations occurring within the territorial limits of the City of Anthony through the City of Anthony Municipal Court. It is agreed that the appropriate personnel from the City of El Paso will be administratively directed to be present at such times as court sessions are set and cases involving the City of El Paso are on the court's docket, without the necessity for the issuance of a subpoena. The City of Anthony Municipal Court will provide reasonable notice of any case settings to the City of El Paso.
- 1.6 The City of El Paso will provide necessary training for employees utilized in providing services under this Agreement, as may be required by law or determined to be appropriate by the City of El Paso, and shall require all such personnel to maintain all required licenses and certifications in accordance with State and Federal laws.

- 1.7 Nothing within the terms of this Agreement shall require the City of El Paso to purchase additional equipment or hire additional personnel in order to comply with the terms of this Agreement.
- 1.8 The City of El Paso agrees that it will keep accurate records of all services provided to the City of Anthony pursuant to this Agreement as part of its routine data collection processes and shall report such activities in its standardized records format to City of Anthony officials, as requested. However, the City of El Paso will not be required to furnish copies of any reports that are maintained on the City's website and available to the City of Anthony from the website.
- 1.9 On or before July 31, 2022, the City of El Paso shall provide to the City of Anthony an initial projection based on the City Manager's filed proposed budget of City of Anthony's potential costs for a new Interlocal Agreement that, if agreed upon, would be effective September 1, 2022. The provision of this initial projection of potential costs will be used solely for the purposes of facilitating the budgeting process for the City of Anthony for its FY2023 budget.
- 1.10 It is understood and agreed to between the parties that any portion of this Agreement providing for the delivery of public health and environmental services for which the City of Anthony does not grant legal authority shall be null and void and of no force and effect, and the City of El Paso shall not be obligated to provide those services.
- 2. **LOCATION OF PERFORMANCE.** The place where most services are to be performed is in the City of Anthony, Texas, and any extraterritorial jurisdiction thereof where the City of El Paso may lawfully provide public health and environmental services as delegated and authorized under this Interlocal Agreement (jurisdictional areas of the City of Anthony). Certain health services involving medical testing, treatment and laboratory analysis shall be performed at City Department of Public Health locations within the City of El Paso.
- 3. <u>APPOINTMENT OF HEALTH AUTHORITY</u>. The Parties agree that the individual appointed to serve as health authority for the City of El Paso will serve as the health authority for the City of Anthony, in accordance with Section 121.028(c), Texas Health and Safety Code.
- 4. **TIMES OF PERFORMANCE.** The City of El Paso shall commence the provision of its services on the 1st day of September 2021, and shall terminate on the 31st day of August 2022, regardless of the date of execution of this Agreement.

4.1 In the event of a public health or environmental emergency, such as, but not limited to, a disaster declaration of the City of Anthony, requiring, as a result of the emergency, specific health and environmental services from the City of El Paso after August 31, 2022, and prior to the signing of a subsequent Interlocal for health and environmental services between the parties to this Agreement, the required services shall be provided by the City of El Paso to the City of Anthony at the rate described in the present Agreement, and the City of Anthony shall pay for said services at said rate within thirty (30) days of receipt of an invoice from the City of El Paso for said services.

## 5. **COMPENSATION.**

- The City of Anthony agrees to pay the amount not to exceed FIFTY-ONE THOUSAND THREE HUNDRED FOUR DOLLARS AND NO/100 (\$51,304.00) for services rendered in accordance with this Agreement, excluding the services described in Section 4.1. Payments shall be made in equal quarterly installments, each in the amount of TWELVE THOUSAND EIGHT HUNDRED TWENTY-SIX DOLLARS AND NO/100 (\$12,826.00) with the first payment becoming due and payable on the 1<sup>st</sup> day of September 2021 or within 10 days after the date that the City of Anthony signs this Agreement, whichever is later. The quarterly installment described in this Section 5.1 does not include the services described in Section 4.1. The Cost Models attached hereto as Appendix A and Appendix B identify the total cost of services offered by the City of El Paso to the City of Anthony pursuant to this Agreement.
- 5.2 The Parties acknowledge that the funds paid by the City of Anthony pursuant to Section 5.1 above may not be sufficient in the event of an unexpected occurrence such as an outbreak, epidemic (i.e. Zika, cholera), or intervention of emerging or new diseases or public health threats (chemical or biological) in the jurisdictional areas of the City of Anthony. The City of Anthony shall name a person to serve as a point of contact to discuss these types of threats, their intervention, and any additional costs that the City of Anthony will need to pay to defray the resulting expenses. Such contact person shall be designated and disclosed to the Director of the Department of

Public Health and the Director of the Department of Environmental Services as of the signing of this Agreement, as applicable.

- 6. PAYMENTS PURSUANT TO THIS AGREEMENT. Payments submitted under this Agreement shall be made payable to the City of El Paso, Attn: Comptroller, PO Box 1890, El Paso, TX 79950-1890. In addition to the compensation provided for herein, the City of El Paso shall receive all proceeds received from inspection and permit fees collected in the City of Anthony. Such fees, when set or revised by the City of Anthony and to the extent allowed by law, shall be set in the same amounts as the fees for the identical services or charges as made by the City of El Paso. All fees that the City of Anthony collects for this purpose shall be paid to the City of El Paso on a quarterly basis, within 30 days of the conclusion of the quarter. The City of Anthony shall also provide the City of El Paso with a report indicating the amount of fees collected and the time period associated with such collection. In event that the City of Anthony accrues an arrearage on payment, the City of El Paso Comptroller or any collection agency retained by the City to collect delinquent accounts may add a collection fee of 21% to the account receivable if owing to the City for more than 60 days, pursuant to the El Paso City Code, Ordinance 14700.
- 7. **LAW GOVERNING CONTRACT.** For purposes of determining the law governing the same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.
  - 7.1 Authority of the City of El Paso. The City of Anthony expressly agrees that the City of El Paso shall have authority to enforce all laws and ordinances applicable to those public health and environmental services covered in this agreement, within the incorporated city limits and extraterritorial jurisdiction of the City of Anthony, Texas. The City of Anthony further agrees that, in the absence of any conflicting city ordinance, the City of El Paso shall have authority to enforce the laws of the State of Texas and the County of El Paso applicable to those public health and environmental services covered in this agreement, within the incorporated city limits and extraterritorial jurisdiction of the City of Anthony, Texas. The City of Anthony shall provide certified copies of all the City of Anthony, Texas Ordinances affecting public health and environmental regulation upon execution of this Agreement and as requested by the City of El Paso, and to provide copies of all such newly adopted or amended ordinances within 10 days after adoption or amendment. Copies of such

- ordinances shall be sent to the Director of the City of El Paso Department of Public Health and to the Director of the City of El Paso Department of Environmental Services, as applicable.
- 7.2 Privileges and Immunities. All privileges and immunities from liability, exemptions from laws, ordinances and rules, pension, relief, disability, worker's compensation, and other benefits which apply to the activities of officers, agents, or employees of the City of El Paso when performing a function shall apply to such officers, agents, or employees to the same extent while engaged in the performance of any of their functions and duties under the terms and provisions of this Agreement. Each party reserves, and does not waive, its rights of sovereign immunity and rights under the Texas Tort Claims Act.
- 7.3 Governmental Function. The Parties expressly agree that, in all things relating to this Agreement, the City of El Paso is performing a governmental function, as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of the City of El Paso, which, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function.
- 7.4 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE PARTY'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND including lost profits, loss of business, or other economic damage, and further including injury to property, mental anguish and emotional distress AS A RESULT OF BREACH OF ANY TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER THE CITY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.
- 7.5 Intentional Risk Allocation. Each of the Parties acknowledges that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement

are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the Parties.

8. HHS PRIVACY REGULATIONS. The Health Insurance Portability and Accountability Act (HIPAA) Standards for Privacy of Individually Identifiable Health Information (Privacy Rule). See 45 CFR Part 160 and Subparts A and E of Part 164, requires that the City of El Paso offer assurances to the City of Anthony that the City of El Paso will safeguard any protected health information received or created on behalf of the City of Anthony. Pursuant to this requirement, the parties further agree to the terms and conditions of the standard HIPAA Business Associate Agreement set forth in Appendix C and incorporated herein as if fully set forth.

The City of Anthony continues its authorization for the City of El Paso to possess and maintain any protected health information received or created on behalf of the City of Anthony and previously possessed or maintained by the El Paso City-County Health and Environmental District, in accordance with the terms of the standard Business Associate Agreement set forth in Appendix C.

9. **TERMINATION.** This Agreement may be terminated in whole or in part by either party upon sixty days written notice to the other party at the following addresses, or at a new address as provided in writing to the nonmoving party by a party which has moved its physical location within thirty (30) days of said relocation without the necessity of amending this contract:

CITY OF EL PASO:

City of El Paso

Attn: City Manager P.O. Box 1890

El Paso, Texas 79950-1890

City of Anthony:

City of Anthony

Attn: Mayor P.O. Box 1269 Anthony, TX 79821

All payments by the City of Anthony under this Agreement are payable only out of current City of Anthony revenues. In the event that funds relating to this Agreement do not become available, such as by City of Anthony City Council not appropriating the funds, the City of Anthony shall have no future obligation to pay or perform any future services related herein to the City of El Paso for the

City of Anthony's fiscal year during which time such funding is not available or appropriated; however, all services that have been provided by the City of El Paso shall be paid in accordance with Sections 5 and 6 of this Agreement. Should the City of Anthony experience a funding unavailability related to the services described in this Agreement, the City of Anthony shall immediately provide written notification to the City of El Paso of such case and either party may choose to terminate the Agreement subject to this Section 9. In the event that the City of Anthony notifies the City of El Paso that the City of Anthony is experiencing a funding unavailability related to this Agreement, the City of El Paso shall immediately cease providing the services described in this Agreement to the City of Anthony except as required by related grant funding requirements to which the City of El Paso must adhere.

- 10. **INDEPENDENT CONTRACTORS.** The City of El Paso and City of Anthony are independent legal entities. Except to the extent required by section 437.009 of the Health and Safety Code, nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. Neither the City of El Paso nor City of Anthony nor any of their respective agents or employees shall control or have any right to control the activities of the other party in carrying out the terms of this Agreement.
- 13. **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.
- 14. **HEADINGS.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
- 15. **ENTIRE AGREEMENT; AMENDMENTS.** This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and no amendment, modification or alteration of the terms shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto. The parties reserve the right to amend this Agreement in the event either party should experience an unforeseen, significant impact to their respective budget allocated for the services addressed in this Agreement.

STATE OF TEXAS )	INTERLOCAL AGREEMENT
COUNTY OF EL PASO )	A VARIABLE OF AN ARCHARDA VA
	e City of El Paso, Interlocal Agreement between the of El Paso and the City of Anthony.
APPROVED this	day of, 2021.
	CITY OF EL PASO
	Oscar Leeser Mayor
ATTEST:	
Laura D. Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Noberta Brito Assistant City Attorney	Angela Mora  Angela Mora, Director  Department of Public Health
Wendi N. Vineyard Assistant City Attorney	Celes . Shyth, P.E., Managing Director Environmental Services Department

(Signatures continue on the following page)

STATE OF TEXAS	)	
	)	INTERLOCAL AGREEMENT
COUNTY OF EL PASO	)	

Signature page for the City of Anthony, Interlocal Agreement between the City of El Paso and the City of Anthony.

APPROVED this 27 day of September, 2021.

CITY OF ANTHONY

Mayor
Printed Name:

APPROVED AS TO FORM:

Printed Name: Value M Armendary

City of Anthony Clerk

ATTEST:

Printed Printed Hin ry" Falo mares
City of Anthony Attorney

APPENDIX "A" - DPH Cost Model Summary Results- For Direct Departments Based on 2021 Budgeted Expenditures and 2019 US Census Population Estimates/Quick Facts

PROGRAM	El Paso	Anthony	Clint	Horizon	Socorro	Vinton	County	San Elizario	Total Operational Cost
Food Safety	974,164	7,648	1,589	28,068	49,113	2,889	122,781	12,988	1,199,240
STD/HIV/Aids Clinics	429,872	3,375	701	12,386	21,672	1,275	54,180	5,731	529,192
Dental Clinic	533,119	4,185	870	15,360	26,878	1,581	67,193	7,108	656,294
Neighborhood Health Centers	97,925	692	160	2,821	4,937	290	12,342	1,306	120,550
Laboratory	700,174	5,497	1,142	20,173	35,300	2,077	88,248	9,335	861,946
Epidemiology	288,629	2,266	471	8,316	14,552	856	36,378	3,848	355,315
Health Education Programs	200,395	1,573	327	5,774	10,103	594	25,257	2,672	246,695
Immunization	221,336	1,738	361	6,377	11,159	929	27,897	2,951	272,474
TB Outreach Federal	198,901	1,562	324	5,731	10,028	290	25,069	2,652	244,856
HIV Prevention	28,887	541	112	1,985	3,473	204	8,682	918	84,803
Housing Opportunities for People With AIDS (HOPWA)	102,603	802	167	2,956	5,173	304	12,932	1,368	126,308
TB Prevention/Control State	169,616	1,332	277	4,887	8,551	203	21,378	2,261	208,805
Regional Planning (RLSS)	50,137	394	82	1,445	2,528	149	6,319	899	61,721
Title V Dental - TDH Bur of Women & Children Fees	50,825	399	83	1,464	2,562	151	6,406	829	62,568
Laboratory Response Network	82,170	645	134	2,367	4,143	244	10,357	1,096	101,155
Infectious Disease Control-Flu	1,155	6	2	33	28	3	146	15	1,422
STD/HIV	43,489	341	71	1,253	2,193	129	5,481	580	53,537
Texas Health Communities	23,102	181	38	999	1,165	69	2,912	308	28,440
HIV Surveillance DSHS	32,815	258	54	945	1,654	26	4,136	438	40,397
PHEP Bio Terrorism-Hazards	99,952	785	163	2,880	5,039	296	12,598	1,333	123,045
211 Area Information Center	63,925	203	104	1,842	3,223	190	8,057	852	78,695
BioWatch	11,551	91	19	333	582	34	1,456	154	14,220
IDCU/ Foodborne Assoc Infection	39,261	308	64	1,131	1,979	116	4,948	523	48,332
WIC Administration	493,736	3,876	805	14,226	24,892	1,464	62,229	6,583	607,812
WIC Breastfeeding	39,140	307	64	1,128	1,973	116	4,933	522	48,184
WIC Nutrition Education	119,590	939	195	3,446	6,029	322	15,073	1,594	147,220
NEW PROGRAMS									
Title X Family Planning - Expansion	344,590	2,705	295	9,928	17,373	1,022	43,431	4,594	424,205
l otal Department of Public Health	5,822,255	45,708	9,497	167,751	293,535	17,269	733,820	77,624	6,747,432
Percent of Total Cost	81.23%	0.64%	0.13%	2.34%	4.10%	0.24%	10.24%	1.08%	100.00%
Population	681,728	5,352	1,112	19,642	34,370	2,022	85,923	680'6	839,238
Cost Per Capita	8.54	8.54	8.54	8.54	8.54	8.54	8.54	8.54	8.04

# City of El Paso, Texas Summary Results- For Direct Departments Based on 2022 Preliminary Budgeted Expenditures APPENDIX "B" - ESD COST MODEL

FY22	El Paso	Anthony	Clint	ŀ	lorizon	s	ocorro	2.0	El Paso County	Sai	n Elizario	V	inton	Tota	al Operational Cost
Vector Control	\$ 858,579	\$ 3,820	\$	\$	863	\$	28,493	\$	178,386	\$	1,561	\$	781	\$	1,072,483
Air Quality (per capita)	\$ 229,948	\$ 1,775	\$ 328	\$	5,928	\$	11,340	\$	33,607	\$	3,322	\$	716	\$	286,965
Grand Total	\$ 1,088,527	\$ 5,596	\$ 328	\$	6,791	\$	39,834	\$	211,993	\$	4,883	\$	1,496	\$	1,359,448
Percent of Total Cost	80.07%	0.41%	0.02%		0.50%		2.93%		15.59%		0.36%		0.11%		100.00%

#### Legislation Text

File #: 21-1299, Version: 1

#### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font. Members of the City Council, Representative Joe Molinar, (915) 212-0004

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Edmund Castle to the Historic Landmark Commission by Representative Joe Molinar, District 4.

DATE: 11/3/2021	
TO: City Clerk	
FROM: City Representative Joe Molinar	
ADDRESS: 300 N. Campbell	TELEPHONE 915-212-0004
Please place the following item on the (Check one):	CONSENT XXX REGULAR
Agenda for the Council Meeting of November 9,	
Re-Appointment of E Item should read as follows:  Re-Appointment of E Representative Joe M	dmund Castle to the Historic Landmark Commission by City olinar, District 4.
BOARD COMMITTEE/COMMIS	SSION APPOINTMENT/REAPPOINTMENT FORM
NAME OF BOARD/COMMITTEE/COMMISSION:	Historic Landmark Commission
NOMINATED BY: City Representative Joe Molin	ar DISTRICT: Four
NAME OF APPOINTEE Edmund Castle	(Please verify correct spelling of name)
E-MAIL ADDRESS:	(Fields verify correct spering of name)
BUSINESS ADDRESS:	
CITY: ST:	ZIP: PHONE:
HOME ADDRESS:	
CITY: ST:	ZIP: PHONE:
DOES THE PROPOSED APPOINTEE HAVE A F	RELATIVE WORKING FOR THE CITY? YES: NO X
IF SO. PLEASE PROVIDE HIS OR HER NAME.	CITY POSITION AND RELATIONSHIP TO THE PROPOSED
APPOINTEE: N/A LIST ALL REAL ESTATE OWNED BY APPOIN	
HAS APPOINTEE BEEN A MEMBER OF OTHE	R CITY BOARDS/COMMISSIONS/COMMITTEES? IF SO, PLEASE
	mission, 2017-2019; Historic Landmark Commission, 8/18/2020-10/4/2021 THIS POSITION BEFORE IT BECAME VACANT?
NAME OF INCUMBENT:	Edmund Castle
EXPIRATION DATE OF INCUMBENT:	10/4/2021
REASON PERSON IS NO LONGER IN OFFICE (CI	HECK ONE): TERM EXPIRED: X
	RESIGNED REMOVED
	<u> </u>
DATE OF APPOINTMENT:	11/9/2021
TERM BEGINS ON:	10/5/2021
EXPIRATION DATE OF NEW APPOINTEE:	10/4/2023
PLEASE CHECK ONE OF THE FOLLOWING:	1 <sup>st</sup> TERM:
	2 <sup>nd</sup> TERM: X
	UNEXPIRED TERM:

#### RESUME Edmund Castle, P.E.



MNK Structural Engineer

Edmund Castle, PE has performed a substantial amount of structural investigations into historic structures of various types and construction materials in the EI Paso area. This experience across a wide range of residential structures and buildings of various types has allowed him to develop a strong understanding of the history and construction methods of the Southwest region in and around El Paso. Structural investigations and studies in support of existing buildings has involved destructive and non-destructive testing, load testing, non-destructive scans of structural elements and architectural facades, selective demolition, laboratory investigation of materials and extensive research into the history behind several buildings. Trost buildings and their construction have been studied in great deal within his experience. Restoration work has followed National Parks preservation guidelines in some instances, in others researched photographs and hand drawings were used to restore critical architectural elements. Structural systems have been restored with select tradesman carefully vetted among preservationists and in other instances modern technological advances in materials were relied on to restore the capacity of a structure. Across Mr Castle's experience, a very client specific solution was arrived at alongside the full project team in order to extend the service life of a historic structure for the owner. His field experience is especially suited for the coordination and support of work in the field.

Edmund Castle, PE brings with him 20 years of experience in structural engineering. During this time he has been involved with structures of all materials and completed a broad range of forensic investigations and evaluations of existing structures. In particular, Edmund has evaluated many UTEP buildings within the campus; this experience along with his involvement in the design of new structures at UTEP has afforded him specific knowledge of the campus and its existing conditions. Most recently, Edmund was the engineer of record for the UTEP IDRB building. Edmund has provided on call services for El Paso area school districts, utility company and other major property owner and developers.

#### **QUALIFICATIONS AND CERTIFICATIONS**

Registered with the State of Texas, PE No. 110714
Registered with the State of New Mexico, PE No. 19815
Registered with the State of Louisiana, PE No. 36884

#### **EDUCATION**

B.S., Civil Engineering, New Mexico State University 3 years architectural studies at Arizona State University

#### References

Frances Yepez, Interim Director of Facilities and Construction Jesse Arredondo Facilities El Paso Electric

#### **Project Experience**

- UTEP IDRB
- UTEP Nursing Building Floor Evaluation
- UTEP Campus Transformation Project
- UTEP Pedestrian Pathways
- UTEP Biomedical and Information Annex
- UTEP Sunbowl Evaluation
- UTEP Structural Design of Sculpture Magoffin Fine Arts, Sebastian
- UTEP Design of Sculpture Foundation Sun Bowl Roundabout
- UTEP Lhakhang Shrine
- UTEP Keck Lab Evaluation
- UTEP Mechanical Upgrade Geology
- UTEP Thermal Plant Expansion Phases I and II
- City of El Paso Westside Swimming Pool
- City of El Paso Eastside Regional Park
- City of El Paso Eastside Sports Complex
- City of El Paso Museum of History Digital Wall Pavilion
- Eastwood High School
- El Paso High School
- Montwood High School

#### Structural Investigation in support of Restoration, Remediation & Renovation:

- El Paso High School Investigation -- Basement Settlement
- El Paso High School Investigation West Stair Settlement
- El Paso High School Assessment Football Locker room
- Administration Building Assessment Design of reinforcement for select structural elements
- Center Building Annex Mills Building Adaptive reuse of existing structure.
- Mills Building Adaptive reuse of existing building for restaurant
- El Paso Civic Center Plaza Repairs Structural study and design of repairs for vibration -
- The Mulligan Luther Building Structural Assessment, seismic retrofit, design of retrofitting for the modernization of the building.
- 801 Texas Structural Assessment and Design of reinforcement for structural floor system
- 811 Texas Structural Assessment, structural floor stabilization and reinforcement, design of retrofitting for the modernization of the building.
- ASARCO Stack prior to demolition Structural evaluation and design of retrofitting
- 1925 Rio Grande Theatre Restoration of Adobe and Timber Structure, seismic and wind retrofitting
- 1925 Trost Warehouse at Florence and Overland Structural Assessment and design of repairs
- Renovation and Additions to 7 historic houses on Officers row, Ft. Bliss Texas
- Hollands Warehouse conversion, Paisano Drive, El Paso, Texas
- Investigation and Feasibility Study of Alamo Elementary School, EL Paso, Texas
- 120 Stanton, Historic structure investigated and converted to apartments, El Paso, Texas
- 210 Virginia, Complete structural assessment and feasibility study completed in preparations of an adaptive resuse project, El Paso, Texas
- St. Patrick Cathedral, Structural investigation into the cause of building distress. Investigation was
  performed for the entire timber and steel structure. Repairs and improvements were designed to stabilize
  movement within the structure.
- Historic Residence, Magoffin Street El Paso, Texas. Structural assessment and design of retrofitting required to convert and restore a historical residence into a visitor center for the Texas Historical Commission. Visitor center will serve the Magoffin Home.
- Toltec Building Structural Evaluation and Assessment of existing structure for planned modifications and improvements
- Kress Building Structural Evaluation of building system in support of adaptive re-use planning
- 1929 Plaza Hotel (Hilton Hotel) Full building scan and Structural Evaluation for Seismic retrofit and restoration
- 1909 Richard Caples Building Structural assessment of light glass system in the basement in support of restoration efforts
- Roberts Banner Building Structural study and Assessment of concrete building system in support of repairs and restoration

- 1916 John T Muir Building Structural evaluation and study for the possible reuse of the building. Evaluation for the completion of additional floors, restoration of the exterior. Planned restoration of corrosion and deterioration of structural iron building frame. Structural floor stabilization and design of repairs.
- 1912 Paso Del Norte Hotel Structural Assessment and Design of repairs to enhance the structural system and restore the capacity of the existing concrete structure. Repairs and work were performed for the planned reuse of the hotel.
- 1914 Alhambra Theatre Structural evaluation of the existing building system in support of repairs and restoration. Design of enhancements and modifications for an adaptive reuse of the building.
- 1909 American National Bank (American Furniture) Structural evaluation and load analysis in support of a study to adapt the building for current use.
- 1926 W.S. Hills Building Structural evaluation and analysis of the existing building for additional floors and the restoration of the existing façade. Design of retrofitting to expand the capacity of the structure.
- 1916 Popular Dry Goods Company Structural evaluation and report to support repairs and stop the corrosion present in building materials
- 1909 Abdou Building Structural evaluation of the exterior building façade. Design of repairs and restorative techniques for the exterior concrete façade.
- 1909 Phillips Dwellings, residence, Myrtle and Magoffin Street, El Paso Structural Assessment for repairs of Masonry and Timber Structure
- 1916 Haymon Krupp Building Structural Assessment and Study of existing concrete and timber structure. Recommendations for restoration of masonry, historic concrete and retrofitting of existing floor system.
- 1907 O'Fallon Building, El Paso Street and Overland, El Paso Design of restoration strategy and new structural steel support frame for the adaptive reuse of the building
- 1914 Union Bank and Trust Evaluation and study of the exterior building façade for restoration, assessment of fire damaged building structure. Developed a comprehensive plan to stabilize and repair the structure damaged by fire.

#### Legislation Text

File #: 21-1268, Version: 1

#### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

Tax Office, Maria O. Pasillas, (915) 212-1737

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

That the tax refunds listed on the attachment posted with this agenda be approved. This action would allow us to comply with state law which requires approval by the legislative body of refunds of tax overpayments greater than \$2,500.00. (See Attachment A)

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

**AGENDA DATE:** 

**PUBLIC HEARING DATE: November 9, 2021** 

CONTACT PERSON(S) NAME AND PHONE NUMBER: Maria O. Pasillas, (915) 212-1737

**DISTRICT(S) AFFECTED: All** 

STRATEGIC GOAL: Goal 6 - Set the Standard for Sound Governance and Fiscal Management

SUBGOAL: 6.11 Provide efficient and effective services to taxpayers

#### **SUBJECT:**

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the tax refunds listed on the attachment posted with this agenda be approved. This action would allow us to comply with state law which requires approval by the legislative body of refunds of tax overpayments greater than \$2,500.00. (See Attachment A)

#### **BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Approve property tax overpayment refunds greater than \$2,500.00, per the Texas Property Tax Code, Sec. 31.11 – Refunds of Overpayments or Erroneous Payments.

#### PRIOR COUNCIL ACTION:

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

Council has considered this previously on a routine basis.

#### AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? \_X\_YES \_\_\_NO

PRIMARY DEPARTMENT: Tax Office SECONDARY DEPARTMENT: N/A

	-		
*******	*****REQUIRED AUTHO	<b>TRIZATION********</b>	****

DEPARTMENT HEAD: Maia O. Pasillas

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

#### TAX REFUNDS November 9, 2021

1.	Corelogic Tax Services, in the amount of \$3 2020 of 2020 taxes. (Geo. # V893-999-4540-2200)	,419.49 made an overpayment on December 15,
		Maria O. Pasillas
	Laura D. Prine	Maria O. Pasillas. RTA

City Clerk

**Tax Assessor Collector** 



TAX OFFICE RECEIVED

OCT 20 2021

### MARIA O. PASILLAS, RTA CITY OF EL PASO TAX ASSESSOR COLLECTOR 221 N. KANSAS, STE 300 EL PASO, TX 79901 PH: (915) 212-0106 FAX: (915) 212-0107 www.elpasotexas.gov/tax-office

Geo No. V893-999-4540-2200 Prop ID 282958

Legal Description of the Property

454 VISTA DEL SOL #96 LOT 22 5670.00 SQ

11802 SCOTT SIMPSON DR

CORELOGIC PO BOX 9205 COPPELL, TX 75019-9214

OWNER, HERRERA EDWARDO & MARGARITA \$

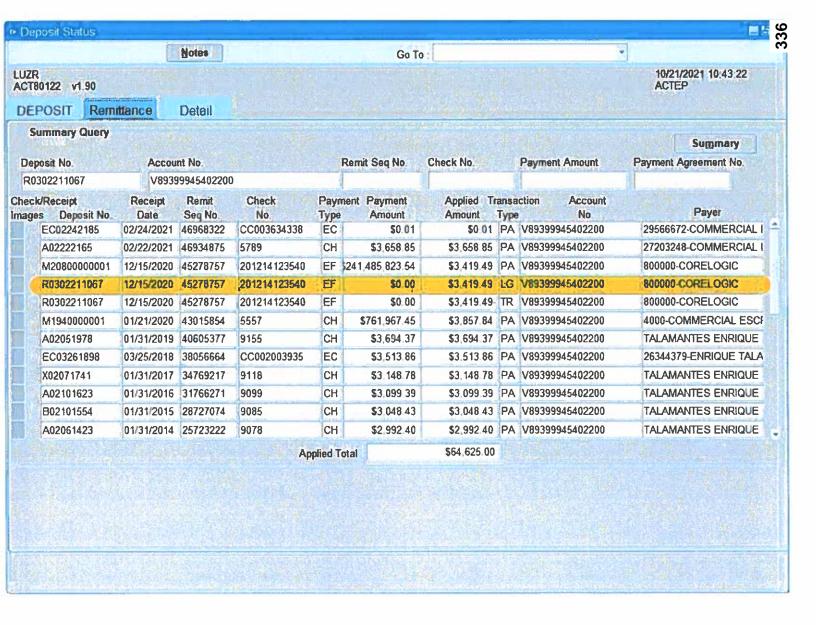
2020 OVERAGE AMOUNT \$3,419.49

1: CITY OF EL PASO, 6: COUNTY OF EL PASO, 7: EL PASO COMMUNITY COLLEGE, 8: UNIVERSITY MEDICAL CENTER OF EL PASO, 9. SOCORRO ISD

Dear Taxpayer:

Our records indicate that an overpayment exists on the property tax account listed above as of the date of this letter. If you paid the taxes on this account and believe you are entitled to a refund, please complete the application below, sign it, and return it to our office. If the taxes were paid by your mortgage/title company or any other party, you must obtain a written letter of release in order for the refund to be issued in your name. If you did not make the payment(s) on this account, please forward this letter to the person who paid these taxes. You may also request the transfer of this overpayment to other tax accounts and/or tax years in the space provided or by attaching an additional sheet if necessary. Your application for refund must be submitted within three years from the date of the overpayment, or you waive the right to the refund (Sec. 31.11c). Governing body approval is required for refunds in excess of \$2500.

APPLICATION FOR PROPERT	TY TAX REFUND:	This application must be ex	mpleted, signed, an	d submitted with supporting documentation	to be valid.		
Step 1. Identify the refund	Who should the refund be issued to:						
recipient. Show information for	Name: Core	ogic Tax Service	es /				
whomever will be receiving	Address.	P O Box 9202					
the refund.	City, State, Zip:	Coppell, TX 75	019		222		
	Daytime Phone No.	817-699-2106		E-Mail Address;shenshwetha@core			
Step 2. Provide payment	Payment made by:		Check No.	Date Paid Amount Pai	d		
information. Please attach copy of cancelled check, original receipt, online		201214	123540	12/15/20 \$241,485	,823.5L		
payment confirmation or bank credit card statement.		TOTAL AMOUNT	PAID (sum of th	ne above amounts)	-		
Step 3. Provide reason for	Please check one of						
this refund. Please list any accounts and or	I paid this account in error and I am entitled to the refund.						
years that you intended to pay	I overpaid this account. Please refund the excess to the address listed in Step 1.						
with this overage	I want this payment applied to next year's taxes.						
	This payme	nt should have been appli	ed to other tax acc	count(s) and or year(s), escrow (listed b	below):		
	1						
Step 4. Sign the form. Unsigned applications cannot be processed.	have given on this:	form is true and correct.	( If you make a fa	described taxes and certify that the info lse statement on this application, you can the Texas Penal Code, Sec. 37.10.)	rmation I ould be found		
Auc 10/21/21		REQUESTOR (REQUIR	e	PRINTED NAME & DATE Shwetha Shenoy 10/15/2021	V		
TAX OFFICE USE ONLY:	Approved	Denied By:	4.4	Date: 10-20-21	L		



#### Legislation Text

File #: 21-1297, Version: 1

#### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

Members of the City Council, Representative Peter Svarzbein, (915) 212-0001

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

For notation pursuant to Section 2.92.080 of the City Code: receipt of campaign contributions by Representative Peter Svarzbein in the amount of \$1,500.00 by El Paso Association of Fire Fighters Local 51.

#### Legislation Text

File #: 21-1302, Version: 1

#### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

Members of the City Council, Representative Alexsandra Annello, (915) 212-0002

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Discussion and action that the City Council declares that the expenditure of District 2 discretionary funds in an amount not to exceed \$4,446.42 to the Downtown Management District for costs related to the placement of informational banners in the City's downtown area for the Ann Richards Legacy Project; serves the public purpose of inspiring new leaders.

# CITY OF EL PASO, TEXAS AGENDA ITEM AGENDA SUMMARY FORM

**DEPARTMENT:** MAYOR AND COUNCIL

AGENDA DATE: November 9, 2021

**CONTACT PERSON NAME AND PHONE NUMBER:** 

City Representative Alexsandra Annello, 212-0002

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: (Goal 4 - Enhance El Paso's Quality of Life through Recreational, Cultural and

**Educational Environments)** 

#### **SUBJECT:**

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the City Council declares that the expenditure of District 2 discretionary funds in an amount not to exceed \$4,446.42 to the Downtown Management District for costs related to the placement of informational banners in the City's downtown area for the Ann Richards Legacy Project; serves the public purpose of inspiring new leaders.

#### **BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

These funds are to reimburse the DMD for printing and banner placement through discretionary funds. The Ann Richards Legacy Project will reimburse the City for funds through acceptance of a donation. This will happen later if things are currently not ready.

#### PRIOR COUNCIL ACTION:

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

Yes, Council approved the placement of banners on 9.14.21.

#### AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

#### RESOLUTION

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

That the City Council declares that the expenditure of District 2 discretionary funds in an amount not to exceed \$4,446.42 to the Downtown Management District for costs related to the placement of informational banners in the City's downtown area for the Ann Richards Legacy Project; serves the public purpose of inspiring new leaders.

That the City Manager is authorized to effectuate any budget transfers necessary to ensure that the funds are properly expended for such purpose and is authorized to execute any related agreements, amendments to such agreements, and documents necessary to carry out the purpose of this Resolution.

APPROVED this day	2021.
	THE CITY OF EL PASO:
	Oscar Leeser Mayor
ATTEST:	
Laura D. Prine City Clerk	
APPROVED AS TO FORM:  Evy A. Sotelo	

Assistant City Attorney

#### Legislation Text

File #: 21-1300, Version: 1

#### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

Members of the City Council, Representative Joe Molinar, (915) 212-0004

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Discussion and action to direct the City Manager and staff to provide an answer on or before the February 1, 2022 City Council meeting with a cost estimate of how much the Multipurpose Performing Arts and Entertainment Center (MPC) project would cost if it were executed today.

# CITY OF EL PASO, TEXAS AGENDA ITEM AGENDA SUMMARY FORM

**DEPARTMENT:** Mayor and Council

AGENDA DATE: November 9, 2021

#### **CONTACT PERSON NAME AND PHONE NUMBER:**

Representative Joe Molinar 915-212-0004

**DISTRICT(S) AFFECTED:** All

#### STRATEGIC GOAL:

Goal 5 - Promote Transparent and Consistent Communication Amongst All Members of the Community

#### **SUBJECT:**

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

N/A

#### **BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Discussion and action to direct the City Manager and staff to provide an answer on or before the February 1, 2022 City Council meeting with a cost estimate of how much the Multipurpose Performing Arts and Entertainment Center (MPC) project would cost if it were executed today.

#### PRIOR COUNCIL ACTION:

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

Yes - City Council meeting (October 26, 2021).

#### AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

*****	********RFQUIRF	AUTHORIZA	TION*********	*****

#### Legislation Text

File #: 21-1298, Version: 1

#### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

Members of the City Council, Representative Peter Svarzbein, (915) 212-0001 Members of the City Council, Representative Alexsandra Annello, (915) 212-0002

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Discussion and action to suspend November Sun Metro route closures to the 2nd quarter of 2022 to fully ascertain return of ridership and to create a timeline for reinstatement of route closures during the pandemic from March 2020 to present.

#### CITY OF EL PASO, TEXAS AGENDA ITEM AGENDA SUMMARY FORM

**DEPARTMENT:** MAYOR AND COUNCIL

AGENDA DATE: 11/09/2021(Regular Agenda)

#### **CONTACT PERSON NAME AND PHONE NUMBER:**

City Representative Peter Svarzbein (915) 212-0001 City Alexsandra Annello, (915) 212-0002

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: (Goal 7- Enhance and Sustain El Paso's Infrastructure Network)

(Goal 1- Cultivate an Environment Conducive to Strong, Sustainable

**Economic Development)** 

(Subgoal 1.7 – Identify and develop plans for areas of investment and

local partnership)

#### **SUBJECT:**

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what?

Discussion and action to suspend November Sun Metro route closures to 2nd quarter 2022 to fully ascertain return of ridership and to create a timeline for reinstatement of route closures during the pandemic from March 2020 to present.

#### **BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The Department of Homeland Security (DHS) prohibited non-essential travelers to come into the United States due to the pandemic in March 2020. The City of El Paso suspended Sun Metro routes for the safety and wellbeing of the residents in March 2020. During the month of October of 2021, DHS announced fully vaccinated non-essential travelers will be able permitted to come into the United States starting on November 8, 2021. Last month, the City of El Paso announced Sun Metro modified/new/removed routes. The routes were modified and created based on ridership data which it promises to offer a better public transportation service to our community. It removed the routes 3, 16, 33 and 42. It created only two routes 12 & 17, and modified 5, 6, 12,17, it impacts 3, 5, 6, 12, 17, 26, 33, 42, 89 and Alameda Brio. The new schedule will take effect on November 21, 2021. Route 16 is scheduled for deactivation as part of the modification program and Route 11 will be reactivated as an option for non-essential travelers.

#### PRIOR COUNCIL ACTION:

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

#### AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer? N/A

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A Search Site

ADVEKTISEMENT		

### **Sun Metro to remove and change routes in November**

by Staff Friday, October 15th 2021





Sun Metro (Credit: KFOX14 / CBS4){/p}

EL PASO, Texas (KFOX14/CBS4) — Sun Metro has made changes to its routes.

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The city of El Paso is holding two public meetings on Monday to inform the community about the changes.

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Changes were made to its route schedule to improve route efficiencies, stated a news release from the city.

"We look at data to determine ridership and what routes make sense to modify," Assistant Director for Sun Metro, Astrid Bunner said.

The schedule will take effect on Sunday, November 21.

The community meetings will be held in the Sun Metro Transit Operations Center located at 10151 Montana Avenue on Monday at 11 a.m. and 6 p.m.

"We hold these meetings to inform the public before November 21. We also have information available at those stations that will be changing routes," Bunner said.

nnot attend in perso ter at 915) 212-3333

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Search Site

#### RUUIE MUDIFICATIONS

LIVE

Impacted routes are: 3, 5, 6, 12, 16, 17, 26, 33, 42, 89 and Alameda Brio

- Route 5: Far East/ Cielo Vista Express route change now traveling on Pebble Hills minimizing Zaragoza traffic congestion
- Route 6: Far East/ Mission Valley Express route change now traveling on Pebble Hills, minimizing Zaragoza traffic congestion
- Route 12: Doniphan Circulator route and schedule change providing service to Artcraft,
   Borderland, and Upper Valley
- Route 17: Three Hills NW EPCC route and schedule change to service South Desert Boulevard directly for improved service time. Route 19 to serve the area

Alameda Brio will improve service times and a more direct connection from Mission Valley
Transit Center to the Downtown Transit Center. Modification in service will arrive at Downtown
Transfer Center faster due to the elimination of stop at Five Points.

#### **NEW ROUTES**

- Route 26: Five Points/Alameda Express new express route servicing 5 Points and the University Medical Center of El Paso campus.
- Route 89: Zaragoza Bridge Circulator new route due to increase in service demand

#### **ROUTES REMOVED**

DUE TO DUPLICATION OF SERVICE AND/OR LOW RIDERSHIP

- Route 3: Ysleta Express route will be deactivated. Alameda Brio to serve the area
- Route 16: Upper Valley Circulator route will be deactivated. Route 12 to serve the area
- Route 33: Gov't Hill via Bassett Place route will be deactivated. Multiple route options to service the area.
- Route 42: Northeast Connector route will be deactivated, Dyer Brio to serve the area

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LIVE

Sign up to receive the topmost interesting stories from in and around our community once a day to your inbox.

#### **MORE TO EXPLORE**

El Pasoans will have to mask up at midnight on Friday

Police: Woman burned alive by ex-boyfriend, with 10-year-old granddaughter in the room

**Body found in Las Cruces Sunday** 

**SPONSORED CONTENT** 

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Nike Air Max Pre-Day LX Sneakers - US5 / Green

\$150.91

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#### Legislation Text

File #: 21-1304, Version: 1

#### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

Members of the City Council, Representative Alexsandra Annello, (915) 212-0002 Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003 Members of the City Council, Representative Peter Svarzbein, (915) 212-0001

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Discussion and action on a Resolution recognizing and honoring November 20, 2021 as National Transgender Day of Remembrance.

# CITY OF EL PASO, TEXAS AGENDA ITEM AGENDA SUMMARY FORM

**DEPARTMENT:** MAYOR AND COUNCIL

AGENDA DATE: November 9, 2021

#### **CONTACT PERSON NAME AND PHONE NUMBER:**

City Representative Alexsandra Annello, 212-0002

City Representative Peter Svarzbein, 212-0001

City Representative Cassandra Hernandez, 212-0003

**DISTRICT(S) AFFECTED:** All Districts

STRATEGIC GOAL: Goal 8 - Nurture and Promote a Healthy, Sustainable Community

#### SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Discussion and action on a resolution recognizing and honoring November 20, 2021 as National Transgender Day of Remembrance.

#### **BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Transgender Day of Remembrance (TDOR) was started in 1999 by transgender advocate Gwendolyn Ann Smith as a vigil to honor the memory of Rita Hester, a transgender woman who was killed in 1998. Transgender Day of Remembrance seeks to highlight the losses faced due to anti-transgender bigotry and violence.

#### PRIOR COUNCIL ACTION:

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

Yes, on 11.24.20 a similar resolution was approved.

#### AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

-	
N/A	

#### RESOLUTION

WHEREAS, The Borderland Rainbow Center in El Paso, Texas recognizes the violence and challenges faced by the transgender community in the nation every day, particularly transgender women of color; and

WHEREAS, there is a long history of violence targeting the transgender community and women of color, much of which goes unreported or inaccurately reported; and

WHEREAS, transgender women of color are more likely to experience violence, including in prisons and immigration detention facilities; and

**WHEREA**S, this year there were at least 43 known transgender or non-binary people who have been killed in the United States, most of whom were people of color; and

WHEREAS, discriminatory attitudes toward the transgender community and women of color foster high rates of violence, homelessness, and economic instability; and

WHEREAS, the members of the transgender community and women of color who do not have access to safe education, employment, and housing due to lack of availability, targeted support programs, or training are forced into situations that put them in vulnerable positions; and

WHEREAS, our City must ensure anti-discriminatory employment practices and promote policies for accepting inclusive environments; and

**WHEREAS**, it is essential to develop policies that support the transgender community, develop public education to dispel myths, and to humanize transgender people;

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

November  $20^{\text{th}}$  2021 shall be recognized as: "NATIONAL TRANSGENDER DAY OF REMEMBRANCE"

APPROVED this day	2021.
	THE CITY OF EL PASO:
	Oscar Leeser Mayor
ATTEST:	APPROVED AS TO FORM:
Laura D. Deira	Karla M. Frances
Laura D. Prine City Clerk	Karla M.\Nieman City Attorney

#### Legislation Text

File #: 21-1274, Version: 1

#### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

Parks and Recreation, Ben Fyffe, (915) 212-1766

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Management Update: Eco-Tourism Update.

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

**AGENDA DATE:** November 9, 2021 **PUBLIC HEARING DATE:** N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ben Fyffe, 212-1766

**DISTRICT(S) AFFECTED:** All

STRATEGIC GOAL: 1: Cultivate an environment conducive to strong, sustainable economic development

**SUBGOAL:** 1.2 Catalyze eco-tourism as an economic development driver focused on El Paso's unique and authentic urban desert identity

#### SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Management Update: Eco-Tourism Update

#### BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Update to Council on status of eco-tourism efforts, to include existing efforts and recommendations moving forward

#### PRIOR COUNCIL ACTION:

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

Eco-tourism as an economic driver was included in Strategic Plan by Council

#### **AMOUNT AND SOURCE OF FUNDING:**

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Funding for efforts absorbed by Visit El Paso and Parks & Recreation Department.

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? \_\_X YES \_\_\_NO

PRIMARY DEPARTMENT: SECONDARY DEPARTMENT:

\_\_\_\_\_

#### 

**DEPARTMENT HEAD:** 

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



November 9, 2021: Agenda # 20

### Management Update: Eco-Tourism

**Cross-Functional Team Report** 







### Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development

- 1.2 Enhance visitor revenue opportunities
  - Develop eco-tourism strategy
  - Catalyze eco-tourism as an economic driver focused on El Paso's unique and authentic urban desert identity



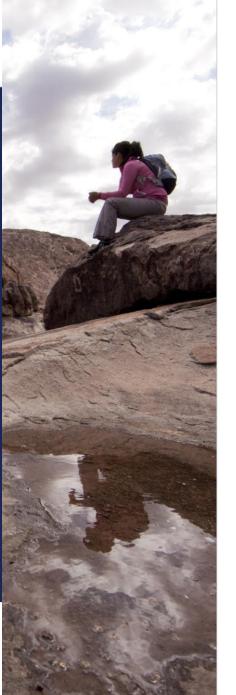
### **Contents**



Team Members

- Why Eco-Tourism?
- Groundwork To Now: Recapping Efforts
  - City of El Paso Investment
  - Marketing Efforts
- Path Forward





### **Team Members**



Ben Fyffe

#### **Destination El Paso**

- Bryan Crowe
- Brooke Underwood
- Veronica Castro

#### **City of El Paso Economic Development**

Miranda Diaz

#### City of El Paso Parks & Recreation

• Guillermo Hernandez

#### **City of El Paso Planning & Inspections**

Karina Brasgalla

# What is Eco-Tourism?

Environmentally responsible travel to natural areas, in order to enjoy and appreciate nature (and accompanying cultural features, both past and present) that promote conservation, have a low visitor-impact and provide for beneficially active socio-economic involvement of local people.

An eco-tourist is an individual seeking to visit and experience a scenic or remote natural area. Eco-tourism provides increases in lodging, employment, and cultural awareness.

-The World Conservation Union (IUCN)

# Why Eco-Tourism: A Market Share We Can Capture

- Nationally, outdoor recreation economy annually generates \$887 Billion in consumer spending annually and \$59.2 Billion in State and Local tax revenue
- Nationally, outdoor recreation employed 5.2 million people in 2019: equal to all the country's hospitals and 2X employed in agriculture
- Nationally, participation in outdoor recreation nationally grew from 151.8 million people in 2018 to 160.7 million in 2020. Most relevant for El Paso, in 2020:
  - Bike sales increased by 121%
  - Camping increased 28%
  - Hiking increased 16%





### What We Know About Eco-Tourists



- Spend time (more than 24 hrs.) and money in a destination for leisure, business, health, etc.
- Prefer responsible travel to natural areas, conserving the environment.
- Are in search of bucket list-worthy, eco-adventures
- Look for highly authentic local experiences
- Are more likely to visit heritage/cultural assets while visiting



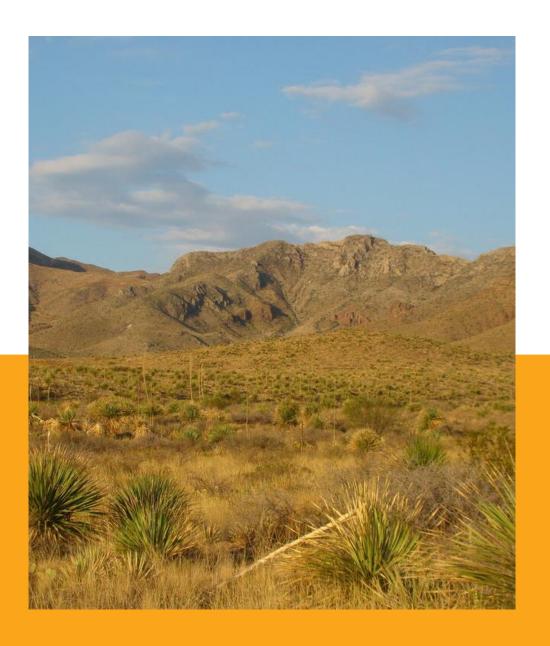




## **Groundwork to Now:** Recapping Efforts

Accreditations for major partners ensuring high standards related to parks, open space and tourism:

- Parks & Recreation
  - CAPRA Accreditation
- Destination El Paso
  - DMAP Certification, CTE, TDM

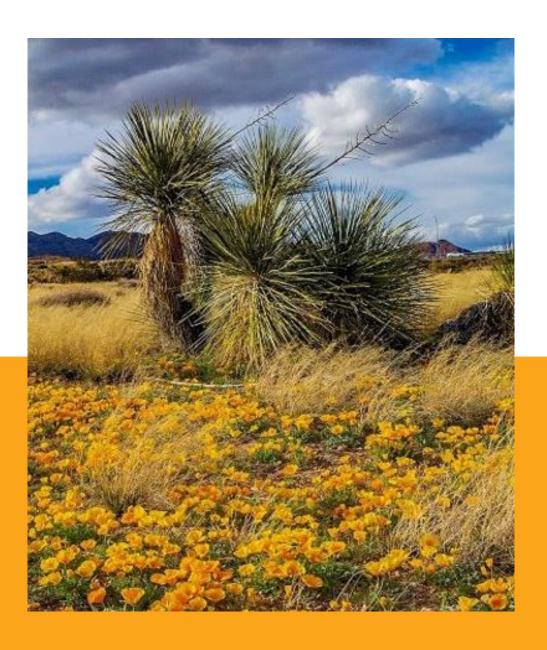




## **Groundwork to Now:** Recapping Efforts

City of El Paso Investment

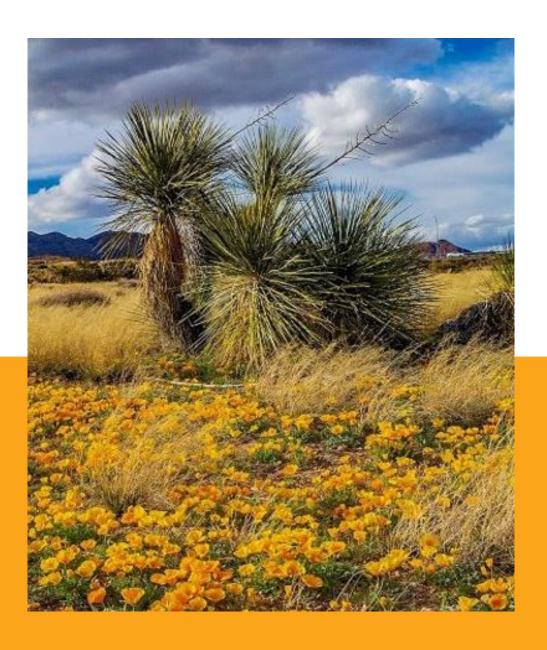
- 25% increase in City of El Paso Parks
   & Recreation inventory realized:
  - 2012 QOL funds
  - CDBG
  - Parkland Dedication Ordinance
- 5 trailheads added or improved and now and 19 miles of trails
- Conservation easements



### Groundwork to Now: Recapping Efforts City of El Paso Investment



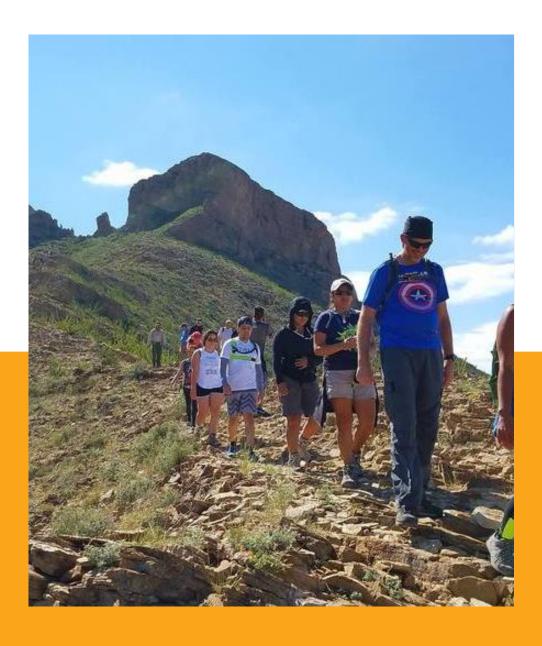
- 25 open spaces added
- Open Space Advisory Board created to provide community input on assets
- New tourist-friendly trail signage being developed



# Groundwork to Now: Recapping Efforts City of El Paso Investment



- Dedicated section of Visit El Paso App for outdoor spaces and ecotourism attractions
- Dedication section on VisitElPaso.com for eco-tourism activities, listicles for top outdoor adventures and interactive maps via Google Trekker
- Consistent social media messaging in promotion of assets



# Groundwork to Now: Recapping Efforts City of El Paso Investment



- Developed new standards for signage on trails and open spaces with specific branding
- Creating consistency and userfriendly messaging for experienced hikers and novices
  - Promoting safety
  - Respecting fragility of the environment



### **New Trail Signs & Standards**



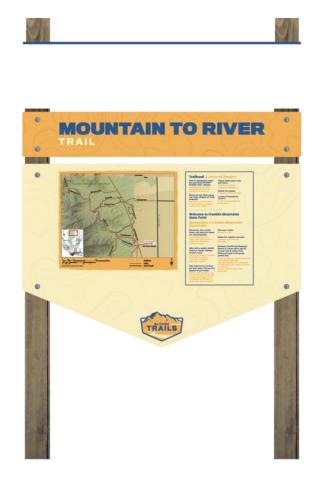
LOGO TRAILS TRAILS Full color logo. One color versions One color versions when used on light when used on dark background. background. **COLORS** 2945U **129U** 7499U 1795U TITLING GOTHIC FB NORMAL (BLACK)

**TITLING GOTHIC NORMAL (BOLD)** 





### **New Trail Signs & Standards**













## TX Marketing Efforts:

#### 2021 Visitors Guide

Cover



#### Featured Article



#### Enjoy the View from the Aztec Caves

Nestled on the rupped western slope of the Franklin Mountains, the Aztec Caves are both a living piece of history and a spectacular reward at the end of a short hike. Start your journey at the trailhead of the Aztec Cave Trail in Franklin Mountains State Park, a less than 3/4-mile hike that ascends more than 400 feet past lechuguillas. ocotillos, yuccas and prickly pear cactuses. If you have hiking poles, they'll be a big help here. Reach the end of the path and step inside the caves and you'll notice walls stained by smoke, marks of those who came before. Savor some time in the shade as you take in the spectacular view of miles of Chihuahuan Desert terrain, a view that has delighted countless generations through the ages. Contact the perk at 915-444-9100 for more information or to secure your pass.

#### Climb to the Peak of the Franklin Mountains

Standing at 7,192 feet above sea level, the imposing North Franklin Mountain is almost always in view no matter where you are in El Paso. Not only can you look upon it in admiration, you can also climb to the very top. To get there, travel up Mundy's Gap Trail on the eastern slopes of the mountain until you reach the North Franklin Mountain Peak Trail. Follow the path along the mountain's eastern slope, twisting and turning over red volcanic rocks along the way. Follow the trail all the way to the summit that affords a nearly 360-degree view of El Paso, as well as New Mexico and the Mexico border. On a clear day, you may even see New Mexico's Organ Mountains. All told, this hike is nearly 13 miles round trip, so make sure to bring plenty of water and a sturdy pair of shoes.



#### Explore Rio Bosque Wetlands Park

Settled along the Texas-Mexico border just southeast of El Paso, Rio Biospae Welfands Park is a 372-acre park home to rigarian welfands fark is a 372-acre park home to rigarian welfands fark that once flournished along the Rio Grander. As you expore the 4.5 miles of trails that meander through the verdant park, you may encounter swallowfall and moranch butterfless, heres and rebbits, bobcats, furtise and more.

If you like to go bird watching, this is the spot for you. More than 240 species have been seconded here, with common neeters including burrowing owns, greater roadrunners, blue grosteels and perindo bustings. Each season has something of its own to offer with winter seeing an abundance of raptors and all the majestic yellow blooms of the annual Forth Bittersewel in the spring. Visit at any time and you'll always see something new. For additional information coeffact #15-\$45-6000.

#### Enjoy Some First-Rate Fishing

Hook your balt, cast your fishing line, and sever the scothing glow of the West Texas morning sur as it rises over the still walters of a transpull lake. This may not sound like something you could do in the desert, but it's sectly what you'll find at El Paso's Aucarate Park, Home to a 48-acre lake stocked with largemouth and black beas, blue gill, carp, chappia, shad, catfish in the summer, and trout in the winter, the park is one of the southwest's too fishing destinations.

Although the lake is great for anglers, there's more to do hers. Rent a kapasi or pedial boat and paddle the day seasy or bring your polif clubs and play a round on either the 18-hole, par-12 or nise-hole security opti courses. Want to take it easy? Lay out a picnic and relax as you savor the cool winter and spring stanstene. Located about six miles from clowntown EI Paso, Accerate Park is an easy-to-reach diseast option.

Additional information can be found at www.epcountyparks.com or 915-771-2380.







#### Keystone Heritage Park

Keystone Heritage Park and the El Paso Desert Botanical Chardens is an archeological site, an archaic wetland and a botanical garden. The 52-acre park in El Paso's Upper Valley offers an interpretive experience, providing welling paths for views of the wetlands where a substantial number of bird species can be sighted, as well as a guided tour of the archeological site, in addition, the park hosts the ElPaso Desert Sotanical Gardens, an entrail landscape of native plants and architecture encompassing a healing garden composed of species with medicinal attritutes, a culinary garden, codus and succilent garden, and a butterfly garden. Visit them online www.keystocheological/size.

#### Scenic Drive

Known as the beet view of the city occessible by car, Scenic Drive wows visitors every time. The winding road skirts around the east side of the mountain citizens up some of the most sturning views of the CR. The road is cut along the edge of the mountains and traveries the southern tip of the Frankins. One side of the winding road is lined by beautiful stablely houses while the other features fabulous views of E.Placo and Justez. Out the most out of your drive by pulling over at the small park and scenic overlook. The road is closed off to motorists every Sunday offering visitors is safe haven for walking, running, taking, and just about anything not motorized. To access Scenic Drive turn onto Rim Rd. from either fleas St. or Albahama St.







### **Print Publications:**

November, Meetings Today



November, Smart Meetings







November, Authentic Texas

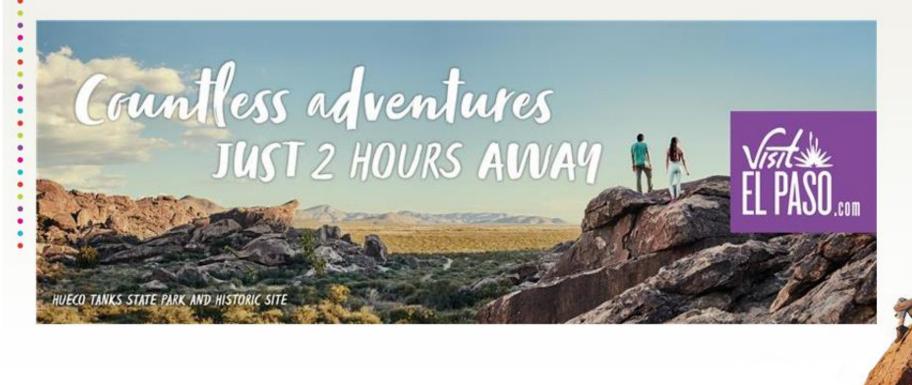






#### Out of Home - Billboard

November 2020- November 2021, Interstate-20 Billboard





DESTINATION EL PASO



### Digital Campaign

September, Social Placement

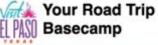


√ 7 El Paso Outdoor



This winter, head down to the Sun City for 300+ days of sun and warmth!

Learn More





El Paso is the perfect basecamp for all of your outdoor adventures and art escapes. The closest major city to Big Bend national park and Marfa. Stay with us and explore the West Texas.

Learn More

Sponsored By Visit El Paso

El Paso is the Journey



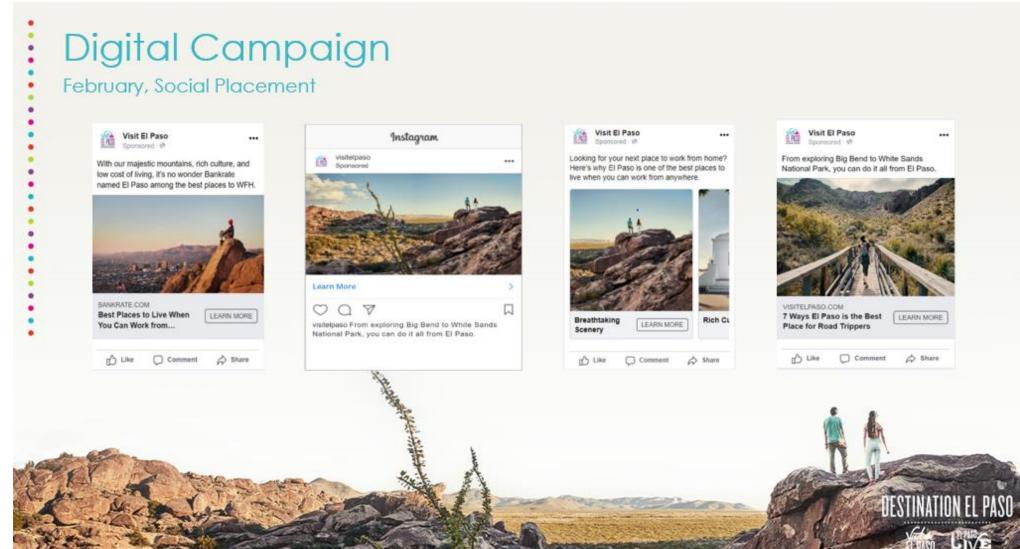
Carlsbad Caverns, the mountains of Ruidoso, natural hot springs, and more surround the city of El Paso. Travellers make El Paso their central hub for the experiences in the region. For those who explore, El Paso is waiting.

Learn More

Sponsored By Visit El Paso











### Digital Campaign

March, Social and Digital Placement





7 Reasons to Live & WFH in LEARN MORE

Comment

& Share

Beautiful El Paso, TX



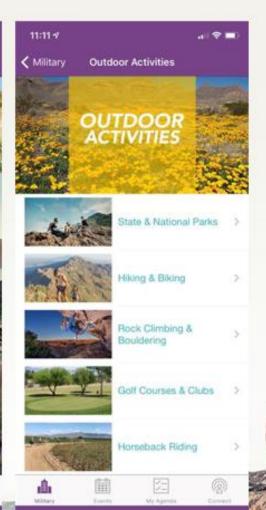






### Visit El Paso App











Develop a more robust digital site/app that provided information in one place as well as a print piece

- Locations and "know before you go" facts
- Grading system for use by experienced, intermediate and novice hikers and cyclists
- Testimonials and tips by El Paso experts





Continue Assessing City, State and Federal Assets to grade tourism-readiness and Plan for Success





#### Grade sites for

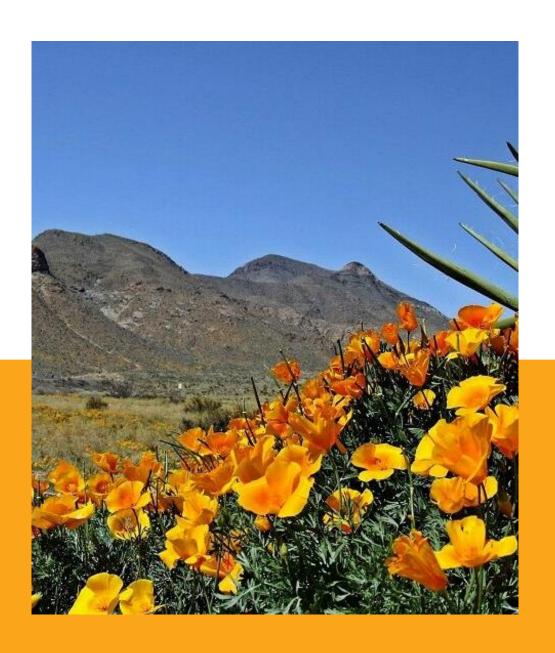
- Regular hours
- Current websites and digital presence
- Tourist Friendly Signage and wayfinding
- Eco-tourist amenities (e.g., bike repair stations or equipment)





#### Develop Trail Master Plan:

- Standards and guidelines to guide future development, particularly in Northeast, Northwest El Paso
- Alignment to ongoing projects and development
- Opportunity for robust stakeholder and community input sessions



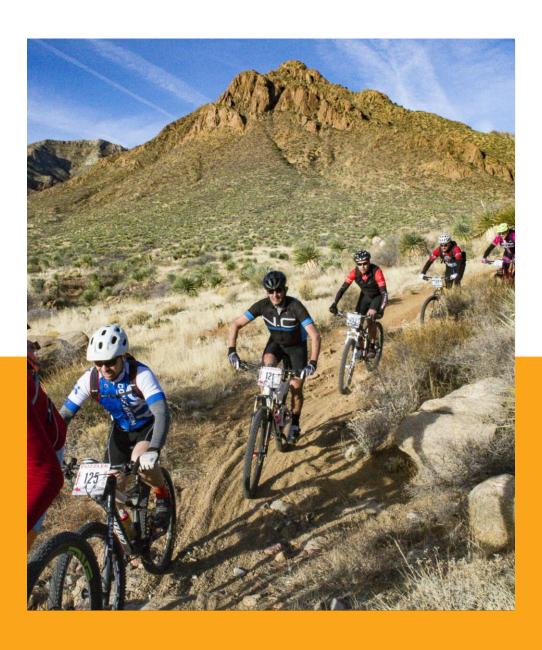
Market El Paso not just as an Eco-Tourism Destination but also as Hub with airport and services providing easy access to:

- Other State Parks
  - Gila National Forest
  - Ft. Davis Mountains

- Other National Parks
  - White Sands
  - Carlsbad Caverns
  - Big Bend

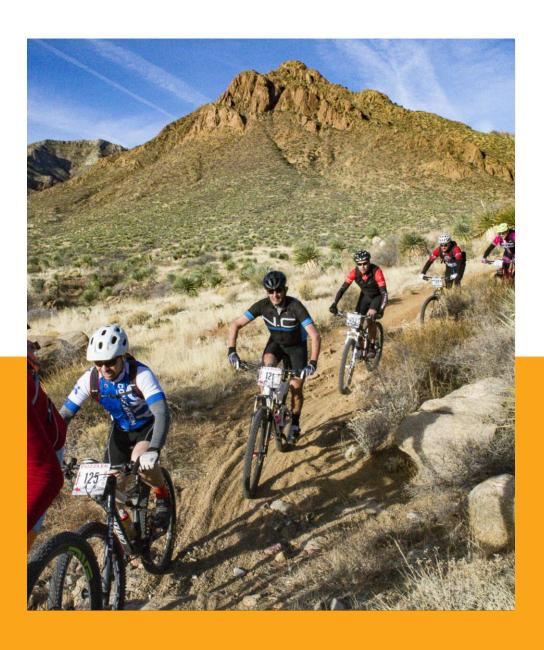
Mexican sites like Copper Canyon





Hire dedicated Eco-Heritage Tourism Staffer at Destination El Paso



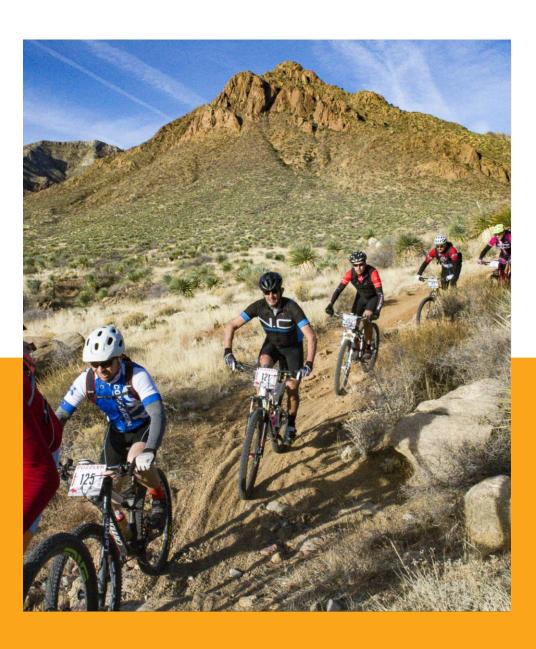


## Document usage and reach to more strategically:

- Determine markets and demographics for higher-yield marketing efforts
- Develop metrics to measure success

## Convene regular meetings of stakeholders to include

- City, State & Federal Parks leadership & staff
- affinity groups for cyclists, hikers privatesector partners
- Private sector partners like bike shops, outfitters, etc.



- Events and tools to familiarize tourism stakeholders and operators with local assets
- El Paso Ambassador Training App
- Use 15+ years of familiarization tour success to craft Local familiarization Tours for Hoteliers, Moteliers, Air BnB superhosts etc
- National and International Fam Tours
  - Travel writers
  - Bloggers
  - Influencers
  - Outdoor enthusiasts
  - Broadcast opportunities



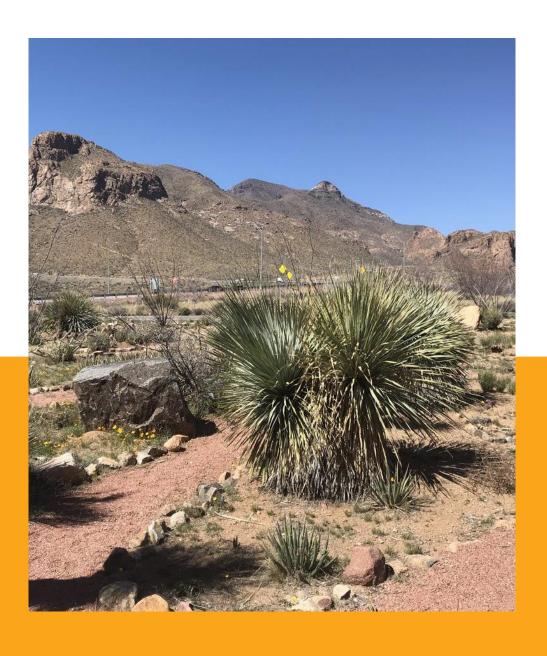


## Path Forward: Recommendations to Build Momentum

More robust outreach to Hotel & Lodging Association and Tour Operators to determine their readiness for Eco-tourists:

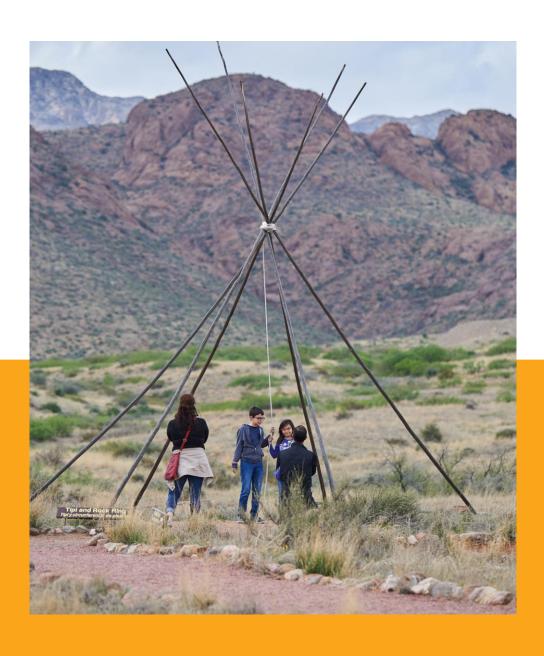
- Regular hours or ability for byappointment tours
- Ability to receive shipment of hiking/cycling/climbing equipment prior to arrival
- Specific messaging or marketing



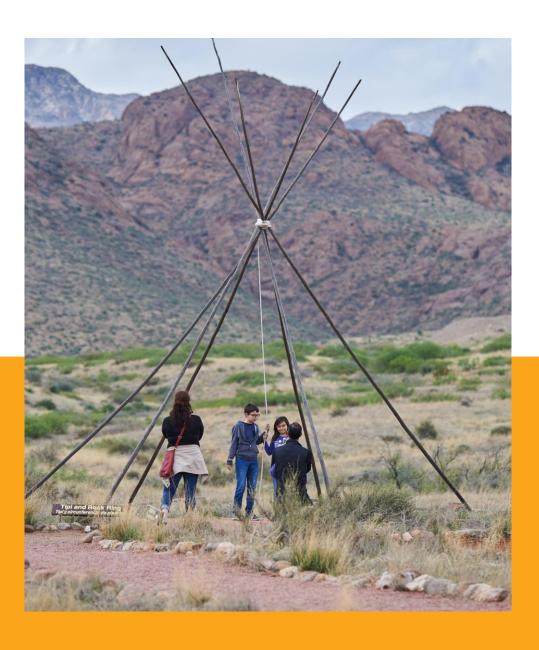


Capitalize on the El Paso Museum of Archaeology's unique location to become a jumping off point for tourists and locals:



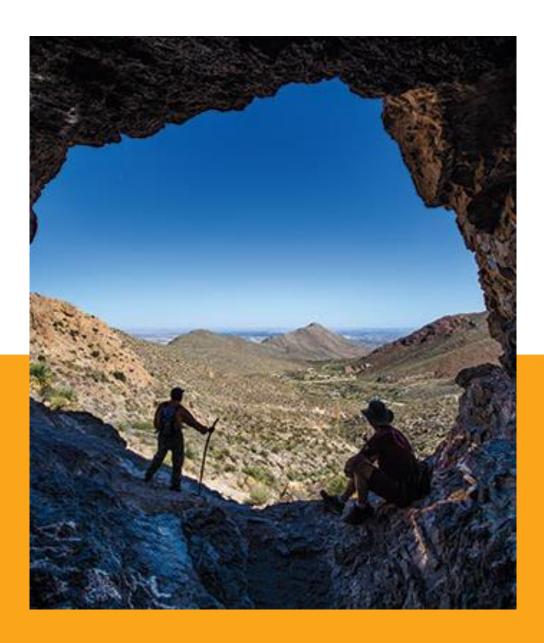


- Site is adjacent to Franklin Mountain State Park, Castner Range and close to Ft. Bliss and set within Wilderness Park with beginner level trails
- Staff to be trained to provide information on sites, visitor amenities, businesses supporting hiking, cycling and more



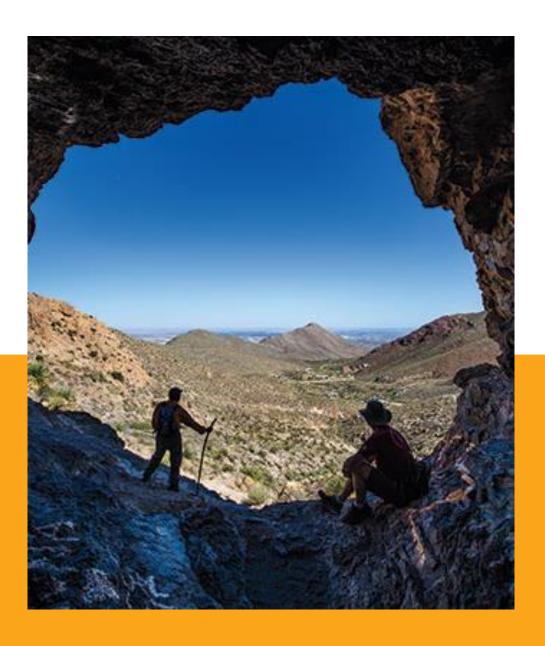


- Site would program workshops in collaboration with Parks & Recreation & ISDs for schools, youth, families and adults on a variety of topics:
  - Hiking 101
  - Mountain Biking 101
  - Identifying Wildlife Presence
     & Safety
  - Respecting eco-systems





- Utilize existing economic development incentives to assist with marketing outside of El Paso for assets like:
  - State Parks
  - Open Spaces
  - Trails
  - Eco-experiences within range of El Paso





- Develop economic development incentives for businesses supporting outdoor recreation and eco-tourism:
  - Camp sites/ RV parks
  - Outfitters
  - Tour operators
  - Cycling/Climbing equipment rentals





More robust outreach to businesses that appeal to eco-tourists desire for highly local and authentic experiences:

- Dovetail with existing Made in the 915, Buy Local initiatives:
  - Restaurants
  - Microbreweries
  - Galleries
  - Retail showcasing locally produced goods
  - Outfitters and Guides



## QUESTIONS



## El Paso, TX

### Legislation Text

File #: 21-1258, Version: 1

## **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

City Manager's Office, Juliana Baldwin-Munoz, (915) 212-1204 City Manager's Office, K. Nicole Cote, (915) 212-1092

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Presentation, discussion and action on the upcoming Strategic Planning Session to be held on December 1-2, 2021 at the El Paso Museum of Art.

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

AGENDA DATE: November 9, 2021

**PUBLIC HEARING DATE:** 

#### **CONTACT PERSON(S) NAME AND PHONE NUMBER:**

Juliana Baldwin-Munoz, City Manager's Office (915) 212-1204 K. Nicole Cote, City Manager's Office (915) 212-1092

DISTRICT(S) AFFECTED: All

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

SUBGOAL: N/A

#### **SUBJECT:**

Presentation, discussion and action on the upcoming Strategic Planning session to be held on December 1-2, 2021 at the El Paso Museum of Art.

### BACKGROUND / DISCUSSION:

Presentation to discuss the upcoming Strategic Planning session.

#### PRIOR COUNCIL ACTION:

Special meeting held on May 16, 2019 for discussion and action on the update of the Strategic Plan: The City's Mission, Vision and future goals and initiatives.

### AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

**PRIMARY DEPARTMENT:** City Manager's Office – Performance Office

**SECONDARY DEPARTMENT:** All City

**DEPARTMENT HEAD:** 

If Department Head Summary Form is initiated by Purchasing, client

department should sign also)







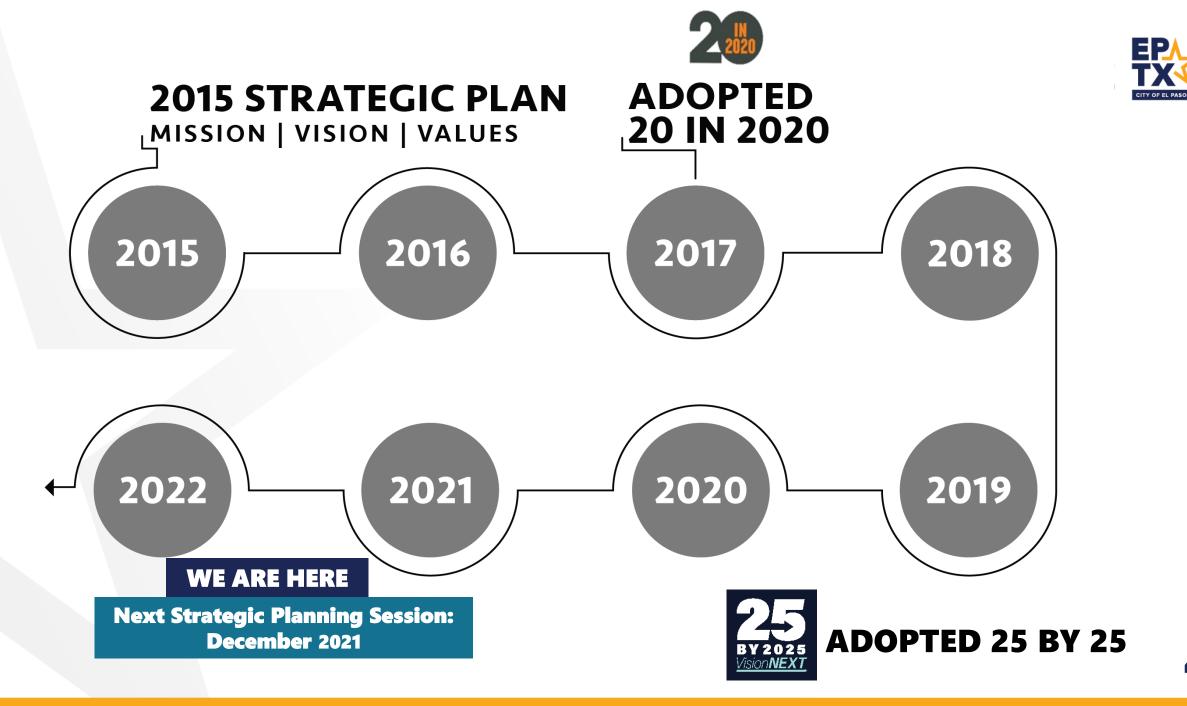
- Strategic Planning Process Recap
- Proposed Session Approach
- •Integrated Budget Process Recap

# Strategic Planning Process





- 1 Input/Ideas
- 7 Identify
- 3 Integrated Budget Process
- Implement
- 5 Integrate





- 1.) Strong Sustainable Economic Development
- 2.) Set the Standard for a Safe and Secure City
- 3.) Promote the Visual Image of El Paso
- 4.) Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments
- 5.) Promote Transparent and Consistent Communication
- 6.) Set the Standard for Sound Governance and Fiscal Management
- 7.) Enhance and Sustain El Paso's Infrastructure Network
- 8.) Nurture and promote a Healthy, Sustainable Community

STRATEGIC PLAN ADOPTED



ESTABLISHED MISSION, VISION & VALUES



AFFIRMED 8 STRATEGIC GOALS



## **OPERATIONAL ALIGNMENT**





## **Vision Blocks**

Goals 1+3

Vibrant Regional Economy

Goals 2,7+8

Safe + Beautiful Neighborhoods

Goal 4

Recreational,
Cultural + Educational
Opportunities

Goals 5+6

High Performing
Government







Examples of key transformative improvements





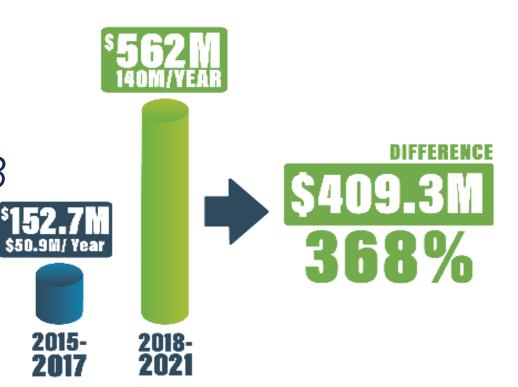
# Safe + Beautiful Neighborhoods

→Capital Project Productivity

283 projects completed since 2018 valued over \$550 million

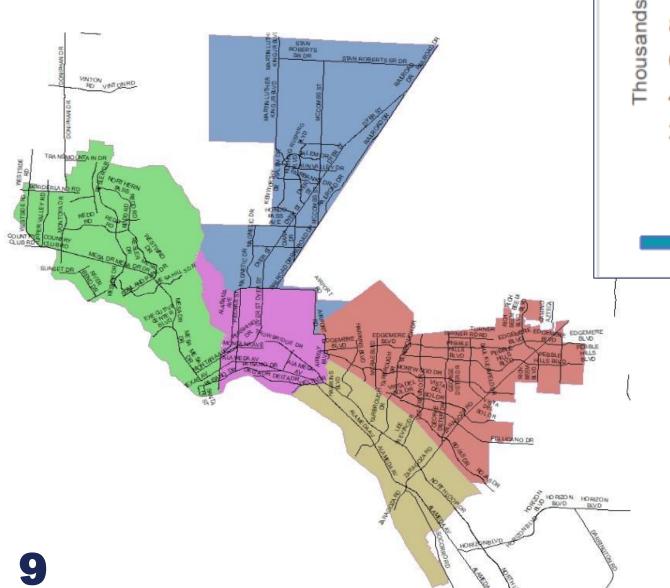
→ Focus on Street Infrastructure

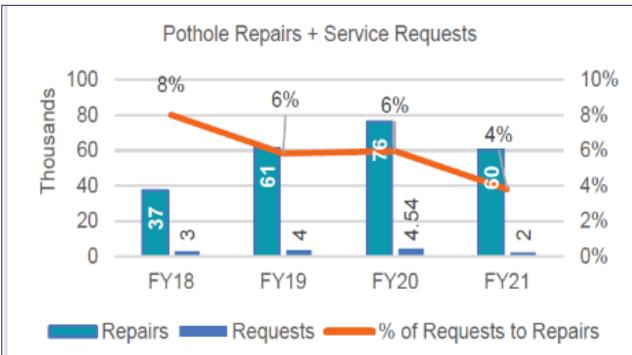
→ Public Safety Operations





# **Top Resident Priority: Street Maintenance**









## **Exceptional Opportunities**





**Grow Signature Holiday Attractions** 

# 2021 Strategic Planning Session: Proposed Approach



- Expand from one to two days
  - Target dates **December 1**st and 2nd
- Day One Focus: Reflect + (re)Calibrate
  - A look back at key accomplishments, shared successes
  - Presentations by Council Members
  - Voice of our Community (Data Review, Key Insights)

# 2021 Strategic Planning Session: Proposed Approach



## Day Two Focus: Ideate + Identify

- Emerging priorities
- Key strategic opportunities
- Determine and/or reaffirm key focus areas



## Integrated Budget Process

- Budget Updates (every Council agenda)
- Chime In! Survey
- FY22 Budget Work Sessions (July 2021)

# Voice of our Residents/Workforce (September-November 2021)

- Council Member Feedback
- Partner Sessions (Communities of Excellence)
- Voice of our Youth---Youth Advisory Board
- Director Workshop (Operational Priorities)
- 2021 Community Survey

Strategic Planning Session (December)

# **Council Member Feedback Snapshot**



What do you consider the most significant accomplishment(s) of the City's Strategic Plan implementation, so far? Why?

Key Theme---Formal process that leads to addressing funding and needs of City of El Paso

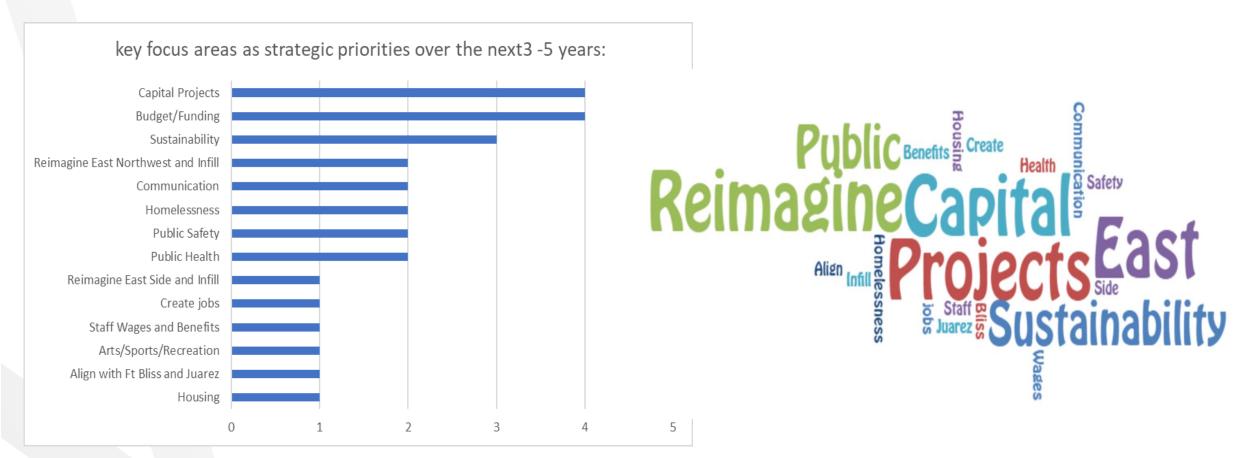


# Council Member Feedback



Snapshot

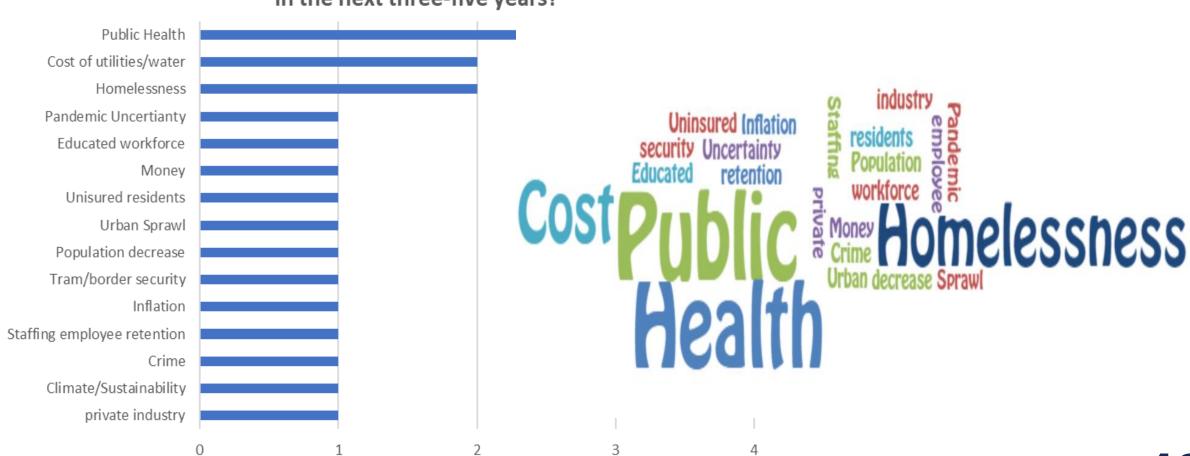
Top three key focus areas as strategic priorities over the next three to five years:



# **Council Member Feedback Snapshot**

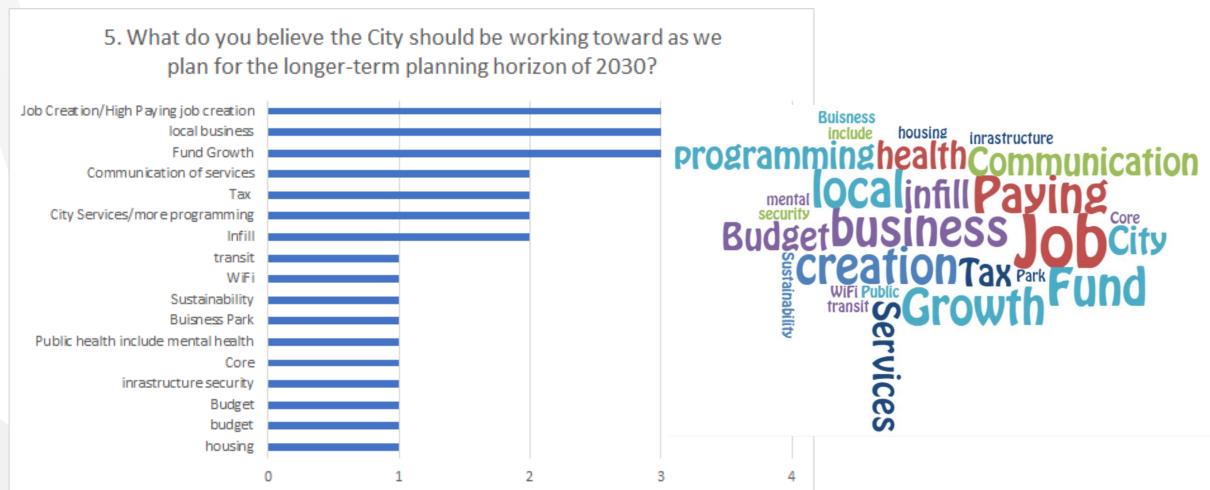


4. What are the most significant challenges the City will face in the next three-five years?



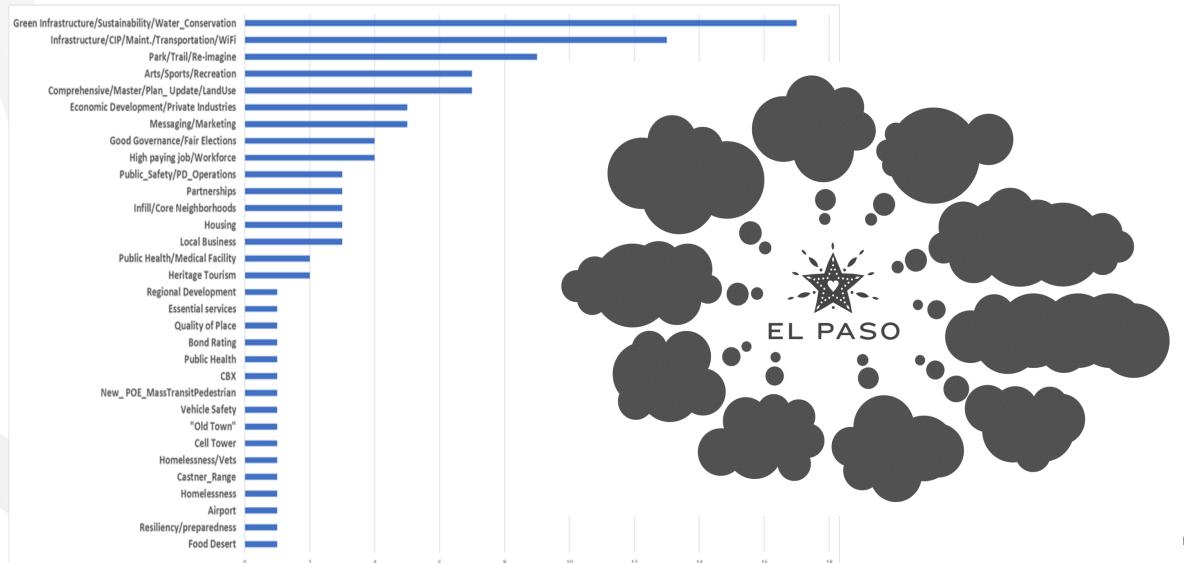
# Council Member Feedback Snapshot





# **Council Member Feedback Snapshot----Vision Bubbles**









# Community Partner Feedback Snapshot

- Reinforce + Expand Communities of Excellence initiative
- Three interactive, hybrid session options delivered
- 20 organizations
  - Public Sector
  - Private Sector
  - Social Services Providers
- Over 440 individual data points captured

# **Community Survey**\*Trends Snapshot



Please rate each of the following items as they relate to El Paso as a whole.  Positive Ratings (4 or 5 on 5-point scale)					
Category	2021	2019	Difference		
El Paso as a place to live	79.5%	79.7%	-0.2%		
El Paso as a place to raise children	79.5%	79.3%	0.2%		
El Paso as a place to work	40.0%	40.0%	0.0%		
El Paso as a place to retire	67.4%	68.4%	-1.0%		
El Paso as a place to visit	45.6%	40.9%	4.7%		
El Paso as a place for recreation and entertainment	29.2%	25.1%	4.1%		
El Paso as a place to do business	44.9%	43.0%	1.9%		
Your overall quality of life in El Paso	66.5%	64.1%	2.4%		

<sup>\*</sup>Preliminary Results, survey still underway



# Community Survey: \*Comparative Snapshot



Please rate each of the following items as they relate to El Paso as a whole.					
Positive Ratings (4 or 5 on 5-point scale)					
Category	El Paso	Texas	Difference		
El Paso as a place to live	79.5%	56.4%	23.1%		
El Paso as a place to raise children	79.5%	53.9%	25.6%		
El Paso as a place to work	40.0%	48.1%	-8.1%		
El Paso as a place to retire	67.4%	58.4%	9.0%		
El Paso as a place to visit	45.6%	58.8%	-13.2%		

<sup>\*</sup>Preliminary Results, survey still underway





# Integrated Budget Process (IBP)



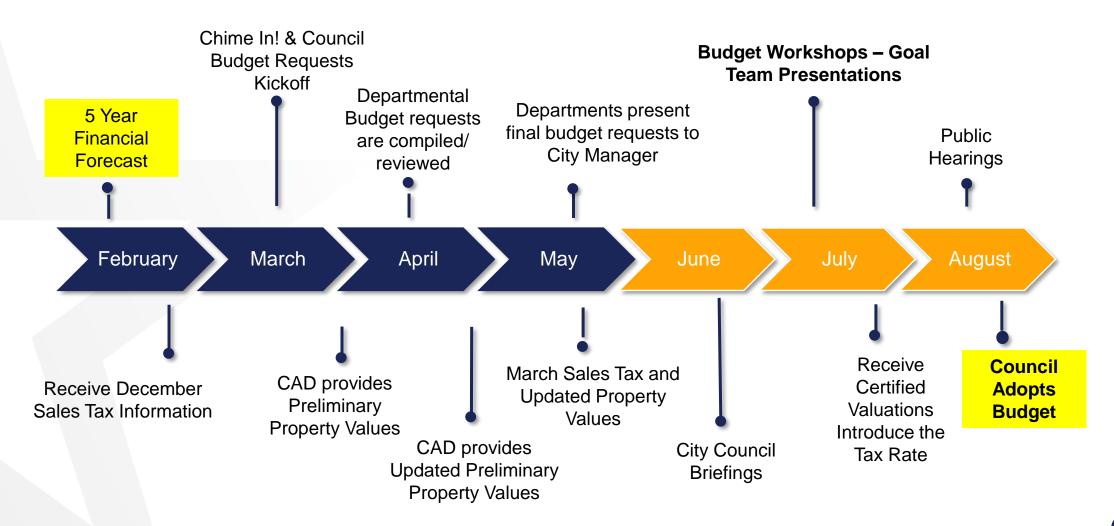
Annual process that integrates:

- Financial goals
- Departmental operational needs
- Resource requirements associated with strategic initiatives and projects



# Integrated Budget Process Timeline









Expand investment in public safety

Expand the investment and beautification of street infrastructure

Complete the Quality of Life bond projects

# **Expanded Investment in Public Safety**





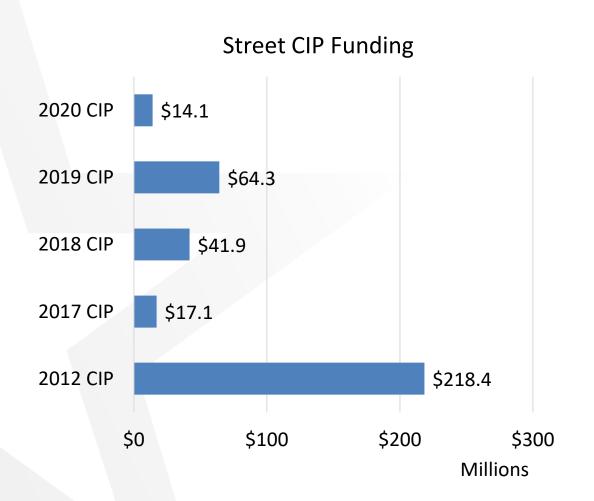


## Staffing

- Since the summer of 2015 (FY 2016) the Police and Fire budgets have increased by \$70 million, or 32%
- Police staffing plan to add a net increase of 300 Officers began in FY 2016
- Additional investments include the Crisis Intervention Team and an increase 911 Communicators
- Fleet/Capital Replacement
  - Summer of 2019 the budget included \$4 million for fleet and capital replacement
  - Summer 2021 the budget included \$7.8 for fleet and capital replacement
- 2019 Public Safety Bonds
  - \$167.3 million, or 40%, of the total \$413.1 million in bonds have been issued

## **Expanded Investment in Street Infrastructure**



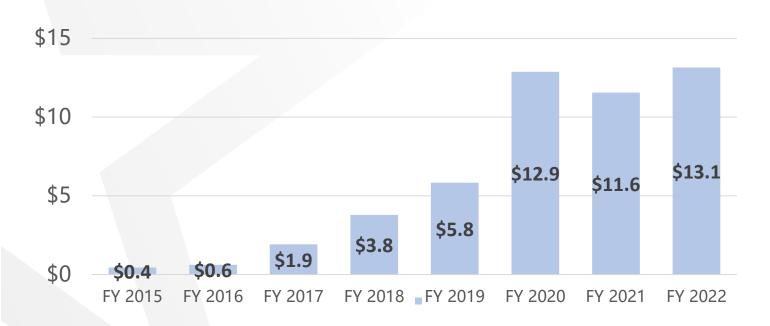


- \$10 million annually in set-aside (pay-go) funds for street resurfacing projects
- Newly funded Traffic Intersection Safety Program
- Annual funding for ADA on-demand request projects
- Annual funding for Neighborhood Traffic Management Program
- Pothole repairs improved operational efficiency
- Capital Improvement Projects
  - Resurfacing
  - Reconstruction
  - Traffic signals
  - Lighting and medians
  - MPO match

# Complete the Quality of Life bond projects... and restore services impacted by COVID



## **Quality of Life – Cumulative O & M**



- Increased funding for sport complex maintenance
- New automated irrigation pilot project
- 2012 Quality of Life Bonds - 156 projects completed

# FY21-22 Budget Priorities



- No property tax rate increase for the second consecutive year
- Lowering taxes for seniors and disabled
- Focusing on long-term financial sustainability (short-term decisions impact our long-term future)
- Restoring high-priority services and capital project funding impacted by COVID-19

# Current Year Budget Recap



SAFE AND BEAUTIFUL NEIGHBORHOODS	EXCEPTIONAL RECREATIONAL, CULTURAL AND EDUCATIONAL OPPORTUNITIES	HIGH PERFORMING GOVERNMENT
Collective bargaining impacts for public safety	\$10.7M increase for Quality of Life services and operating costs for new bond projects	Compensation – minimum 1.5%
Two police academies and three fire academies	\$1.5M for sports complex facility maintenance	Implementation of internal equity adjustments
\$1.2M increase for Crisis Intervention Team	\$500K increase for an automated irrigation pilot project	No healthcare cost increase for civilian employees
\$7.8M increase for Public Safety capital replacement (set-aside funds)	\$434K for Winterfest	Funding Shape-it-Up wellness program – up to \$1,800 annually
\$20M total for street resurfacing projects and pavement condition index study refresh (includes additional \$12.2M recently approved)		Funding Health Savings Account - \$500 to \$1,000 annually (for Consumer Driven Healthcare Plan participants)
\$1.8M increase for Vision Zero – traffic intersection safety program		
\$500K increase for ADA on-demand request funding		
\$250K in Neighborhood Traffic Management Plan funding		

## **Future Cost Drivers**



- New collective bargaining agreements in FY 2023 and FY 2024
- Public Safety Bonds More officers and fire fighters for new commands and stations
- Remaining quality of life bond project operating costs
- Workforce investments compensation increases and healthcare
- Remaining amount of debt to issue for capital projects
- Critical investment still needed for streets, facilities, vehicles, equipment, information technology



## El Paso, TX

### Legislation Text

File #: 21-1284, Version: 1

## **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

Police, Assistant Chief Peter Pacillas (915) 212-4308

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance amending Title 12 (Vehicles and traffic), Chapter 12.08 (Administration and Enforcement), Section 12.08.220 (Impounding Vehicles) of the City Code, in its entirety, to allow an employee designated by the City to request the removal and storage of illegally parked and abandoned vehicles.

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

**AGENDA DATE: 11/09/21** 

**PUBLIC HEARING DATE: 11/23/2021** 

CONTACT PERSON(S) NAME AND PHONE NUMBER: Assistant Chief Victor Zarur 915-212-4307

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: 2-Set the Standard for a Safe and Secure City

SUBGOAL: 2.1-Maintain standing as one of the nation's top safest cities.

### SUBJECT:

An ordinance amending Title 12 (Vehicles and Traffic), Chapter 12.08 (Administration and Enforcement), Section 12.08.220 (Impounding Vehicles) of the city code, in its entirety, to allow an employee designated by the city to request the removal and storage of illegally parked and abandoned vehicles.

#### BACKGROUND / DISCUSSION:

HB 914 recently passed in the State Legislature and went into effect on September 1, 2021. This bill authorizes municipalities to broaden who can tow illegally parked vehicles from the El Paso Police Department to the broader category of municipal employees.

### PRIOR COUNCIL ACTION:

N/A

#### AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? \_\_\_\_YES\_ONO

PRIMARY DEPARTMENT: Police SECONDARY DEPARTMENT:

**DEPARTMENT HEAD:** Chief Gregory K. Allen

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

Revised 04/09/2021

<b>ORDINANCE</b>	NO.
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AN ORDINANCE AMENDING TITLE 12 (VEHICLES AND TRAFFIC), CHAPTER 12.08 (ADMINISTRATION AND ENFORCEMENT), SECTION 12.08.220 (IMPOUNDING VEHICLES) OF THE CITY CODE, IN ITS ENTIRETY, TO ALLOW AN EMPLOYEE DESIGNATED BY THE CITY TO REQUEST THE REMOVAL AND STORAGE OF ILLEGALLY PARKED AND ABANDONED VEHICLES.

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

**SECTION 1.** That Title 12 (Vehicles and Traffic), Chapter 12.08 (Administration and Enforcement), Section 12.08.220 (Impounding Vehicles), is hereby amended, in its entirety, as follows:

Section 12.08.220 - Impounding Vehicles.

- A. Members of the police department, the fire chief or his designee, or an employee designated by the City Manager are authorized to remove or impound vehicles from any street, highway, alley, public or private ground, or public rights-of-way to the nearest garage, vehicle storage facility, or other place of safety, or to a garage or storage facility designated or maintained by the city under the circumstances herein enumerated:
  - When a vehicle is illegally parked in any zone or within any area where parking
    is prohibited or restricted by official signs or curb markings, or is parked in such
    a manner as to obstruct or partially obstruct any crosswalk, sidewalk or driveway;
  - 2. When a vehicle is so parked as to obstruct the movement of any railroad train, railroad car or locomotive;
  - 3. When a vehicle is parked on public or private property under or next to any fire escape or fire exit at a location such that the parked vehicle would obstruct or interfere with the operation or use of the fire escape or fire exits as a means of exit from the building;
  - 4. When a vehicle is parked on public or private property next to any standpipe or sprinkler connection used by the fire department at a location such that the parked vehicle would obstruct or interfere with the operation of use of such connection;
  - 5. When a vehicle is illegally parked in a zone designated by the city engineer under Section 12.44.180 of this code and such zone is marked as a tow-away zone by a sign;
  - 6. When a vehicle other than a commercial vehicle is parked in a loading zone designated for commercial vehicles only and such zone is marked by a sign as a tow-away zone;

1

- 7. When a vehicle is parked on city-owned property in violation of official signs or curb-markings established in accordance with Section 12.44.170 of this code;
- 8. When a vehicle is left parked or standing on any portion of a limited-access or controlled-access highway for a continuous period of time in excess of ten hours;
- 9. When a vehicle is left parked or standing on city-owned property that is not held open or provided for vehicular traffic or public parking, and the property is so marked by a sign;
- 10. When a vehicle remains parked in violation of no parking signs posted regarding street construction in accordance with the provisions in Section 12.44.220 of this code.
- 11. When a vehicle is parked legally on public property; and has been unattended for more than 48 hours; and there is reasonable grounds to believe the vehicle is abandoned.
- B. Members of the police department and the fire chief or his designee are authorized to remove or impound vehicles from any street, highway, alley, public or private ground, or public rights-of-way to the nearest garage, vehicle storage facility, or other place of safety, or to a garage or storage facility designated or maintained by the city under the circumstances herein enumerated:
  - 1. When a vehicle is left unattended upon any bridge, viaduct or causeway, or in any tube or tunnel where such vehicle constitutes an obstruction to traffic;
  - 2. When the police department is authorized or directed to remove obstructions, including vehicles and personal property, from any right-of-way or any other portion of the roadway in accordance with the provisions in Section 545.3051, Transportation Code;
  - 3. When a vehicle upon a street or highway is so disabled as to constitute an obstruction to traffic and the person or persons in charge of such vehicle are absent or are unable to provide for its custody or removal;
  - 4. When a vehicle is stored in the streets, alleys or other rights-of-way in violation of Section 12.80.150 of this code;
  - 5. When a vehicle is left unattended upon a street where such vehicle constitutes a hazard or obstruction to the normal movement of traffic;
  - 6. When a vehicle has been involved in an accident and by reason of damage or incapacity of the driver cannot be driven or is unsafe to drive;
  - 7. When a vehicle constitutes a traffic hazard because of defective lights, brakes or steering apparatus;

- 8. When a vehicle is being used to transport hazardous materials in violation of Title 9 of this code;
- 9. When the police department is authorized to take an abandoned motor vehicle, watercraft or outboard motor found on public or private property into custody pursuant to Section 683.011, Texas Transportation Code;
- 10. When a vehicle is offered or exposed for sale in violation of Section 13.20.040 of this code and removed and stored in accordance with the provisions of that section;
- 11. When a vehicle is stopped by a police officer for an alleged traffic law violation; and the vehicle's owner or operator fails to show evidence of financial responsibility as required under Chapter 601 of the Texas Transportation Code, as amended.
- C. Officers and other authorized employees may use city equipment or the services of an independent contractor of the city to remove or impound a vehicle and store it as authorized in this section, or to transfer or seize, impound and store a vehicle.
- D. Whenever an officer or other authorized employee removes or impounds a vehicle utilizing city equipment, or when a peace officer seizes a vehicle utilizing city equipment, the city shall take the necessary steps to ascertain the registered owner and lienholders of record if any thereof, and shall give or cause to be given notice in writing, in accordance with Chapter 683 of the Texas Transportation Code, to such registered owner and lienholders of record if any of the fact of such removal, the police or fire department case number and the location of the place where the vehicle is located.
- E. There is established a towing fee and a storage fee which shall be charged in the respective established fee amounts per day for vehicles twenty-five feet in length or less and for vehicles over twenty-five feet in length for each calendar day, or part thereof, for each vehicle that is removed or impounded hereunder or transferred or seized by peace officer when it is towed by city equipment or stored in a city storage facility. All the charges assessed shall be a lien against the vehicle.

The registered owner, lienholder of record or person authorized or entitled to possession of a vehicle must comply with the requirements of the Texas Transportation Code and pay the city's towing and storage fees as authorized by this section and if applicable, any fees assessed against the vehicle under the authority in Chapter 12.85 of this code or post a bond as may be provided for in this code prior to redeeming the vehicle. Additionally, if the vehicle was towed by an independent contractor of the city or transferred to a city lot from a garage or vehicle storage facility, the registered owner, lienholder of record or person authorized or entitled to possession of a vehicle must also pay those outstanding towing, storage and other related fees or post a bond as may be provided for in this code prior to redeeming the vehicle.

Fees must be paid in accordance with the procedures established by the police department and the comptroller's office.

Information as to these procedures shall be made available to persons seeking to reclaim a vehicle. Vehicles will be released from the storage facility during the hours the facility is open to the public on presentment of proof that payment has been made. A person reclaiming a vehicle must remove it from the city's storage facility within twenty-four hours after paying the towing and storage charges, or he will be assessed additional storage charges. Vehicles not reclaimed within the time allowed under the Texas Transportation Code will be disposed of in accordance with that code.

- F. Whenever a vehicle is removed, impounded, or seized under the authority of this section utilizing the services of an independent contractor of the city, the independent contractor shall comply with all notice and redemption of vehicle provisions required by the Texas Transportation Code.
- G. Whenever a vehicle is removed, impounded, or seized under the authority of this section utilizing the services of an independent contractor, the independent contractor shall be entitled to charge and receive from the registered owner, lienholders of record if any or other person authorized or entitled to reclaim the vehicle all charges and fees authorized in its contract with the city. All the charges assessed shall be a lien against the vehicle. Vehicles not reclaimed within the time allowed under the Texas Transportation Code will be disposed of in accordance with that code.
- H. The term "vehicle" as used in this section shall be deemed to include bicycles. Any bicycle that remains unclaimed for a period of thirty days shall be disposed of in accordance with Article 18.17, Texas Code of Criminal Procedure.
- I. Members of the police department are authorized to remove or impound from any public or private property to a city storage facility, other vehicle storage facility, or other location of an auction, by means of city-owned and operated wrecker equipment, or by utilizing the services of an independent contractor of the city, all motor vehicles that at the time of removal are abandoned motor vehicles under the Texas Transportation Code. The registered owner or person entitled to possession of a vehicle must comply with the Texas Transportation Code and pay all towing, storage and other fees as authorized by this section prior to redeeming the vehicle. All vehicles must be redeemed in accordance with the provisions of this section.
- J. A registered owner or other person whose vehicle has been removed or impounded under the authority of this section may, within ten days of the day the vehicle was removed or impounded, request a post-deprivation hearing. At the time of the request, the registered owner or other person shall post a bond, sufficient to cover the cost of all outstanding tickets and towing and storage fees accrued, and shall provide the case number used by the police or fire department in making the report pertaining to the removal or impoundment of the vehicle. Such bond shall be posted at the municipal court bond office. Such person's vehicle will be released from the storage facility on presentment of proof that the requisite bond has been posted.

The hearing shall be held before a judge of the El Paso municipal court. A judge shall, as soon as practicable, hear the matter, after giving reasonable notice to the police chief or fire marshal, as applicable. The party requesting the hearing and the police chief or fire marshal or their designated representatives shall have the opportunity to present evidence and make argument on their behalf. The formal rules of evidence do not apply to a hearing under this section.

The judge hearing the case shall make his or her ruling on the basis of substantial evidence presented at the hearing. The judge shall uphold or overrule the decision to remove or impound the vehicle. In the event that the decision is upheld, the bond shall be forfeited to the city. In the event that the decision is overruled, the amount of the bond shall be returned to the person who posted it. The decision of the judge is final.

(Administration and Enforcement) of the Ci	ty Code remains in full force and effect.
ADOPTED this day of	, 2021.
	CITY OF EL PASO:
	Oscar Leeser Mayor
ATTEST:	
Laura D. Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Eric Gutierrez	Chief Gregory Allen
Assistant City Attorney	El Paso Police Department

### El Paso, TX

### Legislation Text

File #: 21-1269, Version: 1

### **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

#### **District 6**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553 Planning and Inspections, Andrew Salloum, (915) 212-1603

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting Special Permit No. PZST21-00012, to allow for a television and radio broadcasting antennae on the property described as a portion of Lot 1, Block 2, Pellicano Commercial Unit Three, 12285 Pellicano Drive, City of El Paso, El Paso County, Texas, pursuant to Section 20.10.700 of the El Paso City Code. The penalty being as provided in Chapter 20.24 of the El Paso City Code.

The proposed special permit meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: 12285 Pellicano Drive Applicant: Montoya Oak Business Park, LP

PZST21-00012

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

AGENDA DATE: November 9, 2021 PUBLIC HEARING DATE: December 7, 2021

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553

Andrew Salloum, (915) 212-1603

**DISTRICT(S) AFFECTED**: District 6

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

**SUBGOAL:** 3.1 Provide business friendly permitting and inspection processes

3.2 Improve the visual impression of the community

#### SUBJECT:

An Ordinance granting Special Permit NO. PZST21-00012, to allow for a television and radio broadcasting antennae on the property described as a portion of Lot 1, Block 2, Pellicano Commercial Unit Three, 12285 Pellicano Drive, City of El Paso, El Paso County, Texas, pursuant to Section 20.10.700 of the El Paso City Code. The penalty being as provided in Chapter 20.24 of the El Paso City Code.

The proposed special permit meets the intent of the Future Land Use designation for the property and is in accordance with *Plan El Paso*, the City's Comprehensive Plan.

Subject Property: 12285 Pellicano Drive Applicant: Montoya Oak Business Park, LP

PZST21-00012

#### **BACKGROUND / DISCUSSION:**

The applicant is requesting a special permit to allow for the placement of one ground-mounted and one roof-mounted television-broadcasting receiving antenna in a C-4 (Commercial) zone district as required by El Paso City Code Section 20.10.700 TV and radio broadcasting antennae. The City Plan Commission public hearing is scheduled for November 4, 2021. As of November 1, 2021, the Planning Division did not receive any communication support or opposition to the special permit request. See attached staff report for additional information.

#### PRIOR COUNCIL ACTION:

N/A

#### AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

PRIMARY DEPARTMENT: Planning & Inspections, Planning Division

SECONDARY DEPARTMENT: N/A

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

**DEPARTMENT HEAD:** 

Philip Ctive

Philip F. Etiwe - Planning and Inspections Director

Revised 04/09/2021

ORDINANCE	NO.	

AN ORDINANCE GRANTING SPECIAL PERMIT NO. PZST21-00012, TO ALLOW FOR A TELEVISION AND RADIO BROADCASTING ANTENNAE ON THE PROPERTY DESCRIBED AS A PORTION OF LOT 1, BLOCK 2, PELLICANO COMMERCIAL UNIT THREE, 12285 PELLICANO DRIVE, CITY OF EL PASO, EL PASO COUNTY, TEXAS, PURSUANT TO SECTION 20.10.700 OF THE EL PASO CITY CODE. THE PENALTY BEING AS PROVIDED IN CHAPTER 20.24 OF THE EL PASO CITY CODE.

WHEREAS, Montoya Oak Business Park, LP, has applied for a Special Permit under Section 20.04.320 of the El Paso City Code to allow for a television and radio broadcasting antennae; and,

**WHEREAS,** the Section 20.10.700 allows for a television and radio broadcasting antennae by Special Permit; and,

WHEREAS, a report was made by the City Plan Commission and a public hearing was held regarding such application; and,

WHEREAS, the City Plan Commission has recommended approval of the subject Special Permit; and

**WHEREAS,** the subject Special Permit has been submitted to the City Council of the City of El Paso for review and approval; and

**WHEREAS**, the City Council of the City of El Paso finds that the application conforms to all requirements of Section 20.04.320 of the El Paso City Code.

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

- 1. That the property described as follows, is in a <u>C-4 (Commercial)</u> Zone District: *A portion of Lot 1, Block 2, Pellicano Commercial Unit Three, 12285 Pellicano Drive, City of El Paso, El Paso County, Texas*; and as more particularly described by metes and bounds on the attached Exhibit "A"; and,
- 2. That the City Council hereby grants a Special Permit under Section 20.04.320 of the El Paso City Code to allow for a television and radio broadcasting antennae, on the property described in Paragraph 1 of this Ordinance; and,
- 3. That this Special Permit is issued subject to the development standards in <u>C-4</u> (<u>Commercial</u>) District regulations and is subject to the approved Detailed Site Development Plan, attached hereto as Exhibit "B", signed by the Applicant, the City Manager and the Executive Secretary to the City Plan Commission. A copy of this plan is attached hereto as Exhibit "B" and is incorporated herein by reference for all purposes; and,

- 4. That if at any time the Applicant fails to comply with any of the requirements of this Ordinance, **Special Permit No. PZST21-00012** shall be subject to automatic termination; construction or occupancy shall be discontinued; and the Applicant shall be subject to the penalty provisions of Chapter 20.24 and the City can avail itself of any and all legal or equitable remedies provided to it under law; and,
- 5. That the Applicant shall sign an Agreement incorporating the requirements of this Ordinance. Such Agreement shall be signed and filed with the Zoning Administrator and the Executive Secretary to the City Plan Commission before building permits are issued.

building permits are issued	
ADOPTED this of	, 2021.
	THE CITY OF EL PASO:
ATTEST:	Oscar Leeser Mayor
Laura D. Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Wed N. Vigad	Philip Ctive  Philip F. Etiwe, Director
Wendi N. Vineyard Assistant City Attorney	Philip F. Etiwe, Director Planning & Inspections Department

441

#### **AGREEMENT**

Montoya Oak Business Park, LP., (Property Owner) referred to in the above Ordinance, hereby agrees to develop the above-described property in accordance with the approved Detailed Site Development Plan attached to same Ordinance, and in accordance with the standards identified in the C-4 (Commercial) District regulations, and subject to all other requirements set forth in this Ordinance.

EXECUTED this 28 day of October, 2021.

OWNER:

Montoya Oak-Business Park, LP.

#### ACKNOWLEDGMENT

THE STATE OF TEXAS )

COUNTY OF EL PASO )

This instrument is acknowledged before me on this 28 day of 2021, by Montoya Oak Business Park, LP., as property owner.

CYNTHIA GRANADOS
Notary Public, State of Texas
Comm. Expires 06-19-2024
Notary ID 132530581

My Commission Expires:

The second second

Notary Public, State of Texas

Printed or Typed Name

ORDINANCE NO.

21-1007-2805 | 1125027

#### LEGAL DESCRIPTION

BEING a tract of land situated in the O. A. Danielson Survey, Abstract No. 311, City of El Paso, El Paso County, Texas, being part of Lot 1, Block 2, Pellicano Commercial Unit Three, an addition to the City of El Paso. Texas according to the plat recorded in Volume 75, Page 15 of the Plat Recorded of El Paso, Texas, and being all of the called 6.2790 acre tract of land described in Special Warranty Deed to Montoya Oak Business Park, LP recorded in Instrument No. 20180095999 of the Official Public Records of El Paso County, Texas, and being more particularly described as follows:

BEGINNING at a point in the north right-of-way line of Pellicano Drive (120-foot wide right-of-way); from said point the southeast corner of said Lot 1, Block 2 bears North 89°57'25" East, a distance of 373.52 feet;

THENCE South 89°57'25" West, along the said north right-of-way line of Pellicano Drive, a distance of 36.00 feet to a point for corner;

THENCE departing the said north right-of-way line of Pellicano Drive, North 00°02'35" West, a distance of 181.00 feet to a point for corner;

**THENCE** the following three (3) calls:

South 89°57'25" West, a distance of 63.80 feet to a point for corner;

North 00°05'42" East, a distance of 261.14 feet to a point for corner;

North 89°54'18" West, a distance of 190.00 feet to a point for corner in the east right-of-way line of Bob Hope Drive (90-foot wide right-of-way):

THENCE North 00°05'42" East, along the said east right-of-way line of Bob Hope Drive, a distance of 217.00 feet to a point for the northwest corner of said Lot 1, Block 2;

THENCE South 89°54'18" East, along the north line of said Lot 1, Block 2, a distance of 662.17 feet to a point for the northeast corner of said Lot 1, Block 1;

THENCE South 00°02'35" East, along the east line of said Lot 1, Block 2, a distance of 477.00 feet to a point for corner;

THENCE departing the east line of said Lot 1, Block 2, South 89°57'25" West, a distance of 373.52 feet to a point for corner:

THENCE South 00°02'35" East, a distance of 181.00 feet to the POINT OF BEGINNING and containing 6.28 acres of land, more or less.

This document was prepared under 22 Texas Administrative Code §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or established interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

#### NOTES:

The bearings for this survey are based on a bearings of Lot 1, Block 2, Pellicano Commercial Unit Three, an addition to the City of El Paso, Texas according to the plat recorded in Volume 75, Page 15 of the Plat Recorded of El Paso, Texas.

-- 10/20/21 MICHAEL C. BILLINGSLEY REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6558 801 CHERRY STREET, UNIT 11 SUITE 1300

FORT WORTH, TEXAS 76102

PH. 817-335-6511

michael.billingsley@kimley-horn.com



ZONING EXHIBIT PART OF LOT 1, BLOCK 2, PELLICANO COMMERCIAL UNIT THREE O. A. DANIELSON SURVEY, ABSTRACT NO. 311 CITY OF EL PASO, EL PASO COUNTY, TEXAS

Date

10/28/2021

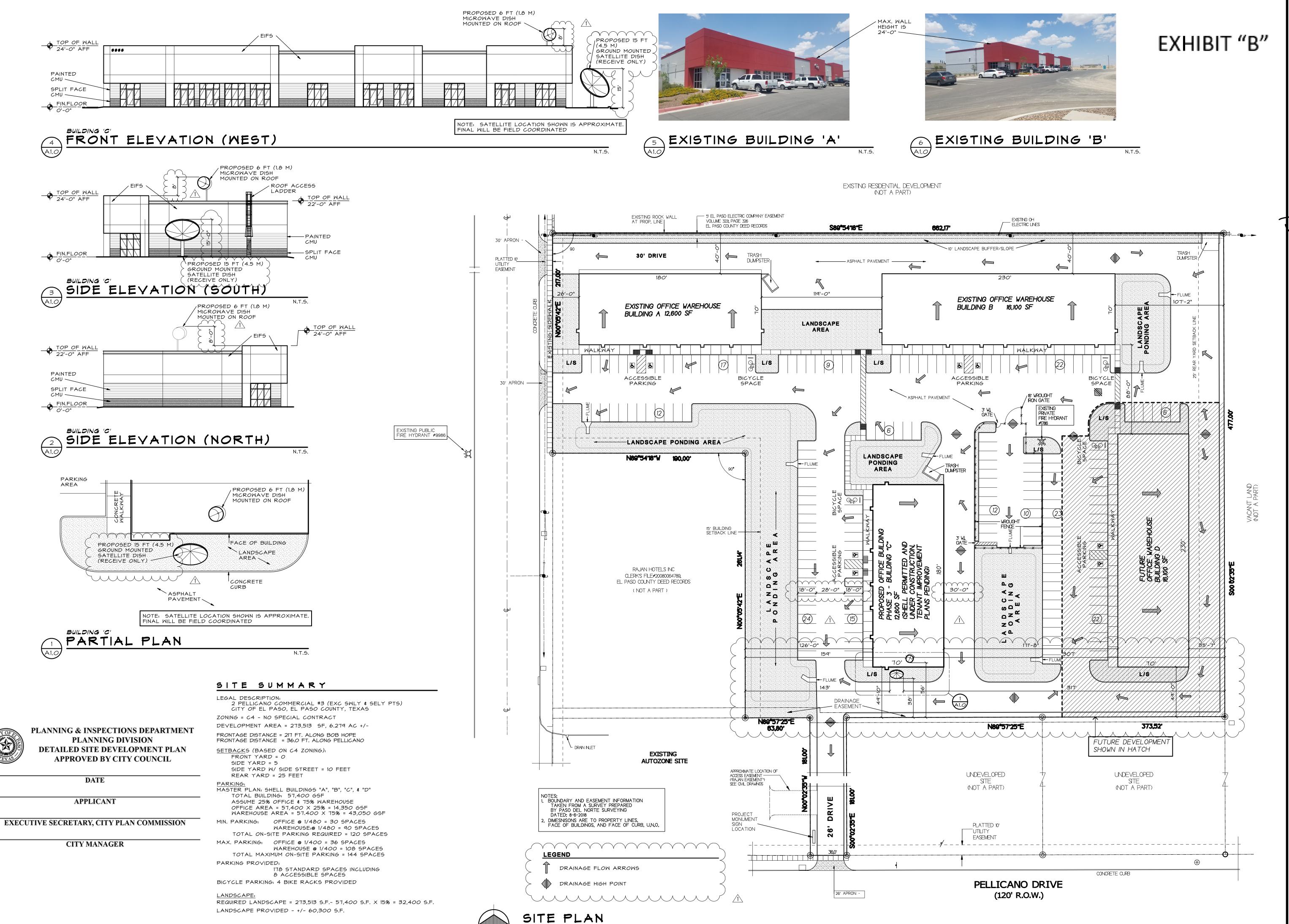
Checked by

FIRM # 10194040

Drawn by

Project No.

064555900



9/22/202

S  $\mathbf{\Omega}$ MENT PI  $\checkmark$ 

REVISIONS 1\ PLAN REVIEW *CO*MMENTS, 9/22/202

**AUGUST 2021** 

**DETAILED SITE** 

**DEVELOPMENT** 

**REVISION #1** 

1" = 40'-0"

### The "DH Gibralter Mount" Series

#### **Fixed or Dual Powered Available**

3.0m, 3.7m, 3.8m, 4.2m, 4.5m and 5.0m one piece or sectional antenna spec Aperture Efficiency at Ku band - 67%





#### GIBRALTER MOUNT SERIES

- 15" Reinforced Base
- 60" Back Ring
- 8 Back Braces
- 24"x24"x1/2" Base Plate

- 0-90° Motorized Elevation With Adjustment
- 200°+ Motorized Azimuth Travel
- 36 Volt DC Motors

Specifications	3.0m	3.7m	3.8m	4.2m	4.5m	5.0m
Antenna Sections	4	4/Optional 8	4	8	8	8
C Band Gain @ 4 Gig	40.6 db	42.3 db	42.5 db	43.5 db	43.9 db	44.3 db
Ku Band Gain @ 12 Gig	49.9 db	51.1 db	51.8 db	53.0 db	53.3 db	54.2 db
Aluminum Thickness	.085	.085	.090	.110	.110	.110
f/d Ratio	.3	.4	.378	.34	.33	.3
Wind Force at 60° at 90 MPH	3,020 lbs	4,200 lbs	4,600 lbs	5,975 lbs	6,600 lbs	7,800 lbs
First Side Lobe (E-Plane)	1.2°	2.4°	2.3°	2.1°	1.95°	1.1°
All Side Lobes	-26 db	-22 db	-22 db	-22 db	-22 db	-22 db
3db Beam Width (E-Plane)	0.5°	1.4°	1.4°	1.2°	1.2°	0.9°
F/L	36"	57.6"	57.6"	57.6"	57.6"	57.6"
Antenna Weight (One Piece)	102 lbs	180 lbs	198 lbs	241 lbs	277 lbs	315 lbs
Antenna Weight (Sectional)	110 lbs	4pc-165 lbs 8pc- 192 lbs	214 lbs	281 lbs	317 lbs	355 lbs
Crate Dims w/Antenna Approximate Weight	62"x40"x66" 254 lbs	76"x36"x78" 4pc-348 lbs 77"x47"x58" 8pc-500 lbs	79"x36"x81" 464 lbs	91"x38"x64" 544 lbs	92"x54"x67" 688 lbs	99"x52"x72" 741 lbs
Dual Pow Mt Weight Fixed Gib Mt Weight	1,230 lbs 752 lbs	1,230 lbs 752 lbs	1,230 lbs 752 lbs	1,230 lbs 752 lbs	1,230 lbs 752 lbs	1,230 lbs 752 lbs
Pallet Dims w/Dual Pow Mt Pallet Weight w/Dual Pow Mt	64"x74"x58" 1,266 lbs	64"x74"x58" 1,266 lbs	64"x74"x58" 1,266 lbs	64"x74"x58" 1,266 lbs	64"x74"x58" 1,266 lbs	64"x74"x58" 1,266 lbs
Pallet Dims w/Fixed Gib Mt Pallet Weight w/Fixed Gib Mt	64"x74"x61" 888 lbs	64"x74"x61" 888 lbs	64"x74"x61" 888 lbs	64"x74"x61" 888 lbs	64"x74"x61" 888 lbs	64"x74"x61" 888 lbs

#### **Sectional Antenna Rib Specifications**

3.0m, 3.7m, 3.8m: 8 Ribs 4.2m, 4.5m, 5.0m: 16 Ribs

With today's innovative technology, DH is able to take our larger; one piece, spun aluminum antenna and cut them into sections. This allows for ease of handling, installation and shipping.





Crating available for domestic or ISPM 15 international

#### OPTIONAL:

- Hot Dip Galvanizing
- Non-Penetrating Roof Mount
- Electronics, Feedhorns, LNBS, Cabling
- Half/Full Dish De-icing
- Template Kits



600 N. Marquette Rd.
Prairie du Chien, WI 53821
dhsat@mhtc.net www.DHSatellite.com

<sup>\*</sup>Antenna sizes are nominal. \*Custom crating available. \*Dimensions & weights are approximate.



# **DH Test Data**

#### Tested with A1 Turbo S2

103 3220 4.2m DH Ant

#### Proof of Performance

Filename: 42NO3220.103H Date: 09/05/2012 Time: 16:51:39 Location:

Technician: Notes: Level: dBm FieldGuide: North American V 1.99

Software: 1.19 Model: TURBO S2 Serial: 1674529 LNB Model: LO=5.150 3.4-4.2 Region: NE Continental US

Switch: None

### Proof of Performance

Filename: 42NO3220.103V Date: 09/05/2012 Time: 16:51:39 Location: Technician:

Notes: Level: dBm FieldGuide: North American V 1.99

Software: 1.19 Model: TURBO S2 Serial: 1674529 LNB Model: LO=5.150 3.4-4.2 Region: NE Continental US

Switch: None

#### Satellite: 103.0 West / AMC1

	Dnlink	Freq	Error Mo						Eb/No		Lock	LNB	LNB
Tran	MHz	MHz	MHz Pol Typ	e Rate	Rate	dbm	SiqQ	db	dB	dB	Status	Volts	mA
B2A1 .	3760.040	1389.960	-0.035 Err DvbS	2 8-3/41	29999	-28.9	99	15.0	14.5	16.3	LOCK	17.9	210
5 ID	3800.080	1349.920	-0.010 Err DC	2 7/8	29270	-27.1	99	14.9	14.4	16.2	LOCK	17.9	210
7.	3840.000	1310.000	-0.086 Err Dvb-	S 3/4	26681	-27.4	100	15.5	15.0	16.8	LOCK	17.9	210
<u> </u>	3840.080	1309.920	0.015 Err Dvb-	S 3/4	26681	-27.3	100	15.5	15.0	16.8	LOCK	17.9	210
10 .	3906.576	1243.424	0.014 Err Dvb-	S 3/4	6510	-32.2	96	13.4	12.9	14.7	LOCK	17.9	210
11 .	3915.072	1234.928	0.015 Err Dvb-	S 2/3	4410	-32.6	96	13.5	13.0	14.8	LOCK	17.9	210
10 .	3920.224	1229.776	0.014 Err Dvb-	S 5/6	3140	-34.3	91	12.0	11.5	13.3	LOCK	17.9	210
10 .	3924.224	1225.776	-0.010 Err Dvb-	S 5/6	2734	-35.3	95	12.7	12.2	14.0	LOCK	17.9	210
B2B1 .	3927.508	1222.492	-0.059 Err DvbS	2 Q-3/4	2450	-40.3	95	12.8	12.3	14.1	LOCK	17.9	210
K1A1 .	3960.052	1189.948	-0.007 Err Dvb9	8-5/6	30000	-27.7	99	15.0	14.5	16.3	LOCK	17.9	210
15 .	4040.068	1109.932	0.015 Err Dvb-	S 3/4	26681	-25.4	101	15.9	15.4	17.2	LOCK	17.9	210
17 .	4040.000	1110.000	-0.073 Err Dvb-	S 3/4	26681	-25.3	101	15.8	15.3	17.1	LOCK	17.9	210
G1A1 .	4073.568	1076.432	0.000 Err Dvb-	S .	3000	-33.1		0.0			Unlock	17.9	210
19 .	4081.068	1068.932	0.015 Err Dvb-	S 3/4	7230	-31.6	97	13.9	13.4	15.2	LOCK	17.9	210
В.	4089.952	1060.048	-0.006 Err DvbS	2 8-2/3	5923	-33.7	100	15.3	14.8	16.6	LOCK	17.9	210
21 .	4120.000	1030.000	-0.056 Err DvbS	2 8-3/41	30000	-26.8	99	14.9	14.4	16.2	LOCK	17.9	210
21 .	4120.044	1029.956	-0.013 Err Dvb5	8-3/4	30000	-26.7	99	14.9	14.4	16.2	LOCK	17.9	210

#### Satellite: 103.0 West / AMC1

Tran	Dnlink MHz	Freq MHz	Error Mod MHz Pol Type	Code Rate	Symbol Rate		IRD SiqQ	C/N db	Eb/No dB	Es/No dB	Lock Status	LNB Volts	LNB mA
2 .	3740.000	1410.000	-0.097 Err Dvb-S	7/8	29270	-26.2	98	14.5	14.0	15.8	LOCK	17.9	210
2 .	3740.088	1409.912	0.015 Err Dvb-S	7/8	29270	-26.2	98	14.5	14.0	15.8	LOCK	17.9	210
6 .	3820.000	1330.000	-0.093 Err DC2	3/4	29270	-25.5	100	17.4	16.9	18.7	LOCK	17.9	210
6 ID	3820.084	1329.916	0.014 Err DC2	3/4	29270	-25.3	100	17.3	16.8	18.6	LOCK	17.9	210
8 .	3860.068	1289.932	-0.004 Err DvbS2	8-5/6	30000	-27.9	100	15.4	14.9	16.7	LOCK	17.9	210
B2D1 .	3891.044	1258.956	-0.029 Err DvbS2	8-2/3	9092	-34.8	100	15.5	15.0	16.8	LOCK	17.9	210
B2E1 .	3913.544	1236.456	0.000 Err Dvb-S		6400	-45.6		0.0			Unlock	17.9	210
12 .	3940.076	1209.924	-0.010 Err DC2	7/8	29270	-25.0	100	15.6	15.1	16.9	LOCK	17.9	210
13 .	3980.076	1169.924	0.015 Err Dvb-S	7/8	26666	-24.9	100	17.3	16.8	18.6	LOCK	17.9	210
18 .	4060.072	1089.928	0.000 Err DC2		29270	-35.6		0.0			Unlock	17.9	210
20 .	4091.068	1058.932	0.015 Err Dvb-S	3/4	14035	-29.9	98	14.4	13.9	15.7	LOCK	17.9	210
B2I1 .	4109.044	1040.956	-0.032 Err Dvb-S	3/4	14029	-31.3	96	13.5	13.0	14.8	LOCK	17.9	210
24 .	4196.064	953.936	0.014 Err Dvb-S	2/3	2894	-34.0	100	16.8	16.3	18.1	LOCK	17.9	210

103 3220 4.5m **DH Ant** 

#### Proof of Performance

Filename: 453220.103HMD Date: 09/07/2012 Time: 13:45:06 Location: Technician:

Level: dBm

FieldGuide: North American V 1.99

Software: 1.19 Model: TURBO S2 Serial: 1674529 LNB Model: LO=5.150 3.4-4.2 Region: NE Continental US

Switch: None

#### Proof of Performance

Filename: 453D0.103VMD Date: 09/07/2012 Time: 13:45:06 Location:

Technician: Notes: Level: dBm FieldGuide: North American V 1.99 Software: 1.19

Model: TURBO S2 Serial: 1674529 LNB Model: LO=5.150 3.4-4.2

Region: NE Continental US Switch: None

#### Satellite: 103.0 West / AMC1

Tran	Dnlink MHz	Freq MHz	Error Mod MHz Pol Type	Code Rate	Symbol Rate		IRD SiqQ	C/N db	Eb/No dB	Es/No dB	Lock Status	LNB Volts	LNB mA
B2A1 .	3760.040	1389.960	-0.037 Err DvbS2	8-3/41	29999	-28.1	101	15.8	15.3	17.1	LOCK	17.9	210
5 ID	3800.080	1349.920	-0.011 Err DC2	7/8	29270	-26.1	100	15.5	15.0	16.8	LOCK	17.9	210
7.	3840.000	1310.000	-0.087 Err Dvb-S	3/4	26681	-26.0	100	16.6	16.1	17.9	LOCK	17.9	210
<u> </u>	3840.080	1309.920	0.014 Err Dvb-S	3/4	26681	-26.0	100	16.7	16.2	18.0	LOCK	17.9	210
10 .	3906.576	1243.424	0.015 Err Dvb-S	3/4	6510	-30.7	97	14.0	13.5	15.3	LOCK	17.9	210
11 .	3915.072	1234.928	0.014 Err Dvb-S	2/3	4410	-31.6	96	13.4	12.9	14.7	LOCK	17.9	210
10 .	3920.224	1229.776	0.015 Err Dvb-S	5/6	3140	-33.0	94	12.6	12.1	13.9	LOCK	17.9	210
10 .	3924.224	1225.776	-0.011 Err Dvb-S	5/6	2734	-33.6	96	13.6	13.1	14.9	LOCK	17.9	210
B2B1 .	3927.508	1222.492	-0.061 Err DvbS2	Q-3/4	2450	-39.1	97	14.0	13.5	15.3	LOCK	17.9	210
K1A1 .	3960.052	1189.948	-0.013 Err DvbS2	8-5/6	30000	-27.4	100	15.5	15.0	16.8	LOCK	17.9	210
15 .	4040.068	1109.932	0.014 Err Dvb-S	3/4	26681	-24.3	100	16.8	16.3	18.1	LOCK	17.9	210
17 .	4040.000	1110.000	-0.075 Err Dvb-S	3/4	26681	-24.3	100	16.8	16.3	18.1	LOCK	17.9	210
G1A1 .	4073.568	1076.432	0.000 Err Dvb-S		3000	-38.1		0.0	_		Unlock	17.9	210
19 .	4081.068	1068.932	0.014 Err Dvb-S	3/4	7230	-31.4	98	14.4	13.9	15.7	LOCK	17.9	210
В.	4089.952	1060.048	-0.007 Err DvbS2	8-2/3	5923	-33.3	99	15.2	14.7	16.5	LOCK	17.9	210
21 .	4120.000	1030.000	-0.057 Err DvbS2	8-3/41	30000	-25.6	100	15.6	15.1	16.9	LOCK	17.9	210
21 .	4120.044	1029.956	-0.012 Err DvbS2	8-3/41	30000	-25.6	100	15.7	15.2	17.0	LOCK	17.9	210

#### Satellite: 103.0 West / AMC1

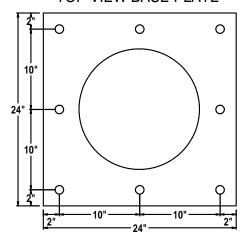
Tran	Dnlink MHz	Freq MHz	Error Mod MHz Pol Type		Symbol Rate		IRD SiqQ	C/N db	Eb/No dB	Es/No dB	Lock Status	LNB Volts	LNB mA
2 .	3740.000	1410.000	-0.100 Err Dvb-S	7/8	29270	-25.4	97	14.1	13.6	15.4	LOCK	17.9	210
2 .	3740.088	1409.912	-0.012 Err Dvb-9	7/8	29270	-25.5	97	14.1	13.6	15.4	LOCK	17.9	210
6.	3820.000	1330.000	-0.095 Err DC2	2 3/4	29270	-24.8	100	17.6	17.1	18.9	LOCK	17.9	210
6 ID	3820.084	1329.916	-0.012 Err DC2	2 3/4	29270	-24.9	100	17.6	17.1	18.9	LOCK	17.9	210
8 .	3860.068	1289.932	-0.013 Err DvbS2	8-5/6	30000	-27.9	100	15.7	15.2	17.0	LOCK	17.9	210
B2D1 .	3891.044	1258.956	-0.031 Err DvbS2	8-2/3	9092	-34.6	100	16.4	15.9	17.7	LOCK	17.9	210
B2E1 .	3913.544	1236.456	0.000 Err Dvb-S		6400	-33.6		0.0			Unlock	17.9	210
12 .	3940.076	1209.924	-0.012 Err DC	2 7/8	29270	-24.5	100	15.4	14.9	16.7	LOCK	17.9	210
13 .	3980.076	1169.924	-0.010 Err Dvb-9	7/8	26666	-24.1	100	17.7	17.2	19.0	LOCK	17.9	210
18 .	4060.072	1089.928	0.000 Err DC2		29270	-34.8		0.0			Unlock	17.9	210
20 .	4091.068	1058.932	-0.011 Err Dvb-9	3/4	14035	-28.6	100	15.7	15.2	17.0	LOCK	17.9	210
B2I1 .	4109.044	1040.956	0.000 Err Dvb-S		14029	-39.3		0.0			Unlock	17.9	210
24 .	4196.064	953.936	0.014 Err Dvb-9	2/3	2894	-34.6	100	16.8	16.3	18.1	LOCK	17.9	210

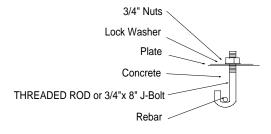
# **GIBRALTER BASE PADS**

90 MPH REQUIRED FOUNDATION SIZE BASED ON SOIL CONDITION  LATERAL SOIL BEARING= 400 PSF/FT ALLOWABLE FOUNDATION PRESSURE= 4,000 PSF									
Dish Size(in meters)	SONOTUBE DIMENSIONS	SQUARE PAD							
3.0	3.5' DIA. X 4'-4" deep	3'-5" x 3'-5" x 3'-7" deep							
3.7	3.5' DIA. X 4'-8" deep	4'-0" x 4'-0" x 4-0"' deep							
3.8	3.5' DIA. X 5'-0" deep	4'-2" x 4'-2" x 4'-0" deep							
4.2	3.5' DIA. X 5'-6" deep	4'-6" x 4'-6" x 4'-3" deep							
4.5	3.5' DIA. X 5'-8" deep	4'-6" x 4'-6" x 4'-5" deep							
5.0	3.5' DIA. X 6'-3" deep	5'-0" x 5'-0" x 4'-7" deep							

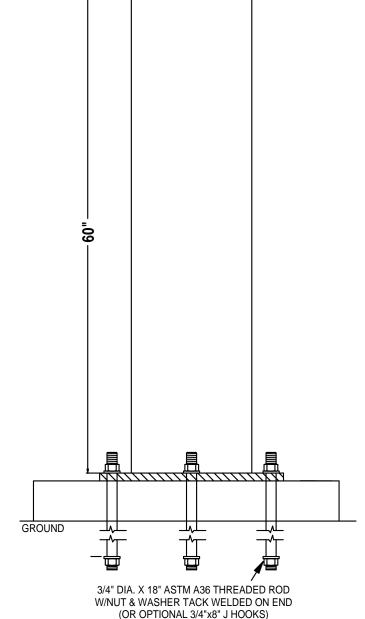
\*IF SOIL TYPE DOES NOT MATCH SOIL TYPE DESCRIBED, THE FOUNDATION SHALL BE DESIGNED BY A QUALIFIED PROFESSIONAL ENGINEER OR BUILIDING OFFICIAL\*

#### TOP VIEW BASE PLATE





5-7 #3 REBAR USED IN FOOTINGS REBAR DISTRIBUTED EVENLY IN TWO DIRECTIONS CENTER OF REBAR SHOULD BE 2" ABOVE BOTTOM OF PAD OUTSIDE OF BARS SHOULD BE 3" FROM EDGE OF PAD



DH SATELLITE GIBRALTER BASE PADS 12-19-13

GIBRALTER BASE PADS

# HX6-11W



1.8m | 6ft ValuLine® High Performance, High XPD Antenna, dual-polarized, 10.000 – 11.700 GHz

### **Product Classification**

Product Type Microwave antenna

Product Brand ValuLine®

General Specifications

Antenna Type HX - ValuLine® High Performance, High XPD

Antenna, dual-polarized

1

**Polarization** Dual

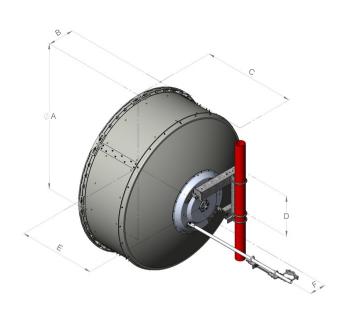
Side Struts, Included

Side Struts, Optional

**Dimensions** 

**Diameter, nominal** 1.8 m | 6 ft

# Antenna Dimensions and Mounting Information



	Dimension	ons in inch	nes (mm)			
Antenna size, ft (m)	А	В	С	D	E	F
6 (1.8)	74.8 (1899)	13.4 (340)	47.5 (1206)	20.9 (530)	39.4 (1001)	8.4 (214)

# **Electrical Specifications**

Operating Frequency Band	10.000 - 11.700 GHz
Gain, Low Band	42.9 dBi
Gain, Mid Band	43.6 dBi
Gain, Top Band	44.3 dBi
Boresite Cross Polarization Discrimination (XPD)	33 dB
Front-to-Back Ratio	76 dB
Beamwidth, Horizontal	1 °
Beamwidth, Vertical	1°
Return Loss	26 dB

Philip Etiwe

Page 2 of 6

# HX6-11W

**VSWR** 1.1

Radiation Pattern Envelope Reference (RPE) 7378 | 7401

Electrical Compliance ACMA FX03\_10a | ACMA FX03\_11a | Canada

SRSP 310.5 | Canada SRSP 310.7 Part

A | Canada SRSP 310.7 Part B | ETSI 302 217

Class 3 | US FCC Part 101A

Cross Polarization Discrimination (XPD) Electrical Compliance ETSI EN 302217 XPD Category 2

Mechanical Specifications

**Compatible Mounting Pipe Diameter** 115 mm – 120 mm | 4.5 in – 4.7 in

Fine Azimuth Adjustment Range  $\pm 15^{\circ}$ Fine Elevation Adjustment Range  $\pm 5^{\circ}$ 

 Wind Speed, operational
 180 km/h | 111.847 mph

 Wind Speed, survival
 200 km/h | 124.274 mph

Wind Forces at Wind Velocity Survival Rating

**Axial Force (FA)** 6960 N | 1,564.671 lbf

Angle a for MT Max -130 °

**Side Force (FS)** 1566 N | 352.051 lbf

**Twisting Moment (MT)** 3923 N-m | 34,721.477 in lb

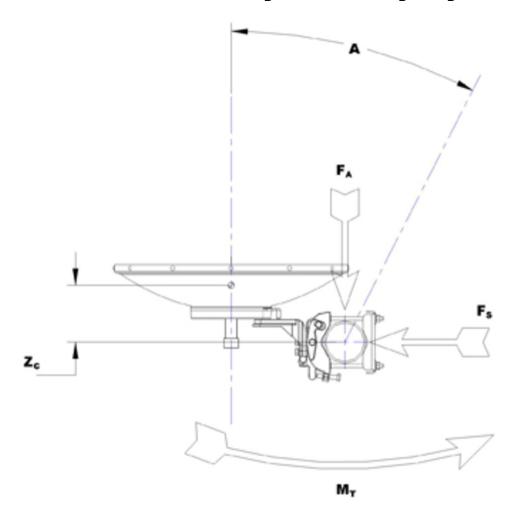
 Force on Inboard Strut Side
 4075 N | 916.097 lbf

 Zcg without Ice
 363 mm | 14.291 in

 Zcg with 1/2 in (12 mm) Radial Ice
 541 mm | 21.299 in

**Weight with 1/2 in (12 mm) Radial Ice** 237 kg | 522.495 lb

# Wind Forces at Wind Velocity Survival Rating Image



### Packaging and Weights

**Weight, net** 75 kg | 165.346 lb

# Regulatory Compliance/Certifications

#### Agency Classification

ISO 9001:2015 Designed, manufactured and/or distributed under this quality management system



\* Footnotes

Wind Speed, operational

For VHLP(X), SHP(X), HX and USX antennas, the wind speed

Page 4 of 6

# HX6-11W

where the maximum antenna deflection is 0.3 x the 3 dB beam width of the antenna. For other antennas, it is defined as a deflection is equal to or less than 0.1 degrees.

The maximum wind speed the antenna, including mounts and radomes, where applicable, will withstand without permanent deformation. Realignment may be required. This wind speed is applicable to antenna with the specified amount of radial ice.

Bands correspond with CCIR recommendations or common allocations used throughout the world. Other ranges can be accommodated on special order.

For a given frequency band, gain is primarily a function of antenna size. The gain of Andrew antennas is determined by either gain by comparison or by computer integration of the measured antenna patterns.

The difference between the peak of the co-polarized main beam and the maximum cross-polarized signal over an angle twice the 3 dB beamwidth of the co-polarized main beam.

Denotes highest radiation relative to the main beam, at  $180^{\circ}$   $\pm 40^{\circ}$ , across the band. Production antennas do not exceed rated values by more than 2 dB unless stated otherwise.

The figure that indicates the proportion of radio waves incident upon the antenna that are rejected as a ratio of those that are accepted.

Ratio within the operating band.

Radiation patterns define an antenna's ability to discriminate against unwanted signals. Under still dry conditions,

Maximum; is the guaranteed Peak Voltage-Standing-Wave-

against unwanted signals. Under still dry conditions, production antennas will not have any peak exceeding the current RPE by more than 3dB, maintaining an angular accuracy of +/-1° throughout

The difference between the peak of the co-polarized main beam and the maximum cross-polarized signal over an angle twice the 3 dB beamwidth of the co-polarized main beam.

Maximum forces exerted on a supporting structure as a result of wind from the most critical direction for this parameter. The individual maximums specified may not occur simultaneously. All forces are referenced to the

mounting pipe.

Maximum side force exerted on the mounting pipe as a

Wind Speed, survival

**Operating Frequency Band** 

Gain, Mid Band

**Boresite Cross Polarization Discrimination (XPD)** 

Front-to-Back Ratio

**Return Loss** 

**VSWR** 

Radiation Pattern Envelope Reference (RPE)

**Cross Polarization Discrimination (XPD) Electrical Compliance** 

**Axial Force (FA)** 

Side Force (FS)

Page 5 of 6

# HX6-11W

**Twisting Moment (MT)** 

result of wind from the most critical direction for this parameter. The individual maximums specified may not occur simultaneously. All forces are referenced to the mounting pipe.

Maximum forces exerted on a supporting structure as a result of wind from the most critical direction for this parameter. The individual maximums specified may not occur simultaneously. All forces are referenced to the mounting pipe.

### 12285 Pellicano Drive

City Plan Commission — November 4, 2021



CASE MANAGER: Andrew Salloum, (915)212-1603, SalloumAM@elpasotexas.gov

**PROPERTY OWNER:** Montoya Oak Business Park, LP APPLICANT: Kimley-Horn & Associates, Inc.

**REPRESENTATIVE:** Jake Torpey

LOCATION: 12285 Pellicano Drive (District 6)

**PROPERTY AREA:** 6.28 acres

**EXISTING ZONING:** C-4 (Commercial)

**REQUEST:** Special Permit to allow for the placement of a ground and roof-

mounted television-broadcasting receiving antenna in a

C-4 (Commercial) zone district

**RELATED APPLICATIONS:** None **PUBLIC INPUT:** None

**SUMMARY OF REQUEST:** The applicant is requesting a special permit to allow for the placement of one ground-mounted and one roof-mounted television-broadcasting receiving antenna in a C-4 (Commercial) zone district as required by El Paso City Code Section 20.10.700 TV and radio broadcasting antennae.

**SUMMARY OF STAFF RECOMMENDATION:** Staff recommends approval of the special permit for a television-broadcasting receiving antenna in C-4 (Commercial) zone district. The proposal meets all the requirements of 20.10.700 TV and radio broadcasting antennas, 20.04.320 Special Permit, and 20.04.150, Detailed Site Development Plan.



Figure A. Subject Property & Immediate Surroundings

**DESCRIPTION OF REQUEST:** The applicant is requesting a special permit to allow for the placement of a ground and roof-mounted television-broadcasting receiving antenna in C-4 (Commercial) zone district as required by El Paso City Code Section 20.10.700 (TV and radio broadcasting antennae). A special permit is a requirement of 20.10.700 of the El Paso City Code for the proposed broadcast antenna use.

The detailed site development plan shows the existing 12,600 square foot office building with the proposed roof-mounted antenna. The elevations show a maximum building height of 24 feet plus 6 feet in height above the roofline. That antenna is proposed to be six (6) feet wide and ten (10) feet in height, to include its support structure. The proposed roof-mounted antenna would be more than 100 feet from the residential zone district which exceeds the setback requirements of one (1) foot for each one (1) foot of total height for roof-mounted broadcast antennas in the commercial districts. The detailed site development plan shows the proposed ground-mounted antenna on the side of the office building. The proposed antenna is shown with both its height and width at fifteen (15) feet. The required setback for the ground-mounted antenna is fifteen (15) based on its height, and its proposed distance of over 100 feet from the residential zone district that is complied with that setback requirement.

COMPLIANCE WITH TV AND RADIO BROADCA	STING ANTENNAE REQUIREMENTS (20.10.700)
Criteria	Does the Request Comply?
A. In Residential, Apartment and Commercial Zoning Districts. Ground-mounted radio or television broadcasting antenna support structures with antennas and equipment storage facilities shall comply with the following standards:	Yes. The proposed TV broadcasting antennas meets the setback requirement as shown on the detailed site development plan.
1. The antenna support base shall be set back one foot for each one foot of height from abutting residential districts, measured from the antenna support base to the property line;	
2. The radio or television broadcasting antenna support structure shall conform with FCC and FAA height regulations within a residential zone;	Not applicable since the subject property is currently zoned C-4 (Commercial).
3. The following must accompany a request for a special permit:  a. A nonionizing electromagnetic radiation (NIER) report, in a format acceptable to the FCC,  b. A structural engineering report for the antenna support,  c. A detailed site development plan showing the antenna, supporting structures and appurtenant equipment in relation to the existing surroundings,  d. Verification letters that an FCC application has been submitted and FAA approval has been obtained;	Yes. All of required documents have been provided, please see attachments 1-4
4. Collocation or installation of additional antennas on an existing antenna support structure shall be permitted after review and approval by the building official of a structural recertification report, prepared and sealed by a licensed professional engineer, and an updated NIER emissions report;  5. Increase in elevation of an existing antenna support	Not applicable.  This is not applicable because the proposed antennae
structure shall be permitted, so long as the setback and maximum height limitations are complied with, after review and approval by the building official of updated structural and NIER emissions reports;	are new.

6. Existing nonconforming antenna support structures, unable to comply with current setback limitations shall be prohibited from any increase in elevation.

This is not applicable because proposed antennae are new.

COMPLIANCE WITH SPECIAL PERMIT REQUIREMENTS (EL PASO CITY CODE SECTION 20.04.320.D)						
Criteria	Does the Request Comply?					
1. The proposed development complies, except to the extent waived, varied or modified pursuant to the provisions of this title, with all of the standards and conditions applicable in the zoning district in which it is proposed to be located.	Yes, the proposed TV & Radio Broadcasting antennae is permitted in the C-4 (Commercial) District with an approval of a Special Permit. The submitted Detailed Site Development Plan and supporting documentation complies with the standards of El Paso City Code Section 20.04.320.D (Special Permits) and 20.10.700 (TV and Broadcast Antennas).					
2. Furthers <i>Plan El Paso</i> and applicable neighborhood plans or policies.	Yes, the request complies with the recommendations of <i>Plan El Paso</i> and the G-4 Future Land Use designation.					
3. Adequately served by and will not impose an undue burden upon public improvements.	Yes, access to the driveway and on-street parking will be from Pellicano Drive and Bob Hope Drive, the improved major arterial and minor arterial respectively. The established neighborhood is adequately served.					
4. Any impacts of the proposed development on adjacent property are adequately mitigated with the design, proposed construction and phasing of the site development.	Yes, the proposed design of the antennas is compatible with the existing building on the site. They will need to demonstrate compliance with the building code and other applicable standards at the time of permitting.					
5. The design of the proposed development mitigates substantial environmental problems.	Yes, the subject property does not involve greenfield/environmentally sensitive land or arroyo disturbance.					
6. The proposed development provides adequate landscaping and/or screening where needed.	Yes, the development will comply with landscaping ordinance requirements.					
7. The proposed development is compatible with adjacent structures and uses.	Yes, this proposed development is consistent with the existing commercial uses to the surrounding areas.					
8. The proposed development is not materially detrimental to the property adjacent to the site.	Yes, the proposed redevelopment is similar in intensity and scale to surrounding development.					

COMPLIANCE WITH PLAN EL PASO GOALS & POLICIES – When evaluating whether a							
proposed special permit is in accordance with <i>Plan El Paso</i> , consider the following factors:							
Criteria	Does the Request Comply?						
Future Land Use Map: Proposed zone change is compatible with the Future Land Use designation for the property:  G-4, Suburban (Walkable): This sector applies to modern single-use residential subdivisions and office parks, large schools and parks, and suburban shopping centers. This sector is generally stable but would benefit from strategic suburban retrofits to supplement the limited housing stock and add missing civic and commercial uses.	Yes. The subject property, and the proposed development for it, meet the intent of the G-4, Suburban (Walkable) Future Land Use Map designation.						

# COMPLIANCE WITH *PLAN EL PASO* GOALS & POLICIES – When evaluating whether a proposed special permit is in accordance with *Plan El Paso*, consider the following factors:

**Compatibility with Surroundings:** The proposed zoning district is compatible with those surrounding the site:

C-4 (Commercial) District: The purpose of this district is to provide for locations for the most intensive commercial uses intended to serve the entire city. It is intended that the district regulations permit heavy commercial uses characterized by automotive and light warehousing. The regulations of the districts are intended to provide a transition from general business areas to industrial and manufacturing uses, and to accommodate major locations of commerce, service and employment activities. Within the central business district, more intensive commercial uses are allowed, the predominant of which are retail trade and service uses, providing less restrictive height and area

existing zoning no longer suitable for the property.

regulations.

Yes. TV & Radio Broadcasting antennae is a permitted use in the C-4 District with special permit approval.

# THE PROPOSED PROJECT'S EFFECT ON THE PROPERTY AND SURROUNDING PROPERTY, AFTER EVALUATING THE FOLLOWING FACTORS:

Historic District or Special Designations & Study Area	No, the property is not located within a historic or
Plans: Any historic district or other special	other special district.
designations that may be applicable. Any adopted	
small areas plans, including land-use maps in those	
plans.	
Potential Adverse Effects: Potential adverse effects	No adverse effects anticipated. The uses and
that might be caused by approval or denial of the	development configurations are already existing and
requested rezoning.	are similar to other properties in the surrounding
	areas.
Natural Environment: Anticipated effects on the	Subject property does not involve greenfield/
natural environment.	environmentally sensitive land or arroyo
	disturbance.
<b>Stability:</b> Whether the area is stable or in transition.	The area is stable and the proposed development is
	compatible with the existing single-family zoning and
	uses and school of the surrounding properties.
Socioeconomic & Physical Conditions: Any changed	The proposed development is within an older, stable
social, economic, or physical conditions that make the	area of the city comprised of commercial properties

**ADEQUACY OF PUBLIC FACILITIES, SERVICES AND INFRASTRUCTURE:** Access to the subject property is proposed from Pellicano Drive and Bob Hope Drive, which are designated a major and minor arterial respectively on the City's Major Thoroughfare Plan. It is adequate to serve the proposed development.

previously rezoned from R-F throughout the

**SUMMARY OF DEPARTMENTAL REVIEW COMMENTS:** No objections to proposed special permit. There were no adverse comments received from the reviewing departments. Applicant is responsible for obtaining all applicable permits and approvals prior to construction.

**PUBLIC COMMENT:** The subject property is not within the boundaries of any registered neighborhood associations. Public notices were mailed to property owners within 300 feet on September 30 2021. As of October 28, 2021, the Planning Division did not receive any communication support or opposition to the special permit request.

#### **RELATED APPLICATIONS:** N/A.

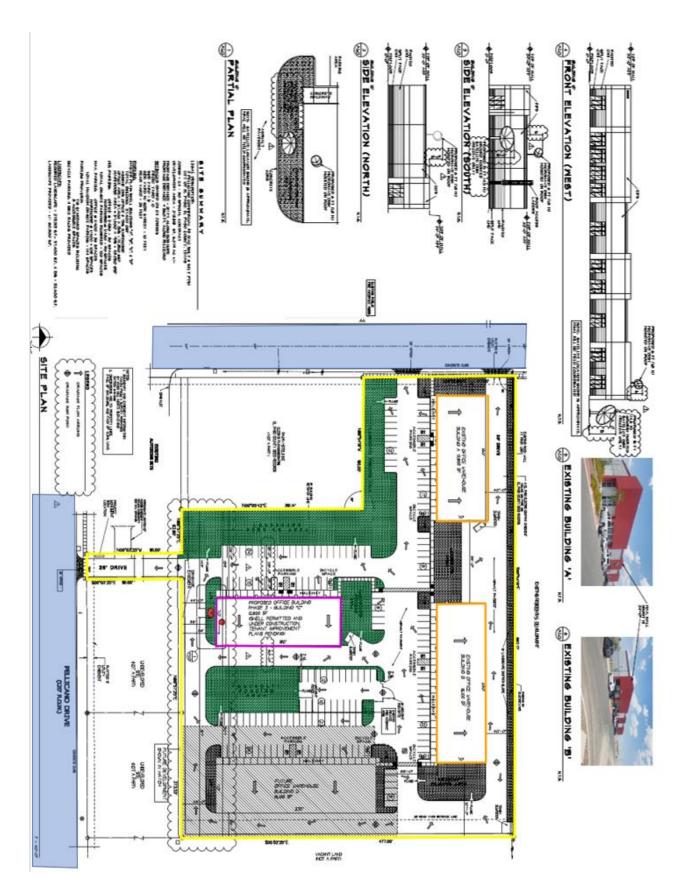
#### **CITY PLAN COMMISSION OPTIONS:**

The purpose of the Zoning Ordinance is to promote the health, safety, morals and general welfare of the City. The City Plan Commission (CPC) has the authority to advise City Council on Zoning matters. In evaluating the request, the CPC may take any of the following actions:

- 1. **Recommend Approval** of the special permit request, finding that the request is in conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or that the request is in conformance with other criteria that the CPC identifies from the Comprehensive Plan. (Staff Recommendation)
- 2. **Recommend Approval of the special permit request With Modifications** to bring the request into conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan.
- 3. **Recommend Denial** of the special permit request, finding that the request does not conform to the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan.

#### ATTACHMENTS:

- 1. Detailed Site Plan
- 2. Dish Cut Sheet
- 3. NIER Report
- 4. FCC/FAA
- 5. Future Land Use Map
- 6. Department Comments
- 7. Neighborhood Notification Boundary Map



### The "DH Gibralter Mount" Series

#### Fixed or Dual Powered Available

3.0m, 3.7m, 3.8m, 4.2m, 4.5m and 5.0m one piece or sectional antenna spec Aperture Efficiency at Ku band - 67%



- 0-90\* Motorized Elevation With Adjustment 0-90" Motorized Elevation With A 200"+ Motorized Azimuth Travel

- 36 Volt DC Motors

#### Sectional Antenna Rib Specifications

3.0m, 3.7m, 3.8m: 8 Ribs 4.2m, 4.5m, 5.0m: 16 Ribs

With today's innovative technology, DH is able to take our larger; one piece, spun aluminum antenna and cut them into sections. This allows for ease of handling, installation and shipping.





Crating available for domestic or ISPM 15 international

Specifications	3.0m	3.7m	3.8m	4.2m	4.5m	5.0 m
Antenna Sections	4	4/Optional 8	4	8	8	8
C Band Gain @ 4 Gig	40.6 db	42.3 db	42.5 db	43.5 db	43.9 db	44.3 db
Ku Band Gain @ 12 Gig	49.9 db	51.1 db	51.8 db	53.0 db	53.3 db	54.2 db
Aluminum Thickness	.085	.085	.090	.110	.110	.110
f/d Ratio	.3	.4	.378	.34	.33	.3
Wind Force at 60° at 90 MPH	3,020 lbs	4,200 lbs	4,600 lbs	5,975 lbs	6,600 lbs	7,800 lbs
First Side Lobe (E-Plane)	1.2*	2.4*	2.3*	2.1*	1.95*	1.1*
All Side Lobes	-26 db	-22 db	-22 db	-22 db	-22 db	-22 db
3db Beam Width (E-Plane)	0.5*	1.4*	1.4*	1.2*	1.2*	0.9*
F/L	36"	57.6"	57.6"	57.6"	57.6**	57.6"
Antenna Weight (One Piece)	102 Ibs	180 lbs	198 Ibs	241 Ibs	277 Ibs	315 lbs
Antenna Weight (Sectional)	110 lbs	4pc-165 lbs 8pc-192 lbs	214 Ibs	281 lbs	317 lbs	355 Ibu
Crate Dim: w/Antenna Approximate Weight	62"x40"x66" 254 lbs	76"x36"x78" 4pc-348 lbs 77"x47"x58" 8pc-500 lbs	79"x36"x81" 464 lbs	91"x38"x64" 544 lbs	92"x54"x67" 688 Ibs	99"x52"x72" 741 lbs
Dual Pow Mt Weight Fixed Gib Mt Weight	1,230 lbs 752 lbs	1,230 lbs 752 lbs	1,230 lbs 752 lbs	1,230 lbs 752 lbs	1,230 lbs 752 lbs	1,230 lbs 752 lbs
Pallet Dims w/Dual Pow Mt Pallet Weight w/Dual Pow Mt	64"x74"x58" 1,266 lbs	64"x74"x58" 1,266 lbs	64"x74"x58" 1,266 lbs	64"x74"x58" 1,266 lbs	64"x74"x58" 1,266 lbs	64"x74"x58" 1,266 lbs
Pallet Dims w/Fixed Gib Mt Pallet Weight w/Fixed Gib Mt	64"x74"x61" 888 lbs	64"x74"x61" 888 lbs	64"x74"x61" 888 lbs	64"x74"x61" 888 lbs	64"x74"x61" 888 lbs	64"x74"x61" 888 lbs

#### OPTIONAL:

- Hot Dip Galvanizing
  Non-Penetrating Roof Mount
  Electronics, Feedhorns, LNBS, Cabling
- Half/Full Dish De-icing
- Template Kits



600 N. Marquette Rd. Prairie du Chien, WI 53821

www.DHSatellite.com

Ph (608)-326-8406 1-800-627-9443 Fx (608)-326-4233

02/20/2020

### HX6-11W



 $1.8m\,|\,6ft\,ValuLine \circledR$  High Performance, High XPD Antenna, dual-polarized, 10.000-11.700~GHz

_				,						
IJг	П	1.0	$\overline{}$		$\neg$	$\subset$	ıΤı	ca	ŤΙ	п

 Product Type
 Microwave antenna

 Product Brand
 ValuLine⊙

General Specifications

Antenna Type

HX - ValuLine® High Performance, High XPD

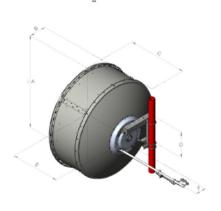
Polarization
Side Struts, Included

Side Struts, Optional
Dimensions

Diameter, nominal 1.8 m | 6 ft

### HX6-11W

#### Antenna Dimensions and Mounting Information



	Dimensio	ins in inch	es (mm)			
Antenna size, ft (m)	А	В	С	D	E	F
6	74.8	13.4	47.5	20.9	39.4	8.4



To Whom It May Concern,

The City of El Paso has requested that KTDO provide evidence to support a special use permit for our proposed facility near the intersection of Pellicano Drive and Bob Hope Drive. Specifically, the requested documentation pertains to a roof-mounted microwave transmitting dish and ground-mounted satellite receiving dish which will be installed as part of the project. According to the document "20.10.700 – TV and radio broadcasting antennae," (attached) Section A.3.a and A.3.d, the City would like:

- A nonionizing electromagnetic radiation (NIER) report, in a format acceptable to the FCC.
- Verification letters that an FCC application has been submitted and FAA approval has been obtained.

We have reviewed Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) regulations and are pleased to report that, in this case, documentation should not be required.

- For the NIER report:
  - As per the FCC's Rules Section §1.1307, (b)(1) Table 1
    - Based on the FCC's Part 74 Subparts listed in the table, the FCC does not include Subpart F under which our proposed facility would operate. The table does not mention facilities under Subpart F so we are categorically excluded.
    - KTDO's ground-mounted satellite receiving dish does not transmit (receive only), so an NIER would not be required.
    - Attached is an example of an Environmental Health and Safety Report for a similar dish, which would fulfill FCC requirements if it was required, and shows only a potential hazard at the feed flange. (See OET-65 RF Exposure Calculations prepared by Doug Lung) Note: Even the surface of the dish is well below FCC Maximum Permissible Exposure. Our new proposed dish is smaller and should not exceed these calculations.
- Verification letters:
  - A path study showing no interference to other licenses resulting from the move has been completed and is attached. (See M1923408 sn.pdf).
  - As per the FAA's circular "NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION" section §77.15 Construction or alteration not requiring notice:
    - "No person is required to notify the Administrator for any of the following construction or alteration: (a) Any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town, or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation."
    - Both the microwave dish and satellite dish will be located in a highly populated commercial/residential section of the city and neither will extend in excess of twenty feet above the structure. Therefore, under these criteria, verification

letters are not required. A TOWAIR study has been conducted as evidence in support of this (See attached KTDO-TOWAIR REPORT 9.22.21).

Radio Frequency Safety and legal compliance are the highest priority for both KTDO and NBCUniversal. Even with the negligible power output of the microwave, KTDO is taking measures in construction to shield the site and ensure that it is secured to prevent unauthorized entry.

We are pleased to work with the City of El Paso in this great endeavor. Don't hesitate to reach out to us directly for any questions or concerns.

Appreciatively

Javier Guerra, Director of Technology

9/22/2021 TOWAIR Search Results

#### **TOWAIR Determination Results**

#### \*\*\* NOTICE \*\*\*

TOWAIR's findings are not definitive or binding, and we cannot guarantee that the data in TOWAIR are fully current and accurate. In some instances, TOWAIR may yield results that differ from application of the criteria set out in 47 C.F.R. Section 17.7 and 14 C.F.R. Section 77.13. A positive finding by TOWAIR recommending notification should be given considerable weight. On the other hand, a finding by TOWAIR recommending either for or against notification is not conclusive. It is the responsibility of each ASR participant to exercise due diligence to determine if it must coordinate its structure with the FAA. TOWAIR is only one tool designed to assist ASR participants in exercising this due diligence, and further investigation may be necessary to determine if FAA coordination is appropriate.

#### **DETERMINATION Results**

### Structure does not require registration. The structure meets the 6.10-meter (20-foot) Rule criteria.

Your Specifications

#### NAD83 Coordinates

Latitude	31-43-37.2 north
Longitude	106-16-15.6 west

#### Measurements (Meters)

Overall Structure Height (AGL) 9.1
Support Structure Height (AGL) 6.4
Site Elevation (AMSL) 1220

#### Structure Type

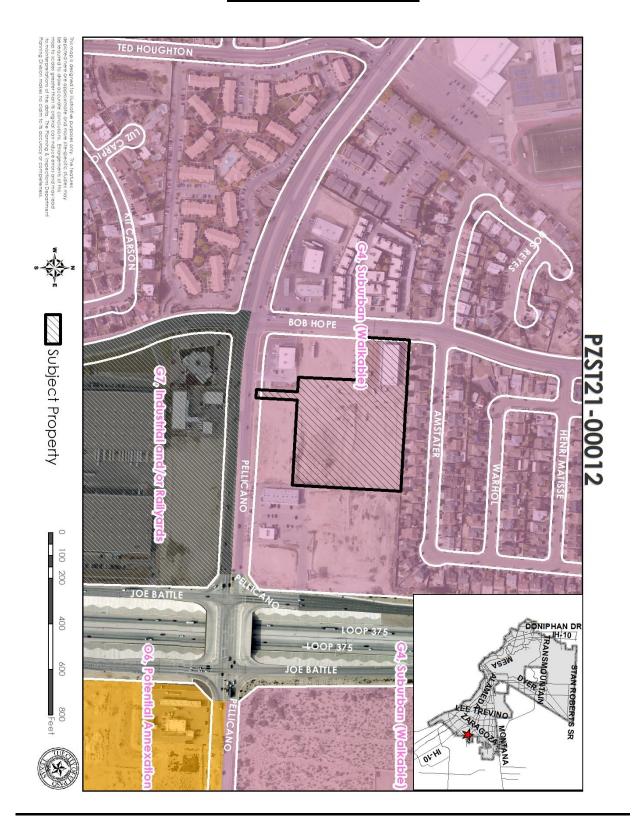
BPOLE - Building with Pole

#### **Tower Construction Notifications**

Notify Tribes and Historic Preservation Officers of your plans to build a tower,

CLOSE WINDOW

https://wireless2.fcc.gov/UlsApp/AsrSearch/towairResult.jsp?printable



#### <u>Planning and Inspections Department – Planning Division</u>

No objections to the special permit request.

#### Planning and Inspections Department - Plan Review

No objections to the special permit and detailed site development plan.

Note: At the time of submittal for building permit, the project will need to comply with all applicable provisions of the ICC, TAS, and Municipal Code

#### <u>Planning and Inspections Department – Landscaping Division</u>

No objections to the special permit and detailed site development plan.

#### Planning and Inspections Department – Land Development

No objections to special permit and detailed site development plan.

#### **Street and Maintenance Department**

No objections.

Note: All driveway and sidewalk improvements shall be constructed in current compliance with all applicable City of El Paso Municipal Codes / Ordinances

#### **Fire Department**

Coordinate with Construction Code Compliance (El Paso Fire Marshal's Office) for hose lay requirements and fire hydrant requirements.

#### Sun Metro

No objections.

#### **El Paso Water**

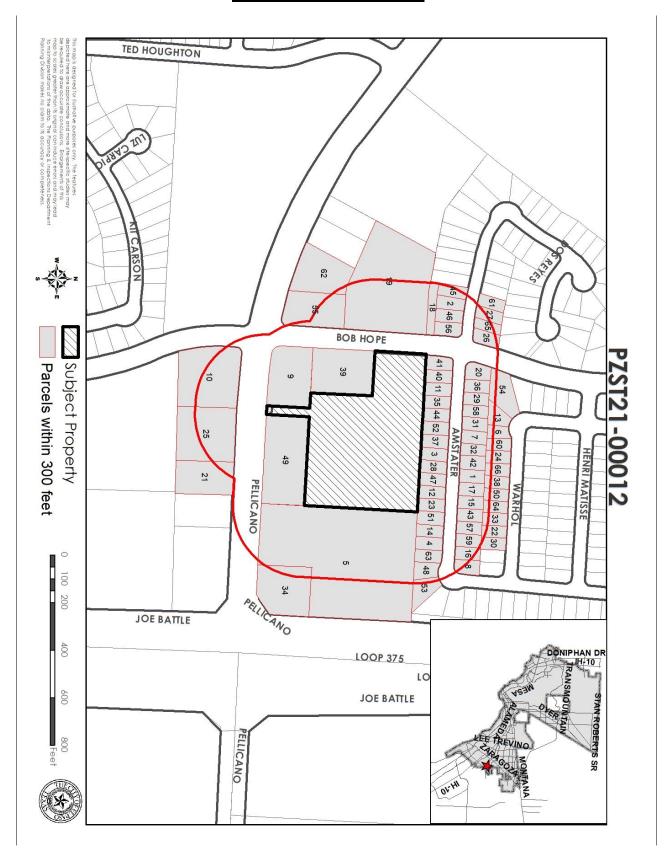
No comments received.

#### El Paso Water - Stormwater Engineering

No comments received.

#### El Paso County Water Improvement District #1

The item is not within the boundaries of EPCWID1



### **Legislation Text**

File #: 21-1270, Version: 1

# CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

#### **District 4**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553 Planning and Inspections, Luis Zamora, (915) 212-1552

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance changing the zoning of Tract 8C, Section 29, Block 80, TSP 1, Texas And Pacific RR Company Surveys, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) to C-4 (Commercial). The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: Generally located East of Dyer Street and North of Sean Haggerty Drive/Angora Loop Avenue

Applicant: Sitework Engineering c/o Jorge Garcia, PZRZ21-00022

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

AGENDA DATE: November 9, 2021 PUBLIC HEARING DATE: December 7, 2021

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553

Luis Zamora, (915) 212-1552

**DISTRICT(S) AFFECTED**: District 4

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

**SUBGOAL:** 3.2 Set one standard for infrastructure across the city

#### **SUBJECT:**

An Ordinance changing the zoning of Tract 8C, Section 29, Block 80, TSP 1, Texas And Pacific RR Company Surveys, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) to C-4 (Commercial). The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with *Plan El Paso*, the City's Comprehensive Plan.

Subject Property: Generally located East of Dyer Street and North of Sean Haggerty Drive/Angora Loop Avenue Applicant: Sitework Engineering c/o Jorge Garcia, PZRZ21-00022

#### **BACKGROUND / DISCUSSION:**

The applicant is requesting to rezone the subject property to allow a proposed shopping center. City Plan Commission recommended 8-0 to approve the proposed rezoning on October 7, 2021. As of November 2, 2021, the Planning Division has not received any communication in support or opposition to the rezoning request. See attached staff report for additional information.

#### PRIOR COUNCIL ACTION:

N/A

#### AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? \_X\_YES \_\_\_NO

PRIMARY DEPARTMENT: Planning & Inspections, Planning Division

**SECONDARY DEPARTMENT: N/A** 

******	******REQUIRED AUTHORIZATION*****	*****
<b>DEPARTMENT HEAD:</b>	06.1. A.	

ORDIN	ANCE NO.
TSP 1, TEXAS AND PACIFIC R COUNTY, TEXAS FROM R-F	THE ZONING OF TRACT 8C, SECTION 29, BLOCK 80, RR COMPANY SURVEYS, CITY OF EL PASO, EL PASO (RANCH AND FARM) TO C-4 (COMMERCIAL). THE OR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.
NOW THEREFORE, BE IT O OF EL PASO:	ORDAINED BY THE CITY COUNCIL OF THE CITY
<b>29, Block 80, Tsp 1, Texas and Pac Texas</b> , located in the City of El Pa by metes and bounds on the attached	360 of the El Paso City Code, the zoning of <b>Tract 8C</b> , <b>Section cific RR Company Surveys</b> , <b>City of El Paso</b> , <b>El Paso County</b> , so, El Paso County, Texas, and as more particularly described ed Exhibit "A", incorporated by reference, be changed from <b>R-nmercial</b> ), as defined in Section 20.06.020, and that the zoning sed accordingly.
The penalties for violating the in Section 20.24 of the El Paso City	he standards imposed through this rezoning ordinance are found y Code.
ADOPTED this day	of, 2021.
	THE CITY OF EL PASO:
ATTEST:	Oscar Leeser, Mayor
Laura D. Prine, City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Wendi N. Vineyard Assistant City Attorney	Philip Tiwe Philip F. Etiwe, Director Planning & Inspections Department

#### **EXHIBIT "A"**

Tract 8C, Section 29, Block 80, Tsp 1, Texas and Pacific RR Company Surveys, City of El Paso, El Paso County, Texas

#### METES AND BOUNDS

Metes and bounds description of a parcel of land known as Tract 8C, Section 29, Block 80, Tsp 1, Texas and Pacific RR Company Surveys, City of El Paso, El Paso County, Texas containing 233,777 square feet or, 5.367 acres of land more or less and better described by metes and bounds as follows:

Commencing at a found rebar on the Southerly ROW line of Dyer Street (100 feet R.O.W.) that marks the most Northerly corner of Tract 8C, said point also being the point of beginning of this description.

Thence, leaving said Dyer Street R.O.W. line and along the Boundary line of Tracts 8C and 8A, S 46° 43' 47" E a distance of 477.66 feet to a point (found rebar);

Thence S43° 16' 13" W, a distance of 489.88 feet to a point (found rebar);

Thence N46° 43' 47" W, a distance of 477.66 feet to a point (found pipe)

Thence 47.12 feet along the arc of a curve to the right, whose radius is 30.00 feet, whose interior angle is 90 degrees, whose chord bears N01° 43' 47" W a distance of 42.42 feet to a point (found rebar) on the Southerly R.O.W. line of Dyer Street;

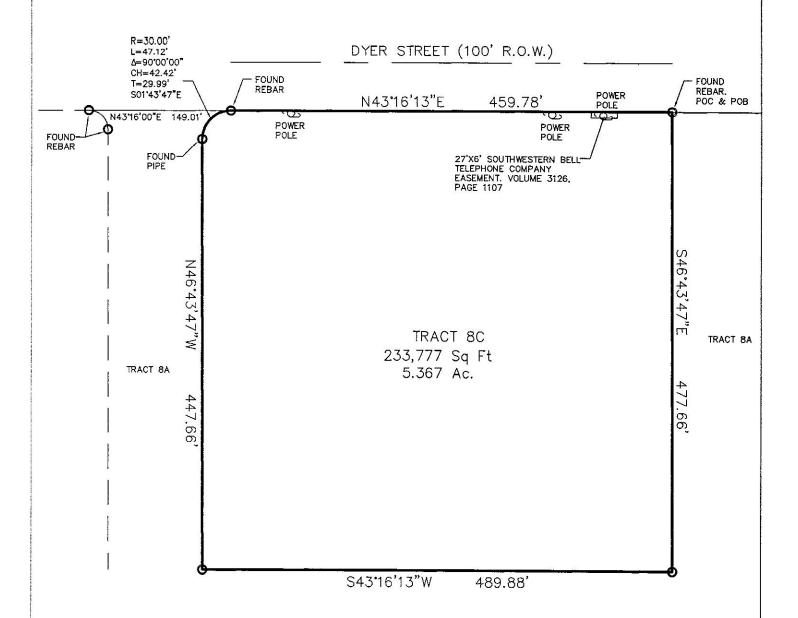
Thence along said Dyer Street R.O.W. line N 43° 16' 13" E, a distance of 459.78 feet' to the point of beginning of this description. Said parcel of land contains 233,777 square feet or 5.367 acres of land more or less.

Enrique A. Rey RPLS TX 3505

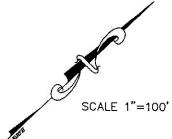
El Paso, Texas-Tuesday, August 24, 2021



1. THE FOLLOWING EASEMENTS ARE BLANKET IN NATURE AND ARE NOT PLOTTABLE. EASEMENT TO EL PASO ELECTRIC COMPANY AND MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY RECORDED IN VOLUME 1351, PAGE 183, VOLUME 1398, P 613 AND VOLUME 71, 1157. SOLD AND QUIT CLAIMED TO SOUTHWESTERN BELL TELEPHONE COMPANY RECORDED IN VOLUME 1231, PAGE 646. REAL PROPERTY RECORDS EL PASO COUNTY, TEXAS



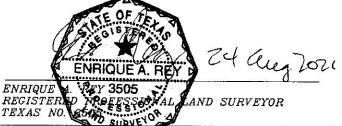
TRACT 8A
EL PASO WATER UTILITIES PSB



PLAT OF SURVEY BEING TRACT 8C, SECTION 29, BLOCK 80 TOWNSHIP 1 TEXAS AND PACIFIC RAILROAD COMPANY SURVEYS CITY OF EL PASO, EL PASO COUNTY, TEXAS EL PASO COUNTY RECORDS

I HEREBY CERTIFY THAT THE FOREGOING BOUNDARY AND IMPROVEMENT SURVEY WAS MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

THIS PROPERTY LIES IN ZONE C, AS DESIGNATED BY THE F.E.M.A. FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO.480214 0010B, DATED, OCTOBER 15, 1982 EL PASO COUNTY, TEXAS



D.M. MAY 18, 2021

JOB NO. 2021–119200 BERT BOSBERRY

CONSULTING ENGINEERING-SURVEYING-LAND PLANNING
9434 VISCOUNT DR. SUITE 148 EL PASO TEXAS, 79925
PH. (915)309-1889 FAX (915) 633-8060
TEXAS FIRM REGISTRATION F-3368

### East of Dyer St. and North of Sean Haggerty

City Plan Commission — October 7, 2021

CASE NUMBER: PZRZ21-00022

CASE MANAGER: Luis Zamora, (915) 212-1552, ZamoraLF@elpasotexas.gov

PROPERTY OWNER: Tomlin Partners, LLC and Adobe Haciendas, Inc. as Tenants in

Common

**REPRESENTATIVE:** Sitework Engineering c/o Jorge Garcia

**LOCATION:** East of Dyer St. and North of Sean Haggerty Dr. (District 4)

**PROPERTY AREA:** 5.37 acres

**REQUEST:** Rezone from R-F (Ranch and Farm) to C-4 (Commercial)

**RELATED APPLICATIONS:** None

**PUBLIC INPUT:** None received as of September 30, 2021

**SUMMARY OF REQUEST:** The applicant is requesting to rezone the subject property from R-F (Ranch and Farm) to C-4 (Commercial) to allow the proposed use of shopping center.

**SUMMARY OF STAFF RECOMMENDATION:** Staff recommends **APPROVAL** of the rezoning request. The proposed development is consistent with adjacent commercial properties within its vicinity. Furthermore, the proposed commercial zone is compatible with the G-4, Suburban (Walkable) Future Land Use Designation and is in keeping with the policies of *Plan El Paso* in the Northeast Planning Area.

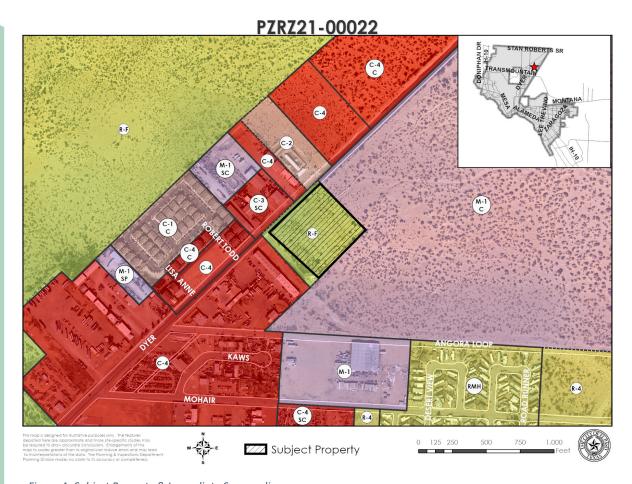


Figure A. Subject Property & Immediate Surroundings

**DESCRIPTION OF REQUEST:** The applicant proposes to rezone a 5.37-acre lot from R-F (Ranch and Farm) to C-4 (Commercial) to allow for a shopping center development. The subject property is currently undeveloped. The generalized plot plan shows the subject property with the conceptual foot print of the shopping center location. Primary access is proposed through Dyer Street.

#### PREVIOUS CASE HISTORY: N/A

COMPATIBILITY WITH NEIGHBORHOOD CHARACTER: The proposed rezoning is consistent with adjacent uses and meets the established character of its neighborhood. Properties to the northwest across Dyer Street are zoned C-2 (Commercial), C-3/sc (Commercial/special contract), and C-4 (Commercial) with uses including automotive repair shops and a kennel. Property to the northeast and southeast is zoned M-1/c (Light Manufacturing/conditions) and is currently undeveloped. Property to the southwest is split-zoned R-F (Ranch and Farm) and C-4 (Commercial) and is also undeveloped.

## COMPLIANCE WITH *PLAN EL PASO*/REZONING POLICY – When evaluating whether a proposed rezoning is in accordance with *Plan El Paso*, consider the following factors:

#### Criteria

### Future Land Use Map: Proposed zone change is

compatible with the Future Land Use designation for the property:

**G-4, Suburban (Walkable):** This sector applies to modern single-use residential subdivisions and office parks, large schools and parks, and suburban shopping centers. This sector is generally stable but would benefit from strategic suburban retrofits to supplement the limited housing stock and add missing civic and commercial uses.

# **Does the Request Comply?**Yes. The proposed shopping center is consistent with the surrounding commercial properties and is in keeping with the G-4, Suburban (Walkable) future land

use designation of Plan El Paso.

**Compatibility with Surroundings:** The proposed zoning district is compatible with those surrounding the site:

<u>C-4 (Commercial)</u>: The purpose of this district is to provide for locations for the most intensive commercial uses intended to serve the entire city. It is intended that the district regulations permit heavy commercial uses characterized by automotive and light warehousing. The regulations of the districts are intended to provide a transition from general business areas to industrial and manufacturing uses, and to accommodate major locations of commerce, service and employment activities.

Yes. The proposed C-4 (Commercial) zone district matches other immediate properties across Dyer Street zoned C-2 (Commercial), C-3/sc (Commercial/special contract), and C-4 (Commercial). Immediate property to the southeast and northwest is zone M-1/c (Light Manufacturing/conditions) and the proposed zoning district can serve as transition to more intensive uses permitted in that district.

**Preferred Development Locations:** Located along an arterial (or greater street classification) or the intersection of two collectors (or greater street classification). The site for proposed rezoning is not located mid-block, resulting in it being the only property on the block with an alternative zoning district, density, use and/or land use.

Yes. The property is located along Dyer Street, which is classified as a major arterial roadway on the City of El Paso's Major Thoroughfare Plan (MTP). The proposed zoning district is consistent with the zoning district to the south (C-4 (Commercial)).

### THE PROPOSED ZONING DISTRICT'S EFFECT ON THE PROPERTY AND SURROUNDING PROPERTY, AFTER EVALUATING THE FOLLOWING FACTORS:

**Historic District or Special Designations & Study Area Plans:** Any historic district or other special
designations that may be applicable. Any adopted
small areas plans, including land-use maps in those
plans.

N/A. The property is not located within any Historic Overlay District nor any other special designation areas.

COMPLIANCE WITH PLAN EL PASO/REZONING	POLICY – When evaluating whether a
proposed rezoning is in accordance with Plan	El Paso, consider the following factors:
Potential Adverse Effects: Potential adverse effects	None. The proposed rezoning, if approved, is not
that might be caused by approval or denial of the	anticipated to cause any adverse effects on the
requested rezoning.	community.
Natural Environment: Anticipated effects on the	None. The subject property does not lie within an
natural environment.	arroyo or other sensitive environment. No negative
	environmental impacts are anticipated if the rezoning
	request is approved.
<b>Stability:</b> Whether the area is stable or in transition.	The area is stable. None of the surrounding properties
	within the neighborhood of the subject property have
	been recently rezoned.
Socioeconomic & Physical Conditions: Any changed	None.
social, economic, or physical conditions that make the	
existing zoning no longer suitable for the property.	

**ADEQUACY OF PUBLIC FACILITIES, SERVICES AND INFRASTRUCTURE:** Primary access is proposed through Dyer Street, which is classified as a major arterial roadway on the City of El Paso's Major Thoroughfare Plan (MTP). The major arterial classification is appropriate to serve the proposed shopping center development. Existing services and infrastructure are appropriate to serve future development.

SUMMARY OF DEPARTMENTAL REVIEW COMMENTS: No adverse comments from reviewing departments.

**PUBLIC COMMENT:** The subject property does not lie within any Neighborhood or Civic Associations. Surrounding property owners within 300 feet were notified by mail on September 9, 2021. The Planning division has received no communication in support of or in opposition to the rezoning request as of September 30, 2021.

#### **RELATED APPLICATIONS:** None.

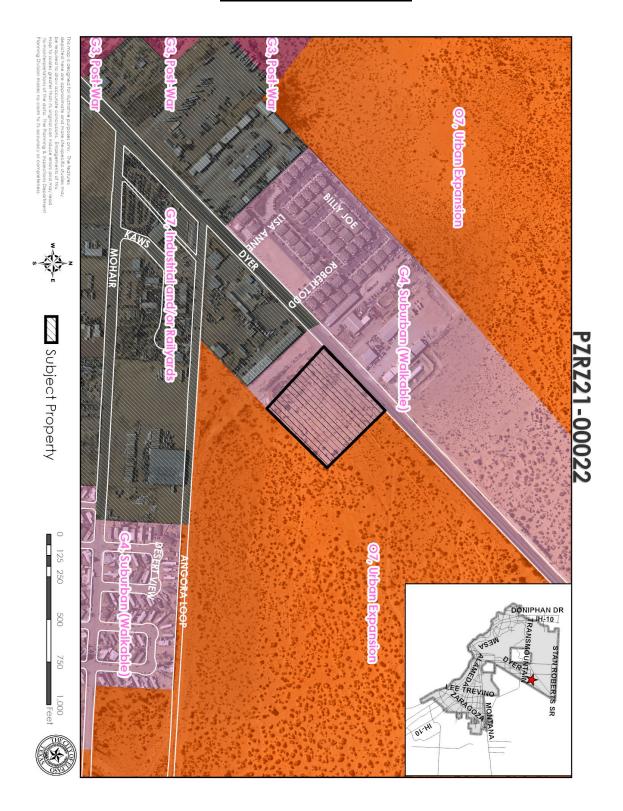
#### CITY PLAN COMMISSION OPTIONS:

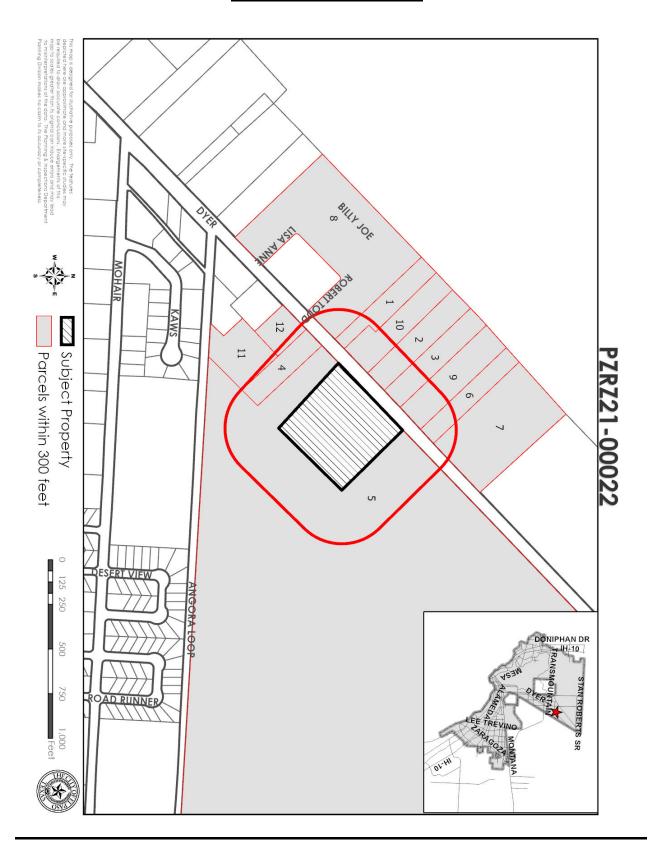
The purpose of the Zoning Ordinance is to promote the health, safety, morals and general welfare of the City. The City Plan Commission (CPC) has the authority to advise City Council on Zoning matters. In evaluating the request, the CPC may take any of the following actions:

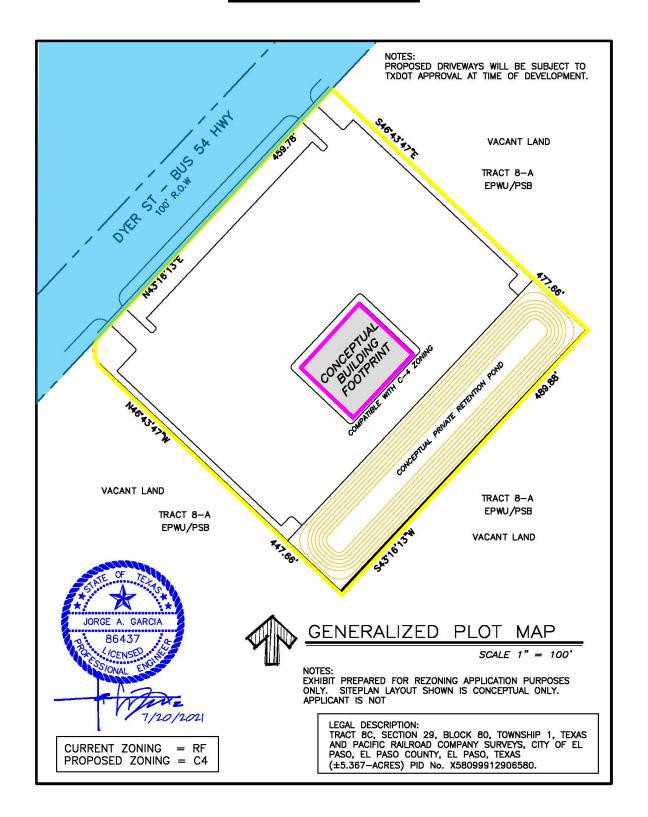
- Recommend Approval of the rezoning request, finding that the request is in conformance with the review
  criteria of *Plan El Paso* as reflected in the Staff Report, or that the request is in conformance with other
  criteria that the CPC identifies from the Comprehensive Plan. (Staff Recommendation)
- 2. **Recommend Approval of the rezoning request With Modifications** to bring the request into conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan.
- 3. **Recommend Denial** of the rezoning request, finding that the request does not conform to the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan.

#### **ATTACHMENTS:**

- 1. Future Land Use Map
- 2. Neighborhood Notification Boundary Map
- 3. Generalized Plot Plan
- 4. Department Comments







#### <u>Planning and Inspections Department - Planning Division</u>

Coordinate with Texas Department of Transportation for driveway access along Dyer St.

#### <u>Planning and Inspections Department – Plan Review & Landscaping Division</u>

No objections to proposed rezoning

The generalized site plan is not being reviewed for conformance due to conceptual nature.

#### <u>Planning and Inspections Department – Land Development</u>

No objections to proposed rezoning.

#### **Fire Department**

No adverse comments.

#### **Police Department**

No comments received.

#### **Environment Services**

No comments received.

#### **Streets and Maintenance Department**

No objections for TIA deferral since the requirements are met as per Section 19.08.010 B.4 of the El Paso Code.

#### Sun Metro

No objections.

#### **El Paso Water Utilities**

El Paso Water (EPWU) does not object to this request.

The subject property is located within the City of El Paso Northeast Impact Fee service area. Impact fees are assessed at the time of plat and due at the time that El Paso Water receives an application for water and sewer services.

Dyer Street is Texas Department of Transportation (TxDOT) right-of-way. All proposed water and sanitary sewer work to be performed within Dyer Street requires permission from TxDOT.

#### Water:

There is an existing 16-inch diameter water main that extends along Dyer Street, this main is located approximately 37-feet east of the right of way center line. This water main is available for service.

There is an existing 12-inch diameter water main that extends along Dyer Street. No water services from this main are allowed since the main is exclusively dedicated to provide service to the McGregor Range site.

Previous water pressure from fire hydrant #012 located at 11105 Dyer Street and Angora Loop North, has yielded a static pressure of 78 psi, a residual pressure of 74 psi, and a discharge of 919 gallons per minute.

#### Sanitary Sewer:

There is an existing 15-inch diameter sanitary sewer along Dyer Street. This main is located approximately 89.5-feet west of the property. This sewer main is available for service.

#### General

EPWater requires a new service application to provide additional services to the property. New service applications are available at 1154 Hawkins, 3rd floor and should be made 6 to 8 weeks in advance of construction to ensure water for construction work. A site plan, utility plan, grading and drainage plans, landscaping plan, the legal description of the property and a certificate-of-compliance are required at the time of application. Service will be provided in accordance with the current EPWater Rules and Regulations. The applicant is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

#### Stormwater:

The proposed ponding area shown shall have enough capacity to hold the developed runoff for a designated 100-yr. storm event. Label the pond as "Private".

#### **El Paso County 911 District**

The El Paso County 911 District has no comments/concerns regarding this rezoning.

#### **Texas Department of Transportation**

Based on the generalized plot plan, the development does not meet the spacing requirements to have two driveways. The driveway for this development would need to be at least 425 feet from the neighboring driveway to the South.

The TxDOT Access Management Committee will have additional comments once this is presented to them with formal construction drawings and additional information in regards to the purpose of this development is provided.

#### **El Paso County Water Improvement District**

No comments received.

#### Legislation Text

File #: 21-1260, Version: 1

#### **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

#### Districts 2 and 3

Capital Improvement Department, Sam Rodriguez, (915) 212-0065 Purchasing and Strategic Sourcing, Bruce D. Collins, (915) 212-1181

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

The linkage to the Strategic Plan is subsection 7.2 - Improve competitiveness through infrastructure improvements impacting the quality of life.

#### Award Summary:

Discussion and action on the award of solicitation 2022-0052 Airport RTS to MIRADOR ENTERPRISES, INC. for an estimated award of \$1,474,731.79. The purpose of the project is to improve the existing local bus service in El Paso along the Montana Street corridor by adding a new bus rapid transit service route, as well as providing a pickup location for rideshare users. A new enclosed station at the El Paso International Airport will be constructed that will follow the development of the Montana Rapid Transit System (RTS), that will also provide a pickup location for rideshare users. The station will consist of a climate-controlled building. pedestrian lighting, new sidewalks, landscaping, bicycle racks and artwork.

Department: Capital Improvement

Award to: MIRADOR ENTERPRISES, INC.

El Paso, TX

Item(s): Base Bid I, Base Bid II, Base Bid III and Base Bid IV

Initial Term: 182 Consecutive Calendar Days

Base Bid I: \$1,224,669.94 Base Bid II: 26,055.72 \$ Base Bid III: \$ 77.566.32 Base Bid IV: 134.730.00 Additive Alternate I: 11,709.81 \$1,474,731.79 Total Estimated Award:

Funding Source: 2021 Certificate of Obligation/Federal Transit Administration

Account: 190-4746-38290-580270-PCP11MT050B

560-3210-38290-580270-PCP11MT050B

2 & 3 District(s):

#### File #: 21-1260, Version: 1

This is a Low Bid procurement, lump sum contract.

The Purchasing & Strategic Sourcing and Capital Improvement Departments recommend award as indicated to MIRADOR ENTERPRISES, INC., the lowest responsive and responsible bidder and that Arrow Building Corp. be deemed non-responsible due to not providing proper documentation that demonstrates a satisfactory performance record and that PERIKIN Enterprises, LLC be deemed non-responsible due to not meeting the minimum experience requirement that demonstrates a satisfactory performance record.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

As a part of this award, upon the review of the City Attorney, the City Engineer may without further authorization from City Council approve contract changes which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable law, do not make changes to the prices and are within the appropriate budget.

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

AGENDA DATE: November 9, 2021

**PUBLIC HEARING DATE: N/A** 

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** 

Sam Rodriguez, Chief Operations and Transportation Officer, Aviation Director

and City Engineer, (915) 212-1845

Bruce D. Collins, Director of Purchasing & Strategic Sourcing, (915) 212-1181

**DISTRICT(S) AFFECTED:** 2 and 3

STRATEGIC GOAL: Strategic Goal No. 7: Enhance and Sustain El Paso's Infrastructure Network

**SUBGOAL:** 7.2 – Improve competitiveness through infrastructure improvements impacting

the quality of life

#### SUBJECT:

Discussion and action on the award of solicitation 2022-0052 Airport RTS to MIRADOR ENTERPRISES, INC. for Base Bid I: \$1,224,669.94; Base Bid II: \$26,055.72; Base Bid III: \$77,566.32; Base Bid IV: \$134,730.00 and Additive Alternate I: \$11,709.81 for an estimated award of \$1,474,731.79.

#### **BACKGROUND / DISCUSSION:**

The purpose of the project is to improve the existing local bus service in El Paso along the Montana Street corridor by adding a new bus rapid transit service route, as well as providing a pickup location for rideshare users. A new enclosed station at the El Paso International Airport will be constructed that will follow the development of the Montana Rapid Transit System (RTS), that will also provide a pickup location for rideshare users. The station will consist of a climate-controlled building, pedestrian lighting, new sidewalks, landscaping, bicycle racks and artwork.

#### **SELECTION SUMMARY:**

Solicitation was advertised on September 21, 2021 and September 28, 2021. The solicitation was posted on City website on September 21, 2021. The email (Purmail) notification was sent out on September 23, 2021. There were a total eighty-four (84) viewers online; three (3) bids were received; two (2) being local suppliers.

#### **CONTRACT VARIANCE:**

N/A

#### **PROTEST**

No protest was received for this requirement.

#### PRIOR COUNCIL ACTION:

N/A

#### **AMOUNT AND SOURCE OF FUNDING:**

Amount: \$1,474,731.79

Funding Source: 2021 Certificate of Obligation/Federal Transit Administration

Account: 190-4746-38290-580270-PCP11MT050B 560-3210-60070-580270-PCP11MT050B

#### HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? \_\_X\_YES \_\_\_NO

PRIMARY DEPARTMENT: Capital Improvement

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

**DEPARTMENT HEAD:** 

Country Countr

Sam Rodriguez

Chief Operations and Transportation Officer, Aviation Director and City Engineer

### COUNCIL PROJECT FORM (Low Bid)

#### 

Please place the following item on the **REGULAR AGENDA** for the Council Meeting of **November 9, 2021**.

#### STRATEGIC GOAL 7 - Enhance and sustain El Paso's Infrastructure Network

The linkage to the Strategic Plan is subsection 7.2 - Improve competitiveness through infrastructure improvements impacting the quality of life.

#### Award Summary:

Discussion and action on the award of solicitation 2022-0052 Airport RTS to MIRADOR ENTERPRISES, INC. for an estimated award of \$1,474,731.79. The purpose of the project is to improve the existing local bus service in El Paso along the Montana Street corridor by adding a new bus rapid transit service route, as well as providing a pickup location for rideshare users. A new enclosed station at the El Paso International Airport will be constructed that will follow the development of the Montana Rapid Transit System (RTS), that will also provide a pickup location for rideshare users. The station will consist of a climate-controlled building, pedestrian lighting, new sidewalks, landscaping, bicycle racks and artwork.

Department: Capital Improvement

Award to: MIRADOR ENTERPRISES, INC.

El Paso, TX

Item(s): Base Bid I, Base Bid II, Base Bid III and Base Bid IV

Initial Term: 182 Consecutive Calendar Days

 Base Bid I:
 \$1,224,669.94

 Base Bid II:
 \$26,055.72

 Base Bid III:
 \$77,566.32

 Base Bid IV:
 \$134,730.00

 Additive Alternate I:
 \$11,709.81

 Total Estimated Award:
 \$1,474,731.79

Funding Source: 2021 Certificate of Obligation/Federal Transit Administration

Account: 190-4746-38290-580270-PCP11MT050B 560-3210-38290-580270-PCP11MT050B

District(s): 2 & 3

This is a Low Bid procurement, lump sum contract.

The Purchasing & Strategic Sourcing and Capital Improvement Departments recommend award as indicated to MIRADOR ENTERPRISES, INC., the lowest responsive and responsible bidder and that Arrow Building Corp. be deemed non-responsible due to not providing proper documentation that demonstrates a satisfactory performance record and that PERIKIN Enterprises, LLC be deemed non-responsible due to not meeting the minimum experience requirement that demonstrates a satisfactory performance record.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

As a part of this award, upon the review of the City Attorney, the City Engineer may without further authorization from City Council approve contract changes which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable law, do not make changes to the prices and are within the appropriate budget.

#### 2022-0052 Airport RTS **Bid Tab Summary** Sum Total Base Bid I, Base Sum Total Base Bid I, Bid II, Base III, Base Bid IV No. Bidder Base Bid I Base Bid II Base Bid III Base Bid IV Base Bid II, Base III, Base Additive Alternate I Bid IV and Additive Alternate I **PERIKIN Enterprises, LLC** \$1,142,968.51 \$40,670.94 \$109,951.26 \$87,830.93 \$14,206.22 \$1,395,627.86 \$1,381,421.64 2 Arrow Building Corp. \$1,285,000.00 \$21,000.00 \$105,000.00 \$28,000.00 \$1,439,000.00 \$16,000.00 \$1,455,000.00

\$134,730.00

\$1,463,021.98

\$11,709.81

\$1,474,731.79

\$77,566.32

3

Mirador Enterprises, Inc.

\$1,224,669.94

\$26,055.72



#### CITY OF EL PASO BID TABULATION FORM



BID TITLE: Airport RTS

SOLICITATION No: 2022-0052

BID DATE: October 13, 2021

DEPARTMENT: Capital Improvement

BID DATE: October 13, 2021		D	EPARTMENT: Capital Improvement
	Arrow Building Corp.	Mirador Enterprises, Inc.	PERIKIN Enterprises, LLC
	El Paso, TX	El Paso, TX	Albuquerque, NM
	BIDDER 1 of 3	BIDDER 2 of 3	BIDDER 3 of 3
Base Bid I	\$1,285,000.00	\$1,224,669.94	\$1,142,968.51
Base Bid II	\$21,000.00	\$26,055.72	\$40,670.94
Base Bid III	\$105,000.00	\$77,566.32	\$109,951.26
Base Bid IV	\$38,000.00	\$134,730.00	\$87,830.93
SUM TOTAL BASE BID I, BASE BID II, BASE BID III, BASE BID IV:	\$1,449,000.00	\$1,463,021.98	\$1,381,421.64
Additive Alternate I	\$16,000.00	\$11,709.81	\$14,206.22
Amendments Acknowledged	Yes	Yes	Yes
Bid Bond Submitted	Yes	Yes	Yes

View List  1
2 ABPOWERS RAMOS, RAFAEL 3 Access Communication Dittmar, Mark 4 Air Moving Equipment ELLIS, MARK 5 Alpha Building Corp. Lynch, Steve 6 AMTEK Rugh, John 7 Arrow Building McGlohon, Tyler 8 BidJudge.com Bid, Judge 9 Black Stallion Contr Luna, Hector 10 Border Demolition An Acosta, David 11 CEA Group Concha, David 12 Chandler And Associa Chandler, Anthony 13 CK Construction, Inc Avila, Rick 14 ConstructConnect STINSON, MORGAN 15 Construction Journal Exton, Pamela 16 Construction Reporte Wood, Jane 17 Consultant Dunavant, Pete 18 Contractors Register Deg, Maria 19 Dan Williams Company Mendoza, Pedro 20 Dantex Construction Pelech, Keeley 21 Delta Unlimited LLC Pinney, John 22 Deltek Management, Source 23 Direx Construction, Hudson, Brad 24 Dodge Data Peggy, Koehn 25 Dodge Data And Analy Loganathan, Jayalakshmi 26 DRS Rock Materials, Soto, Daniel 27 dsi Dandar Lujan, Rosie
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28 ECM International Lujan, Rosie
30 El Paso JAG Castro, Patricia
31 EMINENT GENERAL CONT RAMOS, RAFAEL
32 Enotsyek Dominguez, Luis
33 Exigo Construction S Alfredo, Chavez
34 F and W Electrical C Olguin, Mike
35 Fulcrum Contracting Jaramillo, Jorge
36 Gamboa Electric Inc Gamboa, Lorenzo
37 GCC Sun City Materia Torres, Angelica
38 HB Construction Mulligan, Matthew
39 Head, Inc. Bruner, Adam
40 Horizone Const. 1 LT De Stefano, Luis Rene
41 i- Sourcing Technolo Balai, Rakesh
42 J.A.R Guillermo, Ovies
43 JCSS Myriam, Acosta

2022-0052 Airport RTS View List		
44	Jobe Materials, L.P.	Lowrance, Gloria
45	Jordan Foster Constr	Lopez, Rafael
46	LAC Construction	Soto, Mauro
47	Martinez Brothers Co	mota, pablo
48	Marvel	Villasenor, Diego
49	Medlock Commercial C	Medlock, Steve
50	MERCER TECHNOLOGIES	Mercer, Garrett
51	Mirador Enterprises	Dominguez, Adriana
52	Noble General Contra	Rey, Nohemi
53	None	Lombrana, Monica
54	Perikin Enterprises	Silva, Luis
55	Prime Vendor Inc.	Jones, Kim
56	QTO Solutions	Uddin, Nisar
57	RBM Engineeering, In	Morris, Bryan
58	RCPM, LLC	Ortiz, Cecilia
59	RDZ BUILD	Rodriguez, Manny
60	Rinker Materials	Ramirez, Mario
61	Roman Construction	Valdespino, Carlos
62	Ross And Baruzzini	Jim, carey
63	Sentry Electrical Gr	Campbell, Howard
64	Sites Southwest	Sanchez, Martha
65	Smartprocure	Bjornsson, Ron
66	SPARTAN CONSTRUCTION	ALLEN, STEVE
67	Summit Electric Supp	Flores, Christina
68	Sunset West Inc	Rall, Timothy
69	The PlanIt Room	Hernandez, Cecilia
70	Tri-State Electric,	Motta, Alejandro
71	Vaughn Construction	Loera, Rudy
72	Vertex Contractors,	Ruiz, Erika
73	Vitual Builders Exch	Olguin, Jeannette
74	Wayne Enterprises	Austin, Fork
75	yucca contracting	Vaquera, Israel
76	Ztex Construction	Construction, Ztex
77		Martinez, Jessica
78		James, Hardison
79		Maldonado, Mariana
80		Banquil, Lovely
81		Watson, Frank
82		pinnamaneni, vamsi
83		Reyes, Manuel
84		Arias, Jorge



# Airport RTS Construction Contract Award Solicitation 2022-0052

November 9, 2021



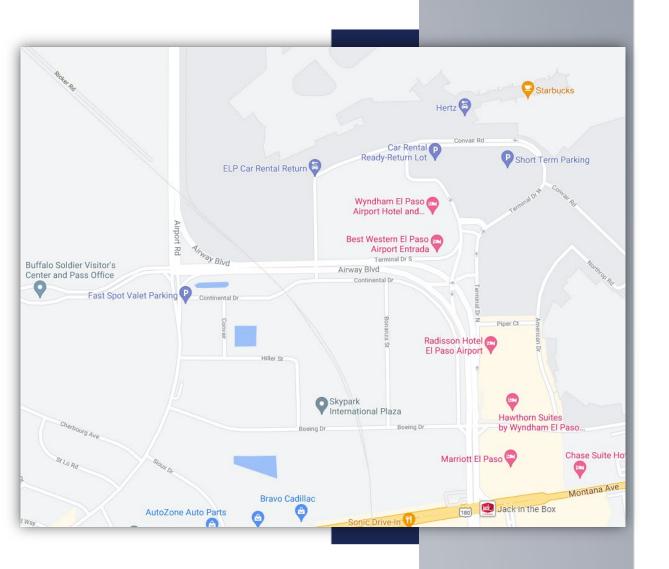


## SCOPE OF WORK



A new enclosed station at the El Paso International Airport will be constructed that will follow the development of the Montana Rapid Transit System (RTS), that will also provide a pickup location for rideshare users. The station will consist of a climate-controlled building, pedestrian lighting, new sidewalks, landscaping, bicycle racks and artwork.





## PROJECT LOCATION

 El Paso International Airport on Convair Road in front of the ConRAC



## PROCUREMENT SUMMARY

- Bid
  - Solicitation advertised on September
     21, 2021 and September 28, 2021
  - 3 firms submitted bids, 2 local vendors
- Recommendation
  - To award the construction contract to MIRADOR ENTERPRISES, INC, for an estimated award of \$1,474,731.79

**Funding Source:** 

Federal Transit
Administration (FTA)

2021 Certificate of Obligation

**Airport Enterprise Funds** 







## **Mission**

Deliver exceptional services to support a high quality of life and place for our community

## Vision

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government

## ☆ Values

Integrity, Respect, Excellence, Accountability, People

### El Paso, TX

#### **Legislation Text**

File #: 21-1104, Version: 1

#### **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

#### **All Districts**

Police, Assistant Chief Victor Zarur, (915) 212-4307

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance amending Title 10 (Public Peace, Morals and Welfare), Chapter 10.12 (Offenses against Public Peace), Section 10.12.050 (Alcohol Prohibited in Public Places), Subsection A to define "Homeless Shelter," "Possesses," and "Possession," and Subsection B to add Homeless Shelter to the area where offense can occur; the penalty being provided in Subsection 10.12.050 E of the El Paso City Code. [POSTPONED FROM 10-12-2021 AND 10-26-20211

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

AGENDA DATE: PUBLIC HEARING DATE:
CONTACT PERSON(S) NAME AND PHONE NUMBER:
DISTRICT(S) AFFECTED:
STRATEGIC GOAL:
SUBGOAL:
SUBJECT:  APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.
BACKGROUND / DISCUSSION:  Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?
PRIOR COUNCIL ACTION:  Has the Council previously considered this item or a closely related one?
AMOUNT AND SOURCE OF FUNDING:  How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?
HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YESNO PRIMARY DEPARTMENT:
SECONDARY DEPARTMENT:

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

Revised 04/09/2021

AN ORDINANCE AMENDING TITLE 10 (PUBLIC PEACE, MORALS AND WELFARE), CHAPTER 10.12 (OFFENSES AGAINST PUBLIC PEACE), SECTION 10.12.050 (ALCOHOL PROHIBITED IN PUBLIC PLACES), SUBSECTION A TO DEFINE "HOMELESS SHELTER", "POSSESSES" AND "POSSESSION", AND SUBSECTION B TO ADD HOMELESS SHELTER TO THE AREA WHERE OFFENSE CAN OCCUR; THE PENALTY BEING PROVIDED IN SUBSECTION 10.12.050 E OF THE EL PASO CITY CODE.

WHEREAS, the Texas Alcohol and Beverage Code Section 109.36 gives the City of El Paso the authority to prohibit the possession of an open container or the consumption of an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a homeless shelter not located in the central business district; and,

WHEREAS, the El Paso Police Department gave out the following number of citations for open container violations in the central business district: 1,443 in 2018, 1,429 in 2020, and 505 as of June, 2021; and,

WHEREAS, the City Council determines that the possession of an open container or the public consumption of alcoholic beverages near to homeless shelters is a public health and safety risk and should be prohibited; and

WHEREAS, City Council wishes to reduce that public health and safety risk in order to improve the quality of life for residents in close proximity to homeless shelters outside of the central business district and for homeless shelter residents, and to reduce nuisances related to drinking in public places.

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

SECTION 1. That Title 10 (PUBLIC PEACE, MORALS AND WELFARE), Chapter 10.12 (OFFENSES AGAINST PUBLIC PEACE), Section 10.12.050 (Alcohol prohibited in public places), Subsection A is amended to add the following:

#### 10.12.050 Alcohol Prohibited in Public Places.

A.

"Homeless shelter" for purposes of this Section 10.12.050 of the City Code, means a supervised publicly or privately operated shelter or other facility that is designed to provide temporary living accommodations to individuals who lack a fixed regular and adequate residence.

"Possesses" and "possession" for purposes of this Section 10.12.050 of the City Code, means actual care, custody, control, or management.

ORDINANCE NO.

**SECTION 2.** That Title 10 (PUBLIC PEACE, MORALS AND WELFARE), Chapter 10.12 (OFFENSES AGAINST PUBLIC PEACE), Section 10.12.050 (Alcohol prohibited in public places), Subsection B is amended as follows:

#### 10.12.050 Alcohol Prohibited in Public Places.

B.

- 1. A person commits an offense if he possesses an open container of or consumes an alcoholic beverage in or on any public street, sidewalk, alley or pedestrian way located in the El Paso central business district area as defined in this section-; or
- 2. A person commits an offense if he possesses an open container of or consumes an alcoholic beverage in or on any public street, sidewalk, alley or pedestrian way located within 1,000 feet of the property line of a homeless shelter that is not located in a central business district.

**SECTION 3.** Except as herein amended, Chapter 10.12 of the El Paso City Code shall remain in full force and effect.

(Signatures on the following page)

ADOPTED this day of	, 2021.
	CITY OF EL PASO:
	Oscar Leeser, Mayor
ATTEST:	
Laura D. Prine	
City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Carlos Armendariz	A/C Victor Zarur
	Gregory Allen
Assistant City Attorney	Police Chief

ORDINANCE NO.
---------------

AN ORDINANCE AMENDING TITLE 10 (PUBLIC PEACE, MORALS AND WELFARE), CHAPTER 10.12 (OFFENSES AGAINST PUBLIC PEACE), SECTION 10.12.050 (ALCOHOL PROHIBITED IN PUBLIC PLACES), SUBSECTION A TO DEFINE "HOMELESS SHELTER", "POSSESSES" AND "POSSESSION", AND SUBSECTION B TO ADD HOMELESS SHELTER TO THE AREA WHERE OFFENSE CAN OCCUR; THE PENALTY BEING PROVIDED IN SUBSECTION 10.12.050 E OF THE EL PASO CITY CODE.

**WHEREAS**, the Texas Alcohol and Beverage Code Section 109.36 gives the City of El Paso the authority to prohibit the possession of an open container or the consumption of an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a homeless shelter not located in the central business district; and,

**WHEREAS**, the El Paso Police Department gave out the following number of citations for open container violations in the central business district: 1,443 in 2018, 1,429 in 2020, and 505 as of June, 2021; and,

**WHEREAS**, the City Council determines that the possession of an open container or the public consumption of alcoholic beverages near to homeless shelters is a public health and safety risk and should be prohibited; and

**WHEREAS**, City Council wishes to reduce that public health and safety risk in order to improve the quality of life for residents in close proximity to homeless shelters outside of the central business district and for homeless shelter residents, and to reduce nuisances related to drinking in public places.

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

**SECTION 1.** That Title 10 (PUBLIC PEACE, MORALS AND WELFARE), Chapter 10.12 (OFFENSES AGAINST PUBLIC PEACE), Section 10.12.050 (Alcohol prohibited in public places), Subsection A is amended to add the following:

#### 10.12.050 Alcohol Prohibited in Public Places.

A.

"Homeless shelter" for purposes of this Section 10.12.050 of the City Code, means a supervised publicly or privately operated shelter or other facility that is designed to provide temporary living accommodations to individuals who lack a fixed regular and adequate residence.

<u>"Possesses" and "possession" for purposes of this Section 10.12.050 of the City Code, means actual care, custody, control, or management.</u>

**SECTION 2.** That Title 10 (PUBLIC PEACE, MORALS AND WELFARE), Chapter 10.12 (OFFENSES AGAINST PUBLIC PEACE), Section 10.12.050 (Alcohol prohibited in public places), Subsection B is amended as follows:

#### 10.12.050 Alcohol Prohibited in Public Places.

B.

- 1. A person commits an offense if he possesses an open container of or consumes an alcoholic beverage in or on any public street, sidewalk, alley or pedestrian way located in the El Paso central business district area as defined in this section; or
- 2. A person commits an offense if he possesses an open container of or consumes an alcoholic beverage in or on any public street, sidewalk, alley or pedestrian way located within 1,000 feet of the property line of a homeless shelter that is not located in a central business district.

**SECTION 3.** Except as herein amended, Chapter 10.12 of the El Paso City Code shall remain in full force and effect.

(Signatures on the following page)

pg. 2

<b>ADOPTED</b> this day of	, 2021.
	CITY OF EL PASO:
	Oscar Leeser, Mayor
ATTEST:	
Laura D. Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:

502



## An Ordinance amending Title 10, Chapter 10.12

Alcohol prohibited in public places

Goal 2 - Set the Standard for a Safe and Secure City

El Paso Police Department

## Table of Contents

- Current enforcement under Section 10.12.050 (Central Business District)
- Purpose statement
- Statutory authority under Texas Alcoholic Beverage Commission (TABC)
- Proposed additions
- Homeless shelters City-wide
- Example maps



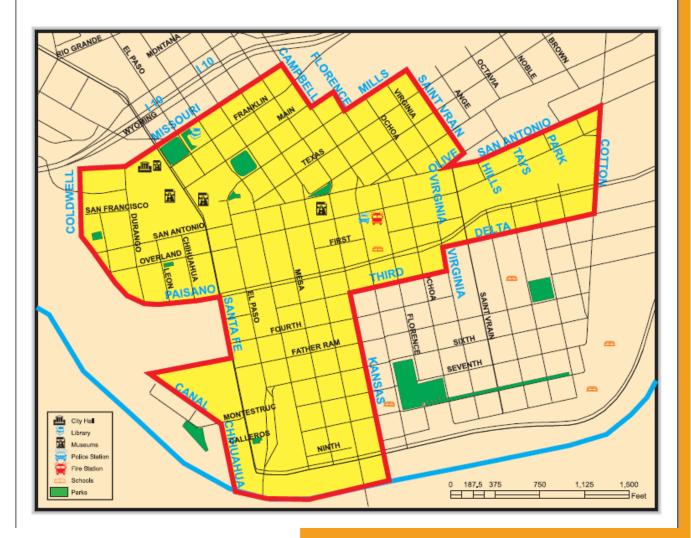
# Enforcement under current ordinance Section 10.12.050, sub. 2.b.1

A person commits an offense if he possesses an open container of or consumes an alcoholic beverage in or on any public street, sidewalk, alley, or pedestrian way located in the El Paso Central Business District area as defined in this section.

Class C citations for open container 2020-06.30.2021

Total 1,801









# Purpose

To improve the quality of life for residents and persons experiencing homelessness in and around homeless shelters by reducing nuisances related to drinking in public.

# Statutory Authority

• TABC 109.35 Central Business District

In this section, "central business district" means a compact and contiguous geographical area of a municipality in which at least 90 percent of the land is used or zoned for commercial purposes and that is the area that has historically been the primary location in the municipality where business has been transacted.

• TABC 109.36 Consumption of Alcoholic Beverages Near Homeless Shelter or Substance Abuse Treatment Center.

An incorporated city may enact regulations prohibiting the possession of an open container or the consumption of an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a homeless shelter that is not located in a central business district or a substance abuse treatment center that is not located in a central business district.

## TABC Section 109.35 (c-1)

TABC Section 109.35 (c-1) In accordance with Section <u>1.06</u> (TABC exclusively governs the manufacture, sale, distribution, transportation, and possession of alcoholic beverages), this section does not authorize municipal regulation of the possession of an open container or the public consumption of alcoholic beverages except as expressly provided by this section.



# Exceptions

- Special authorized events with valid permit from TABC;
- Inside a building not owned or controlled by the City;
- Residential structure; or
- Within area of a TABC licensed establishment for consumption on premises



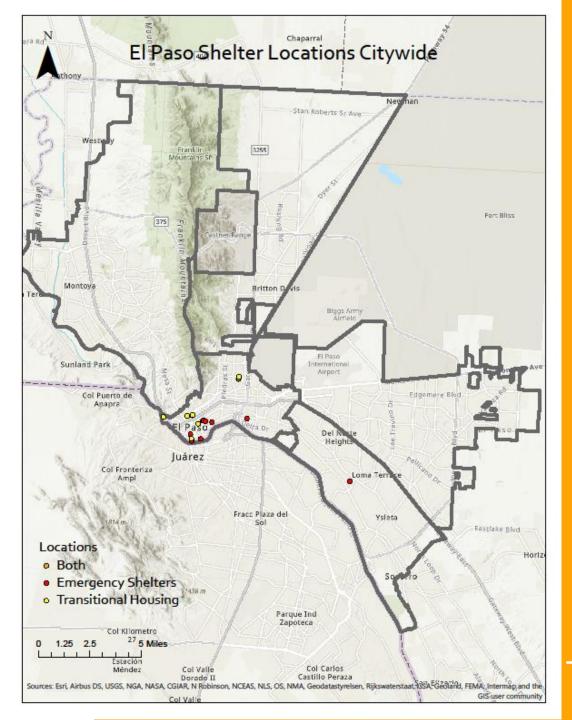
## Proposed Additions

- Definition of "homeless shelter" for purposes of this Section 10.12.050 of the City Code, means a supervised publicly or privately operated shelter or other facility that is designed to provide temporary living accommodations to individuals who lack a fixed regular and adequate residence.
- Definition of "possesses" or "possession" for purposes of this Section 10.12.050 of the City Code, means actual care, custody, control or management.
- A person commits an offense if he possesses an open container of or consumes an alcoholic beverage in or on any public street, sidewalk, alley or pedestrian way located within 1,000 feet of the property line of a homeless shelter that is not located in the Central Business District.



## Homeless Shelters

• Addresses of shelters listed were received through the Homeless Coalition, and may not encompass all shelters throughout the City due to some confidential locations for vulnerable populations.

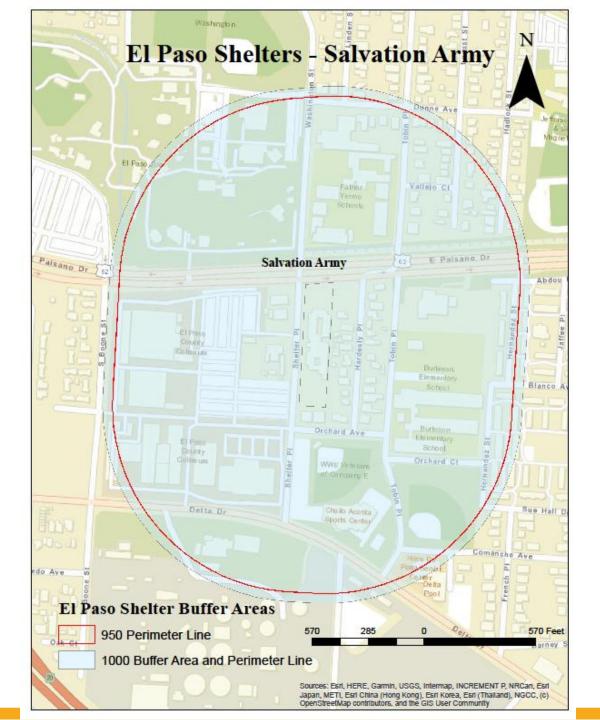


# Examples

Within 1,000 feet example

Measurements of distance will be determined utilizing ARC-GIS pre-printed maps that have a 1000 foot buffer over the parcel lines of the properties that will be placed in the Regional Commands.

The amendment only applies to public areas. Private property is not affected.

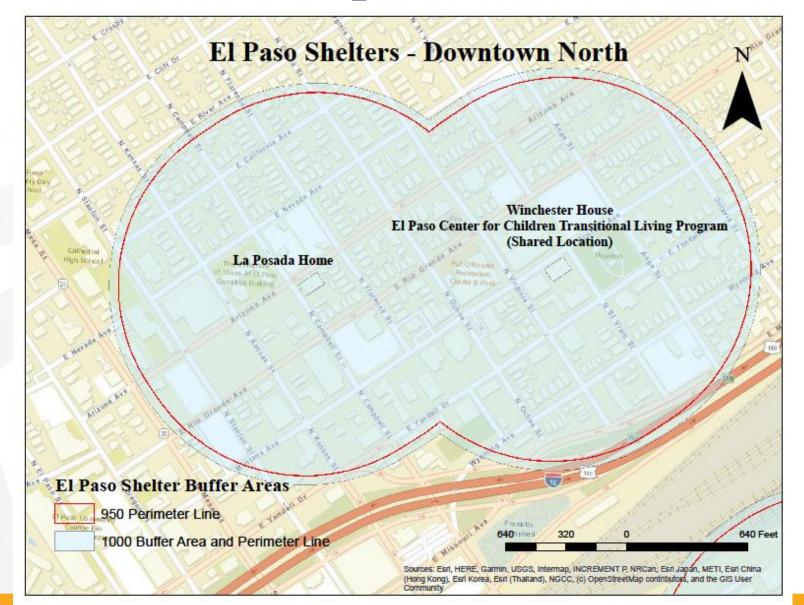






# Examples Cont.





# **Questions or Comments?**



## MISSION



Deliver exceptional services to support a high quality of life and place for our community

## VISION



Develop a vibrant regional
economy, safe and beautiful
neighborhoods and exceptional
recreational, cultural and
educational opportunities powered
by a high performing government



Integrity, Respect, Excellence,
Accountability, People

## El Paso, TX

## Legislation Text

File #: 21-1154, Version: 1

## CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM

## **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **District 6**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553 Planning and Inspections, Jorge Olmos, (915) 212-1607

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance changing the zoning for a portion of Tract 6, Fruitvale Addition, 8458 Roseway Drive, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) to R-4 (Residential). The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with *Plan El Paso*, the City's Comprehensive Plan.

Subject Property: 8458 Roseway Drive Applicant: Elder Ramirez, PZRZ21-00023

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

AGENDA DATE: October 12, 2021
PUBLIC HEARING DATE: November 9, 2021

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553

Jorge Olmos, (915) 212-1607

**DISTRICT(S) AFFECTED**: District 6

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

**SUBGOAL:** 3.2 Set one standard for infrastructure across the city

## **SUBJECT:**

An Ordinance changing the zoning for a portion of Tract 6, Fruitvale Addition, 8458 Roseway Drive, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) to R-4 (Residential). The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with *Plan El Paso*, the City's Comprehensive Plan.

Subject Property: 8458 Roseway Drive Applicant: Elder Ramirez, PZRZ21-00023

### **BACKGROUND / DISCUSSION:**

The applicant is requesting to rezone the subject property from R-F (Ranch and Farm) to R-4 (Residential) to allow a single-family dwelling. The City Plan Commission recommended 5-0 to approve the proposed rezoning on September 9, 2021. As of September 15, 2021 the Planning Division has not received any communication in support or opposition to the rezoning request. See attached staff report for additional information.

### PRIOR COUNCIL ACTION:

N/A

## **AMOUNT AND SOURCE OF FUNDING:**

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? \_X\_YES \_\_\_NO

PRIMARY DEPARTMENT: Planning & Inspections, Planning Division

SECONDARY DEPARTMENT: N/A

*********	*REQUIRED AUTHO	)RIZATION********	*****

**DEPARTMENT HEAD:** 

ORDINANCE NO.	
FRUITVALE ADDITION, 8458 ROSEWA COUNTY, TEXAS FROM R-F (RANCH A	ONING OF A PORTION OF TRACT 6, Y DRIVE, CITY OF EL PASO, EL PASO ND FARM) TO R-4 (RESIDENTIAL). THE PTER 20.24 OF THE EL PASO CITY CODE.
NOW THEREFORE, BE IT ORDAINED OF EL PASO:	BY THE CITY COUNCIL OF THE CITY
Fruitvale Addition, 8458 Roseway Drive, locate and as more particularly described by met incorporated by reference, be changed from	Paso City Code, the zoning of a portion of Tract 6, ed in the City of El Paso, El Paso County, Texas, tes and bounds on the attached exhibit "A", R-F (Ranch and Farm) to R-4 (Residential), as coning map of the City of El Paso be revised
The penalties for violating the standards in Section 20.24 of the El Paso City Code.	mposed through this rezoning ordinance are found
ADOPTED this day of	, 2021.
	THE CITY OF EL PASO:
ATTEST:	Oscar Leeser, Mayor
Laura D. Prine, City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Wendi N. Vineyard	Philip Etiwe Philip F. Etiwe, Director

Planning & Inspections Department

Assistant City Attorney

### **EXHIBIT A**

Being a Portion of Tract 6, Fruitvale Addition, City of El Paso, El Paso County, Texas October 08, 2020

#### METES AND BOUNDS DESCRIPTION 8458 Roseway Drive Exhibit "A"

**FIELD NOTE DESCRIPTION** of a Portion of Tract 6, Fruitvale Addition, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at a found iron rod located at the common boundary corner of Tracts 5 and 6, same being the southerly right-of-way line of Roseway Drive (30' R.O.W.) and the POINT OF BEGINNING of the herein described parcel;

**THENCE**, leaving said common boundary corner of Tracts 5 and 6 and along the southerly right-of-way line of Roseway Drive, South 77°30'00" East, a distance of 159.00 feet to a found iron rod for corner;

**THENCE**, leaving said southerly right-of-way line of Roseway Drive, South 15°00'00" West, a distance of 169.75 feet to a point for corner;

THENCE, North 77°30'00" West, a distance of 159.00 feet to a point for corner at the common boundary line of Tracts 5 and 6;

**THENCE**, along the common boundary line of Tracts 5 and 6, North 15°00'00" East, a distance of 169.75 feet to the **POINT OF BEGINNING** of the herein described parcel and containing 26,964.56 square feet or 0.6190 acres of land more or less.

CAD Consulting Co. 1790 Lee Trevino Drive. Suite 503 El Paso, Texas 79936 (915) 633-6422 I:\M&B\20-0\8458 Roseway.wpd



## 8458 Roseway Drive

City Plan Commission — September 9, 2021



CASE MANAGER: Jorge Olmos, 915-212-1607, OlmosJA@elpasotexas.gov

**PROPERTY OWNER:** Elder Ramirez REPRESENTATIVE: Elder Ramirez

**LOCATION:** 8458 Roseway Drive (District 6)

**PROPERTY AREA:** 0.62 acres

**REQUEST:** Rezone from R-F (Ranch and Farm) to R-4 (Residential)

**RELATED APPLICATIONS:** N/A **PUBLIC INPUT:** None

**SUMMARY OF REQUEST:** The request is to rezone the subject property from R-F (Ranch and Farm) to R-4 (Residential) in order to allow for the use of a single-family residence.

**SUMMARY OF DCC RECOMMENDATION:** Staff recommends **APPROVAL** of the rezoning request. This recommendation is based on the consistency of the request with *Plan El Paso*, the City's adopted Comprehensive Plan.

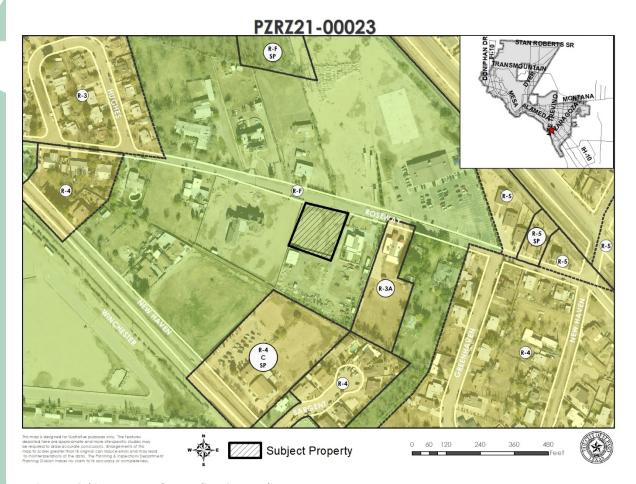


Figure A. Subject Property & Immediate Surroundings

**DESCRIPTION OF REQUEST:** The applicant is requesting to rezone one (1) 0.62 acre lot from R-F (Ranch and Farm) to R-4 (Residential) to allow for a single family residence. The generalized site plan shows a proposed residential structure of approximately 2,000 square feet. The proposed development is in compliance with the proposed R-4 (Residential) district.

#### **PREVIOUS CASE HISTORY: N/A**

**EVALUATING THE FOLLOWING FACTORS:** 

**COMPATIBILITY WITH NEIGHBORHOOD CHARACTER:** The proposed single-family residence is compatible with the surrounding neighborhood. The proposed development will have access from Roseway Dr., a local street. The closest school is Plato Academy (0.55 miles), and the closest park is Pueblo Viejo Park (0.30 miles).

proposed rezoning is in accordance with <i>Plan El Paso</i> , consider the following factors:			
Criteria	Does the Request Comply?		
Future Land Use Map: Proposed zone change is compatible with the Future Land Use designation for the property:  G-3, Post-War: This sector applies to transitional neighborhoods typically developed from the 1950s through the 1980s. Streets were laid out with curvilinear patterns without alleys and shopping centers are located at major intersections behind large parking lots. This sector is generally stable but would benefit from strategic suburban retrofits to supplement the limited housing stock and add missing civic and commercial uses.	Yes. The proposed development is in character with the surrounding existing single-family residential uses and places of worship in proximity, and is compatible with the G-3 designation.		
Compatibility with Surroundings: The proposed zoning district is compatible with those surrounding the site:  R-4 (Residential): The purpose of this district is to allow for a low density of dwelling units supporting a suburban-urban interface that permits developments utilizing varying lot configurations, permits primarily single-family and two-family residential areas, and recreational and institutional uses incidental to and serving the neighborhood.	Yes. The proposed zoning district is compatible with the other zoning districts surrounding the property. Properties around the proposed development are zoned R-F (Ranch and Farm), R-3A (Residential), and R-4 C SP (Residential/condition/special contract), and consist of single-family residential uses and places of worship.		
<b>Preferred Development Locations:</b> Yes. As per Policy 1.4.1.c, the proposed rezoning is appropriate and encourages neighborhoods to have a greater variety of housing types.	Yes. The proposed development is located in proximity to various public transit facilities. The property has access to Alameda Ave, classified as a major arterial as per the City of El Paso's Major Thoroughfare Plan.		

COMPLIANCE WITH PLAN EL PASO/REZONING POLICY – When evaluating whether a			
proposed rezoning is in accordance with Plan El Paso, consider the following factors:			
Historic District or Special Designations & Study Area Plans: Any historic district or other special designations that may be applicable. Any adopted small areas plans, including land-use maps in those plans.	The subject property is not located within any historic districts, other special designations, or study area plans.		
Potential Adverse Effects: Potential adverse effects that might be caused by approval or denial of the requested rezoning.	No adverse effects are anticipated.		
<b>Natural Environment:</b> Anticipated effects on the natural environment.	There are no anticipated effects on the natural environment. The subject property is not within any arroyos or environmentally-sensitive areas.		
<b>Stability:</b> Whether the area is stable or in transition.	The area is stable.		
<b>Socioeconomic &amp; Physical Conditions</b> : Any changed social, economic, or physical conditions that make the existing zoning no longer suitable for the property.	There have been no recent major changes in the area.		

**ADEQUACY OF PUBLIC FACILITIES, SERVICES AND INFRASTRUCTURE:** Access to the proposed development is from Roseway Drive, a local street. Roseway Drive will provide adequate access to the proposed development.

**SUMMARY OF DEPARTMENTAL REVIEW COMMENTS:** The reviewing departments recommend approval, with all major comments having been addressed.

**PUBLIC COMMENT:** Notices were provided to all property owners within 300 feet of the subject property on August 27, 2021. As of September 2, 2021, there has been no communication in support of or in opposition to the request.

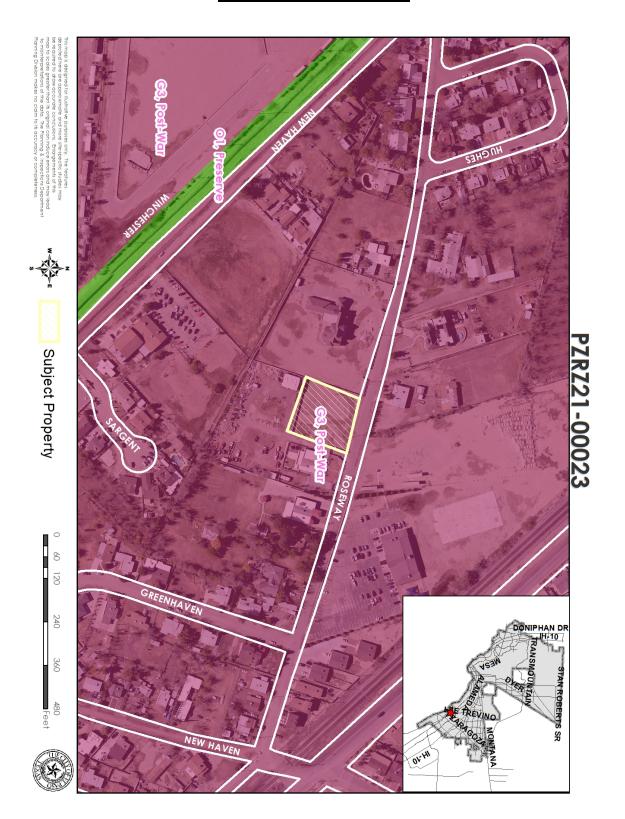
#### **RELATED APPLICATIONS: N/A**

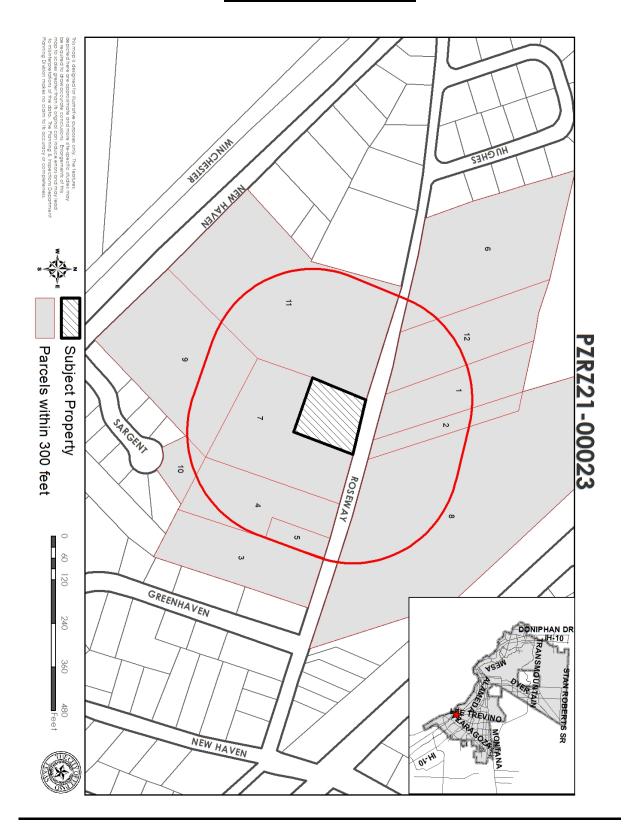
#### **CITY PLAN COMMISSION OPTIONS:**

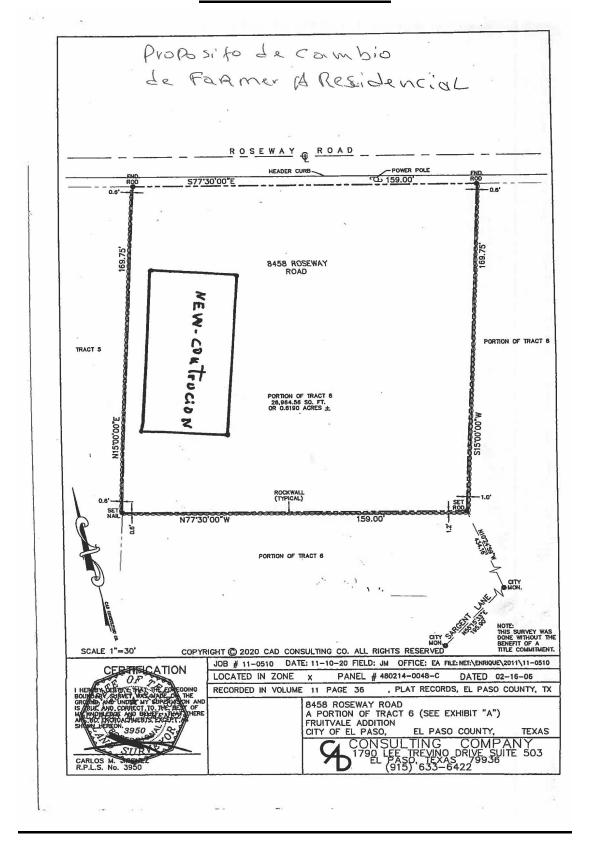
The purpose of the Zoning Ordinance is to promote the health, safety, morals and general welfare of the City. The City Plan Commission (CPC) has the authority to advise City Council on Zoning matters. In evaluating the request, the CPC may take any of the following actions:

- 1. **Recommend Approval** of the rezoning request, finding that the request is in conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or that the request is in conformance with other criteria that the CPC identifies from the Comprehensive Plan. (Staff Recommendation)
- 2. **Recommend Approval of the rezoning request With Modifications** to bring the request into conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan.
- 3. **Recommend Denial** of the rezoning request, finding that the request does not conform to the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan.

- 1. Future Land Use Map
- 2. Neighborhood Notification Boundary Map
- 3. Conceptual Site Plan (non-binding)
- 4. Department Comments







## <u>Planning and Inspections Department – Planning Division</u>

Recommend approval.

## <u>Planning and Inspections Department – Plan Review & Landscaping Division</u>

No objections to proposed rezoning. At the time of submittal for building permit the project will need to comply with all applicable provisions of the ICC, TAS and Municipal Code.

### <u>Planning and Inspections Department – Land Development</u>

- 1: No objections to the proposed rezoning.
- 2: On-site ponding is required in compliance with sections (DSC Panel 1-4C-J, 19.19.010A and DDM, 11.1).

### **El Paso Water**

El Paso Water (EPWU) does not object to this request.

### Water:

There is an existing 6-inch diameter water main that extends along the northern side of Roseway Dr. This main is available for service.

EPWater records indicate that there are no services to property.

Previous water pressure from fire hydrant #2123, located 166 feet east of the intersection of Roseway Dr. and Hughes Cir. has yielded a static pressure of 100 psi, a residual pressure of 90 psi, and a discharge of 1,061 gallons per minute. The owner should, for his own protection and at his own expense, install at the discharge side of each water meter a pressure regulator, strainer and relief valve, to be set for pressure as desired by the customer. The Lot owner shall be responsible for the operation and maintenance of the above-described water pressure regulating device.

#### **Sanitary Sewer:**

There is an existing 8-inch sanitary sewer main that extends along the southern side of Roseway Dr. This main is available for service.

### General:

EPWater requires a new service application to provide service addition to the property. New service applications are available at 1154 Hawkins, 3rd floor and should be made 6 to 8 weeks in advance of construction to ensure water for construction work. A site plan, utility plan, grading and drainage plans, landscaping plan, the legal description of the property and a certificate-of-compliance are required at the time of application. Service will be provided in accordance with the current EPWater – PSB Rules and Regulations. The applicant is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

#### Fire Department

No adverse comments.

## **Sun Metro**

No objections.

## 911 District

No comments/concerns regarding this property.

## El Paso County Water Improvement District #1

EPCWID1 has no comments on the above item.



# 8458 Roseway Dr. Rezoning Application

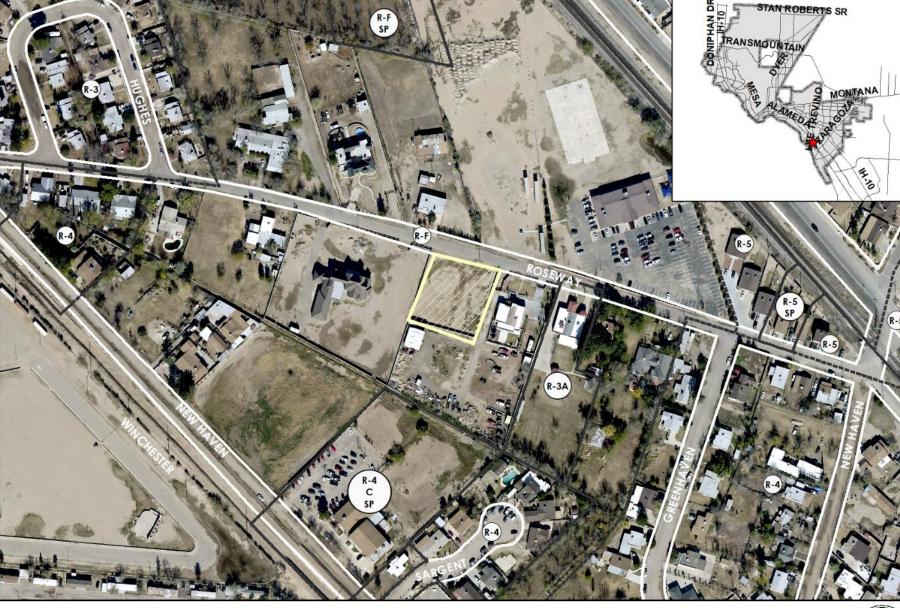
PZRZ21-00023

Strategic Goal 3.

Promote the Visual Image of El Paso

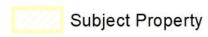


PZRZ21-00023



This map is designed for illustrative purposes only. The features depicted here are approximate and more site-specific studies may be required to draw accurate conclusions. Enlargements of this map to scoles greater than its original can induce error and may lead to misinterpretations of the data. The Planning Division makes no claim to its occuracy or completeness.









**Aerial** 



PZRZ21-00023 STAN ROBERTS SR R-F SP



# **Existing Zoning**



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PZRZ21-00023



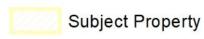


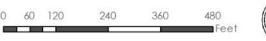
# Future Land Use

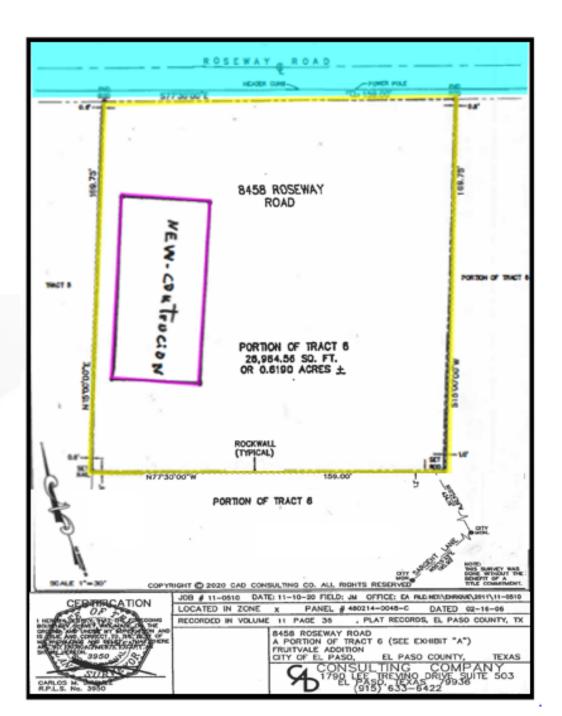


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# Conceptual Plan







# Subject Property



# **Surrounding Development**



















## **Public Input**

- Notices were mailed to property owners within 300 feet on August 27, 2021.
- The Planning division has not received any communication in support of or in opposition to the request.







## Recommendation

• The City Plan Commission recommends approval of the rezoning request.









Deliver exceptional services to support a high quality of life and place for our community

## Vision

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government

## ☆ Values

Integrity, Respect, Excellence, Accountability, People



8458 Roseway Dr.
Rezoning Application

PZRZ21-00023

Strategic Goal 3.

Promote the Visual Image of El Paso



PZRZ21-00023





# **Aerial**

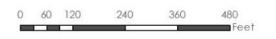


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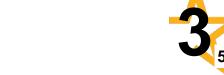
Subject Property



PZRZ21-00023 STAN ROBERTS SR TRANSMOUNTAIN R-3A



# Existing Zoning



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60 120 240 360 480 Feet

PZRZ21-00023 STAN ROBERTS SR TRANSMOUNTAIN This map is designed for illustrative purposes only. The features depicted here are approximate and more site-specific studies may be required to draw accurate conclusions. Enlargements of this map to scales greater than its original can induce errors and may lead to misinterpretations of the data. The Planning & inspections Department

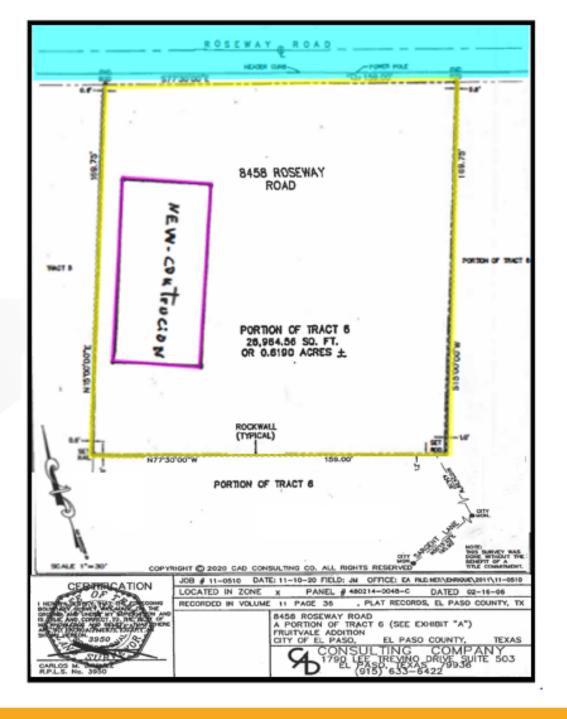
Planning Division makes no claim to its accuracy or completeness.



# **Future** Land Use









# Conceptual Plan





Subject t Proper ty



# Surrounding Development

















# Public Input

- Notices were mailed to property owners within 300 feet on August 27, 2021.
- The Planning Division has not received any communications in support nor opposition to the request.







# Recommendation

• The City Plan Commission recommends approval of the rezoning request.







# Mission

Deliver exceptional services to support a high quality of life and place for our community

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# ☆ Values

Integrity, Respect, Excellence, Accountability, People

#### El Paso, TX

#### Legislation Text

File #: 21-1157, Version: 1

# CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **District 8**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553 Planning and Inspections, Luis Zamora, (915) 212-1552

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance approving a special permit for a parking lot for the property described as Lot 7 and 8 and South 2 Feet of Lot 9, Block 82, Campbell Addition, City of El Paso, El Paso County, Texas, The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed special permit meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: 707 S. Ochoa St.

Applicant: Jaime Montoya, PZST21-00010

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

AGENDA DATE: October 12, 2021
PUBLIC HEARING DATE: November 9, 2021

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553

Luis Zamora, (915) 212-1552

**DISTRICT(S) AFFECTED**: District 8

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

**SUBGOAL:** 3.2 Set one standard for infrastructure across the city

#### SUBJECT:

An Ordinance approving a special permit for a parking lot for the property described as Lot 7 and 8 and South 2 Feet of Lot 9, Block 82, Campbell Addition, City of El Paso, El Paso County, Texas, The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed special permit meets the intent of the Future Land Use designation for the property and is in accordance with *Plan El Paso*, the City's Comprehensive Plan.

Subject Property: 707 S. Ochoa St.

Applicant: Jaime Montoya, PZST21-00010

#### **BACKGROUND / DISCUSSION:**

The applicant is requesting approval of a special permit and a detailed site development plan to allow for the use of off-street parking serving another property. City Plan Commission recommended to approve (5-0) the proposed special permit on August 26, 2021. As of October 5, 2021, the Planning Division has not received any communication in support or opposition to the special permit request. See attached staff report for additional information.

#### PRIOR COUNCIL ACTION:

N/A

#### AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

PRIMARY DEPARTMENT: Planning & Inspections, Planning Division

**SECONDARY DEPARTMENT: N/A** 

****	**************************************
DEPARTMENT HEAD	Philip Flive

ORDINANCE NO.
---------------

AN ORDINANCE GRANTING SPECIAL PERMIT NO. PZST21-00010, TO ALLOW FOR A PARKING LOT ON THE PROPERTY DESCRIBED AS LOTS 7 AND 8, AND SOUTH 2 FEET OF LOT 9, BLOCK 82, CAMPBELL ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS, PURSUANT TO SECTION 20.10.410 OF THE EL PASO CITY CODE. THE PENALTY BEING AS PROVIDED IN CHAPTER 20.24 OF THE EL PASO CITY CODE.

WHEREAS, the Centro de Salud Familiar La Fe, Inc., has applied for a Special Permit under Section 20.10.410 of the El Paso City Code to allow for a parking lot; and,

**WHEREAS,** a report was made by the City Plan Commission and a public hearing was held regarding such application; and,

**WHEREAS,** the City Plan Commission has recommended approval of the subject Special Permit; and

**WHEREAS,** the subject Special Permit has been submitted to the City Council of the City of El Paso for review and approval; and

**WHEREAS,** the City Council of the City of El Paso finds that the application conforms to all requirements of Section 20.04.320 of the El Paso City Code.

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

- 1. That the property described as follows, is in an A-3 (Apartment) District: LOTS 7 AND 8, AND SOUTH 2 FEET OF LOT 9, BLOCK 82, CAMPBELL ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS, City of El Paso, El Paso County, Texas; and,
- 2. That the City Council hereby grants a Special Permit under Section 20.04.320 of the El Paso City Code to allow for a parking on the property described in Paragraph 1 of this Ordinance; and,
- 3. That this Special Permit is issued subject to the development standards in the A-3 (Apartment) District regulations and is subject to the approved Detailed Site Development Plan signed by the Applicant, the City Manager and the Executive Secretary to the City Plan Commission. A copy of this plan is attached hereto as Exhibit "A" and is incorporated herein by reference for all purposes; and,
- 4. That if at any time the Applicant fails to comply with any of the requirements of this Ordinance, Special Permit No. PZST21-00010, shall be subject to termination; construction or occupancy shall be discontinued; and the Applicant shall be subject to the penalty provisions of Chapter 20.24 and any other legal or equitable remedy; and,

and filed with the Zoning Administrator and the ion before building permits are issued.
, 2021.
THE CITY OF EL PASO:
Oscar Leeser Mayor
APPROVED AS TO CONTENT:
Philip Etiwa  Philip F. Etiwe, Director
Philip F. Etiwe, Director Planning & Inspections Department

That the Applicant shall sign an Agreement incorporating the requirements of this

5.

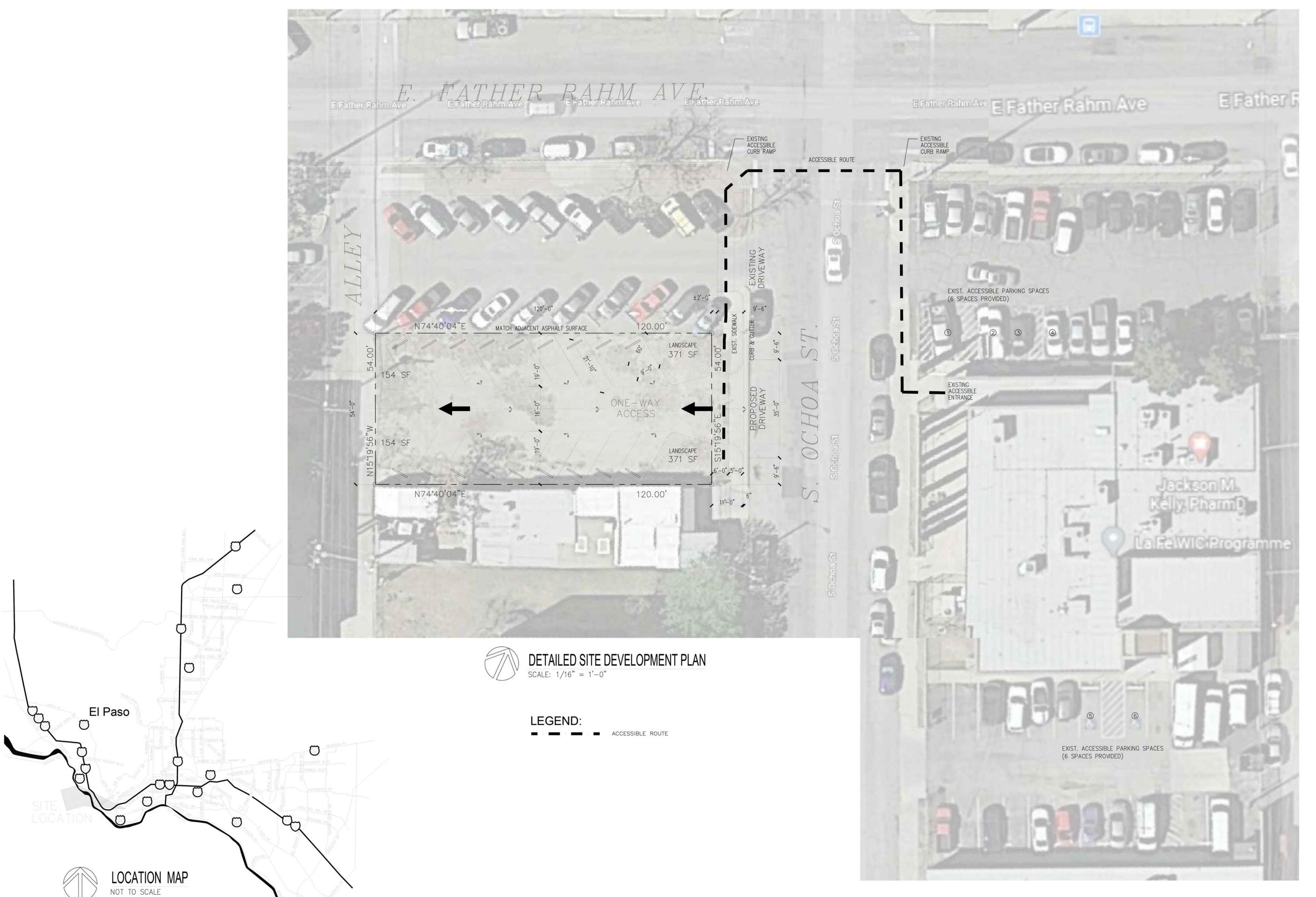
#### **AGREEMENT**

Centro de Salud Familiar La Fe, Inc., the Applicant referred to in the above Ordinance, hereby agrees to develop the above-described property in accordance with the approved Detailed Site Development Plan attached to same Ordinance, and in accordance with the standards identified in the A-3 (Apartment) District regulations, and subject to all other requirements set forth in this Ordinance.

#### ACKNOWLEDGMENT

THE STATE OF TEXAS §	
COUNTY OF EL PASO §	
This instrument is acknowled 2021, by Salud Familiar La Fe, Inc. as Applicant.	ged before me on this 7th day of for Centro de
(Seal)	Belinda M. Baccena
S. /	Notary Public, State of Texas
	Signature
	Belinda M. Barcena
	Printed or Typed Name
My Commission Expires: $\frac{07/28/2025}{}$	BELINDA M BARCENA Notary ID #4757640 My Commission Expires July 28, 2025

# ATTACHMENT "A"





PLANNING & INSPECTIONS DEPARTMENT
PLANNING DIVISION
DETAILED SITE DEVELOPMENT PLAN
APPROVED BY CITY COUNCIL

September 23, 2021

DATE

APPLICANT

Kevin Smith
EXECUTIVE SECRETARY, CITY PLAN COMMISSION

CITY MANAGER

### PARKING SPACES

OVERFLOW PARKING FOR ADJACENT PROPERTY LOCATED AT 714 E. FATHER RAHM AVE.
AMPLE ACCESSIBLE PARKING PROVIDED AT CLINIC.

COMMUNITY HEALTH CLINIC: CENTRO DE SALUD FAMILIAR LA FE, INC.

### LANDSCAPE

LOT SIZE: 54' X 120' = 6,480 S.F. 6,480 S.F. X 0.15 = 972 S.F. REQUIRED: 972 S.F. PROVIDED: 1,050 S.F.

### PROJECT SCOPE

PROJECT SCOPE IS COMPRISED OF A PARKING LOT EXPANSION OF 18 SPACES AS SHOWN ON DRAWINGS TO ACCOMMODATE COMMUNITY HEALTH CLINIC LOCATED ACROSS THE STREET.

#### LEGAL DESCRIPTION

ZONING: A-3

82 CAMPBELL, LOTS 7, 8 & SOUTH 2FT OF 9 (6,480 S.F.) CITY OF EL PASO, EL PASO COUNTY, TEXAS

707 PROPOSED PARKING LOT

707 SOUTH OCHOA STREET EL PASO, TEXAS 79901

DETAILED SITE DEVELOPMENT PLAN 20.xx.000

SP1.0

APRIL 2021

REVISION

REVISED ON 04.12.2021

REVISED ON 04.12.2021

REVISED ON 06.30.2021



Plan: B | Architecture

Contemporary Residential + Commercial Architecture
- EL PASO, TEXAS - 79930 - t: 915.519.5464 - e: plan.b.archs@outlook.com

APRIL 12, 2021 / 100% CONSTRUCTION DOCUMENTS ISSUED FOR REGULATORY APPROVAL, PERMITTING AND CONSTRUCTION

#### 707 Ochoa Street

City Plan Commission — August 26, 2021) 🗔

CASE NUMBER: PZST21-00010

CASE MANAGER: Emily Diaz-Melendez, (915)212-1612, DiazMelendezEM@elpasotexas.gov

**PROPERTY OWNER:** Centro de Salud Familiar Le Fe, Inc.

**REPRESENTATIVE:** Robert Gonzales

**LOCATION:** 707 Ochoa St. (District 8)

**PROPERTY AREA:** 0.15 acres

**EXISTING ZONING:** A-3 (Apartment)

**REQUEST:** Special Permit for off-street parking serving another property

**RELATED APPLICATIONS:** None

**PUBLIC INPUT:** No support or opposition received

**SUMMARY OF REQUEST:** The applicant is requesting a special permit to allow the use of off-street parking serving another property in the A-3 (Apartment) District. The proposed parking lot would serve an existing medical office.

**SUMMARY OF STAFF RECOMMENDATION:** Staff recommends **APPROVAL** of the special permit request. The proposed development meets the requirements of off-street parking serving another property as per El Paso City Code Section 20.10.410 (Off-Street Parking Serving Another Property), Section 20.04.320 (Special Permit Approvals.), and Section 20.04.150 (Detailed Site Development Plan Approval Process - Procedure.).



Figure A. Subject Property & Immediate Surroundings

**DESCRIPTION OF REQUEST:** The applicant is requesting a special permit to allow for the use of off-street parking serving another property. The proposed parking lot is to serve an existing medical office located at 714 E. Father Rahm. The lot consists of eighteen (18) parking spaces within two (2) rows of parking stalls, meeting the minimum requirements for sixty (60) degree angle parking as per El Paso City Code Section 20.14.040(F) (Table – Parking Space Dimensions). The applicant is providing 1,050 square feet of landscaped area. The required amount of landscaping is 972 square feet per Section 18.46.080 (Required Landscapable Areas.). The existing lot is vacant and there is an existing parking lot abutting it to the north. Access to the proposed development is from Ochoa Street.

COMPLIANCE WITH SPECIAL PERMIT REQUIREMENTS (EL PASO CITY CODE SECTION 20.04.320.D)				
Criteria	Does the Request Comply?			
1. The proposed development complies, except to the extent waived, varied or modified pursuant to the provisions of this title, with all of the standards and conditions applicable in the zoning district in which it is proposed to be located.	The proposed development complies with El Paso City Code Sections 20.14.040(F) and 20.10.410. The proposed use of off-street parking serving another property is permissible in the A-3 (Apartment) district with City Council approval of a special permit. The arrangement of parking spaces allows for adequate maneuvering and ingress/egress. Its location adequately serves the site generating the use and is in character with the neighborhood.			
2. Furthers <i>Plan El Paso</i> and applicable neighborhood plans or policies.	The proposed development will provide additional parking spaces to an existing medical office that is currently integrated within a residential area. This will allow the medical office to continue its land use pattern under the G-2 Future Land Use designation, as described below.			
3. Adequately served by and will not impose an undue burden upon public improvements.	The current conditions of Ochoa St. are adequate to serve the proposed development. The proposed development should not pose an undue burden on existing public improvements. There is currently an 11' parkway abutting the subject property and a roadway that allows for on-street parking and a two-lane, two-way roadway.			
4. Any impacts of the proposed development on adjacent property are adequately mitigated with the design, proposed construction and phasing of the site development.	The proposed development meets the requirements of El Paso City Code Section 20.14.040.C (Vehicular Parking - Design and construction.) and should not have a negative impact on adjacent developments.			
5. The design of the proposed development mitigates substantial environmental problems.	Yes. The proposed development is in an established area and is not anticipated to create environmental concerns.			
6. The proposed development provides adequate landscaping and/or screening where needed.	Yes. The proposed development exceeds the minimum landscaping requirements.			
7. The proposed development is compatible with adjacent structures and uses.	There is an existing parking lot abutting the proposed development to the north. The lot size is in character with the surrounding area.			
8. The proposed development is not materially detrimental to the property adjacent to the site.	The proposed development does not cause materially detrimental effects to the adjacentarea.			

COMPLIANCE WITH PLAN EL PASO GOALS & POLICIES – When evaluating whether a				
proposed special permit is in accordance with <i>Plan El Paso</i> , consider the following factors:				
Criteria	Does the Request Comply?			
Future Land Use Map: Proposed zone change is compatible with the Future Land Use designation for the property:  G-2, Traditional Neighborhood: This sector includes the remainder of Central El Paso as it existing through World War II. Blocks are small and usually have rear alleys; buildings directly faced streets; schools, parks, and small shops are integrated with residential areas. This sector is well-suited for use of the SmartCode as a	Yes. The proposed use is compatible with the G-2 Future Land Use Designation. It is serving a medical office that is integrated within the existing residential area.			
replacement for current zoning when planned in conjunction with specific neighborhood plans or identified in the Comprehensive Plan.				
Compatibility with Surroundings: The proposed zoning district is compatible with those surrounding the site:  A-3 (Apartment) District: The purpose of the district is to promote and preserve residential development within the city associated with a landscape more urban in appearance and permitting a mixture of housing types. It is intended that the district regulations allow for medium densities of dwelling units supported by higher intensity land uses located at the periphery of single-family neighborhoods providing that the overall character and architectural integrity of the neighborhood is preserved. The regulations of the districts will permit building types designed for transition from areas of low density residential neighborhoods to other residential areas, and certain nonresidential uses and support facilities.	There is an existing parking lot abutting the proposed development to the north. The lot size is in character with the surrounding area.			
THE PROPOSED PROJECT'S EFFECT ON THE PROPERTY A THE FOLLOWING FACTORS:	AND SURROUNDING PROPERTY, AFTER EVALUATING			
Historic District or Special Designations & Study Area Plans: Any historic district or other special designations that may be applicable. Any adopted small areas plans, including land-use maps in those plans.	No. The proposed development is not within a Historic District, special designation, or study area.			
Potential Adverse Effects: Potential adverse effects that might be caused by approval or denial of the requested rezoning.	No. Approval of this special permit request is not anticipated to result in adverse impacts to surrounding properties or the community.			
Natural Environment: Anticipated effects on the	No. There are no anticipated negative effects on the			
Stability: Whether the area is stable or in transition.	natural environment.  The surrounding area is stable and not in transition.  There have not been any recent rezonings or special permits in the area.			
Socioeconomic & Physical Conditions: Any changed social, economic, or physical conditions that make the existing zoning no longer suitable for the property.	There are no social, economic, or physical conditions that make the existing zoning no longer suitable for the property.			

**SUMMARY OF DEPARTMENTAL REVIEW COMMENTS:** There were no adverse comments provided by reviewing departments.

**PUBLIC COMMENT:** The proposed development is located within the Southside Neighborhood Association and the El Paso Central Business Association. Notice was sent on August 16, 2021 to all property owners within 300 feet of the subject property. As of August 20, 2021, there has been no communication in support of or opposition to the special permit request.

#### **RELATED APPLICATIONS: N/A**

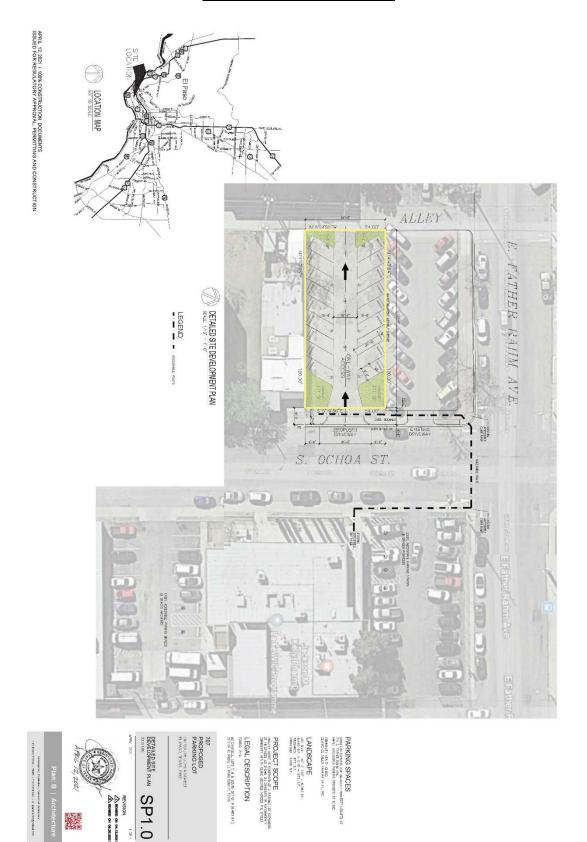
#### CITY PLAN COMMISSION OPTIONS:

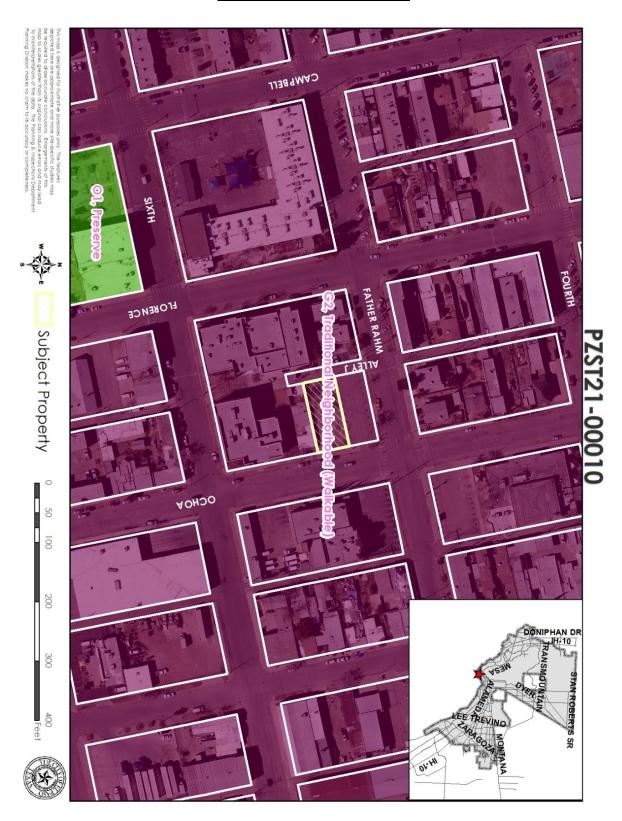
The purpose of the Zoning Ordinance is to promote the health, safety, morals and general welfare of the City. The City Plan Commission (CPC) has the authority to advise City Council on Zoning matters. In evaluating the request, the CPC may take any of the following actions:

- 1. **Recommend Approval** of the special permit request, finding that the request is in conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or that the request is in conformance with other criteria that the CPC identifies from the Comprehensive Plan. (Staff Recommendation)
- 2. **Recommend Approval of the special permit request With Modifications** to bring the request into conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan.
- 3. **Recommend Denial** of the special permit request, finding that the request does not conform to the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan.

#### **ATTACHMENTS:**

- 1. Detailed Site Plan
- 2. Future Land Use Map
- 3. Department Comments
- 4. Neighborhood Notification Boundary Map





#### <u>Planning and Inspections Department – Plan Review</u>

- 1. Recommend approval.
- 2. Lighting shall comply with Chapter 18.18 (Dark Sky Ordinance).

#### <u>Texas Department of Transportation</u>

No comments received

#### Planning and Inspections Department – Landscaping Division

Recommend approval.

#### Planning and Inspections Department – Land Development

- 1. No objections to proposed special permit.
- 2. The code encourages the use of stormwater management practices such as rainwater harvesting within landscaped areas to the maximum extent practicable, per Chapter 19.19, Section 19.19.010, and Subparagraph A-2 & A-5, and not to mention water conservation savings.

#### **Fire Department**

Recommend approval.

#### **Police Department**

No comments received

#### **Sun Metro**

No objections

#### El Paso Water

We have reviewed the subdivision and provide the following comments:

El Paso Water (EPWater) does not object to this request.

#### Water:

There is an existing 6-inch diameter water main that extends along the Alley, west of Ochoa St. and south of Father Rahm Ave., approximately 6.5-feet west of and parallel to the eastern right-of-way line of the alley. This main is available for service.

EPWater records indicate one active 3/4-inch water meter serving the subject property. The service address for these meters is 707 S. Ochoa St.

Previous water pressure readings conducted on fire hydrant number 956 located at the northeast corner of the intersection of Father Rahm Ave. and Florence St. have yielded a static pressure of 100 pounds per square inch (psi), residual pressure of 84 psi, discharge of 1,126 gallons per minute (gpm). The owner should, for his own protection and at his own expense, install at the discharge side of each water meter a pressure regulator, strainer, and relief valve, to be set for pressure as desired by the customer. The Owner shall be responsible for the operation and maintenance of the above -described water pressure regulating device.

#### **Sanitary Sewer:**

There is an existing 8-inch diameter sanitary sewer main that extends along the Alley, west of Ochoa St.

and south of Father Rahm Ave., approximately 8-feet west of and parallel to the eastern right-of-way line of the alley. This main is available for service.

#### General:

EPWater requires a new service application to provide services to the property. New service applications are available at 1154 Hawkins, 3rd floor and should be made 6 to 8 weeks in advance of construction to ensure water for construction work. A site plan, utility plan, grading and drainage plans, landscaping plan, the legal description of the property and a certificate-of-compliance are required at the time of application. Service will be provided in accordance with the current EPWater Rules and Regulations. The applicant is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

#### **El Paso County Water Improvement District**

Proposed development is not within the boundaries of EPCWID1.





707 Ochoa St. Special Permit

PZST21-00010

Strategic Goal 3.

Promote the Visual Image of El Paso





# Recommendation

- Staff recommends approval of the special permit request
  - City Plan Commission recommends approval (5-0) of the special permit request

PZST21-00010

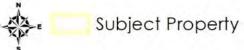


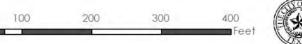


# **Aerial**



This map is designed for flustrative purposes only. The features depicted here are approximate and more site-specific studies may be required to drawaccurate conclusions. Fillargements of this map to scales greater than its original can induce errors and may lead to misinterpretations of the data. The Planning 8 inspections Department Filanning Diktion makes no claim to its accuracy or completeness.





PZST21-00010 STAN ROBERTS SR FOURTH TRANSMOUNTAIN FATHER RAHM (M-1)

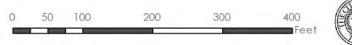


# Existing Zoning



This map is designed for illustrative purposes only. The features depicted here are approximate and more site-specific studies may be required to draw accurate conclusions. Enlargements of this map to scales greater than its original can induce errors and may lead to misinterpretations of the data. The Pianning & inspections Department Ranning Division makes no claim to its accuracy or completeness.



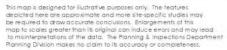


PZST21-00010

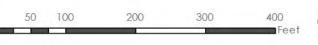


# Future Land Use















## Detailed Site Development Plan







# Subject Property



# Surrounding Development



W













# Public Input

- Notices were mailed to property owners within 300 feet on August 16, 2021.
- The Planning Division has received one phone call of inquiry and no communications in support nor opposition to the request.











# Mission

Deliver exceptional services to support a high quality of life and place for our community

# Vision

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government

# ☆ Values

Integrity, Respect, Excellence, Accountability, People

#### Legislation Text

File #: 21-1169, Version: 1

#### **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

#### **District 4**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553 Planning and Inspections, David Samaniego, (915) 212-1608

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance changing the zoning for the property described as being a portion of Tracts 3 and 3A, Section 15, Block 80, Township 1, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas from R-F (Ranch-Farm) to R-5 (Residential). The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: Dyer Street and O'Connor Drive Applicant: Salvare NE El Paso, LLC, PZRZ21-00019

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

AGENDA DATE: October 12, 2021 PUBLIC HEARING DATE: November 9, 2021

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553

David Samaniego, (915) 212-1608

DISTRICT(S) AFFECTED: District 4

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

SUBGOAL: 3.1 Provide business friendly permitting and inspection processes

3.2 Improve the visual impression of the community

#### SUBJECT:

An Ordinance changing the zoning for the property described as being a portion of Tracts 3 and 3A, Section 15, Block 80, Township 1, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas from R-F (Ranch-Farm) to R-5 (Residential). The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: Dyer Street and O'Connor Drive Applicant: Salvare NE El Paso, LLC, PZRZ21-00019

#### **BACKGROUND / DISCUSSION:**

The applicant is requesting to rezone the subject property from R-F (Ranch-Farm) to R-5 (Residential) to allow for single-family, residential lots. City Plan Commission recommended 5-0 to approve the proposed request on August 26, 2021. As of September 29, 2021, the Planning Division has received one email in opposition and one call of inquiry to the rezoning request. See attached staff report for additional information.

#### PRIOR COUNCIL ACTION:

#### AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

PRIMARY DEPARTMENT: Planning & Inspections, Planning Division

**SECONDARY DEPARTMENT: N/A** 

**DEPARTMENT HEAD:** 

Philip (Tiwe)
Philip E. Etiwe – Planning and Inspections Director

ORDINANCE NO
AN ORDINANCE CHANGING THE ZONING OF BEING A PORTION OF TRACTS 3 AND 3A, SECTION 15, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS FROM R-F (RANCH-FARM) TO R-5 (RESIDENTIAL). THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.
NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:
Pursuant to Section 20.04.360 of the El Paso City Code, the zoning of being a portion of Tracts 3 and 3A, Section 15, Block 80, Township 1, Texas and pacific Railway Company Surveys, located in the City of El Paso, El Paso County, Texas, and as more particularly described by metes and bounds on the attached Exhibit "A', incorporated by reference, be changed from R-F (Ranch-Farm) to R-5 (Residential), as defined in Section 20.06.020, and that the zoning map of the City of El Paso be revised accordingly.

The penalties for violating the standards imposed through this rezoning ordinance are found

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_\_, 2021.

in Section 20.24 of the El Paso City Code.

### Exhibit "A"

Prepared For: El Paso Water Date: 07-02-2021 A Portion of Section 15, Block 80, Township 1, Texas, and Pacific Railway Company Surveys

El Paso County, Texas W.O. 060421-1

### METES AND BOUNDS DESCRIPTION

Description of a 17.047-acre parcel of land more or less being a portion of Tracts 3 and 3A, Section 15, Block 80, Township 1, Texas and Pacific Railway Company Surveys, described in deed dated October 18, 2007, in File Clerk's Number 20070099125, Deed Records, El Paso County, Texas, and being more particularly described by metes and bounds as follows to wit:

Commencing at a found 2" \$\phi\$ diameter pipe on common corner of sections 9,10, 15, & 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys, from which an existing 2" \$\phi\$ dimeter pipe on the common corner of sections 10, 11, 14, & 15, bears South 86°51'47"East, a distance of 5290.57 feet, Thence, alone the common boundary line of Sections 15, and 16, South 02°00'32"West, a distance of 5080.93 feet to a point on the westerly right-of-way line of Dyer Street (100-Foot Right-of-Way, Book 614, Page 295, Deed Records, El Paso County, Texas) Thence, along said right-of-way line, North 46°22'51"East, a distance of 2654.37 feet to ½" \$\phi\$ diameter rebar found on the northerly right-of-way of O'Conner Drive (70-Foot Right-of-Way, Future Land Unit One, Book 1, Page 40, Plat Records, El Paso County, Texas) said ½" \$\phi\$ diameter rebar, being the Point of Beginning;

**Thence,** along said right-of-way line, 34.41 feet along a curve to the right, having a radius of 20.00 feet, a central angle of 90.00'00" and a chord which bears North 88°37'09" West, a distance of 28.28 feet to a found 1/2"  $\phi$  diameter rebar;

**Thence**, North 43°37'09" West, continuing along said right-of-way, a distance of 447.36 feet to a found 1/2" φ rebar with cap stamped "B&A":

**Thence,** continuing along said right-of-way, 360.31 feet along a curve to the right, having a radius of 555.00 feet, a central angle of 37°11'49" and a chord which bears North 25°01'14" West, a distance of 354.02 feet to a 1/2" φ diameter rebar with cap stamped "TX5152" found on the common boundary line described in deeds File Clerk's Numbers 20050053303 and 20070099125, Deed Records, El Paso County, Texas;

Thence, North 46°23'23" East, along said boundary line, a distance of 827.22 feet to point from which a found 5/8" φ diameter rebar bears North 21°25'56" West, a distance of 0.58 feet;

Thence, South 43°36'37" East, continuing along said boundary line, a distance of 802.76 feet to a point on the westerly right-of-way line of Dyer Street from which a found 5/8" φ diameter rebar bears South 89°28'05" East, a distance of 0.44 feet;

Thence South 46°22'51" West, along said right-of-way line, a distance of 920.01 feet to Point of Beginning and containing in all 742,565 square feet or 17.047 acres of land more or less.

CHARLES H, GUTIERREZ R.P.L.S. 5572

H2O-Terra

### Dyer Street and O'Connor Drive

City Plan Commission — August 26, 2021 - REVISED



CASE MANAGER: David Samaniego, (915) 212-1608, SamaniegoDC@elpasotexas.gov

**PROPERTY OWNER:** Salvare NE El Paso, LLC

REPRESENTATIVE: H20 Terra

LOCATION: O'Connor Dr. and Dyer St. (District 4)

**PROPERTY AREA:** 17 acres

**REQUEST:** Rezone from R-F (Ranch-Farm) to R-5 (Residential)

**RELATED APPLICATIONS:** N/A

**PUBLIC INPUT:** One (1) email in opposition and one (1) call of inquiry as of August

19, 2021

**SUMMARY OF REQUEST:** The applicant is requesting to rezone the subject property from R-F (Ranch-Farm) to R-5 (Residential) to allow for single-family, residential lots.

**SUMMARY OF STAFF RECOMMENDATION:** Staff recommends **APPROVAL** of the rezoning request. The recommendation is based on the compatibility of the proposed zoning district with the surrounding residential and commercial districts in the immediate area. Further, the proposed development meets the intent of the G4, Suburban (Walkable) land use designation of *Plan El Paso*, the City's adopted Comprehensive Plan in the Northeast Planning area.

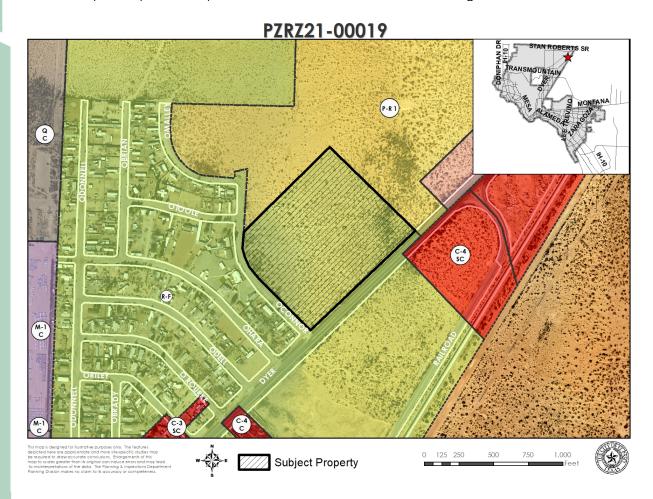


Figure A. Subject Property & Immediate Surroundings

**DESCRIPTION OF REQUEST:** The applicant proposes to rezone approximately seventeen (17) acres of land from R-F (Ranch-Farm) to R-5 (Residential). The property is located at the corner of O'Connor Drive and Dyer Street within the Northeast Planning area. The subject property is currently vacant. The conceptual site plan proposes to develop the seventeen (17) acre lot into 100 single-family, residential lots, one (1) park site, and one (1) pond site. Note the site plan is conceptual, as the final lot configurations will be addressed at the Subdivision stage. The development is proposing access from O'Connor Drive and Dyer Street.

**COMPATIBILITY WITH NEIGHBORHOOD CHARACTER:** The proposed development meets the intent of the G4, Suburban (Walkable) land use designation of *Plan El Paso*, within the Northeast Planning area. Abutting properties to the north and west are zoned P-R-I (Planned Residential I) and are scheduled for single-family residential development. Abutting properties to the west and south are zoned R-F (Ranch-Farm) and developed as mobile homes, horse stables, single-family, residential, and vacant lots.

COMPLIANCE WITH BLANES BASS (BETS)	NING BOLLOV, WILL II.
COMPLIANCE WITH PLAN EL PASO/REZO whether a proposed rezoning is in acco	——————————————————————————————————————
following factors:	ordance willi Flair El Faso, Consider life
Criteria	Does the Request Comply?
Future Land Use Map: Proposed zone change is compatible with the Future Land Use designation for the property:  G-4, Suburban (Walkable): This sector applies to modern single-use residential subdivisions and office parks, large schools and parks, and suburban shopping centers. This sector is generally stable but would benefit from strategic suburban retrofits to supplement the limited housing stock and add missing civic and commercial uses.	Yes, the G4, Suburban (Walkable) land use designation is compatible with the proposed R-5 (Residential) zone designation and the abutting P-R-I (Planned Residential I) and R-F (Ranch-Farm) zone districts. All abutting properties have planned single-family, residential development.
Compatibility with Surroundings: The proposed zoning district is compatible with those surrounding the site:  R-5 (Residential) District: The purpose of the district is to promote and preserve residential development within the city to create basic neighborhood units. It is intended that the district regulations maintain a low density of dwelling units supporting a suburban-urban interface that permits developments utilizing varying lot configurations. The regulations of the districts will permit primarily single-family and two-family residential areas, and recreational and institutional uses incidental to and serving the neighborhood.	Yes, the proposed zoning district is compatible with the surrounding zone districts. Properties abutting to the west and south are zoned R-F (Ranch-Farm) and consist of mobile homes, single-family, residential, and vacant lots. The proposed use of single family, residential lots is compatible with the surrounding existing and planned residential development and is permitted by right in the R-5 (Residential) district with a minimum lot area of 4,500-square feet for single-family lots.
<b>Preferred Development Locations:</b> Is the property in a preferred development location identified in Plan El Paso? State which one.	Yes, the subject property is located along Dyer Street, which is classified as a major arterial on the City of El Paso's Major Thoroughfare Plan (MTP).

COMPLIANCE WITH PLAN EL PASO/REZONING POLICY – When evaluating								
whether a proposed rezoning is in accordance with <i>Plan El Paso</i> , consider the								
following factors:								
THE PROPOSED ZONING DISTRICT'S EFFECT ON THE PROPERTY AND SURROUNDING PROPERTY,								
AFTER EVALUATING THE FOLLOWING FACTORS:								
Historic District or Special Designations & Study	No, the proposed development is not located							
<b>Area Plans:</b> Any historic district or other special	within any historic districts or other special							
designations that may be applicable. Any	designation areas.							
adopted small areas plans, including land-use								
maps in those plans.								
Potential Adverse Effects: Potential adverse	There are no adverse effects anticipated							
effects that might be caused by approval or	from the proposed rezoning. The existing							
denial of the requested rezoning.	infrastructure was originally designed for the							
	proposed district and uses.							
Natural Environment: Anticipated effects on	There are no anticipated effects on the							
the natural environment.	natural environment.							
<b>Stability:</b> Whether the area is stable or in	The area is stable. The subject property and							
transition.	the immediate abutting properties have not							
	been rezoned within the last ten (10) years.							
Socioeconomic & Physical Conditions: Any	N/A							
changed social, economic, or physical								
conditions that make the existing zoning no								
longer suitable for the property.								

**ADEQUACY OF PUBLIC FACILITIES, SERVICES AND INFRASTRUCTURE:** The subject property has access from Dyer Street, which is classified as a major arterial and from O'Connor Drive, which is classified as a local street on the City of El Paso's Major Thoroughfare Plan. In addition, water and sanitary sewer service to the development will require the construction of facilities, as per comments from El Paso Water. North 2 Pump Station is under construction with completion date of fiscal year 21-22. Water/sewer service and additional infrastructure will be addressed at the Subdivision stage.

**PUBLIC COMMENT:** The subject property lies within the Northeast Planning area. Notices were mailed to property owners within 300 feet of the subject property on August 10, 2021. As of August 19, 2021, Planning has received one (1) email in opposition and one (1) phone call of inquiry.

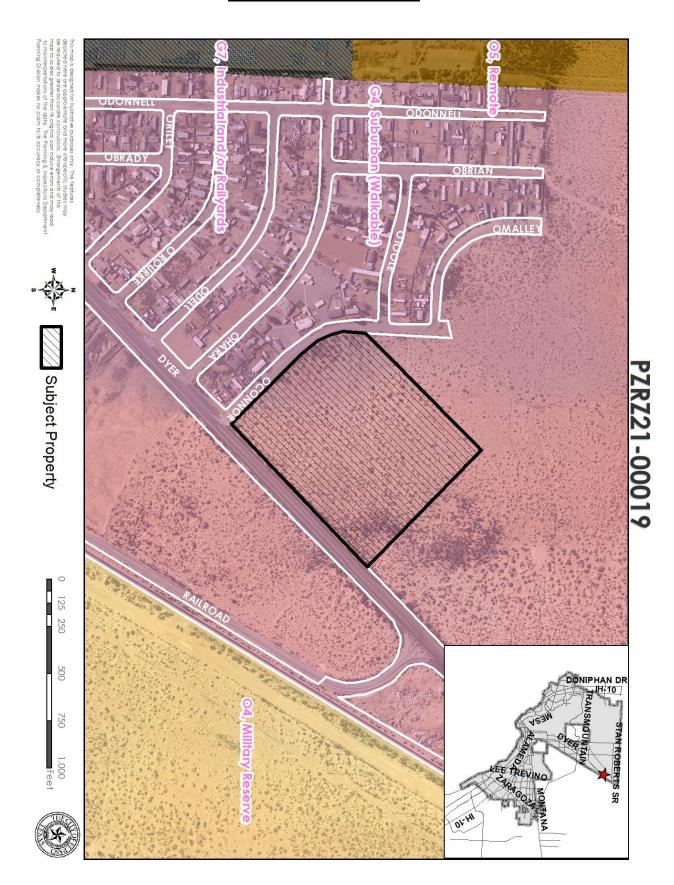
**RELATED APPLICATIONS: N/A** 

#### CITY PLAN COMMISSION OPTIONS:

The purpose of the Zoning Ordinance is to promote the health, safety, morals and general welfare of the City. The City Plan Commission has the authority to advise City Council on Zoning matters. In evaluating the request, the CPC may take any of the following actions:

- 1. **Recommend Approval** of the rezoning request, finding that the request is in conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or that the request is in conformance with other criteria that the CPC identifies from the Comprehensive Plan. (Staff Recommendation)
- 2. **Recommend Approval of the rezoning request With Modifications** to bring the request into conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan.
- 3. **Recommend Denial** of the rezoning request, finding that the request does not conform to the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan.

- 1. Future Land Use Map
- 2. Department Comments
- 3. Neighborhood Notification Boundary Map
- 4. Conceptual Site Plan (non-binding)5. Email of opposition



### <u>Planning and Inspections Department – Planning</u>

Consider relocating the park to a more centralized location or away from Dyer St. (at Subdivision stage).

### <u>Texas Department of Transportation</u>

Applicant will need to submit the access request for approval and grading and drainage plan for review for new subdivision on Dyer.

### Planning and Inspections Department – Plan Review

Recommend approval.

### Planning and Inspections Department – Land Development

No objections to proposed rezoning.

### Sun Metro

Recommend approval – no objections.

### **El Paso Water**

We have reviewed the request described above and provide the following comments:

El Paso Water (EPWU) does not object to this request.

Water and sanitary sewer service to this subdivision requires the construction of major facilities. North 2 Pump Station is under construction with completion date of fiscal year 21-22.

The subject property is located within the Northeast Impact Fee Service Area. Impact fees will be assessed and collected at the time the El Paso Water Utilities receives an application for water and sanitary sewer services when service becomes available.

#### Water

There is an existing 12-inch diameter water main that extends along Dyer Street, located approximately 45-feet south of the right of way centerline. No water services from this main are allowed, since it is exclusively dedicated to providing service to the McGregor Range site.

There is an existing 6-inch diameter water main that extends along O'Connor Drive, located approximately 17-feet south of the property line. This main dead-end approximately 242-feet west of Dyer Street. This water main is available for extension and service.

There is an existing 16-in diameter water main that extended along Dyer Street and deadends approximately 270-feet northeast of the intersection of Dyer Street and Mesquite Flor Drive. This water main will be required to be extended along Dyer Street from where its dead ends to the proposed intersection of O'Connor Drive and Dyer Street. EPWater is currently designing the main parallel to Dyer Street and construction is estimated to be completed in fiscal year 21-22.

### Sanitary Sewer

There are no existing sanitary sewer mains and sewer services currently in the vicinity of

the subject property.

Sanitary sewer mains of smaller diameter will be required to connect to the interceptor main to provide service to the subject property.

Upgrade of the (Dyer / Railroad) Lift Station is required to enable service to the proposed development. The upgrade is under design.

#### General

Dyer Street is a Texas Department of Transportation (TxDOT) right-of-way. All proposed water and sanitary sewer work to be performed within Dyer Street right-of-way requires written permission from TxDOT.

An application for additional water and sanitary sewer services should be submitted 6 to 8 weeks prior to construction to ensure water for construction work. New service applications are available at 1154 Hawkins, 3<sup>rd</sup> Floor. A site plan, utility plan, grading and drainage plans, landscaping plan, the legal description of the property, and a certificate-of-compliance are required at the time of application. Service will be provided in accordance with the current EPWU – PSB Rules and Regulations. The applicant is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

**EP Water-SW** reviewed the property described above and provide the following comments:

• The proposed ponding area shall have enough capacity to hold the developed runoff for a designated 100-yr. storm event.

### Fire Department

No comments received.

### El Paso County Water Improvement District

Not within the boundaries of EPCWID1

#### <u>911</u>

The 911 District does not have any comments or concerns regarding this rezoning.

#### Streets and Maintenance Department

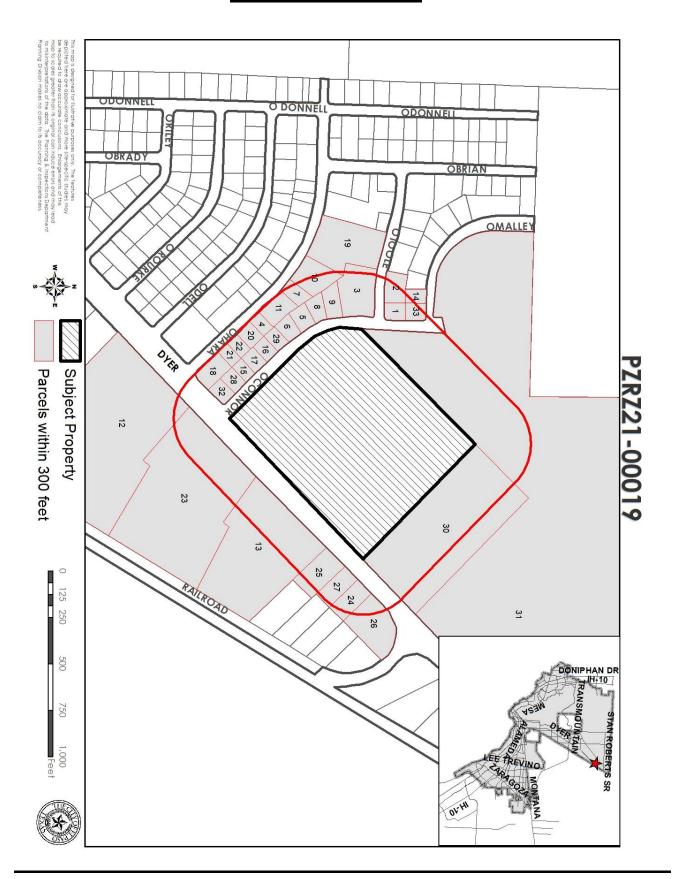
No comments received.

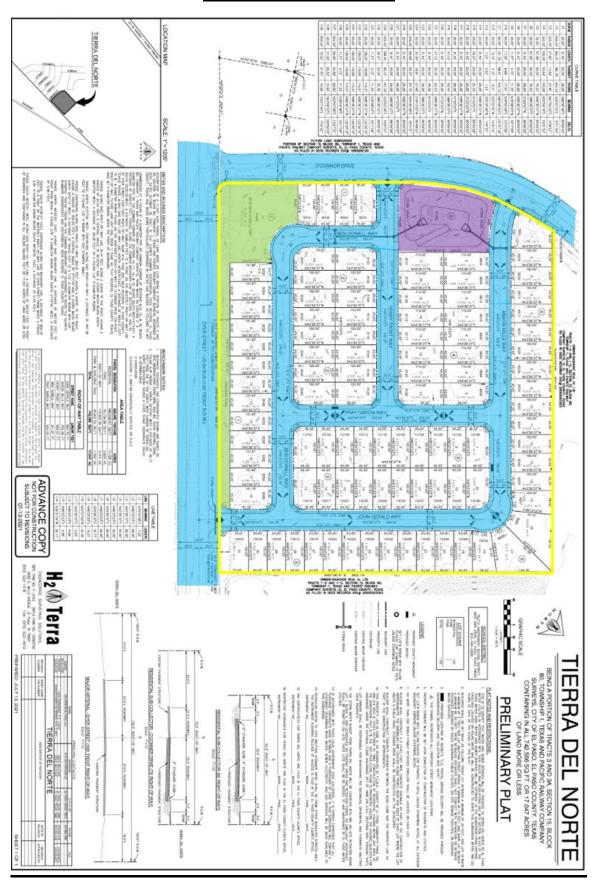
#### **Police Department**

No comments received.

### **Environment Services**

No comments received.





costly.

Sent from Mail for Windows 10

915-433-3626

Leslie Connor-Canada 12359 Oconnor

Regards,

Thu 7/15/2021 4:05 PM

Zoning Change OConnor and 11800 block of Dyer Leslie Canada < lcanada.epch@elp.twcbc.com>

1 You forwarded this message on 7/15/2021 4:43 PM.

Greetings Mr Samaniego,

Phish Alert V2

I called today because of the sign posted concerning a zoning change on the

Property in the 12300 block of Dyer. I spoke with Mariano who said the change had not occurred yet.

The land, 17 acres, has a sign posted. I am requesting formal notification for the City Plan hearing on the zoning and/or any action Salvare.

cleared and curbing is in preparation for new housing. I am not trying to stop economic development. I have a horse facility and should I need to move because of the development, it will be very time consuming and owners on the Oconnor within the 300 feet of the proposed housing development. It is desert land on the north side of Oconnor. I live on the south side of Oconnor. I never received such notification. Now the land is My family has lived her since 1970ish before the City of El Paso annexed the area. My properties are 12359 Oconnor and 7344 OToole. Mariano advised that the City sent notice for zoning change to those property

Can you email a planning map of the area so I have some idea how it is going to affect my property which consiss of a riding stables, 25 stalls and arena?

+ Get more app



Dyer St. & O'Connor Dr. Rezoning

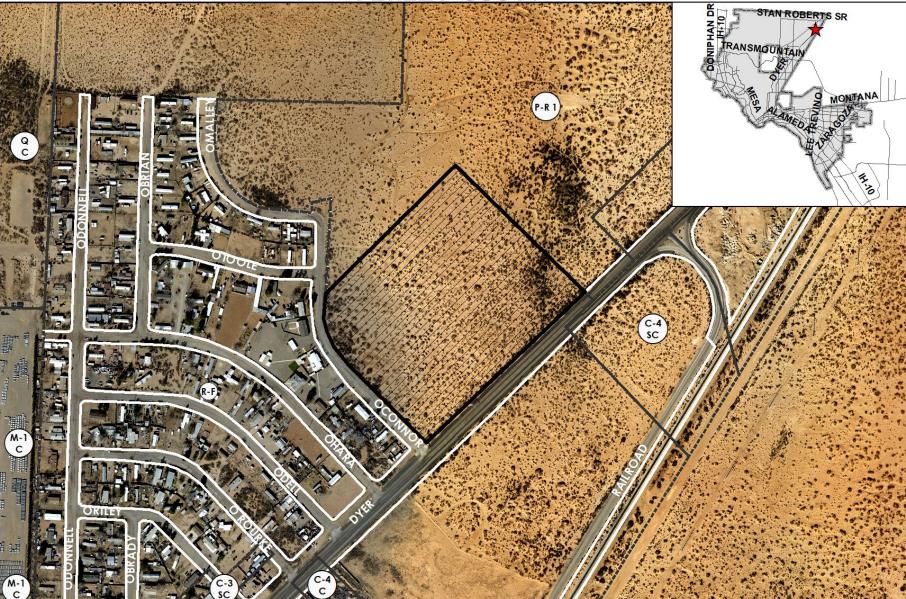
PZRZ21-00019

Strategic Goal 3.

Promote the Visual Image of El Paso



PZRZ21-00019



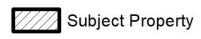


# **Aerial**



This map is designed for illustrative purposes only. The features delpicted here are approximate and more site-specific studies may be required to draw accurate conclusions. Enlargements of this map to scales greater than its original can induce errors and may lead to misinterpretations of the data. The Planning & Inspections Department Planning Division makes no claim to its accuracy or completeness.







PZRZ21-00019 STAN ROBERTS SR TRANSMOUNTAL



# Existing Zoning

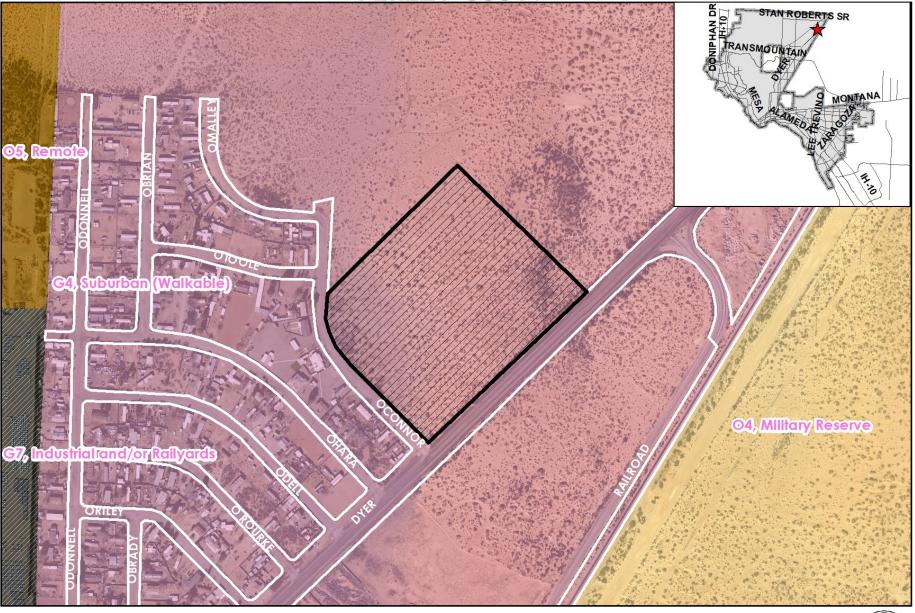


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PZRZ21-00019



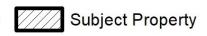


Future Land Use

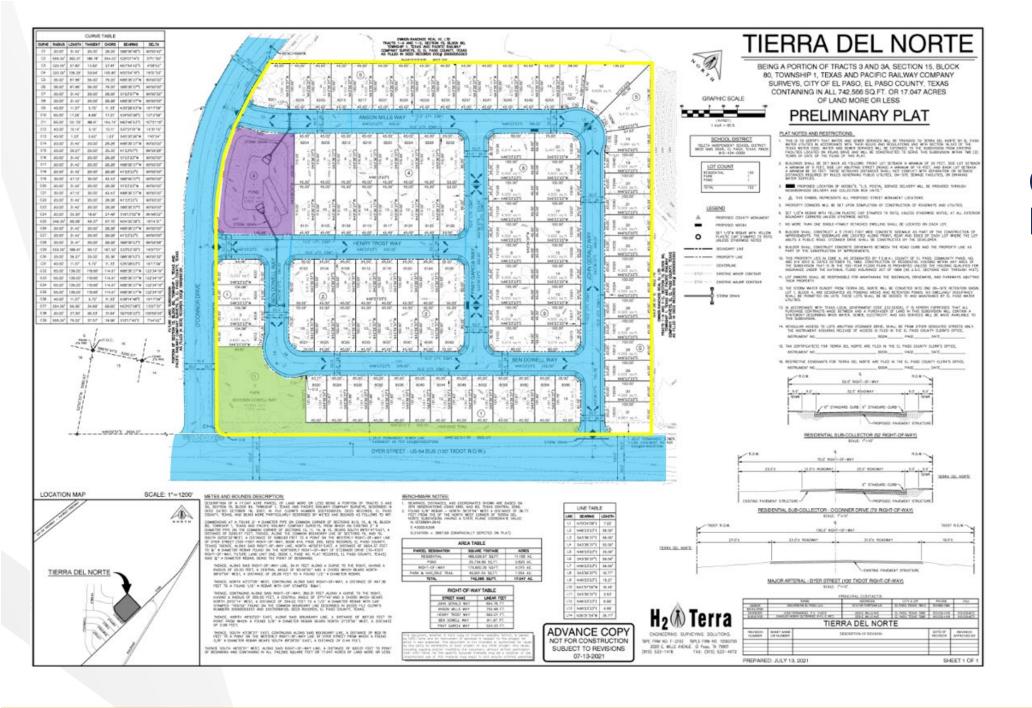


This map is designed for illustrative purposes only. The features depicted here are approximate and more site-specific studies may be required to draw accurate conclusions. Enlargements of this map to scales greater than its original can induce errors and may lead to misinterpretations of the data. The Flanning & Inspections Department Planning Division makes no claim to its accuracy or completeness.











# Conceptual Plan





# Subject Property





# Surrounding Development

















# Public Input

- Notices were mailed to property owners within 300 feet on August 10, 2021.
- As of August 26, 2021, the Planning Division has received two phone calls of inquiry, but no communication in support/opposition to the rezoning request.







# Recommendation

• Staff recommends approval of the rezoning request.







## Mission

Deliver exceptional services to support a high quality of life and place for our community

## Vision

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government

# ☆ Values

Integrity, Respect, Excellence, Accountability, People

### El Paso, TX

### **Legislation Text**

File #: 21-1279, Version: 1

### **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

### District 5

Capital Improvement Department, Sam Rodriguez, (915) 212-1808

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Discussion and action that the City Manager be authorized to sign an Amendment to a Standard Form of Agreement between the Owner and Design-Builder entered into by and between the City and Jordan Foster Construction, LLC, dated March 19, 2019, and establishes a Guaranteed Maximum Price (GMP) for construction and time for completion of construction.

Design-Builder's GMP for cost of the Eastside Sports Complex Phase II 2018-1186R project is \$12,105,896.36, which includes amounts previously paid under the Agreement, the Owner's Contingency, Design-Builder's Fee, General Conditions and Design-Builder's Contingency.

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

AGENDA DATE: November 9, 2021 PUBLIC HEARING DATE: N/A

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

(915) 212-1808

**DISTRICT(S) AFFECTED: 5** 

STRATEGIC GOAL: No. 4 Enhance El Paso's Quality of Life through Recreational, Cultural and

**Educational Environments** 

SUBGOAL: 4.1 Deliver bond projects impacting quality of life across the city in a timely, efficient

manner

### SUBJECT:

That the City Manager be authorized to sign an Amendment to a Standard Form of Agreement between the Owner and Design-Builder entered into by and between the City and Jordan Foster Construction, LLC, dated March 19, 2019, and establishes a Guaranteed Maximum Price (GMP) for construction and time for completion of construction.

Design-Builder's GMP for cost of the Eastside Sports Complex Phase II 2018-1186R project is \$12,105,896.36, which includes amounts previously paid under the Agreement, the Owner's Contingency, Design-Builder's Fee, General Conditions and Design-Builder's Contingency.

### **BACKGROUND / DISCUSSION:**

On December 18, 2017, City Council approved funding for the 2018 Capital Plan. The Eastside Sports Complex Phase II Project includes 8 soccer fields, paved parking to include stripping, parking lights, landscape, pedestrian pathways between the parking stalls, sidewalks, lighting and ADA accessible restrooms.

### PRIOR COUNCIL ACTION:

On March 19, 2019 – City Council approved a Design-Build Agreement between the City of El Paso and Jordan Foster Construction, LLC. Solicitation Number 2018-1186R

### **AMOUNT AND SOURCE OF FUNDING:**

2018 Capital Plan

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? x YES NO

**PRIMARY DEPARTMENT:** Capital Improvement Department

**SECONDARY DEPARTMENT:** Parks and Recreation

**************************************

Revised 04/09/2021

### **DEPARTMENT HEAD:**

X Jerry DeMuro/for

#### RESOLUTION

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

That the City Manager, or designee, is authorized to sign the Guaranteed Maximum Price Amendment to the Standard Form of Agreement by and between the City of El Paso and Jordan Foster Construction, LLC ("Design-Builder") for the project known as "Eastside Sports Complex Phase II 2018-1186R", to accept and incorporate the Design-Builder's Guaranteed Maximum Price Proposal and establishing the Guaranteed Maximum Price ("GMP") for the project in the amount of \$12,105,896.36; and

That the City Manager or designee be authorized to approve contract changes, and sign contract amendments, which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable law and do not make changes to the prices and are within the appropriate budget; and

That the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this agreement.

PASSED AND APPROVED this	_day of, 2021.
	CITY OF EL PASO:
	Oscar Leeser, Mayor
ATTEST:	
Laura D. Prine, City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:  Serry DeMuro/for
Omar De La Rosa,	Samuel Rodriguez, P.E., City Engineer
Assistant City Attorney	Capital Improvement Department

### GUARANTEED MAXIMUM PRICE AMENDMENT TO THE STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

This Guaranteed Maximum Price Amendment to the Standard Form of Agreement between Owner and Design-Builder (the "Amendment") is entered into by and between the City of El Paso (the "City" or "Owner") and Jordan Foster Construction, LLC. (the "Design-Builder") for the construction of Eastside Sports Complex Phase II 2018-1186R. This Amendment amends the one certain Standard Form of Agreement Between the Owner and Design-Builder (the "Agreement") entered into by and between the City and Jordan Foster Construction, LLC, dated March 19, 2019, and establishes a Guaranteed Maximum Price ("GMP") for construction and time for completion of construction as set forth below:

#### RECITALS

**WHEREAS**, the City and Design-Builder entered into the Agreement dated as of March 19, 2019, for the construction of Eastside Sports Complex Phase II 2018-1186R

WHEREAS, unless clearly provided otherwise herein, all terms and phrases used herein shall have the same meaning as the terms and phrases used in the Agreement; and

**WHEREAS**, the Agreement contemplates the delivery of a Design-Builder's GMP Proposal to the City; and

WHEREAS, the Agreement requires that said proposal contain certain representations and documentation; and

**WHEREAS**, the Agreement provides that in the event the City timely accepts the Design-Builder GMP Proposal, this Amendment shall be executed; and

WHEREAS, Design-Builder has delivered a Design-Builder GMP Proposal to the City; and

WHEREAS, the City desires to accept the Design-Builder's GMP Proposal, subject to any amendments or revisions as set forth below.

**NOW, THEREFORE,** in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Design-Builder agree to modify and amend the Agreement as follows:

- 1. The City hereby accepts the Design-Builder's GMP Proposal submitted by Design-Builder, a true and complete copy of which is attached hereto and incorporated herein by reference, marked as **Exhibit** "1-A".
- 2. **GUARANTEED MAXIMUM PRICE.** Design-Builder's GMP for cost of the Eastside Sports Complex Phase II 2018-1186R project is \$12,105,896.36, which includes amounts previously paid under the Agreement and the Owner's Contingency of Two Hundred Thousand (\$200,000) subject to additions and deductions by Change Order as provided in the Contract Documents. As agreed by the City and Design-Builder, the GMP is an amount that the cost of the Eastside Sports Complex Phase II 2018-1186R project shall not exceed, and is based on and detailed in the attached Exhibit "1-A".
- 3. **DESIGN-BUILDER'S FEE.** The Design-Builder's Fee for the Construction of the Work is hereby established in the sum not to exceed \$444,521.44, based on the product of 4.33% multiplied by the Cost of the Work, and said sum is included within the above stated GMP.
- 4. **GENERAL CONDITIONS EXPENSES.** The General Conditions expenses for the construction of the Work are hereby established in the sum of \$580,680.00, and said sum is included in the above stated GMP. Design-Builder acknowledges and agrees that the City shall have no liability for any General Condition expenses beyond payment of the above noted amount and Design-Builder agrees that it shall not be entitled to receive any additional compensation from the City for the General Conditions beyond this amount unless expressly adjusted by a Change Order.
- 5. **OWNER'S CONTINGENCY.** The City has established a contingency fund in the sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00) for this Project. Design-Builder has no right or entitlement to the contingency fund and use of such funds are subject to the prior written approval and issuance of a Change Order by the City. Any contingency funds remaining at the completion of the Project will be credited back to the Owner from the GMP.
- 6. **DESIGN BUILDER CONTINGENCY**. The Design Builder Construction Contingency in an amount of \$200,000.00 is included in the Guaranteed Maximum Price to allow the Design Builder to accommodate changes in the market place and to complete the project as designed. The Design Builder may use the Design Builder Construction Contingency without the Owner's approval. The Design Builder shall report to the Owner the status of the Design Builder Construction Contingency with each Application for Payment. The Owner will not increase the Design Builder's fee for any funds expended from the Design Builder Construction Contingency. The Design Builder Construction Contingency for the project is Two Hundred Thousand Dollars (\$200,000.00) included in the GMP.
  - The Design Builder Construction Contingency is not available for use by the Design Builder for mistakes of subcontractors or material suppliers, or any warranty work.
  - The Design Builder Construction Contingency is not available for use by the Owner for allowance overruns, changes in the Scope of Work, differing or changed site conditions.

At Final Completion of the Project, any unused portion of the Design Builder Construction Contingency remaining in the Guaranteed Maximum Price shall be split 50/50 with the Owner.

7. Pursuant to the terms of the Agreement, The Design-Builder shall achieve Substantial Completion of the entire Work not later than 345 calendar days from the date the Notice to Proceed is issued,

subject to and adjustments of this Contract Time as provided in the Contract Documents and Change Orders modifying and extending this Agreement. It is specifically understood and agreed to by and between Owner and Design-Builder that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.

- 8. Pursuant to the terms of the Agreement, Construction Manager shall achieve Final Completion of the entire Work not later than 30 calendar days from the date of Substantial Completion, subject to and adjustments of this Contract Time as provided in the Contract Documents and Change Orders modifying and extending this Agreement. It is specifically understood and agreed to by and between Owner and Design-Builder that time is of the essence in the final completion of the Work, and that failure to complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.
- 9. Design-Builder acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed work following expiration of the Contract Time. The Design-Builder further acknowledges and agrees that, if the Design-Builder fails to reach the Substantial Completion and/or Final Completion dates of any portion of the Work within the Contract time, the Owner will sustain actual damages as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Owner and Design-Builder agree that, if the Design-Builder shall neglect, fail, or refuse to achieve substantial completion and/or final completion of the Work by the Substantial Completion and/or Final Completion date, subject to proper extension granted by the Owner, then the Design-Builder agrees to pay the Owner as liquidated damages ("Liquidated Damages"), not as a penalty, for the damages that would be suffered by Owner as a result of delay the sum of:
  - \$794.72 for each consecutive calendar day after the date of Substantial Completion in which the Work is not completed.
  - \$547.33 for each consecutive calendar day after the date of Final Completion in which the Work is not completed.

10. Except as modified herein, the terms and conditions of the Agreement remain unchanged. In the event of a conflict between the terms of this Amendment and those of the Agreement, the City and Design-Builder agree that the terms of this Amendment shall take precedence.

IN WITNESS WHEREOF, the parties h day of, 2021.	ave executed this Amendment to be effective as of the
OWNER:	Construction Manager:
CITY OF EL PASO, TEXAS	JORDAN FOSTER CONSTRUCTION, LLC
By:	By: MyEdl
Name:	Name: Matt Hardison
Title:	Title: Avea Manager

[Exhibit "1-A" begins on the following page]

### Exhibit "1-A" - Design-Builder's Proposal

### **Eastside Sports Complex Phase II GMP**

### **Construction Cost.**

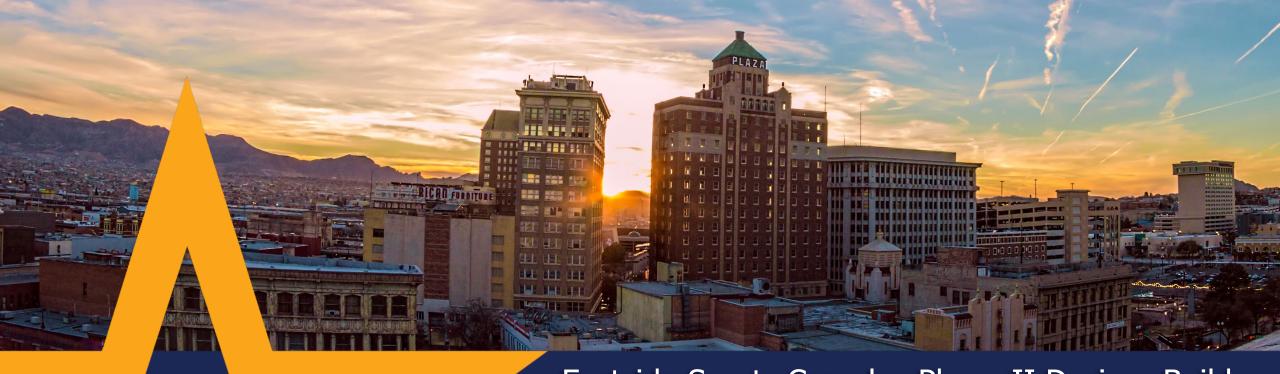
Biditem	Description	Bid Quantity	Unit	Bid Price	Bid Total
1	REMOVE ASPHALT PAVEMENT	140.000	SY	\$ 4.86	\$ 680.40
3	REMOVE HEADWALL	1.000	EA	\$ 1,479.13	\$ 1,479.13
6	REMOVE CURB AND GUTTER	795.000	LF	\$ 3.52	\$ 2,798.40
8	REMOVE ROCK WALL W WROUGHT IRON	160.000	LF	\$ 19.19	\$ 3,070.40
9	REMOVE LANDSCAPE AREA	5,490.000	SY	\$ 1.51	\$ 8,289.90
10	CLEAR AND GRUB	38.500	ACRE		\$ 45,803.45
20	SITE CUT/ SITE FILL	36,000.000	CY	\$ 5.07	\$ 182,520.00
25	EXPORT MATERIAL AND HAUL OFF	40,000.000	CY	\$ 9.02	\$ 360,800.00
30	SCARIFY AND COMPACT BUILDING PAD	365.000	SY	\$ 3.49	\$ 1,273.85
35	SCARIFY AND COMPACT PAVED AREAS	30,300.000	SY	\$ 1.60	\$ 48,480.00
38	SCARIFY AND COMPACT SIDEWALK AREAS	11,705.000	SY	\$ 2.04	\$ 23,878.20
40	PREP FILL	118,340.000	SY	\$ 1.37	\$ 162,125.80
60	GRADE FOR CURB	11,640.000	LF	\$ 1.44	\$ 16,761.60
70	INSTALL BASE COURSE 5-INCH AT LIGHT DUTY	27,740.000	SY	\$ 6.22	\$ 172,542.80
73	INSTALL BASE COURSE 8-INCH AT HEAVY DUTY	1,225.000	SY	\$ 9.78	\$ 11,980.50
80	INSTALL ASPHALT PAVING 2-INCH AT LIGHT DUTY	27,740.000	SY	\$ 9.86	\$ 273,516.40
82	INSTALL ASPHALT PAVING 2.5-INCH AT HEAVY DUTY	2,560.000	SY	\$ 12.81	\$ 32,793.60
90	INSTALL 4-INCH SIDEWALK w BROOM FINISH	62,500.000	SF	\$ 3.92	\$ 245,000.00
95	INSTALL 4-INCH SIDEWALK W SAND BLAST FINISH	35,760.000	SF	\$ 4.92	\$ 175,939.20
97	INSTALL CONCRETE FLUME	245.000	SY	\$ 124.77	\$ 30,568.65
98	INSTALL 6-INCH REINFORCED SIDEWALK	7,030.000	SF	\$ 6.12	\$ 43,023.60
105	INSTALL CONCRETE HANDICAP RAMPS	6.000	EA	\$ 1,135.08	\$ 6,810.48
110	INSTALL CURB AND GUTTER	11,505.000	LF	\$ 10.71	\$ 123,218.55
130	INSTALL HEADER CURB 6" X 12"	135.000	LF	\$ 11.68	\$ 1,576.80
140	INSTALL IRRIGATION SYSTEM	1.000		\$ 1,295,136.00	\$ 1,295,136.00
150	INSTALL TIFWAY SOD	1,000,000.000	SF	\$ 0.85	\$ 850,000.00
160	PLANT TREES	191.000	EA	\$ 331.26	\$ 63,270.66
165	INSTALL SEEDING	265,000.000	SF	\$ 0.37	\$ 98,050.00
175	INSTALL DESERT TAN CRUSHER FINES	60,000.000		\$ 0.95	\$ 57,000.00
177	INSTALL DESERT TAN GRAVEL	38,300.000		\$ 0.80	\$ 30,640.00
178	INSTALL PLANTS	2,365.000	1	\$ 23.51	\$ 55,601.15
190	INSTALL PAVILLION CANOPY - Remove	0.000	EA	\$ -	\$ -
192	INSTALL RESTROOM BUILDING AT PAVILLION	1.000	EA	\$ 1,329,611.65	\$ 1,329,611.65
193	INSTALL POLYCABONATE CANOPY - Remove	0.000	EA	\$ -	\$ -
194	INSTALL TRELLIS CANOPY - Remove	0.000	EA	\$ -	\$ -
195	INSTALL MAINTENANCE METAL CANOPY - Remove	0.000	EA	\$ -	\$ -
196	INSTALL MAINTENANCE BUILDING METAL BLDG - Remove	0.000	EA	\$ -	\$ -
200	INSTALL PLAYGROUND AREA - Remove	0.000	EA	\$ -	\$ -
265	INSTALL GATE ENTRY SIGNS	3.000	EA	\$ 32,270.94	\$ 96,812.82
270	INSTALL BANNER SIGNS	12.000	EA	\$ 1,640.26	\$ 19,683.12
275	INSTALL ADA SIGNS	12.000	EA	\$ 625.12	\$ 7,501.44
277	REMOVE AND RELOCATE PICNIC TABLES	12.000	EA	\$ 256.30	\$ 3,075.60
280	INSTALL ADA PICNIC TABLES	4.000	EA	\$ 3,205.72	\$ 12,822.88
300	INSTALL BACKLESS BENCHES	32.000	EA	\$ 2,190.58	\$ 70,098.56
302	INSTALL WHEEL STOPS	100.000	EA	\$ 110.09	\$ 11,009.00
303	INSTALL STRIPING	15,200.000	LF	\$ 0.91	\$ 13,832.00
304	INSTALL HANDICAP SYMBOLS	12.000	EA	\$ 69.46	\$ 833.52
305	INSTALL BIKE RACKS	6.000	EA	\$ 977.75	\$ 5,866.50
	INSTALL TRASH RECEPTACLE	14.000		\$ 2,211.95	\$ 30,967.30
	INSTALL 12-INCH ROCK RIP RAP W MORTAR	440.000		\$ 6.95	\$ 3,058.00
	INSTALL MUSCO LIGHTING	1.000		\$ 1,698,277.16	
	INSTALL LIGHT POLES AT PARKING AREA	1.000		\$ 331,696.05	. , ,
	INSTALL POWER RISER DIAGRAM	1.000		\$ 104,211.39	
	INSTALL SPECIAL SYSTEMS ROUGH IN	1.000		\$ 31,720.62	1

360	INSTALL WIFI SYSTEM	1.000 L	c	\$	127,803.59	\$ 127,803.59
-	COORDINATION & ARC FLASH STUDIES	1.000 L		<del>ب</del> \$	16,028.61	\$ 16,028.61
	INSTALL 6FT ROCK WALL	640.000 L		<del>ب</del> \$	75.99	\$ 48,633.60
	INSTALL 18-INCH ROCKWALL AT PLAYGROUND W CAP - Remove	0.000 L		\$	- 73.33	\$ 
	INSTALL 2FT ROCK WALL WITH 4FT WROUGHT IRON	4,985.000 L		<del>ب</del> \$	115.58	\$ 576,166.30
	INSTALL 24FT WROUGHT IRON GATE	1.000 E		۶ \$	2,885.15	\$ 2,885.15
	INSTALL 10FT WROUGHT IRON GATE	6.000 E		۶ \$	2,137.15	\$ 12,822.90
	INSTALL 10FT WROOGHT IKON GATE  INSTALL 6FT CHAINLINK FENCE	450.000 L		۶ \$	36.33	\$ · · · · · · · · · · · · · · · · · · ·
		1.000 E		۶ \$		\$ 16,348.50
	INSTALL 3FT CHAINLINK GATE				641.14	 641.14
	INSTALL TEMPORARY CHAIN LINK FENCE	1,815.000 L		\$	5.34	\$ 9,692.10
	INSTALL 24" HDPE	160.000 L		\$	87.15	\$ 13,944.00
	INSTALL 36" HDPE	180.000 L		\$	121.34	\$ 21,841.20
	INSTALL INLET 2GRATE	1.000 E		\$	6,826.89	\$ 6,826.89
-	INSTALL 72-INCH MANHOLE	1.000 E		\$	6,327.03	\$ 6,327.03
-	INSTALL NEW HEADWALLS	2.000 E		\$	6,984.99	\$ 13,969.98
-	INSTALL INLET 5GRATE	1.000 E		\$	10,843.89	\$ 10,843.89
-	REMOVE OUFALL STRUCTURE	1.000 E		\$	1,815.50	\$ 1,815.50
	CONNCT TO EXISTING STORM DRAIN	1.000 E		\$	2,376.51	\$ 2,376.51
-	INSTALL BOOSTER STATION	1.000 E		\$	143,474.10	\$ 143,474.10
-	INSTALL 8-INCH FIRE LINE	910.000 L		\$	43.21	\$ 39,321.10
	INSTALL 12-INCH WATER LINE	2,750.000 L		\$	60.31	\$ 165,852.50
	INSTALL 3-INCH WATER	1,310.000 L		\$	27.71	\$ 36,300.10
	INSTALL 3-INCH METER	1.000 E		\$	5,739.49	\$ 5,739.49
530	INSTALL 3-INCH BACKFLOW PREVENTER	1.000 E		\$	8,067.31	\$ 8,067.31
548	INSTALL FIRE HYDRANTS	1.000 E		\$	6,250.74	\$ 6,250.74
549	CONNECT TO EXISTING WATER	3.000 E		\$	4,214.97	\$ 12,644.91
550	INSTALL 6-INCH SANITARY SEWER	1,260.000 L		\$	41.39	\$ 52,151.40
560	INSTALL 6-INCH CLEANOUT	13.000 E		\$	627.68	\$ 8,159.84
570	INSTALL SEWER CONNECTION	1.000 E	Α	\$	1,917.54	\$ 1,917.54
575	ASPHALT PATCH FOR UTILITIES	400.000 S	SY	\$	25.53	\$ 10,212.00
578	WATER LOOP DESIGN FEE	1.000 L	.S	\$	9,617.16	\$ 9,617.16
580	INSTALL SILT FENCING	5,580.000 L	.F	\$	3.56	\$ 19,864.80
585	INSTALL ERSOSION LOGS	260.000 L	.F	\$	3.56	\$ 925.60
590	INSTALL CONSTUCTION ENTRANCE	2.000 E	Α	\$	2,828.94	\$ 5,657.88
595	INSTALL CONCRETE WASHOUT	1.000 E	Α	\$	4,644.83	\$ 4,644.83
600	SWPP PLAN	1.000 E	Α	\$	5,342.87	\$ 5,342.87
6000	MOBILIZATION	1.000 L	.S	\$	49,585.85	\$ 49,585.85
7000	TESTING	1.000 L	.S	\$	15,000.00	\$ 15,000.00
					Subtotal:	\$ 9,685,404.04
Design Cost	i e					
800	CONSULTANT DESIGN FEES THROUGH 60%	1.000 L	.S	\$	521,304.88	\$ 521,304.88
810	CONSULTANT DESIGN FEES THROUGH 100%	1.000 L	.S	\$	351,486.00	\$ 351,486.00
910	JFC DESIGN COST UNDER CONTRACT 60% TO 100%	1.000 L	.S	\$	32,500.00	\$ 32,500.00
					Subtotal:	\$ 905,290.88
General Co	nditions					
9900	SUPERINTENDENT	10.000 N	ON	\$	13,090.00	\$ 130,900.00
9901	PROJECT MANAGER	6.000 N	ON	\$	14,560.00	\$ 87,360.00
9903	OFFICE TRAILER	10.000 N	MO	\$	350.00	\$ 3,500.00
9904	PORTABLE TOILETS	10.000 N	MO	\$	200.00	\$ 2,000.00
9905	WATER ICE	10.000 N	MO	\$	65.00	\$ 650.00
	CELL PHONE	10.000 N		\$	500.00	\$ 5,000.00
9907	FIRST AID SUPPLIES	10.000 N		\$	65.00	\$ 650.00
9908	ENTERTAINMENT	10.000 N		\$	210.00	\$ 2,100.00
	LAPTOP AND FURNITURE	10.000 N		\$	85.00	\$ 850.00
	SECURITY	10.000 N		\$	335.00	\$ 3,350.00
	CONSTRUCTION WATER	10.000 N		\$	2,500.00	\$ 25,000.00
	JOB PHOTOS	10.000 N		\$	210.00	\$ 2,100.00
	SMALL TOOLS	10.000 N		\$	500.00	\$ 5,000.00
		10.000 N		\$	15,532.00	\$ 155,320.00
9917	SURVEY					1.3.3.37(1100

9920 SAFTEY COORDINATOR	6.000	МО	\$ 11,032.00	\$ 66,192.00
9925 OFFICE SUPPLIES	10.000	МО	\$ 75.00	\$ 750.00
9930 PROJECT ENGINEER	6.000	МО	\$ 14,560.00	\$ 87,360.00
9950 SAFETY PPE	1.000	LS	\$ 2,598.00	\$ 2,598.00
			Subtotal:	\$ 580,680.00
Contingencies	_			
940 CONTRACTOR CONTINGENCY	1.000	LS	\$ 200,000.00	\$ 200,000.00
941 OWNER CONTINGENCY	1.000	ls	\$ 200,000.00	\$ 200,000.00
			Subtotal:	\$ 400,000.00
Fee				
920 GENERAL CONTRACTOR FEE	4.33%	LS	\$ 444,521.44	\$ 444,521.44
			Subtotal:	\$ 444,521.44

GMP Total: \$ 12,015,896.36

Previously Paid: \$ 521,304.88 Balance: \$ 11,494,591.48



Eastside Sports Complex Phase II Design- Build GMP Amendment to the Standard Form of Agreement Between Owner and Design-Builder

Solicitation No. 2018-1186R November 09, 2021

### **Strategic Plan Goal:**

No.4 Enhance El Paso's Quality of Life through Recreationa Cultural and Educational Environments Subgoal:

No. 4.1 Deliver bond projects impacting quality of life across the city in a timely, efficient manner





Location:	14380 Montwood
District:	5
Total Budget:	\$14.1 Million
	Tax Increment Reinvestment Zone FY 22 Capital Plan



# PROJECT LOCATION







The project is located at Montwood Dr between Berryville Street and Honey Dew St



### SITE PLAN



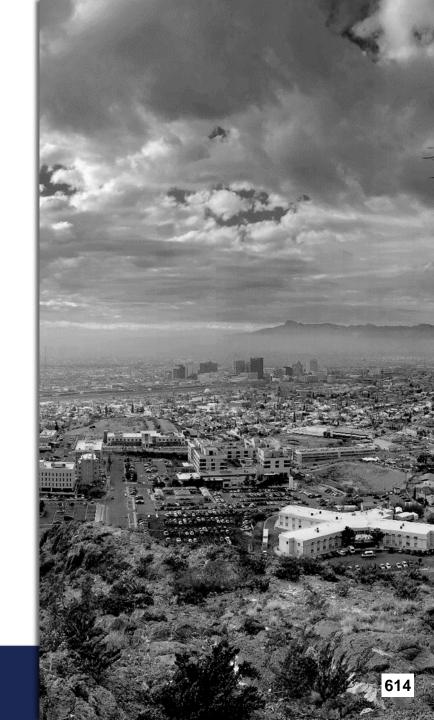


## **GMP AMENDMENT**

DESIGN BUILDE GMP AMENDMENT AMOUNT

\$12, 105,896.36



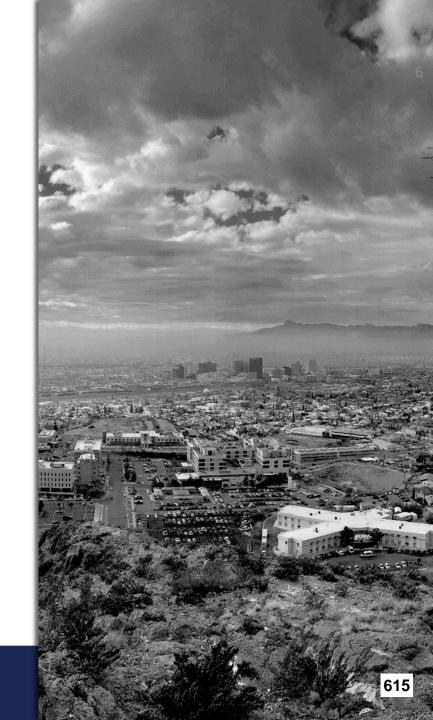




# SCOPE OF WORK

- Eight competition flat fields
- Lighting
- Parking
- ADA Restrooms
- Exterior Fencing







## PROCUREMENT SUMMARY

- Design-Build Procurement
  - Solicitation advertised in May and June 2018
  - 3 firms submitted for the Request for Qualifications Phase, 2 local vendors
  - Jordan Foster Construction, LLC was awarded for an initial amount of \$521,304.88 for the 30% design, 60% design, evaluation criteria, and preconstruction services





## PROCUREMENT SUMMARY

- Recommendation
  - Approve GMP Amendment to the Standard Form of Agreement in the amount of \$12,105,896.36.
- Construction Schedule
  - Start: Winter 2021
  - End: Winter 2023



# **Mission**

Deliver exceptional services to support a high quality of life and place for our community



Integrity, Respect, Excellence, Accountability, People



Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government



# **Misión**

Brindar servicios excepcionales para respaldar una vida y un lugar de alta calidad para nuestra comunidad



Integridad, Respeto, Excelencia, Responsabilidad, Personas



Desarrollar una economía regional vibrante, vecindarios seguros y hermosos y oportunidades recreativas, culturales y educativas excepcionales impulsadas por un gobierno de alto desempeño



#### El Paso, TX

#### Legislation Text

File #: 21-1230, Version: 1

## CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

#### **All Districts**

Capital Improvement Department, Sam Rodriguez, (915) 212-1845

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

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

## 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.
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#### **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

**DEPARTMENT HEAD:** 

Sam Rodriguez, P.E., City Engineer

#### RESOLUTION

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

That the City Manager, or designee, be authorized to sign 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.
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ADOPTED THIS DAY O	F2021.
	CITY OF EL PASO:
	Oscar Leeser
	Mayor
ATTEST:	
Laura Prine City Clerk	_
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Omar De La Rosa	
Assistant City Attorney	Capital Improvement Department

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

### 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

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. **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.
- 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]

	Tomas Gonzalez, City Manager				
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:  Mary Lou Capinoza				
Omar De La Rosa	Mary Lou Espinoza, Real Estate				
Assistant City Attorney	Capital Improvement Department				
STATE OF TEXAS )  COUNTY OF EL PASO )  This instrument was acknowledge, City Manager, City of	d before me on the day of, 20, by El Paso.				
GIVEN UNDER MY HAND, 20	AND SEAL OF OFFICE, this the day of				
	Notary Public in and for the State of Texas  My Commission expires:				

**CITY OF EL PASO** 

**APPRAISER:** 

Name: Preston Chastine Title: Senior Appraiser

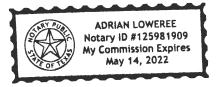
STATE OF TEXAS

**COUNTY OF EL PASO** 

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This instrument was acknowledged before me on the day of Other, 2021, by on behalf of CBRE Inc..

Notary Public in and for the State of Texas My Commission expires: May 14, 2, 2, 2



### 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





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

CERTIFICATE OF LIABILITY INSURANCE 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. (866) 283-7122 (800) 363-0105 Stamford CT Office (A/C, No. Ext) 1600 Summer Street F-MAII ADDRESS: Stamford CT 06907-4907 USA INSURERS AFFORDING COVERAGE NAIC# INSURED INSURER A Zurich American Insurance Company 16535 CBRE Group, Inc., and Subsidiaries INSURER B: ACE Property & Casualty Insurance Co 20699 2100 McKinney Avenue, Suite 1250 American Zurich Insurance Company INSURER C 40142 Dallas, TX 75201 INSURER D: Factory Mutual Insurance Company 21482 INSURER E INSURER F **COVERAGES** THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested POLICY NUMBER POLICY EFF (MM/DD/YY) POLICY EXP TYPE OF INSURANCE LIMITS EACH OCCURRENCE
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ACORD 25 (2016/03)

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. Son Risk Services Northeast . Inc.

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#### CERTIFICATE OF LIABILITY INSURANCE

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.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the noticy(les) must have ADDITIONAL INSURED provisions or be endorsed

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Evidence of Insurance



#### CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY) 10/30/2020

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

PSDEF2000558

Errors & Omissions

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**EXCESS LIAB** 

**EMPLOYERS' LIABILITY** 

E&O-PL-Primary

OFFICER/MEMBER EXCLUDED? (Mandatory in NH)
If yes, describe under
DESCRIPTION OF OPERATIONS below

RETENTION WORKERS COMPENSATION AND

ANY PROPRIETOR / PARTNER / EXECUTIVE

CBRE Group, Inc. and Subsidiaries 400 S. Hope Street

Los Angeles CA 90071 USA

DED

CLAIMS-MADE

**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.

AGGREGATE

11/01/2020 11/01/2021 Per Claim/Aggregate

SIR

PER STATUTE

F I DISEASE-FA EMPLOYEE E.L. DISEASE-POLICY LIMIT

E.L. EACH ACCIDENT

OTH-

\$10,000,000

\$20,000,000

AUTHORIZED REPRESENTATIVE

SIR applies per policy terms & conditions

Aon Risk Services Northeast Inc.

### 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. 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: 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:	APPROVED AS TO CONTENT:					
	Mary Lou Espinoza					
Omar De La Rosa	Mary Lou Espinoza, Real Estate					
Assistant City Attorney	Capital Improvement Department					
STATE OF TEXAS )						
COUNTY OF EL PASO )						
This instrument was acknowledged be, City Manager, City of El P	efore me on the day of, 20, by aso.					
GIVEN UNDER MY HAND AN, 20	ID SEAL OF OFFICE, this the day of					
	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 day of October, 2021, by Lowery . Manc on behalf of Lowery Property Advisors, LLC.



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



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

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this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).											
PROI	DUCER				CONTACT NAME:						
Doug Jones (Oasis)				PHONE (A/C, No, Ext): (888) 627-4735 FAX (A/C, No):							
	Artex Risk Solutions, Inc.				E-MAIL	1400100	mp@oasispe	o.com	(A/O, NO).		
_	. Box 13838				ADDRE	00.	<u> </u>				
500	ttsdale, AZ 85267							DING COVERAGE			NAIC#
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	One, Inc. a division of Oasis Outsourcing, O Merit Drive Suite 910	inc at	Ja. Sia	an One, LLC	INSURE	RC:					
l .	as, TX 75251				INSURE	RD:					
					INSURER E :						
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	OTHER:									\$	
	AUTOMOBILE LIABILITY							COMBINED SINGLE (Ea accident)	LIMIT	\$	
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	(Mandatory in NH) If yes, describe under							E.L. DISEASE - EA E			2,000,000
	DÉSCRIPTION OF OPERATIONS below							E.L. DISEASE - POL	ICY LIMIT	\$	2,000,000
Location Coverage Per			od:	06/01/2021	06/01/2022	Client# 91458	3-1				
DESC	DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)										
Alt. Emp: LOWERY PROPERTY ADVISORS LLC  On Call Appraisals Project 22.769.09A											
only those co-employees of, but not subcontractors IRVING, TX 75062											
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El Paso, TX 79902						OUDVINCE MI	III IIIE FOLIC	I I NOVISIONS.			

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AUTHORIZED REPRESENTATIVE



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.

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this definition does not define the the definition in field of such chaof sement(s).						
PRODUCER	CONTACT NAME:					
THE POLICY SOURCE LLC	PHONE (A/C, No, Ext): (888) 661-3938 (A/	X C, No): (877) 872-7604				
921 W NEW HOPE DR 501 CEDAR PARK, TX 78613	E-MAIL ADDRESS: service.center@travelers.com					
(888) 661-3938	INSURER(S) AFFORDING COVERAGE	NAIC #				
	INSURER A: TRAVELERS CASUALTY INSURANCE COMPANY	OF AMERICA				
INSURED	INSURER B : THE CHARTER OAK FIRE INSURANCE COMPAN	Υ				
LOWERY PROPERTY ADVISORS, LLC 105 DECKER CT	INSURER C:					
STE 1000	INSURER D:					
IRVING, TX 75062	INSURER E:					
	INSURER F:					

### COVERAGES CERTIFICATE NUMBER: 345909702121372 REVISION NUMBER:

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

	EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN WAT HAVE BEEN REDUCED BY FAID CLAIMS.							
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	AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE						E.L. EACH ACCIDENT	\$
	OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	\$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	\$
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
AS RESPECTS TO GENERAL LIABILITY, CITY OF EL PASO IS ADDITIONAL INSURED - BLANKET ADDITIONAL
INSURED - OWNERS, LESSEES OR CONTRACTORS, CG D1 05, BUT ONLY AS RESPECTS TO WORK PERFORMED BY THE INSURED.

AS RESPECTS TO AUTOMOBILE LIABILITY, CITY OF EL PASO IS ADDITIONAL INSURED- CA T4 42 ADDITIONAL INSURED- PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE.

CERTIFICATE HOLDER	CANCELLATION
CITY OF EL PASO 218 NORTH CAMPBELL STREET 2ND FLOOR EL PASO. TX 79901	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
1	Authorized REPRESENTATIVE Minhald Mulligan

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CEDITICIO ATE LIQUADED



DATE (MM/DD/YYYY) 9/29/2021

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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PRODUCER			NAME:					
<b>Sinsureon</b>	PHONE [AIC, No, Ext]; (800) 688-1984 [AIC, No, Ext]; (800) 688-1984 [AIC, No, Ext]; (800) 688-1984							
Insureon (BIN In	ADDRESS:							
30 N. LaSalle, 2	5th Floo	r, Chicago, IL 60602	INS	NAIC #				
			INSURER A: Scotts	dale insuranc	e Company	41297		
INSURED			INSURER B:					
Lowery Property Advisors			INSURER C:					
105 Decker Court, Suite 1000, Irving, TX, 7	75062		INSURER D :					
			INSURER E :					
			INSURER F:					
COVERAGES CER	TIFICAT	E NUMBER:			REVISION NUMBER:	BOLLOV DEDIOD		
THIS IS TO CERTIFY THAT THE POLICIES INDICATED. NOTWITHSTANDING ANY RICERTIFICATE MAY BE ISSUED OR MAY EXCLUSIONS AND CONDITIONS OF SUCH	EQUIREM PERTAIN	IENT, TERM OR CONDITION  I THE INSURANCE AFFORD	OF ANY CONTRACT ED BY THE POLICIE	OR OTHER I S DESCRIBEI	DOCUMENT MITH KESLECT	I TO MALICH LUIS I		
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(Mandatory In NH) If yes, describe under						\$		
DESCRIPTION OF OPERATIONS below	<u>                                     </u>		0.00.0004	6/26/2022		\$1,000,000 / \$2,000,000		
A Professional Liability (Errors and Omissions)		EK(3380093	6/26/2021	6/26/2022	Occurrence/Aggregate			
	Annual Park							
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHIC	CLES (ACC	ORD 101, Additional Remarks Sched	ule, may be attached if mo	re space is requi	ieol			
CERTIFICATE HOLDER			CANCELLATION					
						NOELLED DECORE		
City of El Paso 218 North Campbell Street, 2	nd Floor		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.					
El Paso, TX 79901			AUTHORIZED REPRESENTATIVE					
			AUTHORIZED REPRESENTATIVE					
l i								

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

	This On-Ca	all Agreement for	Professional Services Appraisal Services ("Agreement") is
entered	into this _	day of	, 2021 (" <b>Effective Date</b> "), and is
between	n the CITY	OF EL PASO,	TEXAS (the "City") and Ralph Sellers & Associates (the
"Appra	aiser"). For	the convenience of	of the parties, all defined terms appear in <b>bold face</b> print when
first de	fined.		

**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. 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: Ralph Sellers & Associates

### 8020A Arteraft 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]

# Tomas Gonzalez, City Manager APPROVED AS TO FORM: APPROVED AS TO CONTENT: Wary Low Capinoga Mary Low 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\_\_.

CITY OF EL PASO

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 0 chole, 2021, by Sellers, Sole Proprietor on behalf of Ralph Sellers & Associates.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the Zo day of 0,202.

Notary Public in and for the State of Texas My Commission expires: 03 - 11 - 20 z 3

CATHY CASAS MOLDEN Notary ID #10515070 My Commission Expires March 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.

Form No: CA 20 48 10 13

Endorsement Effective Date: 10/06/2021

**Endorsement Expiration Date:** 

Policy No: BUA 6025199520 Policy Effective Date: 04/29/2021

Endorsement No: 22; Page: 1 of 1
Underwriting Company: National Fire Insurance Company of Hartford, 151 N Franklin St, Chicago, IL
60806



DATE (MM/DD/YYYY) 10/06/2021

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). CONTACT NAME: Marcy Manzanares PHONE IAIC, No. Ext): E-MAIL ADDRESS: (575) 521-1200 FAX (A/C, No): (866) 741-6088 Leaviti Group Southwest, Inc. PO Drawer V marcy-manzanares@leavitt.com 1740 Calle de Mercado, Suite E INSURER(S) AFFORDING COVERAGE NAIC NM 88046 Continental Casualty Co 20443 Masilla INSURER A: 20478 INSURED National Fire Ins of Hartford INSURER D : 20427 Ralph Sellers & Associates American Cas Co of Reading, PA INSURER C: 8020 Arteraft Rd., STE -A INSURER D : INSURERE El Paso TX 79932 INSURER F 21/22 Master Certificate COVERAGES CERTIFICATE NUMBER: REVISION NUMBER: THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. ADDL SUBR TYPE OF INSURANCE POLICY NUMBER LIMITS COMMERCIAL GENERAL LIABILITY 1.000.000 EACH OCCURRENCE DAMAGE YO RENTED 1000000 CLAIMS-MADE OCCUR PREMISES (En occurrence) 10,000 MED EXP (Any one perso Y B4030855062 04/29/2021 04/29/2022 1.000,000 PERSONAL & ADV INJURY 2,000,000 GEN'LAGGREGATE LIMIT APPLIES PER: GENERAL AGGREGATE PRO-JECT 2,000,000 X POLICY PRODUCTS - COMP/OP AGG OTHER: COMBINED SINGLE LIMIT (Ea accident) AUTOMOBILE LIABILITY \$ 1,000,000 ANY AUTO BODILY INJURY (Per person) OWNED AUTOS ONLY HIRED SCHEDULED B × BUA6025199520 04/29/2021 04/29/2022 BODILY INJURY (Per accident) Š AUTOS NON-OWNED AUTOS ONLY PROPERTY DAMAGE (Per accident) AUTOS ONLY Broad Form X UMBRELLA LIAB × occur 1.000,000 EACH OCCURRENCE EXCESS LIAB B4030861136 04/29/2021 04/29/2022 1,000,000 CLAIMS-MADE AGGREGATE DED RETENTION \$ 10,000
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY 1,000,000 ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) E.L. EACH ACCIDENT C WC431161587 11/10/2020 11/10/2021 NIA 1,000,000 E.L. DISEASE - EA EMPLOYEE If yes, describe under DESCRIPTION OF OPERATIONS below 1,000,000 E.L. DISEASE - POLICY LIMIT DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Project Name: Solicitation #2021-1448R 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. City of El Paso

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Marcy Mangapares

2 Civic Center Plaza

El Paso

TX 79901

**AUTHORIZED REPRESENTATIVE** 

# 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. **COMMERCIAL GENERAL LIABILITY**

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

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

#### Personal Injury or Death & Property Damage

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

#### b. AUTOMOBILE LIABILITY

#### **Combined Single Limit**

\$1,000,000.00 per accident

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

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

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

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

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

addition to the Appraiser who is the party to this Agreement. The City has the sole discretion as to whether it makes an assignment of an appraisal under this Agreement 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]

# Tomas Gonzalez, City Manager APPROVED AS TO FORM: APPROVED AS TO CONTENT: Wary Low Capinoga Mary Low Espinoza, Real Estate Capital Improvement Department

STATE OF TEXAS	)									
COUNTY OF EL PASO	)									
This instrument w, City M		nowledge c, City of			the	day of			, 20_	, by
GIVEN UNDER, 20	MY	HAND	AND	SEAL	OF	OFFICE,	this	the _	da	ny of

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

APPRAISER:

Name: Genevieve Pendergras

STATE OF TEXAS

COUNTY OF EL PASO )

This instrument was acknowledged before me on the 20 day of October, 2021, by Genevilve, Pendergras on behalf of Wilkinson, Pendergras & Associates LP.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 20 day of October, 2021.

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

Notary Public in and for the State of Texas

My Commission expires: 12-04-2022

# 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.



STATE FARM LLOYDS

A LLOYDS COMPANY IN RICHARDSON, TEXAS

Po Box 853925 Richardson, TX 75085-3925

Named Insured

M-08-34E2-FB6B F U

000675 3123 WILKINSON, PENDERGRAS & ASSOCIATES LP PO BOX 13501 EL PASO TX 79913-3501

- Արայական իրանի անական հիմի հանական արև արդել և արդանական հայրական հիմի հայրական հիմի հայրական հիմի հայրական հ

**DECLARATIONS AMENDED AUG 13 2021** 

**Policy Number** 93-CP-S901-1

**Policy Period Effective Date Expiration Date** 12 Months SEP 12 2021 SEP 12 2022 The policy period begins and ends at 12:01 am standard time at the premises location.

Agent and Mailing Address JÄIME PORTILLO 6633 N MESA ST STE 201 EL PASO TX 79912-4422

PHONE: (915) 581-8484 (915) 581-8550

#### Office Policy

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.

**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

Prepared SEP 09 2021 CMP-4000

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%	

<sup>\*</sup> 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:

N/A

Cov B - Consumer Price Index:

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.



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



#### 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

Prepared SEP 09 2021 CMP-4000

LIMITAE

## 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

#### <u>SECTION I - EXTENSIONS OF COVERAGE - LIMIT OF INSURANCE - PER POLICY</u>

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



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



#### 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	Businessowners Coverage Form
CMP-4819.1	Unauthorized Business Card Use
FE-6999.3	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

Prepared SEP 09 2021 CMP-4000

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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

**TEXAS GENERAL LAND OFFICE** 

1700 CONGRESS AVE

AUSTIN TX

787011495

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



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



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

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

Whillis I Howkins

Prepared SEP 09 2021 CMP-4000 

#### STATE FARM LLOYDS

A LLOYDS COMPANY IN RICHARDSON, TEXAS

Po Box 853925 Richardson, TX 75085-3925

Named Insured

M-08-34E2-FB6B F U

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

#### INLAND MARINE ATTACHING DECLARATIONS

Policy Number 93-CP-S901-1

Policy Period Effective Date Expiration Date 12 Months SEP 12 2021 SEP 12 2022 The policy period begins and ends at 12:01 am standard time at the premises 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 FE-8743.1 Amend of Inland Marine Condtns Inland Marine Computer Prop

See Reverse for Schedule Page with Limits

Prepared SEP 09 2021 FD-6007

#### **ATTACHING INLAND MARINE SCHEDULE PAGE**

#### ATTACHING INLAND MARINE

ENDORSEMENT NUMBER	COVERAGE		LIMIT OF INSURANCE	DEDU( 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-

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY INFORMATION PAGE

08-34E2-FB6B

POLICY NO. 93-GD-F237-3

COVERAGE IS PROVIDED BY STATE FARM FIRE AND CASUALTY COMPANY PO Box 853925, Richardson TX 75085-3925

NAMED

FFIN 742941995

INSURED & MAILING ADDRESS WILKINSON, PENDERGRAS & BEARD, LP PO BOX 13501 EL PASO TX 79913-3501

WORKPLACE NOT SHOWN INSURED IS A PARTNERSHIP

NCCI CARRIER CODE NO. 14842

COPYRIGHT 1987 NATIONAL COUNCIL ON COMPENSATION INSURANCE

- THE POLICY PERIOD IS FROM 06/07/2021 TO 06/07/2022 12:01 A.M. STANDARD TIME AT THE INSURED'S MAILING ADDRESS.
- WORKERS COMPENSATION INSURANCE: PART ONE OF THE POLICY APPLIES TO THE WORKERS COMPENSATION LAW OF THE STATES LISTED HERE: TX 3A.
  - EMPLOYERS LIABILITY INSURANCE: PART TWO OF THE POLICY APPLIES TO WORK IN EACH STATE LISTED IN ITEM 3A. THE LIMITS OF OUR LIABILITY UNDER PART TWO ARE: BODILY INJURY BY ACCIDENT \$1,000,000 EACH ACCIDENT BODILY INJURY BY DISEASE \$1,000,000 EACH EMPLOYEE BODILY INJURY BY DISEASE \$1,000,000 POLICY LIMIT OTHER STATES INSURANCE: PART THREE OF THE POLICY APPLIES TO ALL STATES EXCEPT ME, MT, ND, OH, RI, WA, WV, WY AND STATES LISTED IN 3A.

  - THIS POLICY INCLUDES THESE ENDORSEMENTS AND SCHEDULES: WC000422B FE-4847 WC000414A WC420301J WC420308 WC000000C

4. THE PREMIUM FOR THIS POLICY WILL BE DETERMINED BY OUR MANUALS OF RULES, CLASSIFICATIONS, RATES AND RATING PLANS, ALL INFORMATION

RULES, CLASSIFICATIONS, RATES AND RAI REQUIRED BELOW IS SUBJECT TO VERIFICA	ATION AND CHANGE BY AUDIT.
CODE NOS. AND CLASSIFICATIONS	PREMIUM BASIS TO-   RATE/\$100   ESTIMATED   TAL ESTIMATED AN-   REMUNERA-   ANNUAL   NUAL   REMUNERATION   TION   PREMIUM
8742 REAL ESTATE AGENCY - OUTSIDE EMPLOYEES & COLLECTORS	57,230 .16 92
	150
EMPLOYERS LIABILITY INCREASED LIMITS PREMIUM INCENTIVE 00.0% PREMIUM ADJUSTMENT REQUIRED FOR MINIMUM PREMIUM TERRORISM 9740	150
FOR MINIMUM PREMIUM TERRORISM 9740	57,230 .024 158
MINIMUM PREMIUM \$ 250 TEXAS TOT	AL ESTIMATED ANNUAL PREMIUM \$(MIN.) 414

706

DEPOSIT PREMIUM \$

414

WC 00 00 01 A



# WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY INFORMATION PAGE ENDORSEMENT PAGE 01

COVERAGE IS PROVIDED BY
STATE FARM FIRE AND CASUALTY COMPANY
PO Box 853925, Richardson TX 75085-3925 THIS FORMS A PART OF POLICY NO. 93-GD-F237-3

INSURED AND MAILING ADDRESS WILKINSON, PENDERGRAS & BEARD, LP PO BOX 13501 EL PASO TX 79913-3501 NAMED

THE EFFECTIVE DATE IS 06/07/2021 THE EXPIRATION DATE IS 06/07/2022

LOCATION OF THE INSURED

LOCATION NUMBER

545 E REDD RD STE C-2 ENTITY:ETO1 EMP:1 01

EL PASO TX 79912-1294 6531 SIC:

## 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. **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: 600 Sunland Park, #4 Suite #100

- 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:	
STATE OF TEXAS ) COUNTY OF EL PASO )		
This instrument was acknowledged b	pefore me on the day of, 20, by Paso.	
GIVEN UNDER MY HAND AN, 20	ND SEAL OF OFFICE, this the day of	
	Notary Public in and for the State of Texas  My Commission expires:	

AF	PPRAISER:
***	Martin Lyle Rend Ly nme: tle:
STATE OF TEXAS )	
COUNTY OF EL PASO )	
This instrument was acknowledged before me Lynch, Martha Gayle Keid on beha	on the 15 day of 10 day, 2021, by alf of Gayle-Reid Appraisal Services, Inc.
GIVEN UNDER MY HAND AND SEA	L OF OFFICE, this the 25 day of
SAMANTHA NICOLE RESENDEZ NOTATY P	ublic in and for the State of Texas mission expires: Sept. 21, 7024

### 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.



COLPA6

### TEXAS FARM BUREAU INSURANCE COMPANIES

TEXAS FARM BUREAU CASUALTY INSURANCE COMPANY

FARM BUREAU COUNTY MUTUAL INSURANCE COMPANY OF TEXAS TEXAS FARM BUREAU MUTUAL INSURANCE COMPANY SOUTHERN FARM BUREAU LIFE 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

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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**

**DESCRIPTION OF RISK** 

JOHN KEVIN LYNCH JR MARTHA GAYLE REID LYNCH PO BOX 192 **DELL CITY TX 79837-0192** 

2019 LEXS GX 460 JTJBM7FXXK5217651

COVERAGE	LIMITS OF LIABI	LITY
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		
( ) Fleet (X) Specific Automobiles Only ( ) Non-Ownership and Hired Automobiles	\$ 1,000,000 \$ 1,000,000 \$ 1,000,000	EACH PERSON EACH ACCIDENT EACH ACCIDENT
FARM LIABILITY	 \$	EACH OCCURRENCE AGGREGATE
PERSONAL LIABILITY		
( ) Homeowners( ) Farm and Ranch Owners	_	EACH OCCURRENCE EACH OCCURRENCE
UMBRELLA LIABILITY	 \$	EACH OCCURRENCE AGGREGATE

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).

PRODUCER	CONTACT				
	NAME: PHONE	FAX			
USI SOUTHWEST INC	(A/C, No, Ext): (888) 661-3938	-7604			
303 N OREGON STE 310 EL PASO, TX 79901	E-MAIL ADDRESS: service.center@travelers.com				
(888) 661-3938	INSURER(S) AFFORDING COVERAGE		NAIC #		
	INSURER A: TRAVELERS PROPERTY CASUALTY COMP	ANY OF AMERICA	_		
INSURED GAYLE REID APPRAISAL	INSURER B: THE TRAVELERS INDEMNITY COMPANY OF	F AMERICA			
SERVICES CORP. MGR EL PASO 1 LLC	INSURER C:		_		
600 SUNLAND PARK DR, #4	INSURER D:				
EL PASO, TX 79912	INSURER E:				
	INSURER F:		·		

### COVERAGES CERTIFICATE NUMBER: 144959502311372 REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD		POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMIT	s
В	X COMMERCIAL GENERAL LIABILITY  CLAIMS-MADE X OCCUR  X HIRED AUTO  X NON OWNED AUTO  GEN'L AGGREGATE LIMIT APPLIES PER:  X POLICY PRO- OTHER:	X		680-8231B28A-20	11/17/2020	11/17/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	\$1,000,000 \$300,000 \$5,000 \$1,000,000 \$2,000,000 \$2,000,000
	AUTOMOBILE LIABILITY  ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY AUTOS ONLY AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)  BODILY INJURY (Per person)  BODILY INJURY (Per accident)  PROPERTY DAMAGE (Per accident)	\$ \$ \$ \$
Α	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		CUP-4K006244-20	11/17/2020	11/17/2021	AGGREGATE  PER OTHER  STATUTE OTHER  E.L. EACH ACCIDENT  E.L. DISEASE - EA EMPLOYEE  E.L. DISEASE - POLICY LIMIT	\$1,000,000 \$1,000,000 \$ \$ \$ \$ \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
AS RESPECTS TO GENERAL LIABILITY, CERTIFICATE HOLDER IS ADDITIONAL INSURED - SCHEDULED ADDITIONAL INSURED (INCLUDES PRODUCTS-COMPLETED OPERATIONS IF REQUIRED, AND CG D2 47, BUT ONLY AS RESPECTS TO WORK PERFORMED BY THE INSURED.

CERTIFICATE HOLDER	CANCELLATION
THE CITY OF EL PASO 600 SUNLAND PARK EL PASO, TX 79912	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 hishard hulligan

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



### **DECLARATIONS**

LIA025A (11/14)

### 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 REPORT-ED 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

1. 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		
<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.		
3. Deductible: \$1,000 Each Claim		
4. Retroactive Date: 01/10/2011		
<b>5. Inception Date:</b> 01/10/2016		
<b>6. Limits of Liability: A.</b> \$1,000,000 Each Claim <b>B.</b> \$2,000,000 Aggregate		
7. Mail all notices, including notice of Claim, to: LIA Administrators & Insurance Services 1600 Anacapa Street Santa Barbara, California 93101 (800) 334-0652; Fax: (805) 962-0652		
8. Annual Premium: \$1,189.00		

LIA012 (12/14) LIA013 (10/14) LIA018 (10/14) LIA021 (10/14)

This Declarations Page, together with the completed and signed Policy Application including all attachments and exhibits thereto, and the Policy shall constitute the contract between the Named Insured and the company.

9. Forms attached at issue: LIA002 (12/14) ASPCO1122 0615 LIA TX (11/15) LIA TX NOT (11/15)

01/08/2021	By Wie
Date	Authorized Signature
LIA-001 (12/14)	Aspen American Insurance Co

Aspen American Insurance Company

# **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.

### 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 Principal/Owner,
Effective Date 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> <u>Effective Date of Approval</u>

Martha Gayle Reid Lynch 01/10/2021

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.



**On-call Property Appraisal Services** 

Solicitation No: 2021-1448R

November 9, 2021



## **Contract Details**



Location:	City Wide
Contract Value:	Base Contract \$100,000/contract Each Option Year \$50,000/contract Total Value with Options \$250,000/contract
Contract Term:	Two years, with three one year options
Funding Source:	Capital plan and proceeds from real estate transactions



## **Contract Scope**

- Appraisals
- Property inspections
- Valuation verifications
- Purpose and Significance of Appraisal
- Expert witness services in Eminent Domain and other Judicial Proceedings





## **Procurement Summary**

4

- Request for Qualifications advertised on August 2, 2021
- Six (6) firms submitted Statements of Qualifications (SOQs), One (1) of the six was disqualified because of late submission.
- Five (5) SOQs were evaluated. All offerors have local offices. All equally ranked in experience and capability. All have worked for the City.
- Recommendation
  - Award contracts to all responsive offerors:
    - ✓ CBRE
    - ✓ Lowery Property Advisors
    - ✓ Martha Gayle Reid Lynch
    - ✓ Ralph Sellers & Associates
    - √ Wilkinson Pendergras & Beard





# **Mission**

Deliver exceptional services to support a high quality of life and place for our community



Integrity, Respect, Excellence, Accountability, People



Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government



# **Misión**

Brindar servicios excepcionales para respaldar una vida y un lugar de alta calidad para nuestra comunidad



Integridad, Respeto, Excelencia, Responsabilidad, Personas



Desarrollar una economía regional vibrante, vecindarios seguros y hermosos y oportunidades recreativas, culturales y educativas excepcionales impulsadas por un gobierno de alto desempeño



### El Paso, TX

### Legislation Text

File #: 21-1271, Version: 1

### CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM

### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

City Manager's Office, Robert Cortinas, (915) 212-1067

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Discussion and action on the Resolution that the City reviewed and approves the issuance of the Unlimited Tax Bonds, Series 2021 by Paseo Del Este Municipal Utility District No. 1 with the acknowledgement that the issuance of such bonds does not constitute debt issuance by the City of El Paso.

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

**DEPARTMENT:** City Manager's Office

AGENDA DATE: November 9, 2021

**PUBLIC HEARING DATE: N/A** 

CONTACT PERSON NAME AND PHONE NUMBER: Robert Cortinas, Chief Financial Officer (915) 212-1067

**DISTRICT(S) AFFECTED:** All Districts

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

SUBGOAL: 6.5

### SUBJECT:

Discussion and action on the resolution that the City reviewed and approves the issuance of the Unlimited Tax Bonds, Series 2021 by Paseo Del Este Municipal Utility District No. 1 with the acknowledgement that the issuance of such bonds does not constitute debt issuance by the City of El Paso.

#### **BACKGROUND/ DISCUSSION:**

On December 3, 2002 the City Council of the City of **EI** Paso ('City") consented to the creation of Paseo Del Este Municipal Utility Districts Nos. 1 through 9 ("Districts") in the City of **EI** Paso's Extraterritorial Jurisdiction. The City's conditions for the creation of the Districts was that the City is to review and approve the Districts' bonds and notes prior to issuance and may place restrictions on the terms and provisions of each of the District's bonds and notes issued to provide service to the land and conditions on the sale of the District's bonds and notes to the extent such restrictions and conditions do not generally render the bonds and notes of the Districts unmarketable.

#### **PRIOR COUNCIL ACTION:**

N/A

AMOUNT AND SOURCE OF FUNDING: N/A

**DEPARTMENT HEAD:** 

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



### **Contact:**

### Maria Fernanda Urbina

**Managing Director** 

221 North Kansas Suite 600 El Paso, TX 79901 Telephone: 915.351.7228 maria.urbina@hilltopsecurities.com

### Introduction

- On December 2, 2002, the City of El Paso approved a resolution consenting to the creation of Paseo Del Este Municipal Utility Districts No. 1-9 in the City of El Paso's Extraterritorial Jurisdiction for the purpose of providing water and wastewater facilities for the land within those Districts.
- Paseo Del Este MUD No. 1, a political subdivision of the State of Texas, is located in El Paso County (the "District No. 1"), was created by division of Paseo del Este Municipal Utility District (the "Original District") pursuant to a division order adopted by the Original District on March 27, 2003, and operates pursuant to Chapter 443, Acts of the Texas Legislature, Regular Session, 1997 (the "Act") and Chapters 49 and 54, Texas Water Code.
- The District serves as the "Master District" (in such capacity, the "Master District") pursuant to contract(s) (the "Master District Contract") entered into between the District (as Master District) and ten other districts in the Paseo del Este development in eastern El Paso County known as Paseo del Este Municipal Utility District Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 (those ten districts and the Master District being collectively referred to as the "Participant Districts" and individually as "Participant District No. —") with the Master District to coordinate the development of the water, sanitary sewer and drainage facilities to serve the area within all eleven Participant Districts.
- The District No. 1 presently contains approximately 777.502 acres of land located in the Southeast portion of El Paso County approximately 15 miles east of the central area of the City of El Paso, Texas. At ultimate development, the District is projected to serve 1,818 Equivalent Single-Family Connections.

## Project Summary

- District No. 1, a political subdivision of the State of Texas, is located in El Paso County.
  - The District No. 1 is waiting approval from the Texas Commission on Environmental Quality (the "TCEQ") for a bond application requesting approval for the issuance of \$7,945,000 in unlimited tax bonds to finance the District's share of costs for the Regional Master Utility District and water, wastewater and drainage facilities within the District No. 1.
  - Bonds will be payable from an annual ad valorem tax, without legal limitation as to rate or amount, levied upon all taxable property within the District No. 1. The Bonds are obligations of the District and are <u>not</u> obligations of the State of Texas, El Paso County, the City of El Paso or any political subdivision or agency other than the District No. 1.
  - The District No. 1 has not previously issued any unlimited tax bonds.
  - As of August 31, 2021, District No. 1 had a total of 272 connections and according to an El Paso Central Appraisal District certificate, has an estimated taxable assessed value of \$80,067,590.

## Financing Summary

- District No. 1, a political subdivision of the State of Texas, is located in El Paso County.
  - Expected total annual debt service for the proposed bond of \$7,945,000 is approximately \$509,105 for the life of the District's debt.
  - The District's Overall Tax Rate should not exceed \$0.75/\$100 for Tax Year 2021.
  - Bonds will be payable from an annual ad valorem tax, without legal limitation as to rate or amount, levied upon all taxable property within the District No. 1. The Bonds are obligations of the District and are <u>not</u> obligations of the State of Texas, El Paso County, the City of El Paso or any political subdivision or agency other than the District No. 1.

#### RESOLUTION

WHEREAS, on December 3, 2002 the City Council of the City of El Paso ('City") consented to the creation of Paseo Del Este Municipal Utility Districts Nos. 1 through 9 ("Districts") in the City of El Paso's Extraterritorial Jurisdiction; and

WHEREAS, the City's consent to the creation of the Districts was subject to several conditions; and

WHEREAS, one of the City's conditions for the creation of the Districts was that the City is to review and approve the Districts' bonds and notes prior to issuance and may place restrictions on the terms and provisions of each of the District's bonds and notes issued to provide service to the land and conditions on the sale of the District's bonds and notes to the extent such restrictions and conditions do not generally render the bonds and notes of the Districts unmarketable; and

WHEREAS, Paseo Del Este Municipal District No. One ("M.U.D. No. 1") requested review and approval of the issuance of the Unlimited Tax Bonds, Series 2021 Bonds Utility by M.U.D. No. 1 (the "Series 2021 Bonds"); and

WHEREAS, the City reviewed the proposed issuance of Series 2021 Bonds by M.U.D. No. 1 and desires to approve the issuance of the bonds.

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

That the City reviewed and approves the issuance of the Unlimited Tax Bonds, Series 2021 Bonds in the estimated amount of \$7,945,000, by Paseo Del Este Municipal Utility District No. 1, with the acknowledgement that the issuance of such bonds does not constitute debt issuance by the City of El Paso.

APPROVED THIS DAY OF	2021.
	CITY OF EL PASO:
ATTEST:	Oscar Lesser Mayor
Laura D. Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Juan S. Gonzalez	Robert Cortinas

Chief Financial Officer

Senior Assistant City Attorney



### **Contact:**

### Maria Fernanda Urbina

**Managing Director** 

221 North Kansas Suite 600 El Paso, TX 79901 Telephone: 915.351.7228 maria.urbina@hilltopsecurities.com

### Introduction

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- The District No. 1 presently contains approximately 777.502 acres of land located in the Southeast portion of El Paso County approximately 15 miles east of the central area of the City of El Paso, Texas. At ultimate development, the District is projected to serve 1,818 Equivalent Single-Family Connections.

## Project Summary

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  - The District No. 1 has not previously issued any unlimited tax bonds.
  - As of August 31, 2021, District No. 1 had a total of 272 connections and according to an El Paso Central Appraisal District certificate, has an estimated taxable assessed value of \$80,067,590.

## Financing Summary

- District No. 1, a political subdivision of the State of Texas, is located in El Paso County.
  - Expected total annual debt service for the proposed bond of \$7,945,000 is approximately \$509,105 for the life of the District's debt.
  - The District's Overall Tax Rate should not exceed \$0.75/\$100 for Tax Year 2021.
  - Bonds will be payable from an annual ad valorem tax, without legal limitation as to rate or amount, levied upon all taxable property within the District No. 1. The Bonds are obligations of the District and are <u>not</u> obligations of the State of Texas, El Paso County, the City of El Paso or any political subdivision or agency other than the District No. 1.

### El Paso, TX

### Legislation Text

File #: 21-1259, Version: 1

### CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM

### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's, No emails. Please use ARIAL 10 Font.

#### **All Districts**

Capital Improvement Department, Sam Rodriguez (915) 212-1845

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Discussion and action that the City Manager, or designee, be authorized to sign an Agreement for Professional Services by and between the CITY OF EL PASO and TRANSMAP CORPORATION, an Ohio Professional Limited Liability Company, for a project known as "PAVEMENT CONDITIONS INDEX ASSESSMENT" for an amount not to exceed SIX HUNDRED FIFTY TWO THOUSAND EIGHT HUNDRED NINETY FIVE AND 93/100 DOLLARS (\$652,895.93) and that the City Manager, or designee, be authorized to establish the funding sources, make any necessary budget transfers, execute any and all documents necessary for the execution of the Agreement, and to execute any contract amendments that do not impact the funding amount.

## 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: 7 Enhance and sustain El Paso's infrastructure network

SUBGOAL: 7.2 Improve competitiveness through infrastructure improvements impacting the quality of

life

### **SUBJECT:**

That the City Manager, or designee, be authorized to sign an Agreement for Professional Services by and between the CITY OF EL PASO and TRANSMAP CORPORATION, an Ohio professional limited liability company, for a project known as "PAVEMENT CONDITIONS INDEX ASSESSMENT" for an amount not to exceed SIX HUNDRED FIFTY TWO THOUSAND EIGHT HUNDRED NINETY FIVE AND 93/100 DOLLARS (\$652,895.93) and that the City Manager, or designee, be authorized to establish the funding sources, make any necessary budget transfers, execute any and all documents necessary for the execution of the Agreement, and to execute any contract amendments that do not impact the funding amount.

### **BACKGROUND / DISCUSSION:**

The City completed its last PCI study in 2018. It is best practice to perform these studies every three years. Data generated from this study will provide information on the condition of City streets to prioritize where maintenance including surface treatments, resurfacing, and/or reconstruction may be necessary.

### **PRIOR COUNCIL ACTION:**

On August 24, 2021 Council approved the FY 22 Budget. Funding for the assessment was included in the budget.

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? x YES NO

**PRIMARY DEPARTMENT:** Streets and Maintenance

**SECONDARY DEPARTMENT:** Capital Improvement Department

### AMOUNT AND SOURCE OF FUNDING:

FY 22 Budget

### **BOARD / COMMISSION ACTION:**

N/A

Revised 04/09/2021

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

### RESOLUTION

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

That the City Manager, or designee, be authorized to sign an Agreement for Professional Services by and between the CITY OF EL PASO and **TRANSMAP CORPORATION**, an Ohio professional limited liability company, for a project known as "PAVEMENT CONDITIONS INDEX ASSESSMENT" for an amount not to exceed \$652,895.93 and that the City Manager, or designee, be authorized to establish the funding sources, make any necessary budget transfers, execute any and all documents necessary for the execution of the Agreement, and to execute any contract amendments that do not impact the funding amount.

APPROVED THIS DA	Y OF 2021.
	CITY OF EL PASO:
	Oscar Leeser, Mayor
ATTEST:	
Laura D. Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
	Jerry DeMuro/for
Omar De La Rosa	Samuel Rodriguez, P.E., City Engineer
Assistant City Attorney	Capital Improvement Department

THE STATE OF TEXAS	)	
	)	AN AGREEMENT FOR
COUNTY OF EL PASO	)	PROFESSIONAL SERVICES

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_\_, 2021 by and between the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the "Owner", and TRANSMAP Corporation, an Ohio professional limited liability company, hereinafter referred to as the "Consultant".

WHEREAS, the Owner intends to engage the Consultant to perform professional services for the project known as "PAVEMENT CONDITIONS INDEX ASSESSMENT", hereinafter referred to as the "Project", as further described in Attachment "A" and

**WHEREAS,** the Project, as originally intended by the Owner also included the services listed in **Attachment "B"**; and

**WHEREAS**, because of budget restraints, the Owner, as of the date of this Agreement, can only fund the part of the Project that is listed in **Attachment "A"**; and

**WHEREAS,** if funding becomes available, the Owner may request the Consultant to perform the services listed in **Attachment "B"**; and

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

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

### ARTICLE I. ATTACHMENTS

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

Attachment "A"	Scope of Services and Fees
Attachment "B"	Additional Scope of Services
Attachment "C"	Intentionally Deleted
Attachment "D"	Invoice Requirements
Attachment "E"	Insurance Certificate

### ARTICLE II. PROJECT

2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform the services identified in this Agreement for the Project. The Project shall consist of the Consultant's

completion of the Scope of Services as further described in **Attachment "A"**. Such Scope of Services shall be completed in accordance with the identified phases described in **Attachment "A"**.

- 2.2 The Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.
- **2.3** The Consultant shall serve as the Owner's professional representative for the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.
- 2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for the Project. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site, if available. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.
- 2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working day time period.

### ARTICLE III. CONSULTANT FEES AND PROJECT BUDGET

**3.1 PAYMENT TO CONSULTANT.** The Owner shall pay to the Consultant an amount not to exceed **SIX HUNDRED FIFTY-TWO THOUSAND EIGHT HUNDRED NINETY-FIVE AND 93/100 (\$652,895.93)** for the services listed in Attachment "A". The Consultant will perform the Services listed in Attachment "A" as provided in this Agreement.

The parties agree and understand that all fees and compensation to the Consultant shall only become due and payable in accordance with the terms of this Agreement and the fees to be charged for the Project shall be pursuant to the Consultant's fee proposal at the rates which are attached hereto as **Attachment "A"**.

Before the expiration of this Agreement, the City Council may, by City Council resolution, approve funding for the Additional Scope of Services attached to this Agreement as **Attachment** "B". Following any City Council resolution, the City Engineer will provide the Consultant with a written notice to proceed allowing the Consultant to perform the services listed in **Attachment** "B". If issued a notice to proceed as provided above, then the Consultant will perform the services listed in **Attachment** "B" at the rates listed in **Attachment** "B". All services under **Attachment** "B", if authorized as provided herein, will be paid in accordance to the terms of this Agreement. The

parties agree that no work under **Attachment "B"** is authorized and thus should not be performed or paid for unless City Council approves by resolution the authorization for the Additional Scope of Services in **Attachment "B"** to this Agreement.

#### 3.2 INTENTIONALLY DELETED.

- 3.3 CONSULTANT'S INVOICES. The Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to Attachment "D". Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety days (90) of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.
  - **3.3.1** Each invoice shall contain a brief summary indicating, at a minimum, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of the Project. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.
  - **3.3.2** The Owner agrees to pay invoices for all services performed as soon as reasonably possible but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.

#### 3.4 INTENTIONALLY DELETED...

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

### ARTICLE IV. PERIOD OF SERVICE AND TERMINATION

4.1 TERM AND PERIOD OF SERVICE. The services called for by each phase shall begin upon the issuance of a Notice to Proceed from the City Engineer. The Consultant shall complete the requested services in accordance with the timelines and schedules outlined in Attachment "A". Unless terminated earlier as allowed under this Agreement, this Agreement will remain in effect until 180 calendar days have lapsed after the completion of the Services listed in Attachment "A". If a notice to proceed with the Services in Attachment "B" has been issued by the City Engineer pursuant to this Agreement, then this Agreement will expire at the completion of the services listed in Attachment "B".

Any provisions that are meant to survive the term of this Agreement, such as, but not limited to, indemnification, audit, warranties, and copyrights, will remain in effect following the expiration of the term of this Agreement.

- 4.2 SUSPENSION. Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve** (12) months after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.
- **4.3 TERMINATION.** This Agreement may be terminated as provided herein.
  - **4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days'** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.
  - 4.3.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of seven (7) consecutive calendar days to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.
  - 4.3.3 TERMINATION FOR FAILURE TO COMPLY WITH SUBCHAPTER J, CHAPTER 552, GOVERNMENT CODE. The requirements of subchapter J, Chapter

- 552, Government Code, may apply to this Contract and the Contractor or vendor agrees that the Contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
- **4.3.4 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

### ARTICLE V. INSURANCE AND INDEMNIFICATION

- **5.1 INSURANCE.** The Consultant shall procure and maintain insurance coverage as required herein and attached in **Attachment "E"**. Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.
  - **5.1.1 WORKERS' COMPENSATION INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

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

- **5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Consultant and the Consultant's employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant. The minimum limits of liability and coverages shall be as follows:
  - a) Commercial General Liability
    \$1,000,000.00 Per Occurrence
    \$1,000,000.00 Products/Completed Operations
    \$1,000,000.00 Personal and Advertising Injury
  - b) <u>AUTOMOBILE LIABILITY</u> Combined Single Limit

### \$1,000,000.00 per accident

- **5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of \$1,000,000 on a claims made basis.
- **5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Agreement.
- **5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this Agreement.
- **5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate.
- 5.2 INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY HOLD HARMLESS, AND DEFEND OWNER, AND OWNER'S OFFICERS, DIRECTORS, PARTNERS, AGENTS CONSULTANTS, AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS, AND ALL COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE PROJECT, PROVIDED THAT ANY SUCH CLAIM, COST, LOSS, OR DAMAGE IS ATTRIBUTABLE TO ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR CONSULTANT'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, CONSULTANTS OR EMPLOYEES. THE CONSULTANT SHALL NOT BE RESPONSIBLE FOR ANY ACTS OF ANY OF THE CITY'S INDEPENDENT PROJECT MANAGERS.

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

### ARTICLE VI. FEDERAL AND STATE PROVISIONS

**6.1 COMPLIANCE WITH APPLICABLE LAWS – FEDERAL AND STATE FUNDING REQUIREMENTS.** Consultant, at Consultant's sole expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with

applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Consultant with respect to the use of federal and state funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal and state funds.

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

- --The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.
- -- The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.
- --The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment "F".
- -- The Texas Department of Transportation through an Agreement with the Owner.

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

- **6.1.1 CONTRACT ASSURANCE**. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
- **6.1.2 DBE GOOD FAITH EFFORTS.** The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal will be identified pursuant to the federal funding requirements for an individual task order established for this contract. The offeror

shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this Agreement.

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

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

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

an invoice to such date, and upon acceptance of the work by the Owner.
6.3 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 78 STAT.252, 42 U.S.C. 2000D TO 2000D-4 AND TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION.

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

- (1) **Compliance with Regulations**: Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination**: Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. ADP shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be

- notified by Consultant of Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports**: Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by Client to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information Consultant shall so certify to Client, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance**: In the event of Consultant's noncompliance with the nondiscrimination provisions of this contract, the Client shall impose such contract sanctions as it may determine to be appropriate, including but not limited to:
  - a. Withholding of payments to the Consultant under the contract until the Consultant complies, and / or
  - b. Cancellation, termination or suspension of the contract in whole or in part.
- (6) **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Client may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Consultant may request Client to enter into such litigation to protect the interests of Client and in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

### ARTICLE VII. GENERAL PROVISIONS

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

### 7.2 INTENTIONALLY DELETED

**7.3 CONSULTANT'S QUALITY OF WORK.** The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional

service. The Consultant's services shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the Project and in accordance with the time periods established in **Attachment "A"** and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner.

- 7.4 **COPYRIGHT AND REPRODUCTION RIGHTS.** Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner has the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects, other than the construction of the Project, shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.
- 7.5 AUDITING RECORDS FOR THE SPECIFIC PROJECT. Consultant's records subject to audit shall include but not be limited to records which, have a bearing on matters of interest to the Owner in connection with the Consultant's work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

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

The Owner or its designee shall be entitled, at its expense, to audit all of the Consultant's records related to this Project, and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require

inspection and photo copying of selected documents from time to time at reasonable times (limited to Consultant's office hours) and places upon reasonable notice.

#### 7.6 CONTRACTING INFORMATION

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

- **7.7 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.
- **7.8 VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.
- **7.9 GOVERNING LAW.** The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.
- **7.10 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.
- **7.11 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.
- **7.12 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner: The City of El Paso

Attn: City Manager P. O. Box 1890

El Paso, Texas 79950-1890

With a Copy to: The City of El Paso

Attn: City Engineer P. O. Box 1890

El Paso, Texas 79950-1890

To the Consultant: TRANSMAP CORPORATION

Attn: Howard Luxhoj 5030 Transamerica Dr. Columbus, Ohio 43328

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

- **7.13 CONFLICTING PROVISIONS.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.
- **7.14 ENTIRE AGREEMENT.** This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.
- **7.15 TEXAS GOVERNMENT CODE.** In accordance to Chapter 2274 of the Texas Government Code, as amended from time to time, the Consultant represents and warrants to the Owner the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

(Signatures begin on following page)

		CITY OF EL PASO:
		Tomás González City Manager
APPROVED AS TO FORM Omar De La Rosa Assistant City Attorney	M: —	APPROVED AS TO CONTENT:
	ACKNOWLED	GMENT
THE STATE OF TEXAS COUNTY OF EL PASO	\$ \$ \$	
This instrument was by <b>Tomás González</b> , as <b>Cit</b>		ore me on this day of, 2021, City of El Paso, Texas.
		Notary Public, State of Texas
My commission expires:		

TRANSMAP CORPORATION

Name: Howard Luxhoi

Title: President and CEO

### **ACKNOWLEDGEMENT**

THE STATE OF OH COUNTY OF Franklin

by Howard Luxhoj, on behalf of Consultant.

Notary Public, State of Texas Ohio

My commission expires:

10-17-26

Jared O'Brien Notary Public, State of Ohio Commission #: 2021-RE-838867 My Commission Expires 10-17-26

### ATTACHMENT "A" SCOPE OF SERVICES AND FEES

### Attachment A Scope of Work (Funded)

**Transmap Corporation** 

October 7, 2021

### City of El Paso, TX

#### **Pavement Condition Index Assessment Pricing**

#### **Pavement Analysis**

Task	Description	Comments	Units	Price	Total
1.0	Field Data Collection (units = centerline miles)	Transmap will utilize our Crack Map 3D technology (LCMS) for pavement collection - 100% coverage - 360-degree image view of all roadways (ROW) with our panoramic Ultra HD solution - Groundbased LiDAR	2,307	\$108.99	\$251,439.93
1.1	Advanced Inspections - 100% Analysis of All Through Lanes (units = lump sum)	Transmap will process all the data collected in the field. Delivery of Crack Map Orthophotography (MrSID of cracks on an image), Crack Intelligence data (Rankings of all the cracks, hot spot analysis), Image delivery, Ride Quality failed locations, Utility Adjustments Needed	1	\$29,240.00	\$29,240.00
1.2	.2 City-Wide Post Processed LiDAR (units = lump sum)  Transmap will process all LiDAR data into LAS files to brought into AutoCAD or cloud data (access to web)		1	\$24,999.00	\$24,999.00
1.3	Network Setup and Review (units = hours)  Transmap will use the Agency's c file and create the necessary field and formatting to produce a pavicenterline		28	\$109.00	\$3,052.00
1.4	ASTM D6433 Network Level Formatting - (units = sections)	ASTM D6433 distress standards	25,150	\$7.04	\$177,056.00
1.5	PAVER 7.x PCI Load (units = lump sum)	Formatting distress data and centerline file for mass load to produce official PCI results	1	\$2,723.00	\$2,723.00
1.6	Walk-Out (units = days)	Transmap will perform 4 pavement walk- outs - We will walk-out 2 districts at a time - Transmap will have one iPad and will supply the Agency with another iPad	4	\$1,999.00	\$7,996.00
1.7	GIS Integration - (units = hours)	Transmap will link all PCI data to the Agency's centerline file	56	\$109.00	\$6,104.00
1.8	Pavement Management Practice Definition "Boot Camp" (price is lump sum)	Transmap will meet with the agency to review maintenance/rehabilitation activities, analysis procedures, and collect any existing information on roadways (ADT data, construct dates, maintenance dates, etc.) This process will setup the reporting task	1	\$4,235.00	\$4,235.00
1.9	Reporting (units = hours)	Transmap will put together written/tabular and GIS map data to support a 5-year work plan - Candidate list for all roads and ranking for all segments	54	\$137.00	\$7,398.00
1.10	On-Site Pavement Management Training (units = days)	Transmap will provide PAVER I Training - This is a 2-day class that goes over every phase of PAVER work flow - We will also go through the pavement management process	2	\$3,872.00	\$7,744.00
1.11	True Area Calculation (units = hours)	Transmap will update PAVER and the Agency's GIS file to represent the True Area of pavement - True area will be an accurate width of pavement not just an average with from samples - This will assist the Paving Manager with actual widths to establish cost to replace pavement	410	\$109.00	\$44,690.00
	Transmap Project Management (units =	Standard project management includes			

Subtotal \$652,895.93

Hourly Rates							
Field Technician	per hour	\$61.00					
GIS Technician	per hour	\$81.00					
Pavement Technician	per hour	\$81.00					
GIS Analyst	per hour	\$109.00					
Project Manager	per hour	\$109.00					
Senior Project Manager	per hour	\$137.00					
Project Principle PE	per hour	\$160.00					

Consultant will complete all items listed in this Attachment "A" within 150 calendar days from the date of the notice to proceed.

### ATTACHMENT "B" Additional Scope of Work

### **ATTACHMENT "B"**

## Additional Scope of Work Pending Funding Availability

PAVER Assets

Task	Description	Comments	Units	Price	Total
9.0	PAVER Attributes-Paint Markings (units = centerline miles)	Standard attributes include; street name, unique ID, unique ID (street centerline), type, Good Poor condition, color - Accurate square foot of paint so Paving Manager can contract to replace all markings - Delivery of shapefile	2,307	\$42.50	\$98,047.50
9.1	PAVER Attributes - Curb&Gutter/Shoulders/Medians (units = centerline miles)	Standard attributes include; street name, unique ID, unique ID (street centerline), Curb Type, Landscaped, Hardscaped, Non Landscaped - Delivery of shapefile	2,307	\$39.50	\$91,126.50
9.2	PAVER Attributes - Sidewalks/ADA Ramps (units = centerline miles)	Standard attributes include; street name, unique ID, unique ID (street centerline), type (concrete, paver, etc.), Failure locations, truncated dome, color) - Delivery of shapefile	2,307	\$52.50	\$121,117.50
9.3	PAVER Attribute - Lane Configuration (units = centerline miles)	Standard attributes include; street name, unique ID, unique ID (street centerline), number of lanes right/left - Delivery of shapefile	2,307	\$35.50	\$81,898.50

Transmap will apply a 10% discount if these assets are approved within 6 months from the Pavement Purchase Order

Services in this Attachment "B" should only be completed if authorized as provided in the Agreement.

### Additional Scope of Work Pending Funding Availability (Cont'd)

#### **Traffic Asset Task List**

Task	Description	Comments	Units	Price	Total
2.0	Signs/Signals/Intersection Control (units = centerline miles)	Standard attributes include; street name, unique ID, unique ID (street centerline), MUTCD code, daytime condition, post type, Number of heads, Pole Type, Detector Loop, Camera, Radar	2,307	\$86.50	\$199,555.50
2.1	GIS Integration (units = hours)	Transmap will link all collected assets to the centerline unique ID and road name.	21	\$109.00	\$2,289.00
2.2	Project Management (units = hours)	Standard project management includes managing the personnel assigned to the project, monthly project updates, and phone support throughout project.	222	222 \$109.00	
	·		Subt	otal	\$226,042.50

\_\_\_

### Additional Scope of Work Pending Funding Availability Cont'd)

Гask	ask List  Description	Comments	Units	Price	Tota
3.0	Drainage Inlets (units = centerline miles)	Standard attributes include; street name, unique ID, unique ID (street centerline), Type  Transmap will link all collected assets to the centerline unique ID and road name.  Standard project management includes managing the personnel assigned to the project, monthly project updates, and phone support throughout project.  Subtotal  Comments  Units  Price  Standard attributes include; street name, unique ID, unique ID and road name.  Standard project management includes managing the personnel assigned to the centerline unique ID and road name.  Standard project management includes managing the personnel assigned to the project, monthly project updates, and phone support throughout project.  Subtotal  Comments  Units  \$109.00  \$109.00  Standard attributes include; street name, unique ID, unique ID (street centerline), color  Transmap will link all collected assets to the  12  \$109.00  \$109.00			\$56,52
3.1	GIS Integration (units = hours)	·	12	\$109.00	\$1,308
3.2	Project Management (units = hours)	managing the personnel assigned to the project, monthly project updates, and phone			\$6,970
			Sui	ototal	\$64,80
Гask	Description	Comments	Units	Price	Tot
4.0 Manhole (units = centerline miles)			2,307	\$12.50	\$28,83
4.1	IGIS Integration (units = hours)		12	\$109.00	\$1,308
4.2 Project Management (units = hours)		roject Management (units = hours) managing the personnel assigned to the project, monthly project updates, and phone			
			Sui	btotal	\$33,74
Гask	Description	Comments	Units	Price	Tot
5.0	Fire Hydrants (units = centerline miles)			\$10.25	\$23,64
5.1	GIS Integration (units = hours)	Transmap will link all collected assets to the centerline unique ID and road name.	12	\$109.00	\$1,30
5.2	Project Management (units = hours)	Standard project management includes managing the personnel assigned to the project, monthly project updates, and phone support throughout project.	27	\$109.00	\$2,943
	•	·	Sui	btotal	\$27,89
Гask	Description	Comments	Units	Price	Tot
6.0	Water Valves (units = centerline miles)	Standard attributes include; street name, unique ID, unique ID (street centerline)	2,307	\$12.50	\$28,83
6.1	GIS Integration (units = hours)	Transmap will link all collected assets to the centerline unique ID and road name.	12	\$109.00	\$1,308
6.2	Project Management (units = hours)	Standard project management includes managing the personnel assigned to the project, monthly project updates, and phone support throughout project.	33	\$109.00	\$3,597
			Sui	btotal	\$33,74
Task	Description	Comments	Units	Price	Tot
7.1	Roadway / Pedestrian Illumination (Street Lights) (units = centerline miles)	Standard attributes include; street name, unique ID, unique ID (street centerline), Head type	2,307	\$64.50	\$148,80
7.2	GIS Integration (units = hours)	Transmap will link all collected assets to the centerline unique ID and road name.	12	\$109.00	\$1,308
7.3 Project Management (units = hours)		Project Management (units = hours)  Standard project management includes managing the personnel assigned to the project, monthly project updates, and phone support throughout project.			

\$168,094.50

Subtotal

### Additional Scope of Work Pending Funding Availability (Cont'd)

Bridges					
Task	Description	Comments	Units	Price	Total
8.0	Bridges (units = centerline miles)	Standard attributes include; street name, unique ID, unique ID (street centerline), Start/Stop	2,307	\$10.50	\$24,223.50
8.1	GIS Integration (units = hours)	Transmap will link all collected assets to the centerline unique ID and road name.	12	\$109.00	\$1,308.00
8.2	Project Management (units = hours)	Standard project management includes managing the personnel assigned to the project, monthly project updates, and phone support throughout project.	28	\$109.00	\$3,052.00
	•		Subt	otal	\$28 583 50

Completion timelines for items on this Attachment "B" will be as set in the notice to proceed from City Engineer following City Council approval.

### ATTACHMENT "C" INTENTIONALLY DELETED

### ATTACHMENT "D" INVOICE REQUIREMENTS

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant's proposal found in **Attachment "A"**. The time shown in **Attachment "A"** is an estimate. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and accompanying Summary and Progress Report and the Owner's written approval.

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

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

**Receipts:** Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable*.

No single invoice may include items for both August and September of any given year. The Owner's fiscal year begins on September 1<sup>st</sup> of each year and ends on August 31<sup>st</sup> of each year. The Consultant's invoices must be separated into items that end August 31<sup>st</sup> and those that begin on Septembers 1<sup>st</sup> of any given year, to coincide with the Owner's fiscal year.

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

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

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

### ATTACHMENT "E" INSURANCE CERTIFICATE





EELTING

10/27/2021

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.

227 North Bryan, Ol INSURED	D'Neil & Lowe Insurance Agency h Lynn Street H 43506  TRANSMAP Corporation Transmap Engineering LLC 5030 Transamerica Drive Columbus, OH 43228			PH (AA E- AC IN:	INS SURER A : Cincinr	Dandresono SURER(S) AFFOI nati Insuran	eilandlowe.com	NAIC # 10677
Bryan, Ol	H 43506  TRANSMAP Corporation Transmap Engineering LLC 5030 Transamerica Drive			E-AL IN:	MAIL DDRESS: agency ( INS SURER A : Cincinr SURER B : Landm	Dandresono SURER(S) AFFOI nati Insuran	eilandlowe.com  RDING COVERAGE  CC Company	NAIC#
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COVERA	Transmap Engineering LLC 5030 Transamerica Drive			IN:	SURER A : Cincinr SURER B : Landma	nati Insuran	ce Company	10677
COVERA	Transmap Engineering LLC 5030 Transamerica Drive			IN:	SURER B : Landm			
	Transmap Engineering LLC 5030 Transamerica Drive							V
	5030 Transamerica Drive							<b>*</b>
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	S TO CERTIFY THAT THE POLICI				/E BEEN ISSUED			HE POLICY PERIOD
INDICA	TED. NOTWITHSTANDING ANY F	EQUI	REMI	ENT, TERM OR CONDITION (	OF ANY CONTRA	CT OR OTHER	R DOCUMENT WITH RESPE	CT TO WHICH THIS
	FICATE MAY BE ISSUED OR MAY SIONS AND CONDITIONS OF SUCH							O ALL THE TERMS,
INSR	TYPE OF INSURANCE	ADDL				POLICY EXP (MM/DD/YYYY)	LIMITS	
A X	COMMERCIAL GENERAL LIABILITY	INSD	WVD	I GEIGT NOMBER	(MIM/DD/YYYY)	(MM/DD/YYYY)	EACH OCCURRENCE	\$ 1,000,000
	CLAIMS-MADE X OCCUR	Х	х	ENP 0008067	2/3/2019	2/3/2022	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000
		^	^	LIVI GOGGGT	2/0/2013	LIGILOLL	MED EXP (Any one person)	\$ 10,000
<u> </u>							` , , , , ,	\$ 1,000,000
CEN	" ACCRECATE LIMIT APPLIES DED.						PERSONAL & ADV INJURY	\$ 2,000,000
	'L AGGREGATE LIMIT APPLIES PER: POLICY PRO- LOC						GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	\$ 2,000,000
	OTHER:						PRODUCTS - COMP/OP AGG	\$
Α .	OMOBILE LIABILITY						COMBINED SINGLE LIMIT	\$ 1,000,000
7010	ANY AUTO	Х	х	ENP 0008067	2/3/2019	2/3/2022	(Ea accident)	\$
	OWNED SCHEDULED AUTOS ONLY	^	^	LIVI GOGGGT			BODILY INJURY (Per person)	\$
	HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	\$
1	AUTOS ONLY						(rei accident)	\$
A X	UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	\$ 2,000,000
	EXCESS LIAB CLAIMS-MADE			ENP 0008067	2/3/2019	2/3/2022	AGGREGATE	\$ 2,000,000
	DED RETENTION \$						AGGREGATE	\$
	KERS COMPENSATION EMPLOYERS' LIABILITY						X PER OTH-	\$
ANV P	DROPRIETOR/PARTNER/EYECUTIVE			EWC 0359509	10/12/2021	10/12/2022	E.L. EACH ACCIDENT	\$ 500,000
OFFIC (Mand	CER/MEMBER EXCLUDED?	N/A					E.L. DISEASE - EA EMPLOYEE	500 000
If ves.	, describe under CRIPTION OF OPERATIONS below							\$ 500,000
	essional Liab.			LHR785127	10/31/2021	10/31/2022	E.L. DISEASE - POLICY LIMIT	1,000,000
						10/01/2021		
I								

ACORD 25 (2016/03)

City of El Paso 218 N Campbell St. El Paso, TX 79901

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THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**AUTHORIZED REPRESENTATIVE** 



- Street Maintenance is a high priority for our community
- The inventory for roads in the City shows 2,500 centerline miles
  - \$44 Million is the estimated annual investment in order to keep the street Pavement Condition Index of 70 (out of 100)
- City Council Approvals
  - August 2018- City Council Approved \$7 M Annual Program for Residential.
  - December 2019 City Council approves a dedicated \$3M
     Annual for street resurfacing from PSB Infrastructure Franchise
     Fee

- Current Resurfacing Contract (2019-2022):
  - Annual Value \$6.67M
  - Arterial Resurfacing Four locations for current year
    - Edgemere Substantially Complete
    - Copia In Progress
    - Belvidere and Giles Programmed
  - 2012 CIP Final three locations
    - Upson and Hawkins In Progress
    - Riverbend Substantially Complete
  - Residential Resurfacing Work Programmed in each District
    - District 6 In Progress

- New Resurfacing Contract Bid -
  - Estimated Value \$10M
  - Being evaluated in Purchasing for award
- Surface Treatment Contract -
  - Estimated Value \$1M
  - Specifications and scope developed, Bid to be advertised
- Pavement Condition Study -
  - Estimated Value \$652K

# **Project Details**

Location:	Citywide
District(s):	All
Total Budget:	\$652,895.93
	FY 2022 Budget

### PCI – What is it?

- Pavement Condition Index (PCI) is data used to assess the general condition of pavement
- The data is used as a tool for initial prioritization
- Requires regular evaluation to updating conditions
- Provides forecasting which can assist and plan needed future improvements

## El Paso 2018 Results

PCI Range	Condition Description	Percent of Network
86-100	Good	26.75%
71-85	Satisfactory	22.72%
56-70	Fair	17.06%
41-55	Poor	17.59%
26-40	Very Poor	10.46%
11-25	Serious	5.00%
0-10	Very Serious	0.42%
	TOTAL	100%

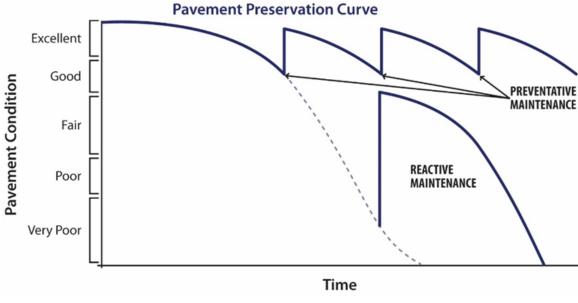
49.5% is Satisfactory or higher 50.5% is Fair or below

### **Best Practices**

- Useful life of a road is 25 years
- 4% of the street inventory every year
- Average PCI at 70 or above should be our goal
- Spend a portion of the budget to keep good pavement in good condition
- Have a plan to bring poor roads to fair condition and above
- Find cost effective treatments at designated times to provide desired level of service

## **Best Practices**

AGE



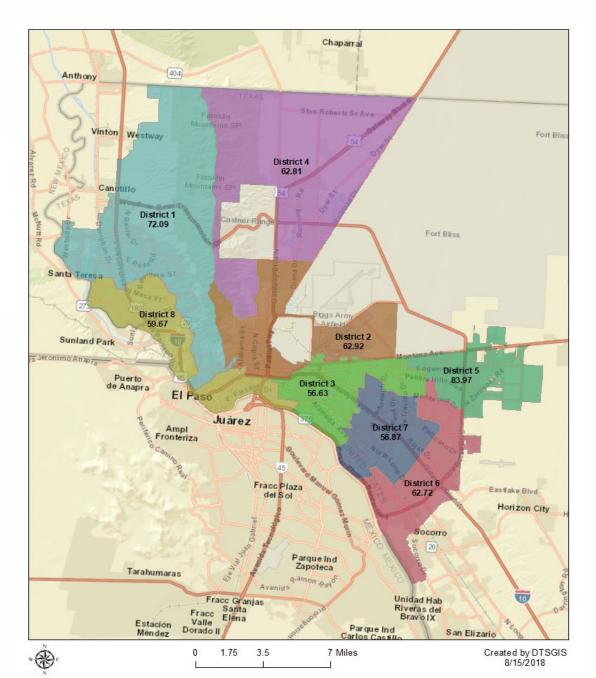




# <u>ပ</u>

### Average PCI by District

District	Average PCI
1	72.09
2	62.92
3	56.63
4	62.81
5	83.97
6	62.72
7	56.87
8	59.67





## **Procurement Summary**

- Request for Qualifications advertised on September 7, 2021
  - One (1) firm submitted a Statement of Qualifications
- Recommendation
  - Award the contract to Transmap Corporation, in the amount of \$652, 895.93
  - Preliminary Schedule
    - ✓ Data Collection: November through December 2021
    - ✓ Data analysis January March 2022





# **Mission**

Deliver exceptional services to support a high quality of life and place for our community



Integrity, Respect, Excellence, Accountability, People



Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government



### El Paso, TX

### **Legislation Text**

File #: 21-1286, Version: 1

### **CITY OF EL PASO, TEXAS** LEGISTAR AGENDA ITEM SUMMARY FORM

### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

#### All Districts

Capital Improvement Department, Sam Rodriguez, (915) 212-1808

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Discussion and action that the City Manager be authorized to sign a two year On-Call Agreement for Professional Services to perform Urban Design Services on a task basis by and between the City of El Paso and each of the following consultants for services not traditionally offered by other design consultants with active on-call contract:

- Service Area Information Analysis AECOM Technical Services. Inc.
- Service Area Strategic Planning and Visioning Lake Flato Architects, Inc. and Mycotoo, Inc. (2) contracts)
- Service Area Sustainability & Resiliency Planning AECOM Technical Services, Inc. and Quantum Engineering Consultants, Inc. (2 contracts)
- Service Area Urban Design Asakura Robinson Company, LLC and Lake Flato Architects, Inc. (2 contracts)

Each On Call Agreement will be for an amount not to exceed Two Hundred Thousand and No/00 Dollars (\$200,000.00), and each agreement will include authorization for the City Engineer to approve additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and authorization for the City Engineer to approve Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if the identified services are necessary for proper execution of identified project and if the increased amounts are within the appropriate budget identified for a project. 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.

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

AGENDA DATE: October 26, 2021 PUBLIC HEARING DATE: N/A

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

(915) 212-1808

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No.7: Enhance and Sustain El Paso's Infrastructure Network

SUBGOAL: 7.5 Set one standard for infrastructure across the city.

### **SUBJECT:**

That the City Manager be authorized to sign a two year On-Call Agreement for Professional Services to perform Urban Design Services on a task basis by and between the City of El Paso and each of the following consultants for services not traditionally offered by other design consultants with active on-call contract:

Service Area Information Analysis AECOM Technical Services. Inc

Service Area Strategic Planning and Visioning Lake Flato Architects, Inc. and Mycotoo, Inc. (2 contracts)

Service Area Sustainability & Resiliency Planning AECOM Technical Services, Inc. and Quantum Engineering Consultants, Inc. (2 contracts)

Service Area Urban Design Asakura Robinson Company, LLC and Lake Flato Architects, Inc. (2 contracts)

Each On Call Agreement will be for an amount not to exceed Two Hundred Thousand and No/00 Dollars (\$200,000.00), and each agreement will include authorization for the City Engineer to approve additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and authorization for the City Engineer to approve Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if the identified services are necessary for proper execution of identified project and if the increased amounts are within the appropriate budget identified for a project. In addition, the City Manager is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement.

### **BACKGROUND / DISCUSSION:**

The on call agreement for professional services for urban design assists the Capital Improvement Department as well as user departments to expedite and complete tasks for projects.

#### PRIOR COUNCIL ACTION:

No prior Council action for urban design services.

### **AMOUNT AND SOURCE OF FUNDING:**

Revised 04/09/2021

The funding for this will come from the current or past Capital Plans or other funding mechanisms, such as TIRZ boards or Uptown Parking Benefit District, that require urban design.

<b>HAVE ALL</b>	<b>AFFECTED</b>	<b>DEPART</b>	MENTS	BEEN N	NOTIFIED?	X	YES	NO

**PRIMARY DEPARTMENT:** Capital Improvement Department

**SECONDARY DEPARTMENT:** NA

**DEPARTMENT HEAD:** 

Sam Rodriguez, P.E., City Engineer

### RESOLUTION

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

That the City Manager, or designee, be authorized to sign a two year On-Call Agreement for Professional Services to perform urban planning services on a task order basis by and between the by City of El Paso and each of the following seven (7) consultants:

- 1. AECOM Technical Services, Inc. (Information Analysis)
- 2. Lake Flato Architects, Inc. (Strategic Planning & Visioning)
- 3. MYCOTOO Inc. (Strategic Planning & Visioning)
- 4. AECOM Technical Services, Inc. (Sustainability & Resiliency)
- 5. Quantum Engineering Consultants, Inc. (Sustainability & Resiliency)
- 6. Asakura Robinson Company, LLC. (Urban Design)
- 7. Lake Flato Architects, Inc. (Urban Design)

Each On-Call Agreement will be for an amount not to exceed TWO-HUNDRED THOUSAND and No/00 Dollars (\$200,000.00), and each agreement will include authorization for the City Engineer to approve additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and authorization for the City Engineer to approve Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if the identified services are necessary for proper execution of identified project and if the increased amounts are within the appropriate budget identified for a project. 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 sign any contract amendments that do not affect the contract amounts.

APPROVED THIS _	DAY OF	2021.
	(Signatures on the follo	owing page)

APPROVED THIS

	CITY OF EL PASO:
	Oscar Leeser Mayor
ATTEST:	·
Laura Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:  Jerry DeMuro/for
Omar A. De La Rosa	Sam Rodriguez, City Engineer
Assistant City Attorney	Capital Improvement Department



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

### **EVALUATION COMMITTEE SCORE SUMMARY**

#### SOLICITATION# 2021-1335R ON CALL CONSULTANT SERVICES - INFORMATION ANALYSIS

	AECOM	DOVER, KOHL & PARTNERS	PARKHILL		
Rater #1	87	73	64		
Rater #2	88	72	63		
Rater #3	84	47	56		
Total Score	259	192	183		

THE STATE OF TEXAS )	ON-CALL
)	AGREEMENT FOR
COUNTY OF EL PASO )	PROFESSIONAL SERVICES

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_\_, 2021 by and between the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the "Owner", and AECOM Technical Services, Inc., a California Corporation, hereinafter referred to as the "Consultant".

**WHEREAS,** the Owner intends to engage the Consultant to perform professional civil engineering services on a task order basis through the use of task orders referencing this Agreement, the scope of which is further described in **Attachment "A"**; and

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

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

### ARTICLE I ATTACHMENTS

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

Attachment "A"	Scope of Services and Project Budget
Attachment "B"	Consultant's Fee Proposal and Hourly Rates
Attachment "C"	Consultant's Basic and Additional Services
Attachment "D"	Payment and Deliverable Schedules
Attachment "E"	Insurance Certificate
Attachment "F"	Federal Aviation Administration contract provisions for Airport
	Improvement Program Projects

### ARTICLE II PROJECT

- 2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform oncall professional services on a Task Order basis. Each individual Task Order will identify the Project and the total compensation due to each Project. The Task Order for each Project shall include the Scope of Services described in **Attachment "A"**.
- 2.2 For each Project, the Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this

- Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.
- 2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.
- 2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.
- 2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working days time period.

### ARTICLE III CONSULTANT FEES AND PROJECT BUDGET

**3.1 PAYMENT TO CONSULTANT.** The Owner shall pay to the Consultant an amount not to exceed **Two Hundred Thousand AND NO/00 DOLLARS** (\$200,000.00) for all basic services and reimbursables performed pursuant to this Agreement.

No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement.

The City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects.

In addition, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00) must have prior approval by City Council through written amendment to this Agreement.

pg. 2

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

Payments to the Consultant shall be made pursuant to **Attachment "D"**.

- **3.2 CONSULTANT'S SERVICES.** The Basic Services and Additional Services, if any, to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C".**
- **3.3 CONSULTANT'S INVOICES.** For each Project, the Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in **Attachment "D"**. Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety (90) days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.
  - **3.3.1** Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.
  - **3.3.2** The Owner agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.
- **3.4 PROJECT CONSTRUCTION BUDGET.** The Consultant acknowledges that the construction budget and a construction time for each Project will be identified in each Task Order.
- **3.5 COSTS NOT ENUMERATED.** Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

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### ARTICLE IV PERIOD OF SERVICE AND TERMINATION

- **4.1 PERIOD OF SERVICE.** The term of this Agreement shall be for a period not to exceed **two (2) years** from the date first shown above. The services called for by each Task Order shall begin upon the issuance of a Notice to Proceed from the City Engineer and shall continue through the completion of the construction of the Project, including any required extensions beyond the contract time for construction of the Project, as may be directed by the Owner.
- **4.2 SUSPENSION.** Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve (12) months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.
- **4.3 TERMINATION.** This Agreement may be terminated as provided herein.
  - **4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.
  - **4.3.2 TERMINATION BY EITHER PARTY.** It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to

this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.

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

### ARTICLE V INSURANCE AND INDEMNIFICATION

- **5.1 INSURANCE.** Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.
  - **5.1.1 WORKERS' COMPENSATION INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

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

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

### a) <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.

**General Aggregate** \$1,000,000.00 \$1,000,000.00 per occurrence

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

- **5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) on a claims made basis.
- **5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.
- **5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.
- **5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate.

Further, all polices shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

5.2 INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

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

5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE **REQUIREMENTS.** Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident.

### ARTICLE VI FEDERAL AND STATE PROVISIONS

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

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

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

- --The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment "F".
- -- The Texas Department of Transportation through an Agreement with the Owner.

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

- **6.1.1 CONTRACT ASSURANCE**. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
- **6.1.2 DBE GOOD FAITH EFFORTS**. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal will be identified pursuant to the federal funding requirements for an individual task order established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this Agreement.

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

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

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

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for professional services performed to such date, upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

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

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

- (1) **Compliance with Regulations**: Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination**: Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. ADP shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports**: Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by Client to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information Consultant shall so certify to Client, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of Consultant's noncompliance with the nondiscrimination provisions of this contract, the Client shall impose such contract sanctions as it may determine to be appropriate, including but not limited to:
  - a. Withholding of payments to the Consultant under the contract until the Consultant complies, and  $\slash\hspace{-0.5em}$  or
  - b. Cancellation, termination or suspension of the contract in whole or in part.
- (6) **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as

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

### ARTICLE VII GENERAL PROVISIONS

- 7.1 CONTRACT TIME. Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within Attachment "D". It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in Attachment "D".
- **7.2 OPINION OF PROBABLE COST.** As a design professional practicing in El Paso the Consultant is expected to be familiar with the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The cost opinions of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within **ten percent (10%)** of the bid for the base bid item expected from the lowest responsible bidder.

The Consultant's final cost opinions for the construction of the Project, shall take into account labor costs which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Consultant in compiling a final cost opinions for the Project.

If the Consultant's most recent cost opinion for any construction contract is in excess of the Project construction budget, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Consultant without further compensation.

As noted herein, if all responsible bids exceed the final cost opinion by more than **ten percent** (10%), the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

**7.3 CONSULTANT'S QUALITY OF WORK.** The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work

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

COPYRIGHT AND REPRODUCTION RIGHTS. Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

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

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

The Owner or its designee shall be entitled, at its expense, to audit all of the Consultant's records related to this Project, and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require

inspection and photo copying of selected documents from time to time at reasonable times and places.

- **7.6 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.
- **7.7 VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.
- **7.8 GOVERNING LAW.** The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.
- **7.9 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.
- **7.10 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.
- **7.11 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner: The City of El Paso

Attn: City Manager P.O. Box 1890

El Paso, Texas 79950-1890

With a Copy to: The City of El Paso

Attn: City Engineer P.O. Box 1890

El Paso, Texas 79950-1890

To the Consultant: Chris Brewer

Aecom, Economics + Advisory Practice

303 E Wacker Drive Chicago, Il 60601 Chris.Brewer@Aecom.

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

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

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

**7.14 TEXAS GOVERNMENT CODE**. In accordance to Chapter 2274 of the Texas Government Code, as amended from time to time, the Consultant represents and warrants to the Owner the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

(Signatures on the following pages)

### WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

	CITY OF EL PASO:
	Tomás González City Manager
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Omar A. De La Rosa Assistant City Attorney	Samuel Rodriguez, P.E., City Engineer Capital Improvement Department
(Ack	nowledgment)
THE STATE OF TEXAS \$ \$ COUNTY OF EL PASO \$	
This instrument was acknowledged by <b>Tomás González</b> , as <b>City Manager</b> of t	before me on this day of, 2021, he City of El Paso, Texas.
	Notary Public, State of Texas
My commission expires:	_

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By: Chris Brewer

Title: Vice President, Economics + Advisory Practice

(Acknowledgment)

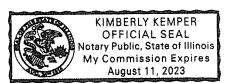
THE STATE OF TEXAS S
COUNTY OF EL PASO S

This instrument was acknowledged before me on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_, 2021, by Chris Brewer, as Vice President of AECOM.

Notary Public, State of Texas

My commission expires:

8/11/2023



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## ATTACHMENT "A" SCOPE OF SERVICES

## Attachment A Scope of Work

The contracts will be used for miscellaneous assignments on an on call urban design information and economic analyses. Services are to include the following:

Informational/massing modeling of mixed uses for peak performance in various land uses, market assessments, feasibility analysis and targeted action plans,

Developing visual projection models of various data sets, including but not limited to mobility, density & development, economic activity, services & amenities, and efficient land use.

Developing land use, sustainable growth and feasible urban development information management and analytical systems that align with the local market.

Creating long-range land use planning and economic/market analyses information management systems to support decisions regarding citywide growth and development, meeting market needs and addressing market shortfalls. Systems to allow for data analysis, scenario planning, visualization, and reporting.

City system-wide scenario 2D and 3D planning and forecasting, allocating forecasted citywide growth totals and tracking proposed development projects from application through completion that where appropriate integrate with regional planning information systems and projections, other agencies systems and models.

Deliverables and work products will be identified on a task order basis.

## ATTACHMENT "B" CONSULTANT'S FEE PROPOSAL AND HOURLY RATES



### August 13, 2021

To: Rebecca Rodriguez, City of El Paso

From: Chris Brewer, AECOM Economics

RE: Hourly Rate Schedule, Solicitation #2021-1335R – On Call Consultant Services – Information Analysis

\_\_\_\_\_\_

The following rates are applicable for AECOM Technical Service, Inc. For 2021 / 2022

Vice President, Economics	\$251.37
Principal Planner, AVP	\$242.99
Senior Associate Planner	\$209.48
Associate Principal / VP, Economics	\$181.55
Senior Associate, Economics	\$153.62
Associate Planner	\$161.99
Associate, Economics	\$125.69
Urban Planner	\$120.10
Senior Analyst, Economics	\$111.72
Analyst, Economics	\$100.55
Analyst Planner	\$97.76
Intern, Economics	\$69.83
Intern Planner	\$78.20

Each individual Task Order will identify the "**Project**", and the Consultant shall provide the Basic and Additional Services as noted herein.

### **BASIC SERVICES OF THE CONSULTANT**

### **GENERAL**

- 1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated
- 2. The Consultant shall comply with the City of El Paso Engineering and Construction Management Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the design phases of this Agreement.
- 3. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.
- 4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

#### **REPORT PHASE**

- 1. Upon receipt of the Owner's written authorization to proceed with the **Report Phase**, the Consultant shall:
  - **a.** Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.
  - **b.** Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.
  - **c.** (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory testing, and (d) Inspection or other special consultation; (2) Act as the Owner's representative in connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

- **d.** Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant's recommendations.
- **e.** As per Attachment "D", furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.
- 2. Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 3. As identified in the Scope of Work in Attachment "A", the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

### PHASE I - PRELIMINARY DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Consultant shall do the following separately for each construction contract:

- 1. Consult with the Owner to determine the Owner's requirements for the Project.
- 2. Provide at the Consultant's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the

Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

- 3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.
- **4.** Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.
- 5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.
- 6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.
- **8.** Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.
- 9. As per **Attachment "D"**, furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

### PHASE II - PRE-FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Pre-Final Design Phase, the Consultant shall do the following separately <u>for each construction contract:</u>

- 1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant's assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.
- 2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the "Drawings," to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called "Specifications." These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.
- **3.** Advise the Owner of any adjustment to the Consultant's previous opinion of probable construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant's cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor's method of pricing and that the Consultant's opinion of probable construction costs are made on the basis of professional judgment and experience. The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.
- **4.** Prepare proposal forms.
- 5. As per **Attachment "D"**, furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not

approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

### PHASE III - FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Final Design Phase, the Consultant shall do the following separately for each construction contract:

- 1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.
- 2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility Consultant comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.
- 3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.
- **4. As per Attachment "D"**, furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.
- 5. **As per Attachment "D"**, furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.
- **6.** Additional copies of the drawings and specifications beyond those identified in **Attachment "D"**, required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

#### **BIDDING PHASE**

Upon receipt of Owner's written request, the Consultant shall provide any of the following services during the Bidding Phase:

- 1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.
- 2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.
- **3.** Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.
- 4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment "D", deliver copies of all addenda to the Owner for appropriate action.
- As identified in Attachment "A", assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.
- 6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

### **CONSTRUCTION PHASE**

At Owner's request, the Consultant shall provide any of the following services associated with the Construction Phase:

- 1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.
- 2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with

such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

- 3. Unless otherwise stipulated in Attachment "A", Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.
- Visit each construction site at least once each week or more frequently, if necessary, to 4. observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

- 5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. Such review must be complete within ten City working days following receipt of submittal documents. The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.
- 6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner's approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract

documents, subject to the Owner's interpretation of such terms and conditions. If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.

- Pased on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.
- **8.** Conduct with the Owner and construction contractor no more **than two brief preliminary inspections**, at times requested by the construction contractor to determine if the Project is ready for final inspection.
- 9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The "punch list" shall be furnished to the construction contractor and the Owner within two City working days after the final inspection.
- 10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the final inspection.
- 11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.
- 12. Furnish the Owner one set of reproducible (**D format**) "record" drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints,

drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format.

- **13.** Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.
- 14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.
- **15.** Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.
- 16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.
- **17.** Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.
- **18**. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.
- **19.** Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.
- **20.** Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.
- 21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.
- 22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.
- 23. Provide additional or extended services during construction made necessary by: a) work damaged by fire or other cause during construction; b) prolongation of the construction contract time by more than **twenty-five percent** provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Consultant; c) Acceleration of the work schedule involving services beyond normal city working hours; or d) the

construction contractor's default under the construction contract due to delinquency or insolvency.

- **24.** Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.
- 25. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

#### **ADDITIONAL SERVICES OF THE CONSULTANT**

#### **GENERAL**

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

- 1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.
- 2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner's scope or budget, except where the Consultant's preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant's final design cost opinions by ten percent or more.
- 3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.
- 4. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.
- 5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

### RESIDENT PROJECT SERVICES

- 1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.
- 2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.
- 3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

### ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

#### PAYMENT SCHEDULE

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

### **Fixed fee Payment to Consultant**

Report Phase	To be determined by Task Order
<b>Preliminary Design Phase</b>	To be determined by Task Order
<b>Pre-Final Design Phase</b>	To be determined by Task Order
Final Design Phase	To be determined by Task Order
<b>Bidding Phase</b>	To be determined by Task Order
<b>Construction Phase</b>	To be determined by Task Order

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant's proposal found in **Attachment "B"**. The time shown in **Attachment "B"** is an estimate. Should the services rendered during the bidding and construction phases exceed the estimated amount, written authorization will be required prior to rendering services. Written authorization shall be only by contract amendment in accordance with the contract provisions. For contracts with a total value less than Fifty Thousand and No/100 Dollars (\$50,000), the parties agree that at no time may the amount of the compensation under this contract exceed Fifty Thousand and No/100 Dollars (\$50,000) except by execution of an amendment to this Agreement.

Payment for each Phase shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and a Consulting Summary and Progress Report and the Owner's written approval.

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

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

**Receipts:** Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable*.

No single invoice may include items for both August and September of any given year. The Owner's fiscal year begins on September 1<sup>st</sup> of each year and ends on August 31<sup>st</sup> of each year. Consultant's invoices must be separated into items that end August 31<sup>st</sup> and those that begin on Septembers 1<sup>st</sup> of any given year, to coincide with Owner's fiscal year.

### ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

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

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

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

#### **DELIVERABLE SCHEDULE**

#### REPORT PHASE

The services called for in the Report Phase of this Agreement shall be completed and **5 copies** of the Preliminary Study and Report shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE I—PRELIMINARY DESIGN PHASE

The services called for in **Phase I** of this Agreement shall be completed and **10 copies** of any required documents and opinion of probable construction costs shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. If Owner does not approve the preliminary design documents, the Consultant shall furnish **five copies** of the resubmitted design documents.

### PHASE II—PRE-FINAL DESIGN PHASE

The services called for in **Phase II** of this Agreement shall be completed and **10 copies** the required documents and services shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE III—FINAL DESIGN PHASE

The services called for in **Phase III** of this Agreement shall be completed and **10 copies** of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. After review, the Consultant shall submit to Owner **3 copies** of the final revised design documents and specifications for final check. Upon the approval of the final design documents, the Consultant shall furnish **10 copies** of the final design documents and specifications for bidding to the Owner within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

### ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

### PHASE IV—BIDDING PHASE

Provide services as authorized by Owner during the bid phase as described in Attachment "C" and submit **1 copy** of all addenda to the Owner for appropriate action within **2 consecutive calendar days.** 

### PHASE V - CONSTRUCTION PHASE

Provide services as authorized by Owner during construction phase as described in Attachment "C" and submit one set of Mylar and one set of electronic media format copies of all record drawings to the Owner within sixty days from the date of substantial completion.

#### **ATTACHMENT "E"**

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### CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 08/12/2021

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(les) 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 the certificate does not confirm that the terms and conditions of the policy, certain policies may require an endorsement. A statement on

th	this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).										
PRO	DUCER				CONTACT James Vogel						
	Marsh Risk & Insurance Services CA License #0437153				PHONE (A/C, N		6-5098	FAX (A/C, No): 212-948-0533			1-0533
	633 W. Fifth Street, Suite 1200				E-MAIL ADDRE		.Lvogel@marsh.c	om			
	Los Angeles, CA 90071 Attn: Los Angeles. Cert Request@Marsh. Com						URER(S) AFFOR	DING COVERAGE			NAIC #
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Re: AECOM Project No: 004191839.0001; Preliminary award, consultant services; #2021-1335R – Information Analysis & #2021-1335R – Sustainability and Resiliency Planning For RFPIRFO Purposes.  City of El Paso is named as additional insured for GL & AL coverages, but only as respects work performed by or on behalf of the named insured and where required by written contract.											
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#### ATTACHMENT "F"

#### **ATTACHMENT "F"**

#### FEDERAL AVIATION ADMINISTRATION (FAA) CONTRACT PROVISIONS

In this Attachment "F", the term "Contractor" shall refer to the "Consultant", and the term "Airport Sponsor" shall refer to the "City".

If there are any conflicts between the terms and conditions of Attachment "F" and Article VI of the Agreement, the terms and conditions of Attachment "F" will prevail.

#### A. GENERAL REQUIREMENT FOR CONTRACT

- 1. The contractor (including all subcontractors) are required to insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all subcontracts;
- 2. The contractor (or subcontractor) is required to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services;
- 3. The contractor is responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider; and
- 4. The contractor (or subcontractor) shall not modify the provisions.

Subject to the applicability criteria noted in the specific contract provisions, these contract provisions apply to all work performed on the contract.

#### B. FAILURE TO COMPLY

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- 1. Withhold progress payments or final payment,
- 2. Terminate the contract,
- 3. Seek suspension/debarment, or
- 4. Any other action determined to be appropriate by the Airport Sponsor or the FAA.

#### C. <u>CONTRACT PROVISIONS</u>

#### 1. ACCESS TO RECORDS AND REPORTS (all AIP-funded projects)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized

representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after the final payment is made and all pending matters are closed.

2. <u>BREACH OF CONTRACT TERMS</u> (all contracts that exceed the simplified acquisition threshold as fixed at 41 USC 403(11). This threshold is presently set at \$100,000.)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. <u>BUY AMERICAN PREFERENCES</u> (all AIP-funded projects, if this professional services agreement includes any manufactured product as a deliverable.)

#### **BUY AMERICAN CERTIFICATION**

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

#### Type of Certification is based on Type of Project:

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

#### \*\*\*\*

#### **Certificate of Buy American Compliance for Total Facility**

(Buildings such as Terminal, SRE, ARFF, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
  - a. Only installing steel and manufactured products produced in the United States; or
  - b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic products
- 3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
  - 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.

- 4. To furnish US domestic product for any waiver request that the FAA rejects.
- 5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver -** The cost of components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

- a. Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature
Communication Name	Tid.
Company Name	Title

\* \* \* \* \*

#### **Certificate of Buy American Compliance for Manufactured Products**

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

Bidder or offeror here	eby certifies	that it will	comply with	149 USC 8	§ 50101 by:
Blace of offerer ner	oo, continues	CIICCO IC TO III	COLLIDITY WILL	, .,	,

- a. Only installing steel and manufactured products produced in the United States, or;
- b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
- c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic product
- 3. To furnish US domestic product for any waiver request that the FAA rejects
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.

- 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver -** The cost of the item components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a. Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature	
Company Name	Title	

#### 4. <u>GENERAL CIVIL RIGHTS PROVISIONS</u> (all contracts)

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- a. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

# 5. <u>CIVIL RIGHTS-TITLE IV COMPLIANCE WITH NONDISCRIMINATION</u> <u>REQUIREMENTS</u> (all AIP funded projects)

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

- 1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities,** as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- 4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontractor or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

# 6. <u>CLEAN AIR AND WATER POLLUTION CONTROL</u> (all contracts that exceed \$100,000)

Contractors and subcontractors agree:

- 1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- 2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- 3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- 4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

# 7. <u>CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS</u> (all contracts that exceed \$100,000)

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in

excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

#### 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

#### 4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

### 8. <u>CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)</u> (all contracts that exceed \$25,000)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

#### 9. <u>DISADVANTAGED BUSINESS ENTERPRISES</u> (all AIP-funded projects)

Contract Assurance (49 CFR § 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (49 CFR §26.29)**- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame

may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

### 10. <u>FEDERAL FAIR LABOR STANDARDS ACT</u> (FEDERAL MINIMUM WAGE) (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

## 11. <u>LOBBYING AND INFLUENCING FEDERAL EMPLOYEES</u> (all AIP-funded projects)

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### 12. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

#### 13. <u>RIGHTS TO INVENTIONS</u> (all AIP-funded projects)

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

#### 14. <u>TERMINATION OF CONTRACT</u> (contracts that exceed \$10,000)

- 1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- 2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- 3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- 4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed

to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

5. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### 15. TRADE RESTRICTION CLAUSE (all AIP-funded projects)

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

#### **16.** <u>TEXTING WHEN DRIVING</u> (all contracts)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.



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

#### **EVALUATION COMMITTEE SCORE SUMMARY**

#### SOLICITATION# 2021-1335R ON CALL CONSULTANT SERVICES - STRATEGIC PLANNING & VISIONING

	ALVIDREZ ARCHITECTURE	ASAKURA ROBINSON	DOVER, KOHL & PARTNERS	LAKE_FLATO	мусотоо	QUANTUM	SITES SOUTHWEST
Rater #1	82	86	98	84	72	84	94
Rater #2	67	84	78	92	95	77	69
Rater #3	74	83	74	91	96	75	67
Total Score	223	253	250	267	263	236	230

THE STATE OF TEXAS )	ON-CALL
)	AGREEMENT FOR
COUNTY OF EL PASO )	PROFESSIONAL SERVICES

This Agreement is made this \_\_\_ day of \_\_\_\_\_, 2021 by and between the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the "Owner", and LAKE FLATO ARCHITECTS, INC., a Texas Corporation, hereinafter referred to as the "Consultant".

WHEREAS, the Owner intends to engage the Consultant to perform professional civil engineering services on a task order basis through the use of task orders referencing this Agreement, the scope of which is further described in **Attachment "A"**; and

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

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

#### ARTICLE I ATTACHMENTS

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

Attachment "A"	Scope of Services and Project Budget
Attachment "B"	Consultant's Fee Proposal and Hourly Rates
Attachment "C"	Consultant's Basic and Additional Services
Attachment "D"	Payment and Deliverable Schedules
Attachment "E"	Insurance Certificate
Attachment "F"	Federal Aviation Administration contract provisions for Airport
	Improvement Program Projects

#### ARTICLE II PROJECT

- 2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform oncall professional services on a Task Order basis. Each individual Task Order will identify the Project and the total compensation due to each Project. The Task Order for each Project shall include the Scope of Services described in **Attachment "A"**.
- 2.2 For each Project, the Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.

- 2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.
- 2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.
- 2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working days time period.

#### ARTICLE III CONSULTANT FEES AND PROJECT BUDGET

**3.1 PAYMENT TO CONSULTANT.** The Owner shall pay to the Consultant an amount not to exceed **Two Hundred Thousand AND NO/00 DOLLARS** (\$200,000.00) for all basic services and reimbursables performed pursuant to this Agreement.

No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement.

The City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects.

In addition, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00) must have prior approval by City Council through written amendment to this Agreement.

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

Payments to the Consultant shall be made pursuant to **Attachment "D"**.

- **3.2 CONSULTANT'S SERVICES.** The Basic Services and Additional Services, if any, to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C".**
- 3.3 CONSULTANT'S INVOICES. For each Project, the Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in Attachment "D". Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety (90) days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.
  - **3.3.1** Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.
  - **3.3.2** The Owner agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.
- **3.4 PROJECT CONSTRUCTION BUDGET.** The Consultant acknowledges that the construction budget and a construction time for each Project will be identified in each Task Order.
- 3.5 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

### ARTICLE IV PERIOD OF SERVICE AND TERMINATION

- **4.1 PERIOD OF SERVICE.** The term of this Agreement shall be for a period not to exceed **two (2) years** from the date first shown above. The services called for by each Task Order shall begin upon the issuance of a Notice to Proceed from the City Engineer and shall continue through the completion of the construction of the Project, including any required extensions beyond the contract time for construction of the Project, as may be directed by the Owner.
- **4.2 SUSPENSION.** Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of

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

- **4.3 TERMINATION.** This Agreement may be terminated as provided herein.
  - **4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.
  - **4.3.2 TERMINATION BY EITHER PARTY.** It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.
  - **4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

### ARTICLE V INSURANCE AND INDEMNIFICATION

- **5.1 INSURANCE.** Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.
  - **5.1.1 WORKERS' COMPENSATION INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

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

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

#### a) **COMMERCIAL GENERAL LIABILITY**

\$1,000,000.00 Per Occurrence \$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.

**General Aggregate** \$1,000,000.00 \$1,000,000.00 per occurrence

#### b) <u>AUTOMOBILE LIABILITY</u>

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

**5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the

benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) on a claims made basis.

- **5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.
- **5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.
- **5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate.

Further, all polices shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

5.2 INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

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

**5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS.** Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence,

professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident.

#### ARTICLE VI FEDERAL AND STATE PROVISIONS

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

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

- --The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.
- --The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.
- --The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment "F".
- -- The Texas Department of Transportation through an Agreement with the Owner.

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

**6.1.1 CONTRACT ASSURANCE**. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this

contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

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

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

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

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

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

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

(1) **Compliance with Regulations**: Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations),

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

#### ARTICLE VII GENERAL PROVISIONS

**7.1 CONTRACT TIME.** Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment "D"**. It is acknowledged that the Consultant does not have

control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in **Attachment "D"**.

**7.2 OPINION OF PROBABLE COST.** As a design professional practicing in El Paso the Consultant is expected to be familiar with the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The cost opinions of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within **ten percent** (10%) of the bid for the base bid item expected from the lowest responsible bidder.

The Consultant's final cost opinions for the construction of the Project, shall take into account labor costs which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Consultant in compiling a final cost opinions for the Project.

If the Consultant's most recent cost opinion for any construction contract is in excess of the Project construction budget, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Consultant without further compensation.

As noted herein, if all responsible bids exceed the final cost opinion by more than **ten percent** (10%), the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

- 7.3 CONSULTANT'S QUALITY OF WORK. The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant's services shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the Project and in accordance with the time periods established in Attachment "D" and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner.
- **7.4 COPYRIGHT AND REPRODUCTION RIGHTS.** Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common

law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

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

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

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

- **7.6 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.
- **7.7 VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.
- **7.8 GOVERNING LAW.** The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

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- **7.9 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.
- **7.10 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.
- **7.11 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner: The City of El Paso

Attn: City Manager P.O. Box 1890

El Paso, Texas 79950-1890

With a Copy to: The City of El Paso

Attn: City Engineer P.O. Box 1890

El Paso, Texas 79950-1890

To the Consultant: David Lake

Partner Lake Flato Architects

311 3<sup>rd</sup> St.

San Antonio, TX 78205

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

- **7.12 CONFLICTING PROVISIONS.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.
- **7.13 ENTIRE AGREEMENT.** This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.
- **7.14 TEXAS GOVERNMENT CODE**. In accordance to Chapter 2274 of the Texas Government Code, as amended from time to time, the Consultant represents and warrants to the Owner the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

(Signatures on following page)

#### WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

	CITY OF EL PASO:
	Tomás González City Manager
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
	Jerry DeMuro/for
Omar A. De La Rosa Assistant City Attorney	Samuel Rodriguez, P.E., City Engineer Capital Improvement Department
THE STATE OF TEXAS \$ \$ COUNTY OF EL PASO \$	knowledgment)
This instrument was acknowledged	d before me on this day of, 2021,
by Tomás González, as City Manager of	the City of El Paso, Texas.
	Notary Public, State of Texas
My commission expires:	
(Signatures co	ontinue on following page)

CONSULTANT:

LAKE FLATO ARCHITECTS

By: David Lake

Title: Partner Lake Flato Architects

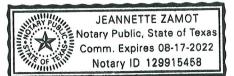
(Acknowledgment)

THE STATE OF TEXAS

§

COUNTY OF EL PASO

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_\_\_, 2021, by David Lake, as Partner of Lake Flato Architects..



Notary Public, State of Texas

My commission expires:

08-17-2022

# ATTACHMENT "A" SCOPE OF SERVICES

# Attachment A Scope of Work

The contracts will be used for miscellaneous assignments on an on call basis for urban design strategic planning and visioning, Services are to include the following

- Design work/plans at urban and architectural scales
- Conceptual development of site and area transformations, wayfinding, and identity branding.
- Engaging and facilitating city and community leaders in developing strategic visions and action plans for targeted areas of redevelopment, new, or infill development at various scales that align with the City's strategic plan and vision, including catalyst projects that create unique experiences.
- Designing and managing high-level, complex planning processes and programs to achieve progressive, dynamic, and interconnected systems.
- Developing methods to co-create and co-design, stakeholder engagement methods to realize short-term and/or and long-range planning and organizational goals, objectives, strategies, catalyst projects and action plans.
- Development and implementation of community, city- or region-wide, and/or City leadership planning initiatives
- Synthesize complex data, opinions, and ideas.

Work products and deliverable will be identified on a task order basis.

# ATTACHMENT "B" CONSULTANT'S FEE PROPOSAL AND HOURLY RATES

### LAKE|FLATO HOURLY RATES

#### Lake | Flato's 2021 hourly billing rates (updated annually)

Principal	\$450
Partner I	\$350
Partner II	\$250
Associate Partner	\$225
Associate	\$200
Project Architect	\$180
Project Director	\$160
Project Designer	\$140
Designer	\$115
Intern	\$75

### ATTACHMENT "C" CONSULTANT'S BASIC AND ADDITIONAL SERVICES

Each individual Task Order will identify the "**Project**", and the Consultant shall provide the Basic and Additional Services as noted herein.

#### **BASIC SERVICES OF THE CONSULTANT**

#### **GENERAL**

- 1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated.
- 2. The Consultant shall comply with the City of El Paso Engineering and Construction Management Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the design phases of this Agreement.
- 3. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.
- 4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

#### **REPORT PHASE**

- 1. Upon receipt of the Owner's written authorization to proceed with the **Report Phase**, the Consultant shall:
  - **a.** Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.
  - **b.** Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.
  - **c.** (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory testing, and (d) Inspection or other special consultation; (2) Act as the Owner's representative in connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

### ATTACHMENT "C" CONSULTANT'S BASIC AND ADDITIONAL SERVICES

- **d.** Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant's recommendations.
- **e.** As per Attachment "D", furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.
- 2. Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- As identified in the Scope of Work in Attachment "A", the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

#### PHASE I - PRELIMINARY DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Consultant shall do the following separately for each construction contract:

- 1. Consult with the Owner to determine the Owner's requirements for the Project.
- 2. Provide at the Consultant's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the

Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

- 3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.
- **4.** Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.
- 5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.
- 6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.
- **8.** Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.
- 9. As per **Attachment "D"**, furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

## PHASE II - PRE-FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Pre-Final Design Phase, the Consultant shall do the following separately <u>for each construction contract:</u>

- 1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant's assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.
- 2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the "Drawings," to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called "Specifications." These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.
- **3.** Advise the Owner of any adjustment to the Consultant's previous opinion of probable construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant's cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor's method of pricing and that the Consultant's opinion of probable construction costs are made on the basis of professional judgment and experience. The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.
- **4.** Prepare proposal forms.
- 5. As per **Attachment "D"**, furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not

approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

## PHASE III - FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Final Design Phase, the Consultant shall do the following separately for each construction contract:

- 1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.
- 2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility Consultant comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.
- 3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.
- **4. As per Attachment "D"**, furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.
- 5. **As per Attachment "D"**, furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.
- **6.** Additional copies of the drawings and specifications beyond those identified in **Attachment "D"**, required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

#### **BIDDING PHASE**

Upon receipt of Owner's written request, the Consultant shall provide any of the following services during the Bidding Phase:

- 1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.
- 2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.
- **3.** Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.
- 4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment "D", deliver copies of all addenda to the Owner for appropriate action.
- As identified in Attachment "A", assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.
- 6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

## **CONSTRUCTION PHASE**

At Owner's request, the Consultant shall provide any of the following services associated with the Construction Phase:

- 1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.
- 2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with

such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

- 3. Unless otherwise stipulated in Attachment "A", Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.
- Visit each construction site at least once each week or more frequently, if necessary, to 4. observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

- 5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. Such review must be complete within ten City working days following receipt of submittal documents. The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.
- 6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner's approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract

documents, subject to the Owner's interpretation of such terms and conditions. If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.

- Passed on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.
- **8.** Conduct with the Owner and construction contractor no more **than two brief preliminary inspections**, at times requested by the construction contractor to determine if the Project is ready for final inspection.
- 9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The "punch list" shall be furnished to the construction contractor and the Owner within two City working days after the final inspection.
- 10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the final inspection.
- 11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.
- 12. Furnish the Owner one set of reproducible (**D format**) "record" drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints,

drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format.

- **13.** Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.
- 14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.
- **15.** Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.
- 16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.
- 17. Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.
- **18**. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.
- **19.** Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.
- **20.** Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.
- 21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.
- 22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.
- 23. Provide additional or extended services during construction made necessary by: a) work damaged by fire or other cause during construction; b) prolongation of the construction contract time by more than **twenty-five percent** provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Consultant; c) Acceleration of the work schedule involving services beyond normal city working hours; or d) the

construction contractor's default under the construction contract due to delinquency or insolvency.

- **24.** Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.
- 25. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

#### ADDITIONAL SERVICES OF THE CONSULTANT

#### **GENERAL**

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

- 1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.
- 2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner's scope or budget, except where the Consultant's preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant's final design cost opinions by ten percent or more.
- 3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.
- **4.** Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.
- 5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

## **RESIDENT PROJECT SERVICES**

- 1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.
- 2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.
- 3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

# ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

#### PAYMENT SCHEDULE

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

## **Fixed fee Payment to Consultant**

Report Phase	To be determined by Task Order
<b>Preliminary Design Phase</b>	To be determined by Task Order
<b>Pre-Final Design Phase</b>	To be determined by Task Order
Final Design Phase	To be determined by Task Order
<b>Bidding Phase</b>	To be determined by Task Order
<b>Construction Phase</b>	To be determined by Task Order

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant's proposal found in **Attachment "B"**. The time shown in **Attachment "B"** is an estimate. Should the services rendered during the bidding and construction phases exceed the estimated amount, written authorization will be required prior to rendering services. Written authorization shall be only by contract amendment in accordance with the contract provisions. For contracts with a total value less than Fifty Thousand and No/100 Dollars (\$50,000), the parties agree that at no time may the amount of the compensation under this contract exceed Fifty Thousand and No/100 Dollars (\$50,000) except by execution of an amendment to this Agreement.

Payment for each Phase shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and a Consulting Summary and Progress Report and the Owner's written approval.

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

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

**Receipts:** Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable*.

No single invoice may include items for both August and September of any given year. The Owner's fiscal year begins on September 1<sup>st</sup> of each year and ends on August 31<sup>st</sup> of each year. Consultant's invoices must be separated into items that end August 31<sup>st</sup> and those that begin on Septembers 1<sup>st</sup> of any given year, to coincide with Owner's fiscal year.

## ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

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

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

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

#### **DELIVERABLE SCHEDULE**

#### REPORT PHASE

The services called for in the Report Phase of this Agreement shall be completed and **5 copies** of the Preliminary Study and Report shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE I—PRELIMINARY DESIGN PHASE

The services called for in **Phase I** of this Agreement shall be completed and **10 copies** of any required documents and opinion of probable construction costs shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. If Owner does not approve the preliminary design documents, the Consultant shall furnish **five copies** of the resubmitted design documents.

## PHASE II—PRE-FINAL DESIGN PHASE

The services called for in **Phase II** of this Agreement shall be completed and **10 copies** the required documents and services shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE III—FINAL DESIGN PHASE

The services called for in **Phase III** of this Agreement shall be completed and **10 copies** of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. After review, the Consultant shall submit to Owner **3 copies** of the final revised design documents and specifications for final check. Upon the approval of the final design documents, the Consultant shall furnish **10 copies** of the final design documents and specifications for bidding to the Owner within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

# ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

## PHASE IV—BIDDING PHASE

Provide services as authorized by Owner during the bid phase as described in Attachment "C" and submit **1 copy** of all addenda to the Owner for appropriate action within **2 consecutive calendar days.** 

## PHASE V - CONSTRUCTION PHASE

Provide services as authorized by Owner during construction phase as described in Attachment "C" and submit one set of Mylar and one set of electronic media format copies of all record drawings to the Owner within sixty days from the date of substantial completion.

## ATTACHMENT "E"

Client#: 158318 LAKEFLAT

## ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/11/2021

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT Erica Eiga			
USI Southwest		13-490-4700		
9811 Katy Freeway, Suite 500 Houston, TX 77024 713 490-4600	E-MAIL ADDRESS: erica.eige@usi.com			
	INSURER(S) AFFORDING COVERAGE	NAIC#		
	INSURER A: Travelers Indemnity Co of America	25666		
Lake Flato Architects, Inc. 311 Third Street, Suite 200 San Antonio, TX 78205	INSURER B: Travelers Property Cas. Co. of America	25674		
	INSURER C : Charter Oak Fire Insurance Company	25615		
	INSURER D : Berkley Insurance Company	32603		
	INSURER E :			
	INSURER F:			

COV	ER/	AGES	(	CERTIFIC	ATE	NUMBER:			REVISION NUMBER:	
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		CLAIMS	-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
			<u></u>						MED EXP (Any one person)	\$5,000
									PERSONAL & ADV INJURY	\$1,000,000
	GEN	'L AGGREGA	TE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$2,000,000

											PERSONAL & ADV	INJURY	\$1,000,000
		GEN	N'L AGGREGATE LI	MIT A	APPLIE	ES PER:					GENERAL AGGREG	SATE	\$2,000,000
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			OTHER:										\$
I	3	AUT	TOMOBILE LIABILI	TY				BA3R6668162147G	01/15/2021	01/15/2022	COMBINED SINGLE (Ea accident)	LIMIT	\$1,000,000
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**Project 1: Strategic Planning & Visioning** 

Claims Made &

Reported Pol

The Auto Liability and General Liability policies include an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder, only when there is a written contract or written agreement between the named insured and the certificate holder and with regard to work performed (See Attached Descriptions)

Retro:1/2/1988

CERTIFICATE HOLDER	CANCELLATION
City of El Paso Attn: Sam Rodriguez, P.E City Engineer Capital Improvement Dept.	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
218 N. Campbell	AUTHORIZED REPRESENTATIVE
El Paso, TX 79901	Jemes Ce. Jennevar

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\$5,000,000 annl aggr.

## ATTACHMENT "F"

#### **ATTACHMENT "F"**

## FEDERAL AVIATION ADMINISTRATION (FAA) CONTRACT PROVISIONS

In this Attachment "F", the term "Contractor" shall refer to the "Consultant", and the term "Airport Sponsor" shall refer to the "City".

If there are any conflicts between the terms and conditions of Attachment "F" and Article VI of the Agreement, the terms and conditions of Attachment "F" will prevail.

## A. GENERAL REQUIREMENT FOR CONTRACT

- 1. The contractor (including all subcontractors) are required to insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all subcontracts;
- 2. The contractor (or subcontractor) is required to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services;
- 3. The contractor is responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider; and
- 4. The contractor (or subcontractor) shall not modify the provisions.

Subject to the applicability criteria noted in the specific contract provisions, these contract provisions apply to all work performed on the contract.

## B. FAILURE TO COMPLY

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- 1. Withhold progress payments or final payment,
- 2. Terminate the contract,
- 3. Seek suspension/debarment, or
- 4. Any other action determined to be appropriate by the Airport Sponsor or the FAA.

## C. <u>CONTRACT PROVISIONS</u>

## 1. ACCESS TO RECORDS AND REPORTS (all AIP-funded projects)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized

representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after the final payment is made and all pending matters are closed.

2. <u>BREACH OF CONTRACT TERMS</u> (all contracts that exceed the simplified acquisition threshold as fixed at 41 USC 403(11). This threshold is presently set at \$100,000.)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. <u>BUY AMERICAN PREFERENCES</u> (all AIP-funded projects, if this professional services agreement includes any manufactured product as a deliverable.)

#### **BUY AMERICAN CERTIFICATION**

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

## **Type of Certification is based on Type of Project:**

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

#### \*\*\*\*

## **Certificate of Buy American Compliance for Total Facility**

(Buildings such as Terminal, SRE, ARFF, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
  - a. Only installing steel and manufactured products produced in the United States; or
  - b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic products
- 3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
  - 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.

- 4. To furnish US domestic product for any waiver request that the FAA rejects.
- 5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

## **Required Documentation**

**Type 3 Waiver -** The cost of components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

- a. Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature
Company Name	Title

\* \* \* \* \*

## **Certificate of Buy American Compliance for Manufactured Products**

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
  - a. Only installing steel and manufactured products produced in the United States, or;
  - b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
  - c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic product
- 3. To furnish US domestic product for any waiver request that the FAA rejects
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.

- 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver -** The cost of the item components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a. Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature
Company Name	Title

## 4. <u>GENERAL CIVIL RIGHTS PROVISIONS</u> (all contracts)

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- a. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

# 5. <u>CIVIL RIGHTS-TITLE IV COMPLIANCE WITH NONDISCRIMINATION</u> <u>REQUIREMENTS</u> (all AIP funded projects)

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

- 1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities,** as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- 4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontractor or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

# 6. <u>CLEAN AIR AND WATER POLLUTION CONTROL</u> (all contracts that exceed \$100,000)

Contractors and subcontractors agree:

- 1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- 2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- 3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- 4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

# 7. <u>CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS</u> (all contracts that exceed \$100,000)

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in

excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

## 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

#### 4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

# 8. <u>CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)</u> (all contracts that exceed \$25,000)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

## 9. <u>DISADVANTAGED BUSINESS ENTERPRISES</u> (all AIP-funded projects)

Contract Assurance (49 CFR § 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (49 CFR §26.29)**- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame

may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

# 10. <u>FEDERAL FAIR LABOR STANDARDS ACT</u> (FEDERAL MINIMUM WAGE) (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

# 11. <u>LOBBYING AND INFLUENCING FEDERAL EMPLOYEES</u> (all AIP-funded projects)

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## 12. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

## 13. <u>RIGHTS TO INVENTIONS</u> (all AIP-funded projects)

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

## **TERMINATION OF CONTRACT** (contracts that exceed \$10,000)

- 1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- 2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- 3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- 4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed

to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

5. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

## 15. TRADE RESTRICTION CLAUSE (all AIP-funded projects)

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

## **16.** <u>TEXTING WHEN DRIVING</u> (all contracts)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

THE STATE OF TEXAS )	ON-CALL
)	AGREEMENT FOR
COUNTY OF EL PASO )	PROFESSIONAL SERVICES

This Agreement is made this 2 day of 0000, 2021 by and between the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the "Owner", and MYCOTOO INC., a California, hereinafter referred to as the "Consultant".

WHEREAS, the Owner intends to engage the Consultant to perform professional civil engineering services on a task order basis through the use of task orders referencing this Agreement, the scope of which is further described in Attachment "A"; and

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

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

## ARTICLE I ATTACHMENTS

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

Attachment "A"	Scope of Services and Project Budget
Attachment "B"	Consultant's Fee Proposal and Hourly Rates
Attachment "C"	Consultant's Basic and Additional Services
Attachment "D"	Payment and Deliverable Schedules
Attachment "E"	Insurance Certificate
Attachment "F"	Federal Aviation Administration contract provisions for Airport
	Improvement Program Projects

## ARTICLE II PROJECT

- 2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform oncall professional services on a Task Order basis. Each individual Task Order will identify the Project and the total compensation due to each Project. The Task Order for each Project shall include the Scope of Services described in **Attachment "A"**.
- 2.2 For each Project, the Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.

- 2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.
- 2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.
- 2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working days time period.

## ARTICLE III CONSULTANT FEES AND PROJECT BUDGET

3.1 PAYMENT TO CONSULTANT. The Owner shall pay to the Consultant an amount not to exceed Two Hundred Thousand AND NO/00 DOLLARS (\$200,000.00) for all basic services and reimbursables performed pursuant to this Agreement.

No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement.

The City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects.

In addition, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such Additional Services as also enumerated within Attachment "C" in an amount not to exceed FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) must have prior approval by City Council through written amendment to this Agreement.

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

Payments to the Consultant shall be made pursuant to Attachment "D".

- 3.2 CONSULTANT'S SERVICES. The Basic Services and Additional Services, if any, to be provided by the Consultant for this Agreement are attached hereto as Attachment "C".
- 3.3 CONSULTANT'S INVOICES. For each Project, the Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in Attachment "D". Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety (90) days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.
  - 3.3.1 Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.
  - 3.3.2 The Owner agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.
- **3.4 PROJECT CONSTRUCTION BUDGET.** The Consultant acknowledges that the construction budget and a construction time for each Project will be identified in each Task Order.
- 3.5 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

# ARTICLE IV PERIOD OF SERVICE AND TERMINATION

- **4.1 PERIOD OF SERVICE.** The term of this Agreement shall be for a period not to exceed **two (2) years** from the date first shown above. The services called for by each Task Order shall begin upon the issuance of a Notice to Proceed from the City Engineer and shall continue through the completion of the construction of the Project, including any required extensions beyond the contract time for construction of the Project, as may be directed by the Owner.
- **4.2** SUSPENSION. Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of

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

- **4.3 TERMINATION.** This Agreement may be terminated as provided herein.
  - **4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.
  - 4.3.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of seven (7) consecutive calendar days to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.
  - **4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

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## ARTICLE V INSURANCE AND INDEMNIFICATION

- **5.1 INSURANCE.** Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.
  - **5.1.1 WORKERS' COMPENSATION INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

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

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

#### a) **COMMERCIAL GENERAL LIABILITY**

\$1,000,000.00 Per Occurrence \$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.

**General Aggregate** \$1,000,000.00 \$1,000,000.00 per occurrence

#### b) **AUTOMOBILE LIABILITY**

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

**5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the

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benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) on a claims made basis.

- **5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.
- **5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.
- **5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate.

Further, all polices shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

5.2 INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

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

**5.2.1** CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS. Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence,

professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident.

## ARTICLE VI FEDERAL AND STATE PROVISIONS

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

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

- --The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.
- -- The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.
- --The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment "F".
- -- The Texas Department of Transportation through an Agreement with the Owner.

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

**6.1.1 CONTRACT ASSURANCE**. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this

contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

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

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

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

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

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

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

(1) Compliance with Regulations: Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations),

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

#### ARTICLE VII GENERAL PROVISIONS

7.1 CONTRACT TIME. Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within Attachment "D". It is acknowledged that the Consultant does not have

control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in **Attachment "D"**.

7.2 OPINION OF PROBABLE COST. As a design professional practicing in El Paso the Consultant is expected to be familiar with the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The cost opinions of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within ten percent (10%) of the bid for the base bid item expected from the lowest responsible bidder.

The Consultant's final cost opinions for the construction of the Project, shall take into account labor costs which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Consultant in compiling a final cost opinions for the Project.

If the Consultant's most recent cost opinion for any construction contract is in excess of the Project construction budget, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Consultant without further compensation.

As noted herein, if all responsible bids exceed the final cost opinion by more than **ten percent** (10%), the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

- 7.3 CONSULTANT'S QUALITY OF WORK. The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant's services shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the Project and in accordance with the time periods established in Attachment "D" and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner.
- 7.4 COPYRIGHT AND REPRODUCTION RIGHTS. Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common

law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

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

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

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

- **7.6 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.
- 7.7 VENUE. For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.
- **7.8 GOVERNING LAW.** The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

- **7.9 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.
- **7.10 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.
- **7.11 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner:

The City of El Paso Attn: City Manager P.O. Box 1890

El Paso, Texas 79950-1890

With a Copy to:

The City of El Paso Attn: City Engineer P.O. Box 1890

El Paso, Texas 79950-1890

To the Consultant:

Seth Cover, CEO Mycotoo Inc.Partner

776 E. Green St. Suite #200

Pasadena, CA 91101

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

- **7.12 CONFLICTING PROVISIONS.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.
- **7.13 ENTIRE AGREEMENT.** This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

(Signatures on following page)

### WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

	CITY OF EL PASO:
	Tomás González City Manager
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Omar A. De La Rosa Assistant City Attorney	Samuel Rodriguez, P.E., City Engineer Capital Improvement Department
THE STATE OF TEXAS §  S  COUNTY OF EL PASO §	.cknowledgment)
This instrument was acknowledge	ed before me on this day of, 2021,
by Tomás González, as City Manager of	of the City of El Paso, Texas.
	Notary Public, State of Texas
My commission expires:	

(Signatures continue on following page)

	Title: CEO	
	(Acknowledgment)	
THE STATE OF TEXAS COUNTY OF EL PASO	§ § §	
This instrument was aby Seth Cover, as CEO of M	acknowledged before me on this day of	, 2021,
My commission expires:	Notary Public, State of Texas	

CONSULTANT: MYCOTOO INC

See attached Notarial Certificate

### **ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California County ofLos	s Angeles	)	
On 10/29/2021	before me,		ore Notary Public me and title of the officer)
personally appeared _	Seth Cover		he person(s) whose name(s) is/are
subscribed to the within his/her/their authorized	in instrument and acknow d capacity(ies), and that t	vledged to me th by his/her/their s	hat he/she/they executed the same in signature(s) on the instrument the ed, executed the instrument.
I certify under PENAL paragraph is true and		the laws of the	State of California that the foregoing
WITNESS my hand ar	nd official seal.		MIESHA L. MOORE Notary Public - California Los Angeles County Commission # 2365943
Signature it A & & M.	o d Warro	(Soal)	My Comm. Expires Jul 16, 2025

# ATTACHMENT "A" SCOPE OF SERVICES

# Attachment A Scope of Work

The contracts will be used for miscellaneous assignments on an on call basis for urban design strategic planning and visioning, Services are to include the following

- Design work/plans at urban and architectural scales
- Conceptual development of site and area transformations, wayfinding, and identity branding.
- Engaging and facilitating city and community leaders in developing strategic visions and action plans for targeted areas of redevelopment, new, or infill development at various scales that align with the City's strategic plan and vision, including catalyst projects that create unique experiences.
- Designing and managing high-level, complex planning processes and programs to achieve progressive, dynamic, and interconnected systems.
- Developing methods to co-create and co-design, stakeholder engagement methods to realize short-term and/or and long-range planning and organizational goals, objectives, strategies, catalyst projects and action plans.
- Development and implementation of community, city- or region-wide, and/or City leadership planning initiatives
- Synthesize complex data, opinions, and ideas.

Work products and deliverable will be identified on a task order basis.



# ATTACHMENT "B" CONSULTANT'S FEE PROPOSAL AND HOURLY RATES



POSITIONS:	HOURLY RATE:
	4075

POSITIONS:	HOURLY KATE:
Executive Producer	\$375
Executive Creative Director	\$375
Sr. Creative Director	\$250
Sr. Show Producer	\$225
Sr. Art Director	\$225
Sr. Technical Director	\$225
Sr. Architect	\$225
Sr. Engineer	\$225
Project Engineer	\$188
Master Planner/ Project Architect	\$188
Sr. Area Development Designer	\$225
Sr. Graphics Designer	\$138
Interiors Designer Manager	\$125
IP Manager	\$82
Design Manager	\$150
Facility Design Manager	\$188
Project Manager	\$163
Production Manager	\$100
Creative Director	\$150
Lead Technical Director	\$163
Area Technical Directors	\$100
(Audio and/or Lighting)	\$100
Ride Systems Manager	\$100
Art Director	\$188
Show Designers	\$163
Graphic Designer	\$125
Project Coordinator	\$75
Job Captain	\$125
Show Set Designer	\$163
Show Set Coordinator	\$75
Model Maker	\$100
Production Assistant	\$32
Dramaturge	\$50
Average Hourly Rate:	\$155



### **ITEMIZATION OF RATE BREAKDOWN**

Average Employee Fringe = 22%

Administrative markup for corporate clients = 20%

Administrative markup for municipalities = 15%

If you require further information, please let us know what that is, and we will be happy to provide you with it.

Each individual Task Order will identify the "Project", and the Consultant shall provide the Basic and Additional Services as noted herein.

#### **BASIC SERVICES OF THE CONSULTANT**

#### **GENERAL**

- 1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated.
- 2. The Consultant shall comply with the City of El Paso Engineering and Construction Management Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the design phases of this Agreement.
- 3. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.
- 4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

#### REPORT PHASE

- 1. Upon receipt of the Owner's written authorization to proceed with the **Report Phase**, the Consultant shall:
  - **a.** Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.
  - **b.** Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.
  - c. (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory testing, and (d) Inspection or other special consultation; (2) Act as the Owner's representative in

connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

- d. Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant's recommendations.
- e. As per Attachment "D", furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.
- 2. Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 3. As identified in the Scope of Work in Attachment "A", the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

#### PHASE I - PRELIMINARY DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Consultant shall do the following separately for each construction contract:

1. Consult with the Owner to determine the Owner's requirements for the Project.

- 2. Provide at the Consultant's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.
- 3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.
- 4. Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.
- 5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.
- Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.
- 8. Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.
- 9. As per Attachment "D", furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above

preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

#### PHASE II - PRE-FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Pre-Final Design Phase, the Consultant shall do the following separately <u>for each construction contract:</u>

- 1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant's assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.
- 2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the "Drawings," to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called "Specifications." These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.
- Advise the Owner of any adjustment to the Consultant's previous opinion of probable 3. construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant's cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor's method of pricing and that the Consultant's opinion of probable construction costs are made on the basis of professional judgment and experience.

The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.

- 4. Prepare proposal forms.
- 5. As per Attachment "D", furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

#### PHASE III - FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Final Design Phase, the Consultant shall do the following separately for each construction contract:

- 1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.
- 2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility Consultant comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.
- 3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.
- 4. As per Attachment "D", furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.
- 5. As per Attachment "D", furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.
- 6. Additional copies of the drawings and specifications beyond those identified in Attachment "D", required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

#### **BIDDING PHASE**

Upon receipt of Owner's written request, the Consultant shall provide any of the following services during the Bidding Phase:

- 1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.
- 2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.
- 3. Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.
- 4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment "D", deliver copies of all addenda to the Owner for appropriate action.
- 5. As identified in Attachment "A", assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.
- 6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

#### **CONSTRUCTION PHASE**

At Owner's request, the Consultant shall provide any of the following services associated with the Construction Phase:

- 1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.
- 2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with

such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

- 3. Unless otherwise stipulated in Attachment "A", Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.
- 4. Visit each construction site at least once each week or more frequently, if necessary, to observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

- Serview shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. Such review must be complete within ten City working days following receipt of submittal documents. The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.
- 6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner's approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed

and shall act as interpreter of the terms and conditions of the construction contract documents, subject to the Owner's interpretation of such terms and conditions. If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.

- 7. Based on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.
- 8. Conduct with the Owner and construction contractor no more than two brief preliminary inspections, at times requested by the construction contractor to determine if the Project is ready for final inspection.
- 9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The "punch list" shall be furnished to the construction contractor and the Owner within two City working days after the final inspection.
- 10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the final inspection.
- 11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.

- 12. Furnish the Owner one set of reproducible (**D format**) "record" drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints, drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format.
- 13. Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.
- 14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.
- 15. Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.
- 16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.
- 17. Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.
- 18. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.
- 19. Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.
- **20.** Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.
- 21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.
- 22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.
- 23. Provide additional or extended services during construction made necessary by: a) work damaged by fire or other cause during construction; b) prolongation of the construction contract time by more than twenty-five percent provided that such prolongation is not

caused by errors, negligence, or other fault on the part of the Consultant; c) Acceleration of the work schedule involving services beyond normal city working hours; or d) the construction contractor's default under the construction contract due to delinquency or insolvency.

- 24. Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.
- 25. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

#### ADDITIONAL SERVICES OF THE CONSULTANT

#### **GENERAL**

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

- 1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.
- 2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner's scope or budget, except where the Consultant's preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant's final design cost opinions by ten percent or more.
- 3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.
- 4. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.

5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

#### RESIDENT PROJECT SERVICES

- If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.
- 2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.
- 3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

### ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

#### PAYMENT SCHEDULE

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

#### Fixed fee Payment to Consultant

Report Phase	To be determined by Task Order
<b>Preliminary Design Phase</b>	To be determined by Task Order
Pre-Final Design Phase	To be determined by Task Order
Final Design Phase	To be determined by Task Order
<b>Bidding Phase</b>	To be determined by Task Order
<b>Construction Phase</b>	To be determined by Task Order

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant's proposal found in **Attachment "B"**. The time shown in **Attachment "B"** is an estimate. Should the services rendered during the bidding and construction phases exceed the estimated amount, written authorization will be required prior to rendering services. Written authorization shall be only by contract amendment in accordance with the contract provisions. For contracts with a total value less than Fifty Thousand and No/100 Dollars (\$50,000), the parties agree that at no time may the amount of the compensation under this contract exceed Fifty Thousand and No/100 Dollars (\$50,000) except by execution of an amendment to this Agreement.

Payment for each Phase shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and a Consulting Summary and Progress Report and the Owner's written approval.

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

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

Receipts: Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable*.

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

### ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

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

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

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

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

#### DELIVERABLE SCHEDULE

#### REPORT PHASE

The services called for in the Report Phase of this Agreement shall be completed and **5 copies** of the Preliminary Study and Report shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE I—PRELIMINARY DESIGN PHASE

The services called for in **Phase I** of this Agreement shall be completed and **10 copies** of any required documents and opinion of probable construction costs shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. If Owner does not approve the preliminary design documents, the Consultant shall furnish **five copies** of the resubmitted design documents.

#### PHASE II—PRE-FINAL DESIGN PHASE

The services called for in **Phase II** of this Agreement shall be completed and **10 copies** the required documents and services shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE III—FINAL DESIGN PHASE

The services called for in **Phase III** of this Agreement shall be completed and **10 copies** of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. After review, the Consultant shall submit to Owner **3 copies** of the final revised design documents and specifications for final check. Upon the approval of the final design documents, the Consultant shall furnish **10 copies** of the final design documents and

## ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

specifications for bidding to the Owner within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE IV—BIDDING PHASE

Provide services as authorized by Owner during the bid phase as described in Attachment "C" and submit 1 copy of all addenda to the Owner for appropriate action within 2 consecutive calendar days.

#### PHASE V - CONSTRUCTION PHASE

Provide services as authorized by Owner during construction phase as described in Attachment "C" and submit one set of Mylar and one set of electronic media format copies of all record drawings to the Owner within sixty days from the date of substantial completion.

### **ATTACHMENT "E"**



#### CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 8/10/2021

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).

PRODUCER		CONTACT NAME: CSERVICE			
Gaspar Insurance Services, Inc. 23161 Ventura Blvd, Suite 100		PHONE (A/C, No, Ext): 8183023060	FAX (A/C, No):		
Woodland Hills CA 91364		E-MAIL ADDRESS: cservice@gasparinsurance.com			
		INSURER(S) AFFORDING COVERAGE	NAIC#		
10-10-10-10-10-10-10-10-10-10-10-10-10-1		INSURER A: New York Marine And General In	16608		
INSURED Mycotoo, Inc	MYCOINC-01	INSURER B : Property & Casualty Insurance	34690		
776 E Green St Ste 200		INSURER c : Gemini Insurance Company	10833		
Pasadena CA 91101		INSURER D:			
		INSURER E:			
		INSURER F:			
COVERAGES	CERTIFICATE NUMBER: 1041071684	REVISION NU	MRFR.		

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS

CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

ISR TR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMIT	S
A	X COMMERCIAL GENERAL LIABILITY  CLAIMS-MADE X OCCUR	Υ	Υ	PK202100017066	4/14/2021	4/14/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000 \$ 100,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 2,000,000
-	X POLICY PRO- JECT LOC						PRODUCTS - COMP/OP AGG	\$ 2,000,000
	OTHER:							\$
A	AUTOMOBILE LIABILITY	-		PK202100017066	4/14/2021	4/14/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	ANY AUTO						BODILY INJURY (Per person)	\$
	OWNED SCHEDULED AUTOS						BODILY INJURY (Per accident)	\$
	X HIRED X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	\$
								\$
١.	UMBRELLA LIAB X OCCUR			UM202100008158	4/14/2021	4/14/2022	EACH OCCURRENCE	\$ 5,000,000
	X EXCESS LIAB CLAIMS-MADE						AGGREGATE	\$ 5,000,000
	DED RETENTION\$							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N	93		72WECAC9LGA	2/25/2021	2/25/2022	X PER OTH- STATUTE ER	
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?	N/A					E.L. EACH ACCIDENT	\$ 1,000,000
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
2	Professional Liability			VNPL007571	5/13/2021	5/13/2022	Each Occurrence General Aggregate	1,000,000 1,000,000

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

This policy includes a Blanket Additional Insured Endorsement – the certificate holder is an additional insured if required by written contract. Please refer to the attached endorsement.

Project: Solicitation #2021-1335R

On Call Consultant Services - Strategic Planning & Visioning

CERTIFICATE HOLDER	CANCELLATION
City of El Paso 218 N. Campbell	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
El Paso TX 79901	AUTHORIZED REPRESENTATIVE

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### ATTACHMENT "F"

#### ATTACHMENT "F"

#### FEDERAL AVIATION ADMINISTRATION (FAA) CONTRACT PROVISIONS

In this Attachment "F", the term "Contractor" shall refer to the "Consultant", and the term "Airport Sponsor" shall refer to the "City".

If there are any conflicts between the terms and conditions of Attachment "F" and Article VI of the Agreement, the terms and conditions of Attachment "F" will prevail.

#### A. GENERAL REQUIREMENT FOR CONTRACT

- 1. The contractor (including all subcontractors) are required to insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all subcontracts;
- 2. The contractor (or subcontractor) is required to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services;
- 3. The contractor is responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider; and
- 4. The contractor (or subcontractor) shall not modify the provisions.

Subject to the applicability criteria noted in the specific contract provisions, these contract provisions apply to all work performed on the contract.

#### B. FAILURE TO COMPLY

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- 1. Withhold progress payments or final payment,
- 2. Terminate the contract,
- 3. Seek suspension/debarment, or
- 4. Any other action determined to be appropriate by the Airport Sponsor or the FAA.

#### C. CONTRACT PROVISIONS

#### 1. ACCESS TO RECORDS AND REPORTS (all AIP-funded projects)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized

representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after the final payment is made and all pending matters are closed.

2. <u>BREACH OF CONTRACT TERMS</u> (all contracts that exceed the simplified acquisition threshold as fixed at 41 USC 403(11). This threshold is presently set at \$100,000.)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. <u>BUY AMERICAN PREFERENCES</u> (all AIP-funded projects, if this professional services agreement includes any manufactured product as a deliverable.)

#### **BUY AMERICAN CERTIFICATION**

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

#### Type of Certification is based on Type of Project:

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials
  Used on the Project (Non-building construction projects such as runway or roadway
  construction; or equipment acquisition projects) must be submitted.

#### \*\*\*\*

#### Certificate of Buy American Compliance for Total Facility

(Buildings such as Terminal, SRE, ARFF, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
  - a. Only installing steel and manufactured products produced in the United States; or
  - b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic products
- 3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
  - 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.

- 4. To furnish US domestic product for any waiver request that the FAA rejects.
- 5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver -** The cost of components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

- a. Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature	
Company Name	Title	

\* \* \* \* \*

#### Certificate of Buy American Compliance for Manufactured Products

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
  - a. Only installing steel and manufactured products produced in the United States, or;
  - b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
  - c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic product
- 3. To furnish US domestic product for any waiver request that the FAA rejects
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- ☐ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.

- 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver** - The cost of the item components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a. Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature	
C	TV41	
Company Name	Title	

### 4. GENERAL CIVIL RIGHTS PROVISIONS (all contracts)

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- a. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

# 5. <u>CIVIL RIGHTS-TITLE IV COMPLIANCE WITH NONDISCRIMINATION</u> <u>REQUIREMENTS</u> (all AIP funded projects)

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

- 1. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- 4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontractor or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## 6. <u>CLEAN AIR AND WATER POLLUTION CONTROL</u> (all contracts that exceed \$100,000)

Contractors and subcontractors agree:

- 1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- 2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- 3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- 4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

## 7. <u>CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS</u> (all contracts that exceed \$100,000)

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in

excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

### 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

### 4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

## 8. <u>CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)</u> (all contracts that exceed \$25,000)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

### 9. <u>DISADVANTAGED BUSINESS ENTERPRISES</u> (all AIP-funded projects)

Contract Assurance (49 CFR § 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (49 CFR §26.29)**- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame

may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

## 10. <u>FEDERAL FAIR LABOR STANDARDS ACT</u> (FEDERAL MINIMUM WAGE) (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

## 11. <u>LOBBYING AND INFLUENCING FEDERAL EMPLOYEES</u> (all AIP-funded projects)

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### 12. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities		
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration		

### 13. <u>RIGHTS TO INVENTIONS</u> (all AIP-funded projects)

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

### 14. TERMINATION OF CONTRACT (contracts that exceed \$10,000)

- 1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- 2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- 3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- 4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed

to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

5. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

### 15. TRADE RESTRICTION CLAUSE (all AIP-funded projects)

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

### 16. <u>TEXTING WHEN DRIVING</u> (all contracts)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.



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

### **EVALUATION COMMITTEE SCORE SUMMARY**

#### SOLICITATION# 2021-1335R ON CALL CONSULTANT SERVICES - SUSTAINABILITY & RESILIENCY PLANNING

	AECOM	ASAKURA ROBINSON	DOVER, KOHL & PARTNERS	QUANTUM	VERDACITY
Rater #1	94	93	88	89	
Rater #2	89	80	44	80	NON
Rater #3	88	54	30	67	RESPONSIVE
Total Score	271	227	162	236	

THE STATE OF TEXAS )	)	ON-CALL
)	)	AGREEMENT FOR
COUNTY OF EL PASO )	)	PROFESSIONAL SERVICES

This Agreement is made this \_\_\_ day of \_\_\_\_\_, 2021 by and between the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the "Owner", and AECOM Technical Services, Inc., a California Corporation, hereinafter referred to as the "Consultant".

WHEREAS, the Owner intends to engage the Consultant to perform professional civil engineering services on a task order basis through the use of task orders referencing this Agreement, the scope of which is further described in **Attachment "A"**; and

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

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

### ARTICLE I ATTACHMENTS

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

Attachment "A"	Scope of Services and Project Budget
Attachment "B"	Consultant's Fee Proposal and Hourly Rates
Attachment "C"	Consultant's Basic and Additional Services
Attachment "D"	Payment and Deliverable Schedules
Attachment "E"	Insurance Certificate
Attachment "F"	Federal Aviation Administration contract provisions for Airport
	Improvement Program Projects

### ARTICLE II PROJECT

- 2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform oncall professional services on a Task Order basis. Each individual Task Order will identify the Project and the total compensation due to each Project. The Task Order for each Project shall include the Scope of Services described in **Attachment "A"**.
- 2.2 For each Project, the Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.

- 2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.
- 2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.
- 2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working days time period.

### ARTICLE III CONSULTANT FEES AND PROJECT BUDGET

**3.1 PAYMENT TO CONSULTANT.** The Owner shall pay to the Consultant an amount not to exceed **Two Hundred Thousand AND NO/00 DOLLARS** (\$200,000.00) for all basic services and reimbursables performed pursuant to this Agreement.

No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement.

The City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects.

In addition, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00) must have prior approval by City Council through written amendment to this Agreement.

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

Payments to the Consultant shall be made pursuant to **Attachment "D"**.

- **3.2 CONSULTANT'S SERVICES.** The Basic Services and Additional Services, if any, to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C".**
- 3.3 CONSULTANT'S INVOICES. For each Project, the Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in Attachment "D". Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety (90) days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.
  - **3.3.1** Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.
  - **3.3.2** The Owner agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.
- **3.4 PROJECT CONSTRUCTION BUDGET.** The Consultant acknowledges that the construction budget and a construction time for each Project will be identified in each Task Order.
- **3.5 COSTS NOT ENUMERATED.** Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

## ARTICLE IV PERIOD OF SERVICE AND TERMINATION

- **4.1 PERIOD OF SERVICE.** The term of this Agreement shall be for a period not to exceed **two (2) years** from the date first shown above. The services called for by each Task Order shall begin upon the issuance of a Notice to Proceed from the City Engineer and shall continue through the completion of the construction of the Project, including any required extensions beyond the contract time for construction of the Project, as may be directed by the Owner.
- **4.2 SUSPENSION.** Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction

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

- **4.3 TERMINATION.** This Agreement may be terminated as provided herein.
  - **4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.
  - 4.3.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of seven (7) consecutive calendar days to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.
  - **4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

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### ARTICLE V INSURANCE AND INDEMNIFICATION

- **5.1 INSURANCE.** Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.
  - **5.1.1 WORKERS' COMPENSATION INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

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

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

### a) **COMMERCIAL GENERAL LIABILITY**

\$1,000,000.00 Per Occurrence \$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.

**General Aggregate** \$1,000,000.00 \$1,000,000.00 per occurrence

### b) <u>AUTOMOBILE LIABILITY</u>

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

**5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the

benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) on a claims made basis.

- **5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.
- **5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.
- **5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate.

Further, all polices shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

5.2 INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

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

**5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS.** Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence,

professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident.

### ARTICLE VI FEDERAL AND STATE PROVISIONS

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

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

- --The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.
- -- The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.
- --The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment "F".
- -- The Texas Department of Transportation through an Agreement with the Owner.

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

- **6.1.1 CONTRACT ASSURANCE**. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
  - **6.1.2 DBE GOOD FAITH EFFORTS.** The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal will be identified pursuant to the federal funding requirements for an individual task order established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this Agreement.

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

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

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

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

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

(1) **Compliance with Regulations**: Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of

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

### ARTICLE VII GENERAL PROVISIONS

**7.1 CONTRACT TIME.** Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill

and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment "D"**. It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in **Attachment "D"**.

**7.2 OPINION OF PROBABLE COST.** As a design professional practicing in El Paso the Consultant is expected to be familiar with the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The cost opinions of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within **ten percent (10%)** of the bid for the base bid item expected from the lowest responsible bidder.

The Consultant's final cost opinions for the construction of the Project, shall take into account labor costs which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Consultant in compiling a final cost opinions for the Project.

If the Consultant's most recent cost opinion for any construction contract is in excess of the Project construction budget, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Consultant without further compensation.

As noted herein, if all responsible bids exceed the final cost opinion by more than **ten percent** (10%), the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

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

for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

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

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

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

- **7.6 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.
- **7.7 VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.
- **7.8 GOVERNING LAW.** The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

- **7.9 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.
- **7.10 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.
- **7.11 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner: The City of El Paso

Attn: City Manager P.O. Box 1890

El Paso, Texas 79950-1890

With a Copy to: The City of El Paso

Attn: City Engineer P.O. Box 1890

El Paso, Texas 79950-1890

To the Consultant: Steven Duong, AICP

Associate Vice President Urbanism + Planning

13355 Noel Rd Suite 400

Dallas, TX 75240

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

- **7.12 CONFLICTING PROVISIONS.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.
- **7.13 ENTIRE AGREEMENT.** This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.
- **7.14 TEXAS GOVERNMENT CODE**. In accordance to Chapter 2274 of the Texas Government Code, as amended from time to time, the Consultant represents and warrants to the Owner the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

(Signatures on following page)

### WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

	CITY OF EL PASO:
	Tomás González City Manager
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
	Samuel Rodriguez, P.E., City Engineer
Omar A. De La Rosa Assistant City Attorney	Samuel Rodriguez, P.E., City Engineer Capital Improvement Department
(Ac	eknowledgment)
THE STATE OF TEXAS \$ \$ COUNTY OF EL PASO \$	
This instrument was acknowledged by <b>Tomás González</b> , as <b>City Manager</b> of	d before me on this day of, 2021, f the City of El Paso, Texas.
	Notary Public, State of Texas
My commission expires:	
	<u></u>
(Signatures c	ontinue on following page)



By: Chris Brewer

Title: Vice President, Economics + Advisory

(Acknowledgment)

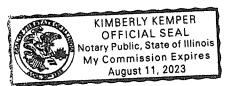
THE STATE OF TEXAS

**COUNTY OF EL PASO** 

by Steven Duong, as Associate Vice President of AECOM.

Notary Public, State of Texas

My commission expires:



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# ATTACHMENT "A" SCOPE OF SERVICES

# Attachment A Scope of Work

The contracts will be used for miscellaneous assignments on an on call for urban design sustainability and resiliency planning. Services are to include the following:

Energy modeling including performance based design, net zero design, circular economy/life cycle evaluation that incorporate climate projections.

Sustainability planning including but not be limited to developing sustainability plans, and performing technical analyses to support sustainability plans and programs for the City.

Sustainability master planning, developing sustainable design, planning, guidelines, and standards for buildings, districts, neighborhoods, cities, and regions, technical analysis and feasibility studies relating to sustainable infrastructure districts and resource use, biophilic and biodiversity planning and design, resiliency studies and analysis for the desert climate, and formulating resiliency strategies for inclement weather including but not limited to flooding, freezing temperatures, and extreme heat.

Deliverables and work products will be identified on a task order basis.

# ATTACHMENT "B" CONSULTANT'S FEE PROPOSAL AND HOURLY RATES



### August 13, 2021

To: Rebecca Rodriguez, City of El Paso

From: Steven Duong, AECOM Urban Planning

**RE: Hourly Rate Schedule, Solicitation** #2021-1335R – On Call Consultant Services – Sustainability and Resiliency Planning

The following rates are applicable for AECOM Technical Service, Inc. For 2021 / 2022

Vice President, Economics	\$251.37
Principal Planner, AVP	\$242.99
Senior Associate Planner	\$209.48
Associate Principal / VP, Economics	\$181.55
Senior Associate, Economics	\$153.62
Associate Planner	\$161.99
Associate, Economics	\$125.69
Urban Planner	\$120.10
Senior Analyst, Economics	\$111.72
Analyst, Economics	\$100.55
Analyst Planner	\$97.76
Intern, Economics	\$69.83
Intern Planner	\$78.20

Each individual Task Order will identify the "**Project**", and the Consultant shall provide the Basic and Additional Services as noted herein.

### **BASIC SERVICES OF THE CONSULTANT**

### **GENERAL**

- 1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated.
- 2. The Consultant shall comply with the City of El Paso Engineering and Construction Management Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the design phases of this Agreement.
- 3. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.
- 4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

### **REPORT PHASE**

- 1. Upon receipt of the Owner's written authorization to proceed with the **Report Phase**, the Consultant shall:
  - **a.** Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.
  - **b.** Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.
  - **c.** (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory testing, and (d) Inspection or other special consultation; (2) Act as the Owner's representative in connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

- **d.** Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant's recommendations.
- **e.** As per Attachment "D", furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.
- 2. Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 3. As identified in the Scope of Work in Attachment "A", the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

### PHASE I - PRELIMINARY DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Consultant shall do the following separately for each construction contract:

- 1. Consult with the Owner to determine the Owner's requirements for the Project.
- 2. Provide at the Consultant's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the

Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

- 3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.
- **4.** Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.
- 5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.
- 6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.
- **8.** Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.
- 9. As per **Attachment "D"**, furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

### PHASE II - PRE-FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Pre-Final Design Phase, the Consultant shall do the following separately <u>for each construction contract:</u>

- 1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant's assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.
- 2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the "Drawings," to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called "Specifications." These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.
- **3.** Advise the Owner of any adjustment to the Consultant's previous opinion of probable construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant's cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor's method of pricing and that the Consultant's opinion of probable construction costs are made on the basis of professional judgment and experience. The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.
- **4.** Prepare proposal forms.
- 5. As per **Attachment "D"**, furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not

approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

### PHASE III - FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Final Design Phase, the Consultant shall do the following separately for each construction contract:

- 1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.
- 2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility Consultant comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.
- 3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.
- **4. As per Attachment "D"**, furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.
- 5. **As per Attachment "D"**, furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.
- **6.** Additional copies of the drawings and specifications beyond those identified in **Attachment "D"**, required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

### **BIDDING PHASE**

Upon receipt of Owner's written request, the Consultant shall provide any of the following services during the Bidding Phase:

- 1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.
- 2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.
- **3.** Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.
- 4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment "D", deliver copies of all addenda to the Owner for appropriate action.
- As identified in Attachment "A", assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.
- 6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

### **CONSTRUCTION PHASE**

At Owner's request, the Consultant shall provide any of the following services associated with the Construction Phase:

- 1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.
- 2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with

such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

- **3.** Unless otherwise stipulated in Attachment "A", Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.
- 4. Visit each construction site at least once each week or more frequently, if necessary, to observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

- 5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. Such review must be complete within ten City working days following receipt of submittal documents. The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.
- 6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner's approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract

documents, subject to the Owner's interpretation of such terms and conditions. If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.

- Passed on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.
- **8.** Conduct with the Owner and construction contractor no more **than two brief preliminary inspections**, at times requested by the construction contractor to determine if the Project is ready for final inspection.
- 9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The "punch list" shall be furnished to the construction contractor and the Owner within two City working days after the final inspection.
- 10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the final inspection.
- 11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.
- 12. Furnish the Owner one set of reproducible (**D format**) "record" drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints,

drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format.

- **13.** Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.
- 14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.
- **15.** Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.
- 16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.
- **17.** Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.
- **18**. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.
- **19.** Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.
- **20.** Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.
- 21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.
- 22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.
- 23. Provide additional or extended services during construction made necessary by: a) work damaged by fire or other cause during construction; b) prolongation of the construction contract time by more than **twenty-five percent** provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Consultant; c) Acceleration of the work schedule involving services beyond normal city working hours; or d) the

### ATTACHMENT "C" CONSULTANT'S BASIC AND ADDITIONAL SERVICES

construction contractor's default under the construction contract due to delinquency or insolvency.

- **24.** Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.
- 25. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

### **ADDITIONAL SERVICES OF THE CONSULTANT**

### **GENERAL**

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

- 1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.
- 2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner's scope or budget, except where the Consultant's preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant's final design cost opinions by ten percent or more.
- 3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.
- **4.** Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.
- 5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

### ATTACHMENT "C" CONSULTANT'S BASIC AND ADDITIONAL SERVICES

### **RESIDENT PROJECT SERVICES**

- 1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.
- 2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.
- 3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

# ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

### PAYMENT SCHEDULE

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

### **Fixed fee Payment to Consultant**

Report Phase	To be determined by Task Order
<b>Preliminary Design Phase</b>	To be determined by Task Order
<b>Pre-Final Design Phase</b>	To be determined by Task Order
Final Design Phase	To be determined by Task Order
<b>Bidding Phase</b>	To be determined by Task Order
<b>Construction Phase</b>	To be determined by Task Order

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant's proposal found in **Attachment "B"**. The time shown in **Attachment "B"** is an estimate. Should the services rendered during the bidding and construction phases exceed the estimated amount, written authorization will be required prior to rendering services. Written authorization shall be only by contract amendment in accordance with the contract provisions. For contracts with a total value less than Fifty Thousand and No/100 Dollars (\$50,000), the parties agree that at no time may the amount of the compensation under this contract exceed Fifty Thousand and No/100 Dollars (\$50,000) except by execution of an amendment to this Agreement.

Payment for each Phase shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and a Consulting Summary and Progress Report and the Owner's written approval.

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

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

**Receipts:** Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable*.

No single invoice may include items for both August and September of any given year. The Owner's fiscal year begins on September 1<sup>st</sup> of each year and ends on August 31<sup>st</sup> of each year. Consultant's invoices must be separated into items that end August 31<sup>st</sup> and those that begin on Septembers 1<sup>st</sup> of any given year, to coincide with Owner's fiscal year.

### ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

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

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

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

### **DELIVERABLE SCHEDULE**

### REPORT PHASE

The services called for in the Report Phase of this Agreement shall be completed and **5 copies** of the Preliminary Study and Report shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

### PHASE I—PRELIMINARY DESIGN PHASE

The services called for in **Phase I** of this Agreement shall be completed and **10 copies** of any required documents and opinion of probable construction costs shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. If Owner does not approve the preliminary design documents, the Consultant shall furnish **five copies** of the resubmitted design documents.

### PHASE II—PRE-FINAL DESIGN PHASE

The services called for in **Phase II** of this Agreement shall be completed and **10 copies** the required documents and services shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

### PHASE III—FINAL DESIGN PHASE

The services called for in **Phase III** of this Agreement shall be completed and **10 copies** of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. After review, the Consultant shall submit to Owner **3 copies** of the final revised design documents and specifications for final check. Upon the approval of the final design documents, the Consultant shall furnish **10 copies** of the final design documents and specifications for bidding to the Owner within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

### ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

### PHASE IV—BIDDING PHASE

Provide services as authorized by Owner during the bid phase as described in Attachment "C" and submit **1 copy** of all addenda to the Owner for appropriate action within **2 consecutive calendar days.** 

### PHASE V - CONSTRUCTION PHASE

Provide services as authorized by Owner during construction phase as described in Attachment "C" and submit one set of Mylar and one set of electronic media format copies of all record drawings to the Owner within sixty days from the date of substantial completion.

### ATTACHMENT "E"

ACORD CI	ERTIF	FICATE OF LIA	BILITY INS	URANC	E		(MM/DD/YYYY) 2/2021
THIS CERTIFICATE IS ISSUED AS A CERTIFICATE DOES NOT AFFIRMAT BELOW. THIS CERTIFICATE OF INS REPRESENTATIVE OR PRODUCER, AI	IVELY OF URANCE ND THE O	R NEGATIVELY AMEND, E DOES NOT CONSTITUT CERTIFICATE HOLDER.	EXTEND OR ALT	ER THE CO BETWEEN T	VERAGE AFFORDED THE ISSUING INSURE	BY THE R(S), AL	POLICIES JTHORIZED
IMPORTANT: If the certificate holder if SUBROGATION IS WAIVED, subject this certificate does not confer rights t	to the te	erms and conditions of th	ne policy, certain po uch endorsement(s	olicies may i			
PRODUCER Marsh Risk & Insurance Services			CONTACT James NAME: James	Vogel			
CA License #0437153			PHONE 213-34	6-5098	FAX (A/C, No	t: 212-948	3-0533
633 W. Fifth Street, Suite 1200			E-MAIL ADDRESS: James	Lvogel@marsh.o		-	
Los Angeles, CA 90071 Attn: Los Angeles Cert Request (8 Marsh Com				SURER/S) AFFOR	RDING COVERAGE		NAIC #
CN101348564-STND-GAUE-21-22		08 2023	INSURER A : ACE Ameri				22667
INSURED			INSURER B : N/A				N/A
AECOM AECOM Technical Services, Inc.			INSURER C : Illinois Unio	n Insurance Co			27960
303 E Wacker Drive, Suite 1400			INSURER D : SEE ACOR				
Chicago, IL 60601			INSURER E :				
			INSURER F:				
COVERAGES CER	TIFICAT	E NUMBER:	LOS-002557419-01		REVISION NUMBER:		
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR LTR TYPE OF INSURANCE	ADDL SUB INSD WVD		POLICY EFF (MM/DD/YYYY)	POLICY EXP	LIM	ITS	
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	1 1				PERSONAL & ADV INJURY	8	2,000,000
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: AECOM Project No: 004191839.0001; Preliminary award, consultant services; #2021-1335R – Information Analysis & #2021-1335R – Sustainability and Resiliency Planning
For RFP/RFQ Purposes.

City of El Paso is named as additional insured for GL & AL coverages, but only as respects work performed by or on behalf of the named insured and where required by written contract.

CERTIFICATE HOLDER	CANCELLATION
City of El Paso Attr. Rebecce Rodriquez, Contract Coordinator Capital Improvement Department 218 N. Campbell El Paso. TX 79901	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
CI P830, 1X 79301	AUTHORIZED REPRESENTATIVE
	Marsh Risk & Insurance Services

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ACORD 25 (2016/03)

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### ATTACHMENT "F"

#### **ATTACHMENT "F"**

### FEDERAL AVIATION ADMINISTRATION (FAA) CONTRACT PROVISIONS

In this Attachment "F", the term "Contractor" shall refer to the "Consultant", and the term "Airport Sponsor" shall refer to the "City".

If there are any conflicts between the terms and conditions of Attachment "F" and Article VI of the Agreement, the terms and conditions of Attachment "F" will prevail.

### A. GENERAL REQUIREMENT FOR CONTRACT

- 1. The contractor (including all subcontractors) are required to insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all subcontracts;
- 2. The contractor (or subcontractor) is required to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services;
- 3. The contractor is responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider; and
- 4. The contractor (or subcontractor) shall not modify the provisions.

Subject to the applicability criteria noted in the specific contract provisions, these contract provisions apply to all work performed on the contract.

### B. FAILURE TO COMPLY

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- 1. Withhold progress payments or final payment,
- 2. Terminate the contract,
- 3. Seek suspension/debarment, or
- 4. Any other action determined to be appropriate by the Airport Sponsor or the FAA.

### C. <u>CONTRACT PROVISIONS</u>

### 1. ACCESS TO RECORDS AND REPORTS (all AIP-funded projects)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized

representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after the final payment is made and all pending matters are closed.

2. <u>BREACH OF CONTRACT TERMS</u> (all contracts that exceed the simplified acquisition threshold as fixed at 41 USC 403(11). This threshold is presently set at \$100,000.)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. <u>BUY AMERICAN PREFERENCES</u> (all AIP-funded projects, if this professional services agreement includes any manufactured product as a deliverable.)

#### **BUY AMERICAN CERTIFICATION**

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

### Type of Certification is based on Type of Project:

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

#### \*\*\*\*

### **Certificate of Buy American Compliance for Total Facility**

(Buildings such as Terminal, SRE, ARFF, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
  - a. Only installing steel and manufactured products produced in the United States; or
  - b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic products
- 3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
  - 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.

- 4. To furnish US domestic product for any waiver request that the FAA rejects.
- 5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### **Required Documentation**

**Type 3 Waiver -** The cost of components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

- a. Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature
Communication Name	Tid.
Company Name	Title

\* \* \* \* \*

### **Certificate of Buy American Compliance for Manufactured Products**

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
  - a. Only installing steel and manufactured products produced in the United States, or;
  - b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
  - c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic product
- 3. To furnish US domestic product for any waiver request that the FAA rejects
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.

- 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### **Required Documentation**

**Type 3 Waiver -** The cost of the item components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a. Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature
Company Name	Title

### 4. **GENERAL CIVIL RIGHTS PROVISIONS** (all contracts)

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- a. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

# 5. <u>CIVIL RIGHTS-TITLE IV COMPLIANCE WITH NONDISCRIMINATION</u> <u>REQUIREMENTS</u> (all AIP funded projects)

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

- 1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities,** as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- 4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontractor or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

# 6. <u>CLEAN AIR AND WATER POLLUTION CONTROL</u> (all contracts that exceed \$100,000)

Contractors and subcontractors agree:

- 1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- 2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- 3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- 4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

# 7. <u>CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS</u> (all contracts that exceed \$100,000)

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in

excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

### 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

#### 4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

# 8. <u>CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)</u> (all contracts that exceed \$25,000)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

### 9. <u>DISADVANTAGED BUSINESS ENTERPRISES</u> (all AIP-funded projects)

Contract Assurance (49 CFR § 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (49 CFR §26.29)**- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame

may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

# 10. <u>FEDERAL FAIR LABOR STANDARDS ACT</u> (FEDERAL MINIMUM WAGE) (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

### 11. <u>LOBBYING AND INFLUENCING FEDERAL EMPLOYEES</u> (all AIP-funded projects)

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### 12. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

### 13. <u>RIGHTS TO INVENTIONS</u> (all AIP-funded projects)

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

### **TERMINATION OF CONTRACT** (contracts that exceed \$10,000)

- 1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- 2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- 3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- 4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed

to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

5. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

### 15. TRADE RESTRICTION CLAUSE (all AIP-funded projects)

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

### **16.** <u>TEXTING WHEN DRIVING</u> (all contracts)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

THE STATE OF TEXAS	)	ON-CALL
	)	AGREEMENT FOR
COUNTY OF EL PASO	)	PROFESSIONAL SERVICES

This Agreement is made this \_\_\_ day of \_\_\_\_\_, 2021 by and between the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the "Owner", and QUANTUM ENGINEERING CONSULTANTS, INC., a California, hereinafter referred to as the "Consultant".

**WHEREAS**, the Owner intends to engage the Consultant to perform professional civil engineering services on a task order basis through the use of task orders referencing this Agreement, the scope of which is further described in **Attachment "A"**; and

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

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

### ARTICLE I ATTACHMENTS

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

Attachment "B" Consultant's Fee Proposal and Hourly Rates	
Attachment "C" Consultant's Basic and Additional Services	
Attachment "D" Payment and Deliverable Schedules	
Attachment "E" Insurance Certificate	
Attachment "F" Federal Aviation Administration contract provisions for Air	rport
Improvement Program Projects	

### ARTICLE II PROJECT

- 2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform oncall professional services on a Task Order basis. Each individual Task Order will identify the Project and the total compensation due to each Project. The Task Order for each Project shall include the Scope of Services described in **Attachment "A"**.
- 2.2 For each Project, the Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.

- 2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.
- 2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.
- 2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working days time period.

### ARTICLE III CONSULTANT FEES AND PROJECT BUDGET

**3.1 PAYMENT TO CONSULTANT.** The Owner shall pay to the Consultant an amount not to exceed **Two Hundred Thousand AND NO/00 DOLLARS** (\$200,000.00) for all basic services and reimbursables performed pursuant to this Agreement.

No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement.

The City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects.

In addition, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00) must have prior approval by City Council through written amendment to this Agreement.

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

Payments to the Consultant shall be made pursuant to **Attachment "D"**.

- **3.2 CONSULTANT'S SERVICES.** The Basic Services and Additional Services, if any, to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C".**
- 3.3 CONSULTANT'S INVOICES. For each Project, the Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in Attachment "D". Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety (90) days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.
  - **3.3.1** Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.
  - **3.3.2** The Owner agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.
- **3.4 PROJECT CONSTRUCTION BUDGET.** The Consultant acknowledges that the construction budget and a construction time for each Project will be identified in each Task Order.
- 3.5 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

### ARTICLE IV PERIOD OF SERVICE AND TERMINATION

- **4.1 PERIOD OF SERVICE.** The term of this Agreement shall be for a period not to exceed **two (2) years** from the date first shown above. The services called for by each Task Order shall begin upon the issuance of a Notice to Proceed from the City Engineer and shall continue through the completion of the construction of the Project, including any required extensions beyond the contract time for construction of the Project, as may be directed by the Owner.
- **4.2 SUSPENSION.** Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not

begun within a period of **twelve** (12) **months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.

- **4.3 TERMINATION.** This Agreement may be terminated as provided herein.
  - **4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.
  - 4.3.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of seven (7) consecutive calendar days to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.
  - **4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

### ARTICLE V INSURANCE AND INDEMNIFICATION

**5.1 INSURANCE.** Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner.

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The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

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

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

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

### a) <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.

**General Aggregate** \$1,000,000.00 \$1,000,000.00 per occurrence

### b) <u>AUTOMOBILE LIABILITY</u>

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

**5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) on a claims made basis.

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- **5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.
- **5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.
- **5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate.

Further, all polices shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

5.2 INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

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

**5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS.** Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance

policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident.

### ARTICLE VI FEDERAL AND STATE PROVISIONS

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

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

- --The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.
- --The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.
- --The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment "F".
- -- The Texas Department of Transportation through an Agreement with the Owner.

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

**6.1.1 CONTRACT ASSURANCE**. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out

these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

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

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

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

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

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

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

(1) **Compliance with Regulations**: Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

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- (2) **Nondiscrimination**: Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. ADP shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports**: Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by Client to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information Consultant shall so certify to Client, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance**: In the event of Consultant's noncompliance with the nondiscrimination provisions of this contract, the Client shall impose such contract sanctions as it may determine to be appropriate, including but not limited to:
  - a. Withholding of payments to the Consultant under the contract until the Consultant complies, and / or
  - b. Cancellation, termination or suspension of the contract in whole or in part.
- (6) **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Client may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Consultant may request Client to enter into such litigation to protect the interests of Client and in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

### ARTICLE VII GENERAL PROVISIONS

**7.1 CONTRACT TIME.** Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment "D"**. It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will

complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in **Attachment "D"**.

**7.2 OPINION OF PROBABLE COST.** As a design professional practicing in El Paso the Consultant is expected to be familiar with the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The cost opinions of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within **ten percent** (10%) of the bid for the base bid item expected from the lowest responsible bidder.

The Consultant's final cost opinions for the construction of the Project, shall take into account labor costs which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Consultant in compiling a final cost opinions for the Project.

If the Consultant's most recent cost opinion for any construction contract is in excess of the Project construction budget, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Consultant without further compensation.

As noted herein, if all responsible bids exceed the final cost opinion by more than **ten percent** (10%), the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

- 7.3 CONSULTANT'S QUALITY OF WORK. The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant's services shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the Project and in accordance with the time periods established in Attachment "D" and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner.
- **7.4 COPYRIGHT AND REPRODUCTION RIGHTS.** Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications

and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

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

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

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

- **7.6 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.
- **7.7 VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.
- **7.8 GOVERNING LAW.** The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.
- **7.9 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.

- **7.10 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.
- **7.11 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner: The City of El Paso

Attn: City Manager P.O. Box 1890

El Paso, Texas 79950-1890

With a Copy to: The City of El Paso

Attn: City Engineer P.O. Box 1890

El Paso, Texas 79950-1890

To the Consultant: Robert Gonzales

President & Principal Engineer

Quantum Engineering Consultants, Inc.

124 W. Castellano Dr., Ste. 100

El Paso, TX 79912

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

- **7.12 CONFLICTING PROVISIONS.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.
- **7.13 ENTIRE AGREEMENT.** This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.
- **7.14 TEXAS GOVERNMENT CODE**. In accordance to Chapter 2274 of the Texas Government Code, as amended from time to time, the Consultant represents and warrants to the Owner the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

(Signatures on following page)

### WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

	CITY OF EL PASO:
	Tomás González City Manager
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
06	Jerry DeMuro/for
Omar A. De La Rosa Assistant City Attorney	Samuel Rodriguez, P.E., City Engineer Capital Improvement Department
THE STATE OF TEXAS \$ \$ COUNTY OF EL PASO \$	
§	
This instrument was acknowledged by <b>Tomás González</b> , as <b>City Manager</b> of the	before me on this day of, 2021, he City of El Paso, Texas.
	Notary Public, State of Texas
My commission expires:	
	_
(Signatures con	ntinue on following page)

CONSULTANT:
QUANTUM ENGINEERING
CONSULTANTS, INC.

By: Robert Gonzales

Title: President/Principal Engineer

### (Acknowledgment)

THE STATE OF TEXAS

§

COUNTY OF EL PASO

This instrument was acknowledged before me on this 28 day of 00 to bee, 2021, by Robert Gonzales, as President/Principal Engineer of Quantum Engineering Consultants, Inc..

Notary Public, State of Texas

My commission expires:

05/14/2025

JOSUE ARMANDO GARCIA Motery Public, State of Texas Comm. Expires 05-14-2025 Notery ID 133101310

JOSUE ARMANDO GARCIA Notary Public, State of Texas Comm. Expires 05-14-2025 Notary ID 133101310

# ATTACHMENT "A" SCOPE OF SERVICES

## Attachment A Scope of Work

The contracts will be used for miscellaneous assignments on an on call for urban design sustainability and resiliency planning. Services are to include the following:

Energy modeling including performance based design, net zero design, circular economy/life cycle evaluation that incorporate climate projections.

Sustainability planning including but not be limited to developing sustainability plans, and performing technical analyses to support sustainability plans and programs for the City.

Sustainability master planning, developing sustainable design, planning, guidelines, and standards for buildings, districts, neighborhoods, cities, and regions, technical analysis and feasibility studies relating to sustainable infrastructure districts and resource use, biophilic and biodiversity planning and design, resiliency studies and analysis for the desert climate, and formulating resiliency strategies for inclement weather including but not limited to flooding, freezing temperatures, and extreme heat.

Deliverables and work products will be identified on a task order basis.

## ATTACHMENT "B" CONSULTANT'S FEE PROPOSAL AND HOURLY RATES



## **HOURLY RATE SCHEDULE**

## **SALARY COSTS**

Classification	Hourly Rate
Expert Witness	\$225.00
Principal	\$194.00
Senior Project Manager	\$175.00
Engineering Manager	\$150.00
Planning Manager	\$150.00
Project Manager	\$140.00
Sustainability Manager	\$140.00
Senior Engineer	\$112.00
Senior Planner	\$112.00
Junior Engineer	\$105.00
Planner/Sustainability Specialist	\$105.00
Senior CADD/Design Technician	\$86.00
Junior CADD/Design Technician	\$80.00
Administrative Assistant	\$60.00
Administrative Support/Runner	\$30.00
Senior Resident Project Representative	\$110.00
Junior Resident Project Representative	\$100.00

## **DIRECT COSTS**

Description	<b>Invoiced Amount</b>
Subconsultants	(cost) x 1.15
Reproduction/Copying	(cost) x 1.15
Miscellaneous (e.g., FedEx, Long Distance Telephone, etc.)	(cost) x 1.15
Mileage	\$0.54/mile
Photo Copies (letter- B&W)	\$0.15/ea
Photo Copies (letter - Color)	\$0.30/ea
Photo Copies (ledger - B&W)	\$0.20/ea
Photo Copies (ledger - Color)	\$0.40/ea
Printing (24 x 36 - B&W)	\$1.50/ea
Printing (24 x 36 - Color)	\$6.00/ea

124 W. Castellano Drive Suite 100 El Paso, Texas 79912 P 915.532.7272 F 915.532.7373 quantum@QECeng.com

On Call Consultant Services – Sustainability & Resiliency Planning Solicitation #2021-1335R

Each individual Task Order will identify the "**Project**", and the Consultant shall provide the Basic and Additional Services as noted herein.

### **BASIC SERVICES OF THE CONSULTANT**

## **GENERAL**

- 1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated
- 2. The Consultant shall comply with the City of El Paso Engineering and Construction Management Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the design phases of this Agreement.
- 3. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.
- 4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

### **REPORT PHASE**

- 1. Upon receipt of the Owner's written authorization to proceed with the **Report Phase**, the Consultant shall:
  - **a.** Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.
  - **b.** Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.
  - **c.** (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory testing, and (d) Inspection or other special consultation; (2) Act as the Owner's representative in connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

- **d.** Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant's recommendations.
- **e.** As per Attachment "D", furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.
- 2. Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- As identified in the Scope of Work in Attachment "A", the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

### PHASE I - PRELIMINARY DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Consultant shall do the following separately for each construction contract:

- 1. Consult with the Owner to determine the Owner's requirements for the Project.
- 2. Provide at the Consultant's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the

Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

- 3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.
- **4.** Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.
- 5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.
- 6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.
- **8.** Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.
- 9. As per **Attachment "D"**, furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

### PHASE II - PRE-FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Pre-Final Design Phase, the Consultant shall do the following separately for each construction contract:

- 1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant's assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.
- 2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the "Drawings," to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called "Specifications." These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.
- **3.** Advise the Owner of any adjustment to the Consultant's previous opinion of probable construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant's cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor's method of pricing and that the Consultant's opinion of probable construction costs are made on the basis of professional judgment and experience. The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.
- **4.** Prepare proposal forms.
- 5. As per **Attachment "D"**, furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not

approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

## PHASE III - FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Final Design Phase, the Consultant shall do the following separately for each construction contract:

- 1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.
- 2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility Consultant comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.
- 3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.
- **4. As per Attachment "D"**, furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.
- 5. **As per Attachment "D"**, furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.
- **6.** Additional copies of the drawings and specifications beyond those identified in **Attachment "D"**, required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

### **BIDDING PHASE**

Upon receipt of Owner's written request, the Consultant shall provide any of the following services during the Bidding Phase:

- 1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.
- 2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.
- **3.** Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.
- 4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment "D", deliver copies of all addenda to the Owner for appropriate action.
- As identified in Attachment "A", assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.
- 6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

## **CONSTRUCTION PHASE**

At Owner's request, the Consultant shall provide any of the following services associated with the Construction Phase:

- 1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.
- 2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with

such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

- **3.** Unless otherwise stipulated in Attachment "A", Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.
- Visit each construction site at least once each week or more frequently, if necessary, to 4. observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

- 5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. Such review must be complete within ten City working days following receipt of submittal documents. The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.
- 6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner's approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract

documents, subject to the Owner's interpretation of such terms and conditions. If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.

- Passed on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.
- **8.** Conduct with the Owner and construction contractor no more **than two brief preliminary inspections**, at times requested by the construction contractor to determine if the Project is ready for final inspection.
- 9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The "punch list" shall be furnished to the construction contractor and the Owner within two City working days after the final inspection.
- 10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the final inspection.
- 11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.
- 12. Furnish the Owner one set of reproducible (**D format**) "record" drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints,

drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format.

- **13.** Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.
- 14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.
- **15.** Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.
- 16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.
- **17.** Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.
- **18**. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.
- **19.** Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.
- **20.** Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.
- 21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.
- 22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.
- 23. Provide additional or extended services during construction made necessary by: a) work damaged by fire or other cause during construction; b) prolongation of the construction contract time by more than **twenty-five percent** provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Consultant; c) Acceleration of the work schedule involving services beyond normal city working hours; or d) the

construction contractor's default under the construction contract due to delinquency or insolvency.

- **24.** Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.
- 25. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

### **ADDITIONAL SERVICES OF THE CONSULTANT**

### **GENERAL**

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

- 1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.
- 2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner's scope or budget, except where the Consultant's preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant's final design cost opinions by ten percent or more.
- 3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.
- 4. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.
- 5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

### RESIDENT PROJECT SERVICES

- 1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.
- 2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.
- 3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

## ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

### PAYMENT SCHEDULE

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

## **Fixed fee Payment to Consultant**

Report Phase	To be determined by Task Order
<b>Preliminary Design Phase</b>	To be determined by Task Order
<b>Pre-Final Design Phase</b>	To be determined by Task Order
Final Design Phase	To be determined by Task Order
<b>Bidding Phase</b>	To be determined by Task Order
<b>Construction Phase</b>	To be determined by Task Order

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant's proposal found in **Attachment "B"**. The time shown in **Attachment "B"** is an estimate. Should the services rendered during the bidding and construction phases exceed the estimated amount, written authorization will be required prior to rendering services. Written authorization shall be only by contract amendment in accordance with the contract provisions. For contracts with a total value less than Fifty Thousand and No/100 Dollars (\$50,000), the parties agree that at no time may the amount of the compensation under this contract exceed Fifty Thousand and No/100 Dollars (\$50,000) except by execution of an amendment to this Agreement.

Payment for each Phase shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and a Consulting Summary and Progress Report and the Owner's written approval.

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

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

**Receipts:** Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable*.

No single invoice may include items for both August and September of any given year. The Owner's fiscal year begins on September 1<sup>st</sup> of each year and ends on August 31<sup>st</sup> of each year. Consultant's invoices must be separated into items that end August 31<sup>st</sup> and those that begin on Septembers 1<sup>st</sup> of any given year, to coincide with Owner's fiscal year.

## ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

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

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

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

### **DELIVERABLE SCHEDULE**

### REPORT PHASE

The services called for in the Report Phase of this Agreement shall be completed and **5 copies** of the Preliminary Study and Report shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

### PHASE I—PRELIMINARY DESIGN PHASE

The services called for in **Phase I** of this Agreement shall be completed and **10 copies** of any required documents and opinion of probable construction costs shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. If Owner does not approve the preliminary design documents, the Consultant shall furnish **five copies** of the resubmitted design documents.

### PHASE II—PRE-FINAL DESIGN PHASE

The services called for in **Phase II** of this Agreement shall be completed and **10 copies** the required documents and services shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

### PHASE III—FINAL DESIGN PHASE

The services called for in **Phase III** of this Agreement shall be completed and **10 copies** of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. After review, the Consultant shall submit to Owner **3 copies** of the final revised design documents and specifications for final check. Upon the approval of the final design documents, the Consultant shall furnish **10 copies** of the final design documents and specifications for bidding to the Owner within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

## ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

### PHASE IV—BIDDING PHASE

Provide services as authorized by Owner during the bid phase as described in Attachment "C" and submit **1 copy** of all addenda to the Owner for appropriate action within **2 consecutive calendar days.** 

## PHASE V - CONSTRUCTION PHASE

Provide services as authorized by Owner during construction phase as described in Attachment "C" and submit one set of Mylar and one set of electronic media format copies of all record drawings to the Owner within sixty days from the date of substantial completion.

## ATTACHMENT "E"

Client#: 158677 QUANTENG

#### ACORD...

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 8/04/2021

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 any rights to the certificate holder in lieu of such endorsement(s).

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	Southwest				PHONE (A/C, No.	Ext): 512-65	51-4159		FAX (A/C, No):	610-5	37-2782
	O-C No. Capital of Tx Hwy. #200				E-MAIL ADDRES	s: debra.w	ylie@usi.co	om			
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	City of El Paso							SCRIBED POLICE			

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ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

218 N. Campbell Street

El Paso, TX 79901







## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 8/4/2021

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 THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER. AND THE CERTIFICATE HOLDER.

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

PRODUCER License # 4682	CONTACT Sal Beltran	
Hub International Insurance Services 201 E Main Drive	PHONE FAX (A/C, No, Ext): (A/C, No):	
Suite 800	E-MAIL ADDRESS: sal.beltran@hubinternational.com	
El Paso, TX 79901	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : ACE Property & Casualty Insurance Company	20699
INSURED	INSURER B : Great Northern Insurance Company	20303
Quantum Engineering Consultants Inc.	INSURER C: Chubb Group of Ins. Companies	
124 W. Castellano Drive, Suite 100	INSURER D:	
El Paso, TX 79912	INSURER E :	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER: REVISION NUMBER:** 

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

INSR		JSIONS AND CONDITIONS OF SUCH	ADDL			POLICY EFF	POLICY EXP			
LTR	TR TYPE OF INSURANCE		INSD	WVD	POLICY NUMBER	(MM/DD/YYYY)	(MM/DD/YYYY)	LIMIT	s	
Α	X	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	\$	2,000,000
		CLAIMS-MADE X OCCUR			D39407061	12/1/2020	12/1/2021	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$	1,000,000
								MED EXP (Any one person)	\$	10,000
								PERSONAL & ADV INJURY	\$	2,000,000
	GEN	N'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$	4,000,000
	X	POLICY X PRO-						PRODUCTS - COMP/OP AGG	\$	4,000,000
		OTHER:							\$	
В	AUT	OMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$	1,000,000
	X	ANY AUTO			73600945	12/1/2020	12/1/2021	BODILY INJURY (Per person)	\$	
		OWNED SCHEDULED AUTOS ONLY						BODILY INJURY (Per accident)	\$	
		HIRED NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	\$	
									\$	
Α	X	UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	\$	5,000,000
		EXCESS LIAB CLAIMS-MADE			D39407103	12/1/2020	12/1/2021	AGGREGATE	\$	
		DED X RETENTION\$						Aggregate	\$	5,000,000
С	WOR	RKERS COMPENSATION EMPLOYERS' LIABILITY						PER OTH- STATUTE ER		
	ANY	PROPRIETOR/PARTNER/EXECUTIVE Y/N	N/A		71761096	12/1/2020	12/1/2021	E.L. EACH ACCIDENT	\$	1,000,000
	(Mar	CER/MEMBER EXCLUDED?	N/A					E.L. DISEASE - EA EMPLOYEE	\$	1,000,000
	If yes	s, describe under CRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	\$	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Project: On Call Consultant Services – Sustainability & Resiliency Planning - Solicitation #2021-1335R

The General Liability & Auto policies includes a blanket automatic additional insured endorsement or policy terms that provide additional insured status to

certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status subject to policy terms and conditions.

The General Liability, Auto & Workers Compensation policies includes a blanket automatic waiver of subrogation endorsement that provides a waiver of subrogation only when there is a written contract between the named insured and the certificate holder that requires it subject to policy terms and conditions. The General Liability and Auto policy contains a special endorsement with Primary and Non-contributory wording subject to policy terms and conditions. SEE ATTACHED ACORD 101

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
DAR =

## ATTACHMENT "F"

### **ATTACHMENT "F"**

### FEDERAL AVIATION ADMINISTRATION (FAA) CONTRACT PROVISIONS

In this Attachment "F", the term "Contractor" shall refer to the "Consultant", and the term "Airport Sponsor" shall refer to the "City".

If there are any conflicts between the terms and conditions of Attachment "F" and Article VI of the Agreement, the terms and conditions of Attachment "F" will prevail.

## A. GENERAL REQUIREMENT FOR CONTRACT

- 1. The contractor (including all subcontractors) are required to insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all subcontracts;
- 2. The contractor (or subcontractor) is required to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services;
- 3. The contractor is responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider; and
- 4. The contractor (or subcontractor) shall not modify the provisions.

Subject to the applicability criteria noted in the specific contract provisions, these contract provisions apply to all work performed on the contract.

## B. FAILURE TO COMPLY

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- 1. Withhold progress payments or final payment,
- 2. Terminate the contract,
- 3. Seek suspension/debarment, or
- 4. Any other action determined to be appropriate by the Airport Sponsor or the FAA.

## C. <u>CONTRACT PROVISIONS</u>

### 1. ACCESS TO RECORDS AND REPORTS (all AIP-funded projects)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized

representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after the final payment is made and all pending matters are closed.

2. <u>BREACH OF CONTRACT TERMS</u> (all contracts that exceed the simplified acquisition threshold as fixed at 41 USC 403(11). This threshold is presently set at \$100,000.)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. <u>BUY AMERICAN PREFERENCES</u> (all AIP-funded projects, if this professional services agreement includes any manufactured product as a deliverable.)

#### **BUY AMERICAN CERTIFICATION**

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

## Type of Certification is based on Type of Project:

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

#### \*\*\*\*

### **Certificate of Buy American Compliance for Total Facility**

(Buildings such as Terminal, SRE, ARFF, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

- ☑ Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
  - a. Only installing steel and manufactured products produced in the United States; or
  - b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic products
- 3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
  - 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.

- 4. To furnish US domestic product for any waiver request that the FAA rejects.
- 5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### **Required Documentation**

Type 3 Waiver - The cost of components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

- a. Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

Type 4 Waiver – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

October 28, 2021		
Date	Signature	
	,	
Quantum Engineering Consultants, Inc.	President/Principal Engineer	
Company Name	Title	

## **Certificate of Buy American Compliance for Manufactured Products**

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

- ☑ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
  - a. Only installing steel and manufactured products produced in the United States, or;
  - b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
  - c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic product
- 3. To furnish US domestic product for any waiver request that the FAA rejects
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.

- 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### **Required Documentation**

**Type 3 Waiver** - The cost of the item components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a. Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

Type 4 Waiver – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

October 28, 2021 Date	Signature
Quantum Engineering Consultants, Inc. Company Name	President/Principal Engineer Title

## 4. <u>GENERAL CIVIL RIGHTS PROVISIONS</u> (all contracts)

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- a. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

## 5. <u>CIVIL RIGHTS-TITLE IV COMPLIANCE WITH NONDISCRIMINATION</u> <u>REQUIREMENTS</u> (all AIP funded projects)

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

- 1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities,** as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- 4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontractor or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## 6. <u>CLEAN AIR AND WATER POLLUTION CONTROL</u> (all contracts that exceed \$100,000)

Contractors and subcontractors agree:

- 1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- 2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- 3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- 4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

## 7. <u>CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS</u> (all contracts that exceed \$100,000)

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in

excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

## 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

#### 4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

## 8. <u>CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)</u> (all contracts that exceed \$25,000)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

## 9. <u>DISADVANTAGED BUSINESS ENTERPRISES</u> (all AIP-funded projects)

Contract Assurance (49 CFR § 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (49 CFR §26.29)**- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame

may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

## 10. <u>FEDERAL FAIR LABOR STANDARDS ACT</u> (FEDERAL MINIMUM WAGE) (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

## 11. <u>LOBBYING AND INFLUENCING FEDERAL EMPLOYEES</u> (all AIP-funded projects)

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## 12. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

## 13. <u>RIGHTS TO INVENTIONS</u> (all AIP-funded projects)

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

### **TERMINATION OF CONTRACT** (contracts that exceed \$10,000)

- 1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- 2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- 3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- 4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed

to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

5. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

## 15. TRADE RESTRICTION CLAUSE (all AIP-funded projects)

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

### **16.** <u>TEXTING WHEN DRIVING</u> (all contracts)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.



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

## **EVALUATION COMMITTEE SCORE SUMMARY**

#### SOLICITATION# 2021-1335R ON CALL CONSULTANT SERVICES - URBAN DESIGN

	ALVIDREZ ARCHITECTURE	ASAKURA ROBINSON	DOVER, KOHL & PARTNERS	GREENWAY STUDIO	IN SITU	LAKE FLATO	LIEVARCH	PARKHILL	QUANTUM	SITES SOUTHWEST	THE DRY LAND
Rater #1	85	88	75	69	69	93	63	61	82	66	65
Rater #2	78	86	77	62	72	89	69	68	84	82	67
Rater #3	83	90	65	46	57	92	60	46	83	73	58
Total Score	246	264	217	177	198	274	192	175	249	221	190

THE STATE OF TEXAS )	ON-CALL
)	AGREEMENT FOR
COUNTY OF EL PASO )	PROFESSIONAL SERVICES

This Agreement is made this \_\_\_ day of \_\_\_\_\_, 2021 by and between the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the "Owner", and ASAKURA ROBINSON COMPANY, LLC, a Texas, hereinafter referred to as the "Consultant".

WHEREAS, the Owner intends to engage the Consultant to perform professional civil engineering services on a task order basis through the use of task orders referencing this Agreement, the scope of which is further described in Attachment "A"; and

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

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

### ARTICLE I ATTACHMENTS

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

Attachment "A"	Scope of Services and Project Budget
Attachment "B"	Consultant's Fee Proposal and Hourly Rates
Attachment "C"	Consultant's Basic and Additional Services
Attachment "D"	Payment and Deliverable Schedules
Attachment "E"	Insurance Certificate
Attachment "F"	Federal Aviation Administration contract provisions for Airport
	Improvement Program Projects-check with

### ARTICLE II PROJECT

- 2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform oncall professional services on a Task Order basis. Each individual Task Order will identify the Project and the total compensation due to each Project. The Task Order for each Project shall include the Scope of Services described in **Attachment "A"**.
- 2.2 For each Project, the Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this

Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.

- 2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.
- 2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.
- 2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working days time period.

### ARTICLE III CONSULTANT FEES AND PROJECT BUDGET

**3.1 PAYMENT TO CONSULTANT.** The Owner shall pay to the Consultant an amount not to exceed **Two Hundred Thousand AND NO/00 DOLLARS** (\$200,000.00) for all basic services and reimbursables performed pursuant to this Agreement.

No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement.

The City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects.

In addition, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00) must have prior approval by City Council through written amendment to this Agreement.

The parties agree and understand that all fees and compensation to the Consultant shall only become due and payable in accordance with the terms of this Agreement and the fees to be charged

for each Project shall be pursuant to the Consultant's fee proposal for such Basic and Additional Services at the rates which is attached hereto as **Attachment "B"**.

Payments to the Consultant shall be made pursuant to **Attachment "D"**.

- **3.2 CONSULTANT'S SERVICES.** The Basic Services and Additional Services, if any, to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C".**
- 3.3 CONSULTANT'S INVOICES. For each Project, the Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in **Attachment "D"**. Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety (90) days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.
  - **3.3.1** Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.
  - **3.3.2** The Owner agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.
- **3.4 PROJECT CONSTRUCTION BUDGET.** The Consultant acknowledges that the construction budget and a construction time for each Project will be identified in each Task Order.
- **3.5 COSTS NOT ENUMERATED.** Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

### ARTICLE IV PERIOD OF SERVICE AND TERMINATION

**4.1 PERIOD OF SERVICE.** The term of this Agreement shall be for a period not to exceed **two (2) years** from the date first shown above. The services called for by each Task Order shall begin upon the issuance of a Notice to Proceed from the City Engineer and shall continue through the completion of the construction of the Project, including any required extensions beyond the contract time for construction of the Project, as may be directed by the Owner.

- **4.2 SUSPENSION.** Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve** (**12**) **months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.
- **4.3 TERMINATION.** This Agreement may be terminated as provided herein.
  - **4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.
  - 4.3.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of seven (7) consecutive calendar days to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.
  - **4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

### ARTICLE V INSURANCE AND INDEMNIFICATION

- **5.1 INSURANCE.** Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.
  - **5.1.1 WORKERS' COMPENSATION INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

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

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

#### a) **COMMERCIAL GENERAL LIABILITY**

\$1,000,000.00 Per Occurrence \$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.

**General Aggregate** \$1,000,000.00 \$1,000,000.00 per occurrence

#### b) <u>AUTOMOBILE LIABILITY</u>

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

**5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the

benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) on a claims made basis.

- **5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.
- **5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.
- **5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate.

Further, all polices shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

5.2 INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

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

**5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS.** Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence,

professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident.

### ARTICLE VI FEDERAL AND STATE PROVISIONS

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

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

- --The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.
- --The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.
- --The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment "F".
- -- The Texas Department of Transportation through an Agreement with the Owner.

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

- **6.1.1 CONTRACT ASSURANCE**. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
- **6.1.2 DBE GOOD FAITH EFFORTS.** The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal will be identified pursuant to the federal funding requirements for an individual task order established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this Agreement.

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

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

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

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

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

(1) **Compliance with Regulations**: Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of

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

### ARTICLE VII GENERAL PROVISIONS

- **7.1 CONTRACT TIME.** Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment "D"**. It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in **Attachment "D"**.
- **7.2 OPINION OF PROBABLE COST.** As a design professional practicing in El Paso the Consultant is expected to be familiar with the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The cost opinions of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within **ten percent** (10%) of the bid for the base bid item expected from the lowest responsible bidder.

The Consultant's final cost opinions for the construction of the Project, shall take into account labor costs which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Consultant in compiling a final cost opinions for the Project.

If the Consultant's most recent cost opinion for any construction contract is in excess of the Project construction budget, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Consultant without further compensation.

As noted herein, if all responsible bids exceed the final cost opinion by more than **ten percent** (10%), the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

7.3 CONSULTANT'S QUALITY OF WORK. The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant's services shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the Project and in accordance with the time periods established in Attachment "D" and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants,

and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner.

- 7.4 **COPYRIGHT AND REPRODUCTION RIGHTS.** Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.
- 7.5 AUDITING RECORDS FOR THE SPECIFIC PROJECT. Consultant's records subject to audit shall include but not be limited to records which, in the Owner's discretion, have a bearing on matters of interest to the Owner in connection with the Consultant's work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

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

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

- **7.6 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.
- **7.7 VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and

shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

- **7.8 GOVERNING LAW.** The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.
- **7.9 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.
- **7.10 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.
- **7.11 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner: The City of El Paso

Attn: City Manager P.O. Box 1890

El Paso, Texas 79950-1890

With a Copy to: The City of El Paso

Attn: City Engineer P.O. Box 1890

El Paso, Texas 79950-1890

To the Consultant: Margaret Robinson

Athorized Representative

Asakura Robinson Company, LLC 1902 Washington Ave. Ste. A

Houston, TX 77007

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

- **7.12 CONFLICTING PROVISIONS.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.
- **7.13 ENTIRE AGREEMENT.** This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.
- **7.14 TEXAS GOVERNMENT CODE**. In accordance to Chapter 2274 of the Texas Government Code, as amended from time to time, the Consultant represents and warrants to the Owner the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will

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

### WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

	CITY OF EL PASO:
	Tomás González City Manager
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Omar A. De La Rosa	
Assistant City Attorney	Capital Improvement Department
THE STATE OF TEXAS \$  \$ COUNTY OF EL PASO \$	
COUNTY OF EL PASO §	
This instrument was acknowledged b	perfore me on this, and, 2021,
by Tomás González, as City Manager of the	ne City of El Paso, Texas.
	Notary Public, State of Texas
My commission expires:	
	_
(Signatures con	tinue on following page)

CONSULTANT: ASAKURA ROBINSON COMPANY LLC.

Margaret Robinson

By: Margaret Robinson

Title: Authorized Representative

### (Acknowledgment)

THE STATE OF TEXAS §

§

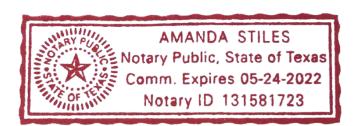
COUNTY OF EL PASO §

This instrument was acknowledged before me on this 27 day of October, 2021, by Margaret Robinson, as Authorized Representative of Asakura Robinson Company, LLC.

Notary Public, State of Texas

My commission expires:

05.24.2022



## ATTACHMENT "A" SCOPE OF SERVICES

# Attachment A Scope of Work

The contracts will be used for miscellaneous assignments on an on call for urban design services. Services are to include the following:

Study and design of streets and public spaces that meet the highest standards of resiliency and sustainability, as measured from an ecological, social and financial perspective and consider the public and stakeholder requirements as defined through community outreach initiatives.

Streetscape Design: Designing streets that focus on creating vibrant public spaces such as alleys upgraded to public spaces; local neighborhood commercial streets; and complex, multimodal streets typically in higher density urban districts to include landscaping, storm water management, bicycle, and transit infrastructure, street furniture, lighting, and wayfinding.

Public Life and Public Space Studies: Designing and conducting public life and public space studies that provide a detailed understanding of how public spaces are used, by whom, for what activities, and at what time of the day and week, including data collection and analysis, and developing succinct and insightful design recommendations.

Public Space Design: Designing and activating plazas that are inclusive, flexible public spaces with elements that are beautiful, durable, sustainable, cost effective, and meet the long-term maintenance needs of the city. Design may include tactical urbanism interventions.

Pedestrian Priority Streets: Designing single-surface, pedestrian priority streets in accordance with the Americans With Disabilities Act (ADA) guidelines and solutions that balance universal access, pedestrian safety, and a flexible, beautiful design.

Deliverables and work products will be identified on a task order basis.

# ATTACHMENT "B" CONSULTANT'S FEE PROPOSAL AND HOURLY RATES

### Asakura Robinson Company LLC Hourly Rate Schedule - 08/09/2021

Position	irect Pay urly Rate	Overhead		Profit		Fully Loaded Hourly Rate	
			176%	2	21.5%		
Managing Principal	\$ 69.71	\$	122.86	\$	41.40	\$	233.97
Principal	\$ 53.85	\$	94.90	\$	31.98	\$	180.72
Senior Associate	\$ 44.23	\$	77.95	\$	26.27	\$	148.45
Associate	\$ 34.62	\$	61.01	\$	20.56	\$	116.18
Staff	\$ 30.00	\$	52.87	\$	17.82	\$	100.69
Accounting Assistant	\$ 25.00	\$	44.06	\$	14.85	\$	83.91
Intern	\$ 19.00	\$	33.49	\$	11.28	\$	63.77

Each individual Task Order will identify the "**Project**", and the Consultant shall provide the Basic and Additional Services as noted herein.

### **BASIC SERVICES OF THE CONSULTANT**

### **GENERAL**

- 1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated
- 2. The Consultant shall comply with the City of El Paso Engineering and Construction Management Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the design phases of this Agreement.
- 3. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.
- 4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

#### **REPORT PHASE**

- 1. Upon receipt of the Owner's written authorization to proceed with the **Report Phase**, the Consultant shall:
  - **a.** Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.
  - **b.** Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.
  - **c.** (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory testing, and (d) Inspection or other special consultation; (2) Act as the Owner's representative in connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

- **d.** Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant's recommendations.
- **e.** As per Attachment "D", furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.
- 2. Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- As identified in the Scope of Work in Attachment "A", the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

### PHASE I - PRELIMINARY DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Consultant shall do the following separately for each construction contract:

- 1. Consult with the Owner to determine the Owner's requirements for the Project.
- 2. Provide at the Consultant's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the

Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

- 3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.
- **4.** Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.
- 5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.
- 6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.
- **8.** Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.
- 9. As per **Attachment "D"**, furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

### PHASE II - PRE-FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Pre-Final Design Phase, the Consultant shall do the following separately <u>for each construction contract:</u>

- 1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant's assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.
- 2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the "Drawings," to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called "Specifications." These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.
- **3.** Advise the Owner of any adjustment to the Consultant's previous opinion of probable construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant's cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor's method of pricing and that the Consultant's opinion of probable construction costs are made on the basis of professional judgment and experience. The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.
- **4.** Prepare proposal forms.
- 5. As per **Attachment "D"**, furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not

approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

### PHASE III - FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Final Design Phase, the Consultant shall do the following separately for each construction contract:

- 1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.
- 2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility Consultant comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.
- 3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.
- **4. As per Attachment "D"**, furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.
- 5. **As per Attachment "D"**, furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.
- **6.** Additional copies of the drawings and specifications beyond those identified in **Attachment "D"**, required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

#### **BIDDING PHASE**

Upon receipt of Owner's written request, the Consultant shall provide any of the following services during the Bidding Phase:

- 1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.
- 2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.
- **3.** Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.
- 4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment "D", deliver copies of all addenda to the Owner for appropriate action.
- As identified in Attachment "A", assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.
- 6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

### **CONSTRUCTION PHASE**

At Owner's request, the Consultant shall provide any of the following services associated with the Construction Phase:

- 1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.
- 2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with

such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

- 3. Unless otherwise stipulated in Attachment "A", Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.
- Visit each construction site at least once each week or more frequently, if necessary, to 4. observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

- 5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. Such review must be complete within ten City working days following receipt of submittal documents. The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.
- 6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner's approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract

documents, subject to the Owner's interpretation of such terms and conditions. If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.

- Passed on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.
- **8.** Conduct with the Owner and construction contractor no more **than two brief preliminary inspections**, at times requested by the construction contractor to determine if the Project is ready for final inspection.
- 9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The "punch list" shall be furnished to the construction contractor and the Owner within two City working days after the final inspection.
- 10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the final inspection.
- 11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.
- 12. Furnish the Owner one set of reproducible (**D format**) "record" drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints,

drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format.

- **13.** Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.
- 14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.
- **15.** Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.
- 16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.
- **17.** Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.
- **18**. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.
- **19.** Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.
- **20.** Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.
- 21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.
- 22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.
- 23. Provide additional or extended services during construction made necessary by: a) work damaged by fire or other cause during construction; b) prolongation of the construction contract time by more than **twenty-five percent** provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Consultant; c) Acceleration of the work schedule involving services beyond normal city working hours; or d) the

construction contractor's default under the construction contract due to delinquency or insolvency.

- **24.** Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.
- 25. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

#### **ADDITIONAL SERVICES OF THE CONSULTANT**

#### **GENERAL**

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

- 1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.
- 2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner's scope or budget, except where the Consultant's preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant's final design cost opinions by ten percent or more.
- 3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.
- 4. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.
- 5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

### **RESIDENT PROJECT SERVICES**

- 1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.
- 2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.
- 3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

### ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

#### PAYMENT SCHEDULE

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

### **Fixed fee Payment to Consultant**

Report Phase	To be determined by Task Order
<b>Preliminary Design Phase</b>	To be determined by Task Order
<b>Pre-Final Design Phase</b>	To be determined by Task Order
Final Design Phase	To be determined by Task Order
<b>Bidding Phase</b>	To be determined by Task Order
<b>Construction Phase</b>	To be determined by Task Order

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant's proposal found in **Attachment "B"**. The time shown in **Attachment "B"** is an estimate. Should the services rendered during the bidding and construction phases exceed the estimated amount, written authorization will be required prior to rendering services. Written authorization shall be only by contract amendment in accordance with the contract provisions. For contracts with a total value less than Fifty Thousand and No/100 Dollars (\$50,000), the parties agree that at no time may the amount of the compensation under this contract exceed Fifty Thousand and No/100 Dollars (\$50,000) except by execution of an amendment to this Agreement.

Payment for each Phase shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and a Consulting Summary and Progress Report and the Owner's written approval.

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

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

**Receipts:** Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable*.

No single invoice may include items for both August and September of any given year. The Owner's fiscal year begins on September 1<sup>st</sup> of each year and ends on August 31<sup>st</sup> of each year. Consultant's invoices must be separated into items that end August 31<sup>st</sup> and those that begin on Septembers 1<sup>st</sup> of any given year, to coincide with Owner's fiscal year.

### ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

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

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

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

#### **DELIVERABLE SCHEDULE**

#### REPORT PHASE

The services called for in the Report Phase of this Agreement shall be completed and **5 copies** of the Preliminary Study and Report shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE I—PRELIMINARY DESIGN PHASE

The services called for in **Phase I** of this Agreement shall be completed and **10 copies** of any required documents and opinion of probable construction costs shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. If Owner does not approve the preliminary design documents, the Consultant shall furnish **five copies** of the resubmitted design documents.

### PHASE II—PRE-FINAL DESIGN PHASE

The services called for in **Phase II** of this Agreement shall be completed and **10 copies** the required documents and services shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE III—FINAL DESIGN PHASE

The services called for in **Phase III** of this Agreement shall be completed and **10 copies** of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. After review, the Consultant shall submit to Owner **3 copies** of the final revised design documents and specifications for final check. Upon the approval of the final design documents, the Consultant shall furnish **10 copies** of the final design documents and specifications for bidding to the Owner within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

### ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

### PHASE IV—BIDDING PHASE

Provide services as authorized by Owner during the bid phase as described in Attachment "C" and submit **1 copy** of all addenda to the Owner for appropriate action within **2 consecutive calendar days.** 

### PHASE V - CONSTRUCTION PHASE

Provide services as authorized by Owner during construction phase as described in Attachment "C" and submit one set of Mylar and one set of electronic media format copies of all record drawings to the Owner within sixty days from the date of substantial completion.

### ATTACHMENT "E"



### CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 8/10/2021

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).

COVERACES	CEDTIFICATE NUMBER: 200225745	DEVISION NUM	MDED.	
		INSURER F:		·
		INSURER E :		
Houston TX 77007		INSURER D : Navigators Insurance Company		42307
Asakura Robinson Company LLC 2500 Summer Street, Suite 3228		INSURER c : Property & Casualty Ins. Co of Hartfor	rd .	34690
NSURED	ASAKROB-02	INSURER B : Hartford Insurance Company Of The I	Midwest	37478
		INSURER A : Sentinel Insurance Company, Ltd		11000
		INSURER(S) AFFORDING COVERAGE		NAIC#
Corpus Christi TX 78403-0870		E-MAIL ADDRESS: certificates-cr@higginbotham.net		
Higginbotham Insurance Agency PO Box 870	Inc	PHONE (A/C, No, Ext): 361-561-2195	FAX (A/C, No): 361-84	4-0101
PRODUCER		CONTACT NAME: Sofie Kaper		

COVERAGES CERTIFICATE NUMBER: 268335745 REVISION NUMBER:

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

INSR LTR				TYPE OF INSURANCE ADDL SUBR INSD WVD POLICY		POLICY EFF POLICY EXE		LIMITS		
А	Х	COMMERCIAL GENERAL LIABILITY	IIIOD	****	65SBAIN2909	6/29/2021	6/29/2022	EACH OCCURRENCE	\$ 2,000,000	
		CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000	
								MED EXP (Any one person)	\$ 10,000	
								PERSONAL & ADV INJURY	\$ 2,000,000	
	GEN	I'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$4,000,000	
	Х	POLICY PRO- JECT LOC						PRODUCTS - COMP/OP AGG	\$4,000,000	
	Х	OTHER: Contractual							\$	
Α	AUT	OMOBILE LIABILITY			65SBAIN2909	6/29/2021	6/29/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 2,000,000	
		ANY AUTO						BODILY INJURY (Per person)	\$	
	OWNED SCHEDULED AUTOS ONLY							BODILY INJURY (Per accident)	\$	
	X HIRED X NON-OWNED AUTOS ONLY							PROPERTY DAMAGE (Per accident)	\$	
									\$	
Α	Х	UMBRELLA LIAB X OCCUR			65SBAIN2909	6/29/2021	6/29/2022	EACH OCCURRENCE	\$ 1,000,000	
		EXCESS LIAB CLAIMS-MADE						AGGREGATE	\$ 1,000,000	
		DED RETENTION \$							\$	
B C		KERS COMPENSATION EMPLOYERS' LIABILITY			65WBCAR2686 TX 65WBCAR2686 LA	6/29/2021 6/29/2021	6/29/2022 6/29/2022	X PER OTH-ER		
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?		N/A		03VVBCAR2000 LA	0/29/2021	0/29/2022	E.L. EACH ACCIDENT	\$ 1,000,000	
	(Mandatory in NH)							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	
	If yes, describe under DESCRIPTION OF OPERATIONS below							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000	
D		essional Liability o Date: 7/6/2004			CH21DPLX00006NC	6/29/2021	6/29/2022	Each Claim Aggregate Ded Ea Claim	\$2,000,000 \$2,000,000 \$10,000	

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

See Attached...

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

City of El Paso Capital Improvement Dept. 218 N. Campbell El Paso TX 79901

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### ATTACHMENT "F"

#### **ATTACHMENT "F"**

### FEDERAL AVIATION ADMINISTRATION (FAA) CONTRACT PROVISIONS

In this Attachment "F", the term "Contractor" shall refer to the "Consultant", and the term "Airport Sponsor" shall refer to the "City".

If there are any conflicts between the terms and conditions of Attachment "F" and Article VI of the Agreement, the terms and conditions of Attachment "F" will prevail.

### A. GENERAL REQUIREMENT FOR CONTRACT

- 1. The contractor (including all subcontractors) are required to insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all subcontracts;
- 2. The contractor (or subcontractor) is required to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services;
- 3. The contractor is responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider; and
- 4. The contractor (or subcontractor) shall not modify the provisions.

Subject to the applicability criteria noted in the specific contract provisions, these contract provisions apply to all work performed on the contract.

### B. FAILURE TO COMPLY

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- 1. Withhold progress payments or final payment,
- 2. Terminate the contract,
- 3. Seek suspension/debarment, or
- 4. Any other action determined to be appropriate by the Airport Sponsor or the FAA.

### C. <u>CONTRACT PROVISIONS</u>

### 1. ACCESS TO RECORDS AND REPORTS (all AIP-funded projects)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized

representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after the final payment is made and all pending matters are closed.

2. <u>BREACH OF CONTRACT TERMS</u> (all contracts that exceed the simplified acquisition threshold as fixed at 41 USC 403(11). This threshold is presently set at \$100,000.)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. <u>BUY AMERICAN PREFERENCES</u> (all AIP-funded projects, if this professional services agreement includes any manufactured product as a deliverable.)

#### **BUY AMERICAN CERTIFICATION**

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

#### Type of Certification is based on Type of Project:

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

#### \*\*\*\*

#### **Certificate of Buy American Compliance for Total Facility**

(Buildings such as Terminal, SRE, ARFF, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
  - a. Only installing steel and manufactured products produced in the United States; or
  - b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic products
- 3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
  - 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.

- 4. To furnish US domestic product for any waiver request that the FAA rejects.
- 5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver -** The cost of components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

- a. Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature		
Company Name	Title		

\* \* \* \* \*

#### **Certificate of Buy American Compliance for Manufactured Products**

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

Bidder or offer	or hereby	certifies	that it	will compl	v with 49	USC 8	§ 50101 by	٠.
		•••••	******	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	, ,,	$\sim$ $\sim$ $\sim$	,, ,	

- a. Only installing steel and manufactured products produced in the United States, or;
- b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
- c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic product
- 3. To furnish US domestic product for any waiver request that the FAA rejects
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.

- 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver -** The cost of the item components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a. Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature		
Company Name	Title		

#### 4. <u>GENERAL CIVIL RIGHTS PROVISIONS</u> (all contracts)

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- a. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

# 5. <u>CIVIL RIGHTS-TITLE IV COMPLIANCE WITH NONDISCRIMINATION</u> <u>REQUIREMENTS</u> (all AIP funded projects)

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

- 1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities,** as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- 4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontractor or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

# 6. <u>CLEAN AIR AND WATER POLLUTION CONTROL</u> (all contracts that exceed \$100,000)

Contractors and subcontractors agree:

- 1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- 2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- 3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- 4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

# 7. <u>CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS</u> (all contracts that exceed \$100,000)

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in

excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

#### 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

#### 4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

# 8. <u>CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)</u> (all contracts that exceed \$25,000)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

#### 9. <u>DISADVANTAGED BUSINESS ENTERPRISES</u> (all AIP-funded projects)

Contract Assurance (49 CFR § 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (49 CFR §26.29)**- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame

may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

# 10. <u>FEDERAL FAIR LABOR STANDARDS ACT</u> (FEDERAL MINIMUM WAGE) (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

# 11. <u>LOBBYING AND INFLUENCING FEDERAL EMPLOYEES</u> (all AIP-funded projects)

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### 12. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

#### 13. <u>RIGHTS TO INVENTIONS</u> (all AIP-funded projects)

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

#### 14. <u>TERMINATION OF CONTRACT</u> (contracts that exceed \$10,000)

- 1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- 2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- 3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- 4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed

to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

5. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### 15. TRADE RESTRICTION CLAUSE (all AIP-funded projects)

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

#### **16.** <u>TEXTING WHEN DRIVING</u> (all contracts)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

THE STATE OF TEXAS	)	ON-CALL
	)	AGREEMENT FOR
COUNTY OF EL PASO	)	PROFESSIONAL SERVICES

This Agreement is made this \_\_\_ day of \_\_\_\_\_, 2021 by and between the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the "Owner", and LAKE FLATO ARCHITECTS, INC., a Texas Corporation, hereinafter referred to as the "Consultant".

WHEREAS, the Owner intends to engage the Consultant to perform professional civil engineering services on a task by task basis through the use of task orders referencing this Agreement, the scope of which is further described in **Attachment "A"**; and

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

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

#### ARTICLE I ATTACHMENTS

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

Attachment "A"	Scope of Services and Project Budget
Attachment "B"	Consultant's Fee Proposal and Hourly Rates
Attachment "C"	Consultant's Basic and Additional Services
Attachment "D"	Payment and Deliverable Schedules
Attachment "E"	Insurance Certificate
Attachment "F"	Federal Aviation Administration contract provisions for Airport
	Improvement Program Projects

#### ARTICLE II PROJECT

- 2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform oncall professional services on a Task Order basis. Each individual Task Order will identify the Project and the total compensation due to each Project. The Task Order for each Project shall include the Scope of Services described in **Attachment "A"**.
- 2.2 For each Project, the Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this

- Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.
- 2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.
- 2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.
- 2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working days time period.

#### ARTICLE III CONSULTANT FEES AND PROJECT BUDGET

**3.1 PAYMENT TO CONSULTANT.** The Owner shall pay to the Consultant an amount not to exceed **Two Hundred Thousand AND NO/00 DOLLARS** (\$200,000.00) for all basic services and reimbursables performed pursuant to this Agreement.

No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement.

The City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects.

In addition, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00) must have prior approval by City Council through written amendment to this Agreement.

The parties agree and understand that all fees and compensation to the Consultant shall only become due and payable in accordance with the terms of this Agreement and the fees to be charged

for each Project shall be pursuant to the Consultant's fee proposal for such Basic and Additional Services at the rates which is attached hereto as **Attachment "B"**.

Payments to the Consultant shall be made pursuant to **Attachment "D"**.

- **3.2 CONSULTANT'S SERVICES.** The Basic Services and Additional Services, if any, to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C".**
- 3.3 CONSULTANT'S INVOICES. For each Project, the Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in Attachment "D". Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety (90) days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.
  - **3.3.1** Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.
  - **3.3.2** The Owner agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.
- **3.4 PROJECT CONSTRUCTION BUDGET.** The Consultant acknowledges that the construction budget and a construction time for each Project will be identified in each Task Order.
- 3.5 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

## ARTICLE IV PERIOD OF SERVICE AND TERMINATION

**4.1 PERIOD OF SERVICE.** The term of this Agreement shall be for a period not to exceed **two (2) years** from the date first shown above. The services called for by each Task Order shall begin upon the issuance of a Notice to Proceed from the City Engineer and shall continue through the completion of the construction of the Project, including any required extensions beyond the contract time for construction of the Project, as may be directed by the Owner.

- **4.2 SUSPENSION.** Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve** (**12**) **months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.
- **4.3 TERMINATION.** This Agreement may be terminated as provided herein.
  - **4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.
  - 4.3.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of seven (7) consecutive calendar days to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.
  - **4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

### ARTICLE V INSURANCE AND INDEMNIFICATION

- **5.1 INSURANCE.** Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.
  - **5.1.1 WORKERS' COMPENSATION INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

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

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

#### a) **COMMERCIAL GENERAL LIABILITY**

\$1,000,000.00 Per Occurrence \$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.

**General Aggregate** \$1,000,000.00 \$1,000,000.00 per occurrence

#### b) <u>AUTOMOBILE LIABILITY</u>

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

**5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the

benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) on a claims made basis.

- **5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.
- **5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.
- **5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate.

Further, all polices shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

5.2 INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

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

**5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS.** Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence,

professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident.

#### ARTICLE VI FEDERAL AND STATE PROVISIONS

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

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

- --The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.
- --The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.
- --The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment "F".
- -- The Texas Department of Transportation through an Agreement with the Owner.

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

**6.1.1 CONTRACT ASSURANCE**. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this

contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

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

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

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

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

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

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

(1) **Compliance with Regulations**: Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations),

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

#### ARTICLE VII GENERAL PROVISIONS

**7.1 CONTRACT TIME.** Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time

schedules indicated within **Attachment "D"**. It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in **Attachment "D"**.

**7.2 OPINION OF PROBABLE COST.** As a design professional practicing in El Paso the Consultant is expected to be familiar with the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The cost opinions of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within **ten percent (10%)** of the bid for the base bid item expected from the lowest responsible bidder.

The Consultant's final cost opinions for the construction of the Project, shall take into account labor costs which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Consultant in compiling a final cost opinions for the Project.

If the Consultant's most recent cost opinion for any construction contract is in excess of the Project construction budget, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Consultant without further compensation.

As noted herein, if all responsible bids exceed the final cost opinion by more than **ten percent** (10%), the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

- 7.3 CONSULTANT'S QUALITY OF WORK. The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant's services shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the Project and in accordance with the time periods established in Attachment "D" and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner.
- **7.4 COPYRIGHT AND REPRODUCTION RIGHTS.** Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as

the "Instruments of Service") are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

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

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

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

- **7.6 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.
- **7.7 VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.
- **7.8 GOVERNING LAW.** The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

- **7.9 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.
- **7.10 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.
- **7.11 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner: The City of El Paso

Attn: City Manager P.O. Box 1890

El Paso, Texas 79950-1890

With a Copy to: The City of El Paso

Attn: City Engineer P.O. Box 1890

El Paso, Texas 79950-1890

To the Consultant: David Lake

Partner Lake Flato Architects

311 3<sup>rd</sup> St.

San Antonio, TX 78205

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

- **7.12 CONFLICTING PROVISIONS.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.
- **7.13 ENTIRE AGREEMENT.** This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.
- **7.14 TEXAS GOVERNMENT CODE**. In accordance to Chapter 2274 of the Texas Government Code, as amended from time to time, the Consultant represents and warrants to the Owner the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

(Signatures on following page)

12

#### WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

	CITY OF EL PASO:
	Tomás González City Manager
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
0_6	Jerry DeMuro/for
Omar A. De La Rosa Assistant City Attorney	Samuel Rodriguez, P.E., City Engineer Capital Improvement Department
THE STATE OF TEXAS \$ \$ COUNTY OF EL PASO \$	owledgment)
COUNTY OF EL PASO §	fore me on this day of, 2021,
by Tomás González, as City Manager of the	e City of El Paso, Texas.
	Notary Public, State of Texas
My commission expires:	
(Signatures conti	inue on following page)

21-1004-1303.007 | 1129038 Lake Flato- Urban Design OAR

CONSULTANT:

LAKE FLATO ARCHITECTS, INC.

By: David Lake

Title: Partner Lake Flato Architects

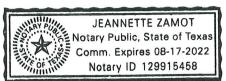
(Acknowledgment)

THE STATE OF TEXAS

8

COUNTY OF EL PASO §

This instrument was acknowledged before me on this \_\_\_\_ day of November, 2021, by David Lake, as Partner of Lake Flato Architects..



My commission expires:

Notary Public State of Texas

# ATTACHMENT "A" SCOPE OF SERVICES

# Attachment A Scope of Work

The contracts will be used for miscellaneous assignments on an on call for urban design services. Services are to include the following:

Study and design of streets and public spaces that meet the highest standards of resiliency and sustainability, as measured from an ecological, social and financial perspective and consider the public and stakeholder requirements as defined through community outreach initiatives.

Streetscape Design: Designing streets that focus on creating vibrant public spaces such as alleys upgraded to public spaces; local neighborhood commercial streets; and complex, multimodal streets typically in higher density urban districts to include landscaping, storm water management, bicycle, and transit infrastructure, street furniture, lighting, and wayfinding.

Public Life and Public Space Studies: Designing and conducting public life and public space studies that provide a detailed understanding of how public spaces are used, by whom, for what activities, and at what time of the day and week, including data collection and analysis, and developing succinct and insightful design recommendations.

Public Space Design: Designing and activating plazas that are inclusive, flexible public spaces with elements that are beautiful, durable, sustainable, cost effective, and meet the long-term maintenance needs of the city. Design may include tactical urbanism interventions.

Pedestrian Priority Streets: Designing single-surface, pedestrian priority streets in accordance with the Americans With Disabilities Act (ADA) guidelines and solutions that balance universal access, pedestrian safety, and a flexible, beautiful design.

Deliverables and work products will be identified on a task order basis.

# ATTACHMENT "B" CONSULTANT'S FEE PROPOSAL AND HOURLY RATES

### LAKE|FLATO HOURLY RATES

#### Lake | Flato's 2021 hourly billing rates (updated annually)

Principal	\$450
Partner I	\$350
Partner II	\$250
Associate Partner	\$225
Associate	\$200
Project Architect	\$180
Project Director	\$160
Project Designer	\$140
Designer	\$115
Intern	\$75

Each individual Task Order will identify the "**Project**", and the Consultant shall provide the Basic and Additional Services as noted herein.

#### **BASIC SERVICES OF THE CONSULTANT**

#### **GENERAL**

- 1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated
- 2. The Consultant shall comply with the City of El Paso Engineering and Construction Management Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the design phases of this Agreement.
- 3. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.
- 4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

#### **REPORT PHASE**

- 1. Upon receipt of the Owner's written authorization to proceed with the **Report Phase**, the Consultant shall:
  - **a.** Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.
  - **b.** Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.
  - **c.** (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory testing, and (d) Inspection or other special consultation; (2) Act as the Owner's representative in connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

- **d.** Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant's recommendations.
- **e.** As per Attachment "D", furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.
- 2. Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- As identified in the Scope of Work in Attachment "A", the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

#### PHASE I - PRELIMINARY DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Consultant shall do the following separately for each construction contract:

- 1. Consult with the Owner to determine the Owner's requirements for the Project.
- 2. Provide at the Consultant's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the

Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

- 3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.
- **4.** Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.
- 5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.
- 6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.
- **8.** Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.
- 9. As per **Attachment "D"**, furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

#### PHASE II - PRE-FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Pre-Final Design Phase, the Consultant shall do the following separately <u>for each construction contract:</u>

- 1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant's assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.
- 2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the "Drawings," to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called "Specifications." These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.
- **3.** Advise the Owner of any adjustment to the Consultant's previous opinion of probable construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant's cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor's method of pricing and that the Consultant's opinion of probable construction costs are made on the basis of professional judgment and experience. The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.
- **4.** Prepare proposal forms.
- 5. As per **Attachment "D"**, furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not

approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

#### PHASE III - FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Final Design Phase, the Consultant shall do the following separately for each construction contract:

- 1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.
- 2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility Consultant comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.
- 3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.
- **4. As per Attachment "D"**, furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.
- 5. **As per Attachment "D"**, furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.
- **6.** Additional copies of the drawings and specifications beyond those identified in **Attachment "D"**, required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

## **BIDDING PHASE**

Upon receipt of Owner's written request, the Consultant shall provide any of the following services during the Bidding Phase:

- 1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.
- 2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.
- **3.** Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.
- 4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment "D", deliver copies of all addenda to the Owner for appropriate action.
- As identified in Attachment "A", assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.
- 6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

## **CONSTRUCTION PHASE**

At Owner's request, the Consultant shall provide any of the following services associated with the Construction Phase:

- 1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.
- 2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with

such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

- **3.** Unless otherwise stipulated in Attachment "A", Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.
- Visit each construction site at least once each week or more frequently, if necessary, to 4. observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

- 5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. Such review must be complete within ten City working days following receipt of submittal documents. The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.
- 6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner's approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract

documents, subject to the Owner's interpretation of such terms and conditions. If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.

- Passed on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.
- **8.** Conduct with the Owner and construction contractor no more **than two brief preliminary inspections**, at times requested by the construction contractor to determine if the Project is ready for final inspection.
- 9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The "punch list" shall be furnished to the construction contractor and the Owner within two City working days after the final inspection.
- 10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the final inspection.
- 11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.
- 12. Furnish the Owner one set of reproducible (**D format**) "record" drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints,

drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format.

- **13.** Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.
- 14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.
- **15.** Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.
- 16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.
- **17.** Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.
- **18**. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.
- **19.** Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.
- **20.** Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.
- 21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.
- 22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.
- 23. Provide additional or extended services during construction made necessary by: a) work damaged by fire or other cause during construction; b) prolongation of the construction contract time by more than **twenty-five percent** provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Consultant; c) Acceleration of the work schedule involving services beyond normal city working hours; or d) the

construction contractor's default under the construction contract due to delinquency or insolvency.

- **24.** Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.
- 25. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

#### **ADDITIONAL SERVICES OF THE CONSULTANT**

#### **GENERAL**

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

- 1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.
- 2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner's scope or budget, except where the Consultant's preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant's final design cost opinions by ten percent or more.
- 3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.
- **4.** Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.
- 5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

### **RESIDENT PROJECT SERVICES**

- 1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.
- 2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.
- 3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

# ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

#### PAYMENT SCHEDULE

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

## **Fixed fee Payment to Consultant**

Report Phase	To be determined by Task Order
<b>Preliminary Design Phase</b>	To be determined by Task Order
<b>Pre-Final Design Phase</b>	To be determined by Task Order
Final Design Phase	To be determined by Task Order
<b>Bidding Phase</b>	To be determined by Task Order
<b>Construction Phase</b>	To be determined by Task Order

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant's proposal found in **Attachment "B"**. The time shown in **Attachment "B"** is an estimate. Should the services rendered during the bidding and construction phases exceed the estimated amount, written authorization will be required prior to rendering services. Written authorization shall be only by contract amendment in accordance with the contract provisions. For contracts with a total value less than Fifty Thousand and No/100 Dollars (\$50,000), the parties agree that at no time may the amount of the compensation under this contract exceed Fifty Thousand and No/100 Dollars (\$50,000) except by execution of an amendment to this Agreement.

Payment for each Phase shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and a Consulting Summary and Progress Report and the Owner's written approval.

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

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

**Receipts:** Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable*.

No single invoice may include items for both August and September of any given year. The Owner's fiscal year begins on September 1<sup>st</sup> of each year and ends on August 31<sup>st</sup> of each year. Consultant's invoices must be separated into items that end August 31<sup>st</sup> and those that begin on Septembers 1<sup>st</sup> of any given year, to coincide with Owner's fiscal year.

## ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

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

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

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

#### **DELIVERABLE SCHEDULE**

#### REPORT PHASE

The services called for in the Report Phase of this Agreement shall be completed and **5 copies** of the Preliminary Study and Report shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE I—PRELIMINARY DESIGN PHASE

The services called for in **Phase I** of this Agreement shall be completed and **10 copies** of any required documents and opinion of probable construction costs shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. If Owner does not approve the preliminary design documents, the Consultant shall furnish **five copies** of the resubmitted design documents.

#### PHASE II—PRE-FINAL DESIGN PHASE

The services called for in **Phase II** of this Agreement shall be completed and **10 copies** the required documents and services shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE III—FINAL DESIGN PHASE

The services called for in **Phase III** of this Agreement shall be completed and **10 copies** of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. After review, the Consultant shall submit to Owner **3 copies** of the final revised design documents and specifications for final check. Upon the approval of the final design documents, the Consultant shall furnish **10 copies** of the final design documents and specifications for bidding to the Owner within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

# ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

#### PHASE IV—BIDDING PHASE

Provide services as authorized by Owner during the bid phase as described in Attachment "C" and submit **1 copy** of all addenda to the Owner for appropriate action within **2 consecutive calendar days.** 

## PHASE V - CONSTRUCTION PHASE

Provide services as authorized by Owner during construction phase as described in Attachment "C" and submit one set of Mylar and one set of electronic media format copies of all record drawings to the Owner within sixty days from the date of substantial completion.

## ATTACHMENT "E"

Client#: 158318 LAKEFLAT

### ACORD.

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 8/11/2021

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 any rights to the certificate holder in lieu of such endorsement(s).

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PRODUCER		CONTACT NAME:	
USI Southwest	PHONE (A/C, No, Ext): 713 490-4600 FAX (A/C, No): 713	3-490-4700	
	y Freeway, Suite 500	E-Mal ADDRESS:	
	, TX 77024	INSURER(S) AFFORDING COVERAGE	NAIC #
713 490-4600	INSURER A: Travelers Indemnity Co of America	25666	
Lake Flato Architects, Inc. 311 Third Street, Suite 200 San Antonio, TX 78205	INSURER B: Travelers Property Cas. Co. of America	25674	
	INSURER C : Charter Oak Fire Insurance Company	25615	
	INSURER D : Berkley Insurance Company	32603	
	INSURER E:		
		INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

	EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMIT	3
Α	X COMMERCIAL GENERAL LIABILITY		6806H4017962147	01/15/2021	01/15/2022	EACH OCCURRENCE	\$1,000,000
	CLAIMS-MADE X OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
						MED EXP (Any one person)	\$5,000
						PERSONAL & ADV INJURY	\$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE	\$2,000,000
	POLICY PRO- JECT LOC					PRODUCTS - COMP/OP AGG	\$2,000,000
	OTHER:						\$
В	AUTOMOBILE LIABILITY		BA3R6668162147G	01/15/2021	01/15/2022	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	ANY AUTO					BODILY INJURY (Per person)	\$
	OWNED SCHEDULED AUTOS					BODILY INJURY (Per accident)	\$
	X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY				_	PROPERTY DAMAGE (Per accident)	\$
							\$
В	X UMBRELLA LIAB X OCCUR		CUP7C9520802147	01/15/2021	01/15/2022	EACH OCCURRENCE	\$5,000,000
	EXCESS LIAB CLAIMS-MADE					AGGREGATE	\$5,000,000
	DED X RETENTION \$10000						\$
С	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		UB9J39318A2147G	01/15/2021	01/15/2022	X PER STATUTE OTH-	
	ANY PROPRIETOR/PARTNER/EXECUTIVE	N/A				E.L. EACH ACCIDENT	\$1,000,000
	(Mandatory in NH)					E.L. DISEASE - EA EMPLOYEE	\$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - POLICY LIMIT	\$1,000,000
D	Professional Liab		AEC904193107	01/15/2021	01/15/2022	\$5,000,000 per claim	1
	Claims Made &		Retro:1/2/1988			\$5,000,000 annl agg	r.
	Reported Pol						
I							

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The Auto Liability and General Liability policies include an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder, only when there is a written contract or written agreement between the named insured and the certificate holder and with regard to work performed by, or on behalf of the named insured.

The General Liability policy includes an automatic Additional Insured endorsement as respects COMPLETED (See Attached Descriptions)

CERTIFICATE HOLDER	CANCELLATION		
City of El Paso Attn: Sam Rodriguez, P.E City Engineer Capital Improvement Dept.	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.		
218 N. Campbell	AUTHORIZED REPRESENTATIVE		
El Paso, TX 79901	Jemes C. Gonnevar		

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## ATTACHMENT "F"

#### **ATTACHMENT "F"**

#### FEDERAL AVIATION ADMINISTRATION (FAA) CONTRACT PROVISIONS

In this Attachment "F", the term "Contractor" shall refer to the "Consultant", and the term "Airport Sponsor" shall refer to the "City".

If there are any conflicts between the terms and conditions of Attachment "F" and Article VI of the Agreement, the terms and conditions of Attachment "F" will prevail.

## A. GENERAL REQUIREMENT FOR CONTRACT

- 1. The contractor (including all subcontractors) are required to insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all subcontracts;
- 2. The contractor (or subcontractor) is required to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services;
- 3. The contractor is responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider; and
- 4. The contractor (or subcontractor) shall not modify the provisions.

Subject to the applicability criteria noted in the specific contract provisions, these contract provisions apply to all work performed on the contract.

## B. FAILURE TO COMPLY

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- 1. Withhold progress payments or final payment,
- 2. Terminate the contract,
- 3. Seek suspension/debarment, or
- 4. Any other action determined to be appropriate by the Airport Sponsor or the FAA.

## C. <u>CONTRACT PROVISIONS</u>

#### 1. ACCESS TO RECORDS AND REPORTS (all AIP-funded projects)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized

representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after the final payment is made and all pending matters are closed.

2. <u>BREACH OF CONTRACT TERMS</u> (all contracts that exceed the simplified acquisition threshold as fixed at 41 USC 403(11). This threshold is presently set at \$100,000.)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. <u>BUY AMERICAN PREFERENCES</u> (all AIP-funded projects, if this professional services agreement includes any manufactured product as a deliverable.)

#### **BUY AMERICAN CERTIFICATION**

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

## Type of Certification is based on Type of Project:

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

#### \*\*\*\*

#### **Certificate of Buy American Compliance for Total Facility**

(Buildings such as Terminal, SRE, ARFF, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
  - a. Only installing steel and manufactured products produced in the United States; or
  - b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic products
- 3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
  - 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.

- 4. To furnish US domestic product for any waiver request that the FAA rejects.
- 5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver -** The cost of components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

- a. Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature		
Company Name	Title		

\* \* \* \* \*

### **Certificate of Buy American Compliance for Manufactured Products**

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

Bidder or o	offeror h	ereby o	certifies	that it	will com	ply with	49 USC	§ 50101 b	v:

- a. Only installing steel and manufactured products produced in the United States, or;
- b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
- c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic product
- 3. To furnish US domestic product for any waiver request that the FAA rejects
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.

- 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver -** The cost of the item components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a. Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature		
Company Name	Title		

## 4. <u>GENERAL CIVIL RIGHTS PROVISIONS</u> (all contracts)

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- a. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

# 5. <u>CIVIL RIGHTS-TITLE IV COMPLIANCE WITH NONDISCRIMINATION</u> <u>REQUIREMENTS</u> (all AIP funded projects)

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

- 1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities,** as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- 4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontractor or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

# 6. <u>CLEAN AIR AND WATER POLLUTION CONTROL</u> (all contracts that exceed \$100,000)

Contractors and subcontractors agree:

- 1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- 2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- 3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- 4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

# 7. <u>CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS</u> (all contracts that exceed \$100,000)

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in

excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

## 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

#### 4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

# 8. <u>CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)</u> (all contracts that exceed \$25,000)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

## 9. <u>DISADVANTAGED BUSINESS ENTERPRISES</u> (all AIP-funded projects)

Contract Assurance (49 CFR § 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (49 CFR §26.29)**- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame

may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

# 10. <u>FEDERAL FAIR LABOR STANDARDS ACT</u> (FEDERAL MINIMUM WAGE) (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

# 11. <u>LOBBYING AND INFLUENCING FEDERAL EMPLOYEES</u> (all AIP-funded projects)

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### 12. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

### 13. <u>RIGHTS TO INVENTIONS</u> (all AIP-funded projects)

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

#### 14. <u>TERMINATION OF CONTRACT</u> (contracts that exceed \$10,000)

- 1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- 2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- 3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- 4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed

to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

5. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

## 15. TRADE RESTRICTION CLAUSE (all AIP-funded projects)

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

#### **16.** <u>TEXTING WHEN DRIVING</u> (all contracts)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.



On-Call Professional Services
Urban Design

Solicitation No: 2021-1335R

November 9, 2021



# **Contract Details**



Location:	City-wide
Contract Value:	\$200,000/contract
Contract Term:	Two years
Funding Source:	Capital plans, bond programs, TIRZ boards, parking benefit districts, etc.



# **Contract Scope**

# On-call Professional Services for Four Focus Areas

- Strategic Planning & Visioning: engaging and facilitating city and community leaders in developing strategic visions and action plans for targeted areas of redevelopment.
- 2. Sustainability & Resiliency Planning: performing technical analyses to support the development of sustainability plans and programs.
- 3. Information Analysis: developing land use, and sustainable growth information management and analytical systems.
- **4. Urban Design:** developing design guidelines and design development for activating public spaces, streetscapes, and pedestrian priority streets.

# **Procurement Summary**

- Request for Qualifications advertised on May 25, 2021
- Received the following Statements of Qualifications (SOQs):
  - ✓ Seven (7) firms for Strategic Planning & Visioning
  - ✓ Five (5) firms for Sustainability & Resiliency Planning
  - ✓ Three (3) firms for Information Analysis
  - ✓ Eleven (11) firms for Urban Design
- SOQs evaluated on the basis of firm approach, qualifications, experience, understanding of local conditions, technical proficiencies and history of successful projects.



# **Recommendations for Award**



Focus Area	Firms
Stratogic Planning and Visioning	Lake Flato Architects, Inc.
Strategic Planning and Visioning	MYCOTOO, Inc.
Sustainability & Resiliency Planning	AECOM Technical Services, Inc.
	Quantum Consulting Engineers, Inc.
Urban Design	Asakura Robinson Company, LLC
	Lake Flato Architects, Inc.
Information Analysis	AECOM Technical Services, Inc.



# **Mission**

Deliver exceptional services to support a high quality of life and place for our community



Integrity, Respect, Excellence, Accountability, People



Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government



# **Misión**

Brindar servicios excepcionales para respaldar una vida y un lugar de alta calidad para nuestra comunidad



Integridad, Respeto, Excelencia, Responsabilidad, Personas



Desarrollar una economía regional vibrante, vecindarios seguros y hermosos y oportunidades recreativas, culturales y educativas excepcionales impulsadas por un gobierno de alto desempeño



## **Legislation Text**

File #: 21-1265, Version: 1

# CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

Please choose District and Department from drop down menu. Please post exactly as example below. No Title's. No emails. Please use ARIAL 10 Font.

#### **All Districts**

Capital Improvement Department, Sam Rodriguez, (915) 212-1808

#### AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Discussion and action that the City Manager be authorized to sign a two year On-Call Agreement for Professional Services to perform energy management services on a task order basis by and between the City of El Paso and each of the following two (2) consultants:

- 1. Texas Energy Engineering Services, Inc.
- 2. Yearout Energy Services Company, LLC

Each On-Call Agreement will be for an amount not to exceed Three Hundred Thousand and No/00 Dollars (\$300,000.00), and each agreement will include authorization for the City Engineer to approve additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and authorization for the City Engineer to approve Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if the identified services are necessary for proper execution of identified project and if the increased amounts are within the appropriate budget identified for a project. In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement.

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

AGENDA DATE: November 9, 2021 PUBLIC HEARING DATE: N/A

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

(915) 212-1808

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No.8: Nurture and Promote a Healthy, Sustainable Community

SUBGOAL: 8.4 Reduce operational energy consumption

#### SUBJECT:

That the City Manager be authorized to sign a two year On-Call Agreement for Professional Services to perform energy management services on a task order basis by and between the City of El Paso and each of the following two (2) consultants:

- 1. Texas Energy Engineering Services, Inc.
- 2. Yearout Energy Services Company, LLC

Each On-Call Agreement will be for an amount not to exceed Three Hundred Thousand and No/00 Dollars (\$300,000.00), and each agreement will include authorization for the City Engineer to approve additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and authorization for the City Engineer to approve Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if the identified services are necessary for proper execution of identified project and if the increased amounts are within the appropriate budget identified for a project. In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement.

#### **BACKGROUND / DISCUSSION:**

The On Call Agreement for professional services to perform energy management services assists the Capital Improvement Department as well as User Departments to expedite and complete tasks for projects.

#### PRIOR COUNCIL ACTION:

N/A

#### AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? x YES NO

**PRIMARY DEPARTMENT:** Capital Improvement Department

**SECONDARY DEPARTMENT: N/A** 

\_\_\_\_\_

### 

**DEPARTMENT HEAD:** 

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

### RESOLUTION

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

That the City Manager be authorized to sign a two year On-Call Agreement for Professional Services to perform energy management services on a task order basis by and between the City of El Paso and each of the following two (2) consultants:

- 1. Texas Energy Engineering Services, Inc.
- 2. Yearout Energy Services Company, LLC

ADDDOVED THIS

Each On-Call Agreement will be for an amount not to exceed Three Hundred Thousand and No/00 Dollars (\$300,000.00), and each agreement will include authorization for the City Engineer to approve additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and authorization for the City Engineer to approve Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if the identified services are necessary for proper execution of identified project and if the increased amounts are within the appropriate budget identified for a project. In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement.

2021

DAVOE

ATTROVED THISDAT O	2021.
	CITY OF EL PASO:
ATTEST:	Oscar Leeser Mayor
ATTEST:	
Laura Prine City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
	Jerry DeMuro/for Sam Rodriguez, City Engineer
Omar A. De La Rosa	Sam Rodriguez, City Engineer
Assistant City Attorney	Capital Improvement Department



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

#### **EVALUATION COMMITTEE SCORE SUMMARY**

### SOLICITATION# 2021-1336R ON CALL PROFESSIONAL SERVICES - ENERGY MANAGEMENT

	CARDINA	EMA	ЕМС	HUITT ZOLLARS	PARAGON	TEESI	YEAROUT ENERGY	
Rater #1	61	59	43	60	60	86	89	
Rater #2	73	71	56	82	77	92	88	
Rater #3	72	74	54	77	73	83	85	
Rater #4	74	73	69	84	75	92	93	
Rater #5	72	72	60	89	86	98	96	
Total Score	352	349	282	392	371	451	451	

THE STATE OF TEXAS )	ON-CALL
)	AGREEMENT FOR
COUNTY OF EL PASO )	PROFESSIONAL SERVICES

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_\_, 2021 by and between the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the "Owner", and TEXAS ENERGY ENGINEERING SERVICES, INC., a Texas Corporation, hereinafter referred to as the "Consultant".

WHEREAS, the Owner intends to engage the Consultant to perform professional civil engineering services on a task order basis through the use of task orders referencing this Agreement, the scope of which is further described in Attachment "A"; and

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

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

### ARTICLE I ATTACHMENTS

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

Attachment "B" Consultant's Fee Proposal and Hourly Rates	
Attachment "C" Consultant's Basic and Additional Services	
Attachment "D" Payment and Deliverable Schedules	
Attachment "E" Insurance Certificate	
Attachment "F" Federal Aviation Administration contract provisions for Air	port
Improvement Program Projects	

### ARTICLE II PROJECT

- 2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform oncall professional services on a Task Order basis. Each individual Task Order will identify the Project and the total compensation due to each Project. The Task Order for each Project shall include the Scope of Services described in **Attachment "A"**.
- 2.2 For each Project, the Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this

- Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.
- 2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.
- 2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.
- 2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working days time period.

### ARTICLE III CONSULTANT FEES AND PROJECT BUDGET

**3.1 PAYMENT TO CONSULTANT.** The Owner shall pay to the Consultant an amount not to exceed **Three Hundred Thousand AND No/00 DOLLARS** (\$300,000.00) for all basic services and reimbursables performed pursuant to this Agreement.

No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement.

The City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects.

In addition, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00) must have prior approval by City Council through written amendment to this Agreement.

The parties agree and understand that all fees and compensation to the Consultant shall only become due and payable in accordance with the terms of this Agreement and the fees to be charged

for each Project shall be pursuant to the Consultant's fee proposal for such Basic and Additional Services at the rates which is attached hereto as **Attachment "B"**.

Payments to the Consultant shall be made pursuant to **Attachment "D"**.

- **3.2 CONSULTANT'S SERVICES.** The Basic Services and Additional Services, if any, to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C".**
- 3.3 CONSULTANT'S INVOICES. For each Project, the Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in Attachment "D". Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety (90) days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.
  - **3.3.1** Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.
  - **3.3.2** The Owner agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.
- **3.4 PROJECT CONSTRUCTION BUDGET.** The Consultant acknowledges that the construction budget and a construction time for each Project will be identified in each Task Order.
- **3.5 COSTS NOT ENUMERATED.** Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

# ARTICLE IV PERIOD OF SERVICE AND TERMINATION

**4.1 PERIOD OF SERVICE.** The term of this Agreement shall be for a period not to exceed **two (2) years** from the date first shown above. The services called for by each Task Order shall begin upon the issuance of a Notice to Proceed from the City Engineer and shall continue through the completion of the construction of the Project, including any required extensions beyond the contract time for construction of the Project, as may be directed by the Owner.

- **4.2 SUSPENSION.** Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve** (**12**) **months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.
- **4.3 TERMINATION.** This Agreement may be terminated as provided herein.
  - **4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.
  - 4.3.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of seven (7) consecutive calendar days to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.
  - **4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

# ARTICLE V INSURANCE AND INDEMNIFICATION

- **5.1 INSURANCE.** Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.
  - **5.1.1 WORKERS' COMPENSATION INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

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

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

#### a) **COMMERCIAL GENERAL LIABILITY**

\$1,000,000.00 Per Occurrence \$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.

**General Aggregate** \$1,000,000.00 \$1,000,000.00 per occurrence

#### b) <u>AUTOMOBILE LIABILITY</u>

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

**5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the

benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) on a claims made basis.

- **5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.
- **5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.
- **5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate.

Further, all polices shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

5.2 INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

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

**5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS.** Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence,

professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident.

### ARTICLE VI FEDERAL AND STATE PROVISIONS

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

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

- --The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.
- --The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.
- --The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment "F".
- -- The Texas Department of Transportation through an Agreement with the Owner.

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

- **6.1.1 CONTRACT ASSURANCE**. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
- **6.1.2 DBE GOOD FAITH EFFORTS.** The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal will be identified pursuant to the federal funding requirements for an individual task order established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this Agreement.

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

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

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

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

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

(1) **Compliance with Regulations**: Consultant shall comply with the Regulations relative

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

### ARTICLE VII GENERAL PROVISIONS

- 7.1 CONTRACT TIME. Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within Attachment "D". It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in Attachment "D".
- **7.2 OPINION OF PROBABLE COST.** As a design professional practicing in El Paso the Consultant is expected to be familiar with the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The cost opinions of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within **ten percent** (10%) of the bid for the base bid item expected from the lowest responsible bidder.

The Consultant's final cost opinions for the construction of the Project, shall take into account labor costs which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Consultant in compiling a final cost opinions for the Project.

If the Consultant's most recent cost opinion for any construction contract is in excess of the Project construction budget, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Consultant without further compensation.

As noted herein, if all responsible bids exceed the final cost opinion by more than **ten percent** (10%), the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

7.3 CONSULTANT'S QUALITY OF WORK. The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant's services shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the Project and in accordance with the time periods established in Attachment "D" and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants,

and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner.

- 7.4 **COPYRIGHT AND REPRODUCTION RIGHTS.** Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.
- 7.5 AUDITING RECORDS FOR THE SPECIFIC PROJECT. Consultant's records subject to audit shall include but not be limited to records which, in the Owner's discretion, have a bearing on matters of interest to the Owner in connection with the Consultant's work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

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

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

- **7.6 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.
- **7.7 VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and

shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

- **7.8 GOVERNING LAW.** The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.
- **7.9 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.
- **7.10 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.
- **7.11 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner: The City of El Paso

Attn: City Manager P.O. Box 1890

El Paso, Texas 79950-1890

With a Copy to: The City of El Paso

Attn: City Engineer P.O. Box 1890

El Paso, Texas 79950-1890

To the Consultant: TEESI Engineering

Attn: M. Saleem Khan, President

1301 S. Capital of Texas Highway, B-325

Austin, Texas 78746

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

- **7.12 CONFLICTING PROVISIONS.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.
- **7.13 ENTIRE AGREEMENT.** This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

(Signatures on following page)

### WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

	CITY OF EL PASO:
	Tomás González City Manager
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
$\bigcirc$ $\bigwedge$	Jerry DeMuro/for
Omar A. De La Rosa Assistant City Attorney	Samuel Rodriguez, P.E., City Engineer Capital Improvement Department
(Ack	nowledgment)
THE STATE OF TEXAS §	
COUNTY OF EL PASO §	
This instrument was acknowledged by <b>Tomás González</b> , as <b>City Manager</b> of t	before me on this day of, 2021, the City of El Paso, Texas.
	Notary Public, State of Texas
My commission expires:	
(Signatures con	ntinue on following page)

CONSULTANT: TEXAS ENERGY ENGINEERING

SERVICES, INC.

By: M.Saleem Khan
Title: President

(Acknowledgment)

THE STATE OF TEXAS §

COUNTY OF EL PASO §

This instrument was acknowledged before me on this <u>21st</u> day of <u>October</u>, 2021, by M. Saleen Khan, as President of Texas Energy Engineering Services, Inc..

Notary Public, State of Texas

My commission expires:

December 1, 2022



# ATTACHMENT A SCOPE OF WORK

Specific tasks under this contract will be defined by individual task orders; anticipated task orders under this contract include but are not limited to the following:

- Analyses, evaluation, and identification of various methods to expand the use of renewable energy in powering city infrastructure and fleet including but not limited to installation of renewable energy and storage systems on/at City facilities, fleet replacement with electric or alternative fuel vehicles, power purchasing agreements, and public-private partnerships in centralized renewable energy facilities.
- Investment grade energy audits of City-facilities to identify and develop energy efficiency improvements to our facilities to include analysis of energy usage, building characteristics, weather data, and the typical usage of the building to include:
  - ✓ Level 1 walk-through audits to identify low cost energy improvements and areas where more detailed future audits can focus.
  - ✓ Level 2 general audits to include a comprehensive evaluation of the building and potential energy conservation measures through detailed information collection, in-depth interviews with facilities managers and users, and the analysis of energy profiles created through interval metering.
  - ✓ Level 3 investment-grade audits of potentially pricey energy efficiency improvements with a distinct focus on financial concerns and return on investment.
- Analyses, evaluation, and identification of various methods to reduce energy consumption and demand, improve performance, and address operation and maintenance challenges for street lights infrastructure.
- Analyses, evaluation, and identification of methods to integrate electric or alternative fuel vehicles into the City's fleet including required infrastructure.
- Deliverables under this contract will include databases, technical reports, and feasibility studies.

The successful offeror must demonstrate capabilities, expertise, and experience in the following:

- Assessing energy consumption and integration of renewable energy sources into City facilities, infrastructure, and fleet and current and future energy needs and costs for a municipality of a similar size and geographic location as El Paso. .
- Researching and identifying a broad suite of energy producing/saving options for a municipal entity.
- Development of and prioritizing renewable energy and energy efficiency strategies for citywide implementation.
- Evaluation of the potential for future City revenue resulting from City generated excess renewable energy.
- Identification and evaluation of funding opportunities for all energy options including revolving funds, energy service contracts, grants, and power purchasing agreements.
- Identification of regulatory and environmental constraints and requirements that pertain to a municipality's renewable energy program including but not limited to evaluation of

legislative and regulatory changes needed, at both State and Federal level, to maximize city-wide renewable energy and energy efficiency implementation potential.

# ATTACHMENT "B" CONSULTANT'S FEE PROPOSAL AND HOURLY RATES

City of El Paso - On Call Professional Services - Energy Management

Soliciataion #2021-1336R

**REVISED 8/31/2021 (2nd)** 

				Ove	erhead			Loa	ided	Loa	ded	
			Raw Rate		Rate %		Profit %		Hourly Rate		Hourly Rate	
Texas Energy Engineering Services, Inc. (d/b/a TEESI Engineering)				158.70%		10%				(Rounded)		
	Title and Rates		(A)		(B)		(C)		(D)		(E)	
1	Principal	\$	72.12	\$	114.45	\$	18.66	\$	205.22	\$	205.00	
2	Engineer III, P.E.	\$	52.88	\$	83.93	\$	13.68	\$	150.49	\$	150.00	
3	Project Manager (P.E.)	\$	55.29	\$	87.74	\$	14.30	\$	157.33	\$	157.00	
4	Sr. Project Coordinator / Mgr (non P.E.)	\$	44.50	\$	70.62	\$	11.51	\$	126.63	\$	127.00	
5	Engineer II, P.E.	\$	49.04	\$	77.82	\$	12.69	\$	139.55	\$	140.00	
6	Engineer I / Sr. Designer	\$	36.06	\$	57.22	\$	9.33	\$	102.61	\$	103.00	
8	Graduate Engineer (G-II)	\$	33.65	\$	53.41	\$	8.71	\$	95.77	\$	96.00	
9	Jr. Staff Engineer (G-I)	\$	30.00	\$	47.61	\$	7.76	\$	85.37	\$	85.00	
10	Sr. CAD Designer / Coordinator	\$	32.56	\$	51.67	\$	8.42	\$	92.66	\$	93.00	
11	Jr. CAD Designer	\$	27.03	\$	42.90	\$	6.99	\$	76.92	\$	77.00	
12	Technician	\$	26.44	\$	41.96	\$	6.84	\$	75.25	\$	75.00	
13	Engineering Aid	\$	16.22	\$	25.74	\$	4.20	\$	46.16	\$	46.00	
14	Sr. Office Administrator	\$	28.37	\$	45.02	\$	7.34	\$	80.73	\$	81.00	
15	Office Support / Admin Assistant	\$	18.00	\$	28.57	\$	4.66	\$	51.22	\$	51.00	

Each individual Task Order will identify the "**Project**", and the Consultant shall provide the Basic and Additional Services as noted herein.

### **BASIC SERVICES OF THE CONSULTANT**

### **GENERAL**

- 1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated
- 2. The Consultant shall comply with the City of El Paso Engineering and Construction Management Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the design phases of this Agreement.
- 3. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.
- 4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

#### **REPORT PHASE**

- 1. Upon receipt of the Owner's written authorization to proceed with the **Report Phase**, the Consultant shall:
  - **a.** Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.
  - **b.** Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.
  - **c.** (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory testing, and (d) Inspection or other special consultation; (2) Act as the Owner's representative in connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

- **d.** Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant's recommendations.
- **e.** As per Attachment "D", furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.
- 2. Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 3. As identified in the Scope of Work in Attachment "A", the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

### PHASE I - PRELIMINARY DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Consultant shall do the following separately for each construction contract:

- 1. Consult with the Owner to determine the Owner's requirements for the Project.
- 2. Provide at the Consultant's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the

Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

- 3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.
- **4.** Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.
- 5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.
- 6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.
- **8.** Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.
- 9. As per **Attachment "D"**, furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

### PHASE II - PRE-FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Pre-Final Design Phase, the Consultant shall do the following separately <u>for each construction contract:</u>

- 1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant's assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.
- 2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the "Drawings," to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called "Specifications." These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.
- **3.** Advise the Owner of any adjustment to the Consultant's previous opinion of probable construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant's cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor's method of pricing and that the Consultant's opinion of probable construction costs are made on the basis of professional judgment and experience. The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.
- **4.** Prepare proposal forms.
- 5. As per **Attachment "D"**, furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not

approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

### PHASE III - FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Final Design Phase, the Consultant shall do the following separately for each construction contract:

- 1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.
- 2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility Consultant comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.
- 3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.
- **4. As per Attachment "D"**, furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.
- 5. **As per Attachment "D"**, furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.
- **6.** Additional copies of the drawings and specifications beyond those identified in **Attachment "D"**, required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

#### **BIDDING PHASE**

Upon receipt of Owner's written request, the Consultant shall provide any of the following services during the Bidding Phase:

- 1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.
- 2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.
- **3.** Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.
- 4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment "D", deliver copies of all addenda to the Owner for appropriate action.
- As identified in Attachment "A", assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.
- 6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

### **CONSTRUCTION PHASE**

At Owner's request, the Consultant shall provide any of the following services associated with the Construction Phase:

- 1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.
- 2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with

such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

- **3.** Unless otherwise stipulated in Attachment "A", Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.
- 4. Visit each construction site at least once each week or more frequently, if necessary, to observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

- 5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. Such review must be complete within ten City working days following receipt of submittal documents. The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.
- 6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner's approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract

documents, subject to the Owner's interpretation of such terms and conditions. If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.

- Passed on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.
- **8.** Conduct with the Owner and construction contractor no more **than two brief preliminary inspections**, at times requested by the construction contractor to determine if the Project is ready for final inspection.
- 9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The "punch list" shall be furnished to the construction contractor and the Owner within two City working days after the final inspection.
- 10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the final inspection.
- 11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.
- 12. Furnish the Owner one set of reproducible (**D format**) "record" drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints,

drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format.

- **13.** Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.
- 14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.
- **15.** Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.
- 16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.
- **17.** Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.
- **18**. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.
- **19.** Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.
- **20.** Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.
- 21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.
- 22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.
- 23. Provide additional or extended services during construction made necessary by: a) work damaged by fire or other cause during construction; b) prolongation of the construction contract time by more than **twenty-five percent** provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Consultant; c) Acceleration of the work schedule involving services beyond normal city working hours; or d) the

construction contractor's default under the construction contract due to delinquency or insolvency.

- **24.** Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.
- 25. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

#### **ADDITIONAL SERVICES OF THE CONSULTANT**

#### **GENERAL**

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

- 1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.
- 2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner's scope or budget, except where the Consultant's preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant's final design cost opinions by ten percent or more.
- 3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.
- 4. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.
- 5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

### RESIDENT PROJECT SERVICES

- 1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.
- 2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.
- 3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

# ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

#### PAYMENT SCHEDULE

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

### **Fixed fee Payment to Consultant**

Report Phase	To be determined by Task Order
<b>Preliminary Design Phase</b>	To be determined by Task Order
<b>Pre-Final Design Phase</b>	To be determined by Task Order
Final Design Phase	To be determined by Task Order
<b>Bidding Phase</b>	To be determined by Task Order
<b>Construction Phase</b>	To be determined by Task Order

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant's proposal found in **Attachment "B"**. The time shown in **Attachment "B"** is an estimate. Should the services rendered during the bidding and construction phases exceed the estimated amount, written authorization will be required prior to rendering services. Written authorization shall be only by contract amendment in accordance with the contract provisions. For contracts with a total value less than Fifty Thousand and No/100 Dollars (\$50,000), the parties agree that at no time may the amount of the compensation under this contract exceed Fifty Thousand and No/100 Dollars (\$50,000) except by execution of an amendment to this Agreement.

Payment for each Phase shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and a Consulting Summary and Progress Report and the Owner's written approval.

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

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

**Receipts:** Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable*.

No single invoice may include items for both August and September of any given year. The Owner's fiscal year begins on September 1<sup>st</sup> of each year and ends on August 31<sup>st</sup> of each year. Consultant's invoices must be separated into items that end August 31<sup>st</sup> and those that begin on Septembers 1<sup>st</sup> of any given year, to coincide with Owner's fiscal year.

# ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

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

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

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

#### **DELIVERABLE SCHEDULE**

#### REPORT PHASE

The services called for in the Report Phase of this Agreement shall be completed and **5 copies** of the Preliminary Study and Report shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE I—PRELIMINARY DESIGN PHASE

The services called for in **Phase I** of this Agreement shall be completed and **10 copies** of any required documents and opinion of probable construction costs shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. If Owner does not approve the preliminary design documents, the Consultant shall furnish **five copies** of the resubmitted design documents.

### PHASE II—PRE-FINAL DESIGN PHASE

The services called for in **Phase II** of this Agreement shall be completed and **10 copies** the required documents and services shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE III—FINAL DESIGN PHASE

The services called for in **Phase III** of this Agreement shall be completed and **10 copies** of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. After review, the Consultant shall submit to Owner **3 copies** of the final revised design documents and specifications for final check. Upon the approval of the final design documents, the Consultant shall furnish **10 copies** of the final design documents and specifications for bidding to the Owner within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

# ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

### PHASE IV—BIDDING PHASE

Provide services as authorized by Owner during the bid phase as described in Attachment "C" and submit **1 copy** of all addenda to the Owner for appropriate action within **2 consecutive calendar days.** 

### PHASE V - CONSTRUCTION PHASE

Provide services as authorized by Owner during construction phase as described in Attachment "C" and submit one set of Mylar and one set of electronic media format copies of all record drawings to the Owner within sixty days from the date of substantial completion.

#### **ATTACHMENT "E"**



### **CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY) 8/11/2021

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 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: Gloria Hill	
Ehrman Murphy & Company	LLP	PHONE (A/C, No, Ext): (713)464-6291 FAX (A/C, No): (713)	)464-6658
9225 Katy Freeway #201		E-MAIL ADDRESS: ghill@ehrmanmurphy.com	
Houston, Texas 77024		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: CONTINENTAL CASUALTY CO. (CNA)	20443
INSURED		INSURER B: VALLEY FORGE INSURANCE CO. (CNA)	
Texas Energy Engineering	Services, Inc.	INSURER C: TEXAS MUTUAL INSURANCE CO.	
1301 S. Capital of Texas	Highway	INSURER D: TRAVELERS CASUALTY & SURETY CO.	
Suite B-325		INSURER E :	
Austin TX	78746	INSURER F:	
001/7714070			

COVERAGES CERTIFICATE NUMBER: CL2010505124

**REVISION NUMBER:** 

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

INSR LTR	INSR LTR TYPE OF INSURANCE			POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMIT	s
A	·-		WVD				EACH OCCURRENCE DAMAGE TO RENTED	\$ 1,000,000
	X COMMERCIAL GENERAL LIABILITY  CLAIMS-MADE X OCCUR	x	Y	в 6020829575	11/16/2020	11/16/2021	PREMISES (Ea occurrence)  MED EXP (Any one person)	\$ 1,000,000 \$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	\$ 2,000,000
	x POLICY x PRO- JECT LOC							\$
В	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	\$
	ALL OWNED SCHEDULED AUTOS	x	Y	B 6021651715	09/15/2020	09/15/2021	BODILY INJURY (Per accident)	\$
	X HIRED AUTOS X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	\$
								\$
A	X UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	\$ 1,000,000
	EXCESS LIAB CLAIMS-MADE			в 6019966819	11/16/2020	11/16/2021	AGGREGATE	\$ 1,000,000
	DED X RETENTION \$ 10,000	x	Y					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		Y				X WC STATU- OTH- TORY LIMITS ER	
	AND EMPLOYERS LIABILITY  ANY PROPRIETOR/PARTNER/EXECUTIVE  OFFICER/MEMBER EXCLUDED?			SBP-0001308625	07/09/2021	07/09/2022	E.L. EACH ACCIDENT	\$ 1,000,000
	(Mandatory in NH)	N/A					E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
D	D Professional Liability			106802190	09/27/2020	09/27/2021	Each Claim Limit	1,000,000
	"Claims Made"			Ea Claim Ded. \$10,000			Aggregate Limit	2,000,000
1								

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
PROJECT: ON CALL PROFESSIONAL SERVICES - ENERGY MANAGEMENT, SOLICITATION #2021-1336R

THE GENERAL LIABILITY AND BUSINESS AUTOMOBILE POLICY INCLUDES ADDITIONAL INSURED IN FAVOR OF CITY OF EL PASO WHEN REQUIRED BY WRITTEN CONTRACT.

CERTIFICATE HOLDER

CANCELLATION

CITY OF EL PASO
CAPITAL IMPROVEMENT DEPARTMENT
218 N. CAMPBELL
EL PASO, TX 79901

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

Jamie Ehrman/GLORIA

Jamie Ehrman

#### **ATTACHMENT "F"**

### FEDERAL AVIATION ADMINISTRATION (FAA) CONTRACT PROVISIONS

In this Attachment "F", the term "Contractor" shall refer to the "Consultant", and the term "Airport Sponsor" shall refer to the "City".

If there are any conflicts between the terms and conditions of Attachment "F" and Article VI of the Agreement, the terms and conditions of Attachment "F" will prevail.

### A. GENERAL REQUIREMENT FOR CONTRACT

- 1. The contractor (including all subcontractors) are required to insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all subcontracts;
- 2. The contractor (or subcontractor) is required to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services;
- 3. The contractor is responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider; and
- 4. The contractor (or subcontractor) shall not modify the provisions.

Subject to the applicability criteria noted in the specific contract provisions, these contract provisions apply to all work performed on the contract.

### B. FAILURE TO COMPLY

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- 1. Withhold progress payments or final payment,
- 2. Terminate the contract,
- 3. Seek suspension/debarment, or
- 4. Any other action determined to be appropriate by the Airport Sponsor or the FAA.

### C. <u>CONTRACT PROVISIONS</u>

### 1. ACCESS TO RECORDS AND REPORTS (all AIP-funded projects)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized

representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after the final payment is made and all pending matters are closed.

2. <u>BREACH OF CONTRACT TERMS</u> (all contracts that exceed the simplified acquisition threshold as fixed at 41 USC 403(11). This threshold is presently set at \$100,000.)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. <u>BUY AMERICAN PREFERENCES</u> (all AIP-funded projects, if this professional services agreement includes any manufactured product as a deliverable.)

#### **BUY AMERICAN CERTIFICATION**

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

### Type of Certification is based on Type of Project:

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

\*\*\*\*

## Certificate of Buy American Compliance for Total Facility

(Buildings such as Terminal, SRE, ARFF, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark ( $\checkmark$ ) or the letter "X".



Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:

- a. Only installing steel and manufactured products produced in the United States; or
- b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
- c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic products
- 3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- ☐ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
  - 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.

- 4. To furnish US domestic product for any waiver request that the FAA rejects.
- 5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### **Required Documentation**

**Type 3 Waiver -** The cost of components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

- a. Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

Type 4 Waiver – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

1 1/1 1/1 1/1 n/1

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

October 21, 2021	Pallu muy
Date	Signature
TEESI Engineering	President
Company Name	Title

### **Certificate of Buy American Compliance for Manufactured Products**

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
  - a. Only installing steel and manufactured products produced in the United States, or;
  - b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
  - c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic product
- 3. To furnish US domestic product for any waiver request that the FAA rejects
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.

- 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver -** The cost of the item components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a. Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

Type 4 Waiver – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

October 21, 2021	Popular wary		
Date	Signature		
TEESI Engineering	President		
Company Name	Title		

## 4. GENERAL CIVIL RIGHTS PROVISIONS (all contracts)

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- a. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

# 5. <u>CIVIL RIGHTS-TITLE IV COMPLIANCE WITH NONDISCRIMINATION</u> <u>REQUIREMENTS</u> (all AIP funded projects)

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

- 1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities,** as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- 4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontractor or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

# 6. <u>CLEAN AIR AND WATER POLLUTION CONTROL</u> (all contracts that exceed \$100,000)

Contractors and subcontractors agree:

- 1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- 2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- 3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- 4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

# 7. <u>CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS</u> (all contracts that exceed \$100,000)

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in

excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

#### 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

#### 4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

# 8. <u>CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)</u> (all contracts that exceed \$25,000)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

### 9. <u>DISADVANTAGED BUSINESS ENTERPRISES</u> (all AIP-funded projects)

Contract Assurance (49 CFR § 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (49 CFR §26.29)**- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame

may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

# 10. <u>FEDERAL FAIR LABOR STANDARDS ACT</u> (FEDERAL MINIMUM WAGE) (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

# 11. <u>LOBBYING AND INFLUENCING FEDERAL EMPLOYEES</u> (all AIP-funded projects)

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### 12. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

### 13. <u>RIGHTS TO INVENTIONS</u> (all AIP-funded projects)

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

#### **TERMINATION OF CONTRACT** (contracts that exceed \$10,000)

- 1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- 2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- 3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- 4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed

to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

5. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

# 15. TRADE RESTRICTION CLAUSE (all AIP-funded projects)

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

#### **16.** <u>TEXTING WHEN DRIVING</u> (all contracts)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

THE STATE OF TEXAS	)	ON-CALL
	)	AGREEMENT FOR
COUNTY OF EL PASO	)	PROFESSIONAL SERVICES

This Agreement is made this \_\_\_ day of \_\_\_\_\_, 2021 by and between the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the "Owner", and YEAROUT ENERGY SERVICES COMPANY, LLC., a New Mexico Limited Liability Company, hereinafter referred to as the "Consultant".

**WHEREAS**, the Owner intends to engage the Consultant to perform professional civil engineering services on a task order basis through the use of task orders referencing this Agreement, the scope of which is further described in **Attachment "A"**; and

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

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

### ARTICLE I ATTACHMENTS

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

Attachment "B" Consultant's Fee Proposal and Hourly Rates	
Attachment "C" Consultant's Basic and Additional Services	
Attachment "D" Payment and Deliverable Schedules	
Attachment "E" Insurance Certificate	
Attachment "F" Federal Aviation Administration contract provisions for Air	rport
Improvement Program Projects	

### ARTICLE II PROJECT

- 2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform oncall professional services on a Task Order basis. Each individual Task Order will identify the Project and the total compensation due to each Project. The Task Order for each Project shall include the Scope of Services described in **Attachment "A"**.
- 2.2 For each Project, the Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this

- Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.
- 2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.
- 2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.
- 2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working days time period.

### ARTICLE III CONSULTANT FEES AND PROJECT BUDGET

**3.1 PAYMENT TO CONSULTANT.** The Owner shall pay to the Consultant an amount not to exceed **Three Hundred Thousand AND No/00 DOLLARS** (\$300,000.00) for all basic services and reimbursables performed pursuant to this Agreement.

No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement.

The City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects.

In addition, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00), if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding **FIFTY THOUSAND AND NO/100 DOLLARS** (\$50,000.00) must have prior approval by City Council through written amendment to this Agreement.

The parties agree and understand that all fees and compensation to the Consultant shall only become due and payable in accordance with the terms of this Agreement and the fees to be charged

for each Project shall be pursuant to the Consultant's fee proposal for such Basic and Additional Services at the rates which is attached hereto as **Attachment "B"**.

Payments to the Consultant shall be made pursuant to **Attachment "D"**.

- **3.2 CONSULTANT'S SERVICES.** The Basic Services and Additional Services, if any, to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C".**
- 3.3 CONSULTANT'S INVOICES. For each Project, the Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in Attachment "D". Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety (90) days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.
  - **3.3.1** Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.
  - **3.3.2** The Owner agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.
- **3.4 PROJECT CONSTRUCTION BUDGET.** The Consultant acknowledges that the construction budget and a construction time for each Project will be identified in each Task Order.
- **3.5 COSTS NOT ENUMERATED.** Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

# ARTICLE IV PERIOD OF SERVICE AND TERMINATION

- **4.1 PERIOD OF SERVICE.** The term of this Agreement shall be for a period not to exceed **two (2) years** from the date first shown above. The services called for by each Task Order shall begin upon the issuance of a Notice to Proceed from the City Engineer and shall continue through the completion of the construction of the Project, including any required extensions beyond the contract time for construction of the Project, as may be directed by the Owner.
- **4.2 SUSPENSION.** Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve** (**12**) **months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.
- **4.3 TERMINATION.** This Agreement may be terminated as provided herein.
  - **4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.
  - **4.3.2 TERMINATION BY EITHER PARTY.** It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.

4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.

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

# ARTICLE V INSURANCE AND INDEMNIFICATION

- **5.1 INSURANCE.** Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.
  - **5.1.1 WORKERS' COMPENSATION INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

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

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

#### a) **COMMERCIAL GENERAL LIABILITY**

\$1,000,000.00 Per Occurrence \$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.

**General Aggregate** \$1,000,000.00 \$1,000,000.00 per occurrence

### b) <u>AUTOMOBILE LIABILITY</u>

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

- **5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) on a claims made basis.
- **5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.
- **5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.
- **5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate.

Further, all polices shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

5.2 INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

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

**5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS.** Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other

provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident.

### ARTICLE VI FEDERAL AND STATE PROVISIONS

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

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

- --The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.
- -- The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.
- --The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment "F".
- -- The Texas Department of Transportation through an Agreement with the Owner.

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

- **6.1.1 CONTRACT ASSURANCE**. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
- **6.1.2 DBE GOOD FAITH EFFORTS**. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal will be identified pursuant to the federal funding requirements for an individual task order established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this Agreement.

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

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

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

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

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

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

### ARTICLE VII GENERAL PROVISIONS

- 7.1 CONTRACT TIME. Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within Attachment "D". It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in Attachment "D".
- **7.2 OPINION OF PROBABLE COST.** As a design professional practicing in El Paso the Consultant is expected to be familiar with the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The cost opinions of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within **ten percent (10%)** of the bid for the base bid item expected from the lowest responsible bidder.

The Consultant's final cost opinions for the construction of the Project, shall take into account labor costs which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Consultant in compiling a final cost opinions for the Project.

If the Consultant's most recent cost opinion for any construction contract is in excess of the Project construction budget, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Consultant without further compensation.

As noted herein, if all responsible bids exceed the final cost opinion by more than **ten percent** (10%), the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

7.3 CONSULTANT'S QUALITY OF WORK. The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant's services shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the Project and in accordance with the time periods established in **Attachment "D"** and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants,

and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner.

- 7.4 **COPYRIGHT AND REPRODUCTION RIGHTS.** Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.
- 7.5 AUDITING RECORDS FOR THE SPECIFIC PROJECT. Consultant's records subject to audit shall include but not be limited to records which, in the Owner's discretion, have a bearing on matters of interest to the Owner in connection with the Consultant's work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

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

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

- **7.6 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.
- **7.7 VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and

shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

- **7.8 GOVERNING LAW.** The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.
- **7.9 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.
- **7.10 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.
- **7.11 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner: The City of El Paso

Attn: City Manager P.O. Box 1890

El Paso, Texas 79950-1890

With a Copy to: The City of El Paso

Attn: City Engineer P.O. Box 1890

El Paso, Texas 79950-1890

To the Consultant: Yearout Energy Services Company, LLC.

Attn: Alex Montano, Executive Vice President

8501 Washington Street NE Albuquerque, NM 87113

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

- **7.12 CONFLICTING PROVISIONS.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.
- **7.13 ENTIRE AGREEMENT.** This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

(Signatures on following page)

# WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

	CITY OF EL PASO:	
	Tomás González City Manager	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:	
$\bigcirc$ $\bot$	Jerry DeMuro/Lor	
Omar A. De La Rosa Assistant City Attorney	Samuel Rodriguez, P.E., City Engineer Capital Improvement Department	
THE STATE OF TEXAS \$  \$ COUNTY OF EL PASO \$	wledgment)	
This instrument was acknowledged bef	fore me on this day of, 2021,	
by Tomás González, as City Manager of the		
	Notary Public, State of Texas	
My commission expires:		

(Signatures continue on following page)

CONSULTANT:

YEAROUT ENERGY SERVICES COMPANY, LLC.

By: Alex Montano

Title: Executive Vice President

(Acknowledgment)

THE STATE OF TEXAS & New Marco

COUNTY OF EL PASO: \$ Band; 1/0

This instrument was acknowledged before me on this <u>27</u>th day of <u>0 ctoor</u>, 2021, by Alex Montano, as Executive Vice President of Yearout Energy Services Company, LLC.

Notary Public, State of Texas

My commission expires:



# ATTACHMENT A SCOPE OF WORK

Specific tasks under this contract will be defined by individual task orders; anticipated task orders under this contract include but are not limited to the following:

- Analyses, evaluation, and identification of various methods to expand the use of renewable energy in powering city infrastructure and fleet including but not limited to installation of renewable energy and storage systems on/at City facilities, fleet replacement with electric or alternative fuel vehicles, power purchasing agreements, and public-private partnerships in centralized renewable energy facilities.
- Investment grade energy audits of City-facilities to identify and develop energy efficiency improvements to our facilities to include analysis of energy usage, building characteristics, weather data, and the typical usage of the building to include:
  - ✓ Level 1 walk-through audits to identify low cost energy improvements and areas where more detailed future audits can focus.
  - ✓ Level 2 general audits to include a comprehensive evaluation of the building and potential energy conservation measures through detailed information collection, in-depth interviews with facilities managers and users, and the analysis of energy profiles created through interval metering.
  - ✓ Level 3 investment-grade audits of potentially pricey energy efficiency improvements with a distinct focus on financial concerns and return on investment.
- Analyses, evaluation, and identification of various methods to reduce energy consumption and demand, improve performance, and address operation and maintenance challenges for street lights infrastructure.
- Analyses, evaluation, and identification of methods to integrate electric or alternative fuel vehicles into the City's fleet including required infrastructure.
- Deliverables under this contract will include databases, technical reports, and feasibility studies.

The successful offeror must demonstrate capabilities, expertise, and experience in the following:

- Assessing energy consumption and integration of renewable energy sources into City facilities, infrastructure, and fleet and current and future energy needs and costs for a municipality of a similar size and geographic location as El Paso. .
- Researching and identifying a broad suite of energy producing/saving options for a municipal entity.
- Development of and prioritizing renewable energy and energy efficiency strategies for citywide implementation.
- Evaluation of the potential for future City revenue resulting from City generated excess renewable energy.
- Identification and evaluation of funding opportunities for all energy options including revolving funds, energy service contracts, grants, and power purchasing agreements.
- Identification of regulatory and environmental constraints and requirements that pertain to a municipality's renewable energy program including but not limited to evaluation of

legislative and regulatory changes needed, at both State and Federal level, to maximize city-wide renewable energy and energy efficiency implementation potential.

# ATTACHMENT "B" CONSULTANT'S FEE PROPOSAL AND HOURLY RATES

# City of El Paso, Texas

On Call Professional Services - Energy Management

**Hourly Labor Rates** 



Vice President\$146.00Executive Vice President\$163.34	Title	YE Hourly <sup>1,2</sup>
Business Analyst   Grant Writer         \$52.39           Account Manager II         \$87.06           Account Manager III         \$104.39           Business Development Manager         \$118.26           Commissioning Specialist         \$52.39           Commissioning Engineer I         \$69.72           Commissioning Engineer III         \$87.06           Commissioning Engineer III         \$104.39           Commissioning Manager         \$118.26           Engineering Specialist         \$52.39           Design Engineer I         \$69.72           Design Engineer I         \$69.72           Design Engineer II         \$69.72           Design Engineer II         \$69.72           Design Engineer III         \$104.39           Engineering Design Manager         \$118.26           Project Development Engineer I         \$69.72           Project Development Engineer II         \$69.72           Project Development Manager         \$118.26           Performance Assurance   Measurement & Verification         \$69.72           Performance Assurance Engineer II         \$69.72           Performance Assurance Engineer II         \$69.72           Performance Assurance Engineer II         \$69.72           Performance Assurance		Labor Rate
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Construction Manager \$118.26 Administration   Leadership Vice President \$146.00 Executive Vice President \$163.34	Project Superintendent	\$80.12
Administration   Leadership  Vice President \$146.00  Executive Vice President \$163.34	General Superintendent	
Administration   Leadership  Vice President \$146.00  Executive Vice President \$163.34	Construction Manager	\$118.26
Vice President\$146.00Executive Vice President\$163.34	Administration   Leadership	
Executive Vice President \$163.34		\$146.00
President \$180.67	Executive Vice President	
	President	\$180.67

#### Notes:

- 1. The hourly rates quoted herein do not include any applicable local or state taxes.
- 2. The hourly rates quoted herein do not include travel or per diem related expenses.

Each individual Task Order will identify the "**Project**", and the Consultant shall provide the Basic and Additional Services as noted herein.

#### **BASIC SERVICES OF THE CONSULTANT**

### **GENERAL**

- 1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated
- 2. The Consultant shall comply with the City of El Paso Engineering and Construction Management Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the design phases of this Agreement.
- 3. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.
- 4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

#### **REPORT PHASE**

- 1. Upon receipt of the Owner's written authorization to proceed with the **Report Phase**, the Consultant shall:
  - **a.** Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.
  - **b.** Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.
  - **c.** (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory testing, and (d) Inspection or other special consultation; (2) Act as the Owner's representative in connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

- **d.** Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant's recommendations.
- **e.** As per Attachment "D", furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.
- 2. Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 3. As identified in the Scope of Work in Attachment "A", the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

#### PHASE I - PRELIMINARY DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Consultant shall do the following separately for each construction contract:

- 1. Consult with the Owner to determine the Owner's requirements for the Project.
- 2. Provide at the Consultant's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the

Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

- 3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.
- **4.** Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.
- 5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.
- 6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.
- **8.** Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.
- 9. As per **Attachment "D"**, furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

#### PHASE II - PRE-FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Pre-Final Design Phase, the Consultant shall do the following separately <u>for each construction contract:</u>

- 1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant's assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.
- 2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the "Drawings," to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called "Specifications." These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.
- **3.** Advise the Owner of any adjustment to the Consultant's previous opinion of probable construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant's cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor's method of pricing and that the Consultant's opinion of probable construction costs are made on the basis of professional judgment and experience. The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.
- **4.** Prepare proposal forms.
- 5. As per **Attachment "D"**, furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not

approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

### PHASE III - FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Final Design Phase, the Consultant shall do the following separately for each construction contract:

- 1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.
- 2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility Consultant comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.
- 3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.
- **4. As per Attachment "D"**, furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.
- 5. **As per Attachment "D"**, furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.
- **6.** Additional copies of the drawings and specifications beyond those identified in **Attachment "D"**, required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

#### **BIDDING PHASE**

Upon receipt of Owner's written request, the Consultant shall provide any of the following services during the Bidding Phase:

- 1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.
- 2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.
- **3.** Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.
- 4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment "D", deliver copies of all addenda to the Owner for appropriate action.
- As identified in Attachment "A", assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.
- 6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

### **CONSTRUCTION PHASE**

At Owner's request, the Consultant shall provide any of the following services associated with the Construction Phase:

- 1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.
- 2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with

such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

- **3.** Unless otherwise stipulated in Attachment "A", Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.
- 4. Visit each construction site at least once each week or more frequently, if necessary, to observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

- 5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. Such review must be complete within ten City working days following receipt of submittal documents. The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.
- 6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner's approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract

documents, subject to the Owner's interpretation of such terms and conditions. If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.

- Passed on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.
- **8.** Conduct with the Owner and construction contractor no more **than two brief preliminary inspections**, at times requested by the construction contractor to determine if the Project is ready for final inspection.
- 9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The "punch list" shall be furnished to the construction contractor and the Owner within two City working days after the final inspection.
- 10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the final inspection.
- 11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.
- 12. Furnish the Owner one set of reproducible (**D format**) "record" drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints,

drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format.

- **13.** Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.
- 14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.
- **15.** Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.
- 16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.
- **17.** Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.
- **18**. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.
- **19.** Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.
- **20.** Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.
- 21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.
- 22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.
- 23. Provide additional or extended services during construction made necessary by: a) work damaged by fire or other cause during construction; b) prolongation of the construction contract time by more than **twenty-five percent** provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Consultant; c) Acceleration of the work schedule involving services beyond normal city working hours; or d) the

construction contractor's default under the construction contract due to delinquency or insolvency.

- **24.** Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.
- 25. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

#### **ADDITIONAL SERVICES OF THE CONSULTANT**

## **GENERAL**

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

- 1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.
- 2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner's scope or budget, except where the Consultant's preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant's final design cost opinions by ten percent or more.
- 3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.
- 4. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.
- 5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

## **RESIDENT PROJECT SERVICES**

- 1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.
- 2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.
- 3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

# ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

#### PAYMENT SCHEDULE

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

## **Fixed fee Payment to Consultant**

Report Phase	To be determined by Task Order
<b>Preliminary Design Phase</b>	To be determined by Task Order
<b>Pre-Final Design Phase</b>	To be determined by Task Order
Final Design Phase	To be determined by Task Order
<b>Bidding Phase</b>	To be determined by Task Order
<b>Construction Phase</b>	To be determined by Task Order

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant's proposal found in **Attachment "B"**. The time shown in **Attachment "B"** is an estimate. Should the services rendered during the bidding and construction phases exceed the estimated amount, written authorization will be required prior to rendering services. Written authorization shall be only by contract amendment in accordance with the contract provisions. For contracts with a total value less than Fifty Thousand and No/100 Dollars (\$50,000), the parties agree that at no time may the amount of the compensation under this contract exceed Fifty Thousand and No/100 Dollars (\$50,000) except by execution of an amendment to this Agreement.

Payment for each Phase shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and a Consulting Summary and Progress Report and the Owner's written approval.

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

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

**Receipts:** Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable*.

No single invoice may include items for both August and September of any given year. The Owner's fiscal year begins on September 1<sup>st</sup> of each year and ends on August 31<sup>st</sup> of each year. Consultant's invoices must be separated into items that end August 31<sup>st</sup> and those that begin on Septembers 1<sup>st</sup> of any given year, to coincide with Owner's fiscal year.

# ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

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

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

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

#### **DELIVERABLE SCHEDULE**

#### REPORT PHASE

The services called for in the Report Phase of this Agreement shall be completed and **5 copies** of the Preliminary Study and Report shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE I—PRELIMINARY DESIGN PHASE

The services called for in **Phase I** of this Agreement shall be completed and **10 copies** of any required documents and opinion of probable construction costs shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. If Owner does not approve the preliminary design documents, the Consultant shall furnish **five copies** of the resubmitted design documents.

## PHASE II—PRE-FINAL DESIGN PHASE

The services called for in **Phase II** of this Agreement shall be completed and **10 copies** the required documents and services shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### PHASE III—FINAL DESIGN PHASE

The services called for in **Phase III** of this Agreement shall be completed and **10 copies** of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. After review, the Consultant shall submit to Owner **3 copies** of the final revised design documents and specifications for final check. Upon the approval of the final design documents, the Consultant shall furnish **10 copies** of the final design documents and specifications for bidding to the Owner within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

# ATTACHMENT "D" PAYMENT AND DELIVERABLE SCHEDULES

## PHASE IV—BIDDING PHASE

Provide services as authorized by Owner during the bid phase as described in Attachment "C" and submit **1 copy** of all addenda to the Owner for appropriate action within **2 consecutive calendar days.** 

# PHASE V - CONSTRUCTION PHASE

Provide services as authorized by Owner during construction phase as described in Attachment "C" and submit one set of Mylar and one set of electronic media format copies of all record drawings to the Owner within sixty days from the date of substantial completion.

## **ATTACHMENT "E"**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 8/13/2021

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 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).

001/504.050	DEV//01011 11/110ED			
Albuquerque NM 87113	INSURER F:			
	INSURER E:			
8501 Washington NE	INSURER D:CNA Insurance			
YESCO, DBA: Yearout Energy Services Co., LLC	INSURER C:Continental Ins Co	35289		
INSURED	INSURER B: Valley Forge	20508		
Albuquerque NM 87199-4600	INSURER A: National Fire Ins. of Hartford	20478		
PO Box 94600	INSURER(S) AFFORDING COVERAGE	NAIC #		
3701 Paseo Del Norte NE	E-MAIL ADDRESS: mbeauchamp@westernassurance.com			
Western Assurance Corp.	PHONE (A/C, No, Ext): (505)265-8481 FAX (A/C, No): (505)26	66-3500		
PRODUCER	CONTACT NAME: Melissa Beauchamp			

COVERAGES CERTIFICATE NUMBER: 20/21 REVISION NUMBER:

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

INSR LTR		TYPE OF INSURANCE	ADDL :	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMIT	S	
	х	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE DAMAGE TO RENTED	\$	1,000,000
A		CLAIMS-MADE X OCCUR	x		6080031936	12/1/2020	12/1/2021	PREMISES (Ea occurrence)  MED EXP (Any one person)	\$	15,000
1								PERSONAL & ADV INJURY	\$	1,000,000
	GEN	I'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$	2,000,000
1	х	POLICY PRO- JECT LOC						PRODUCTS - COMP/OP AGG	\$	2,000,000
		OTHER:							\$	
	AUT	OMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$	1,000,000
l <sub>B</sub>	х	ANY AUTO						BODILY INJURY (Per person)	\$	
٦		ALL OWNED SCHEDULED AUTOS	x		6080031970	12/1/2020	12/1/2021	BODILY INJURY (Per accident)	\$	
1	x	HIRED AUTOS X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	\$	
								Medical payments	\$	5,000
	х	UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	\$	8,000,000
l c		EXCESS LIAB CLAIMS-MADE						AGGREGATE	\$	8,000,000
		DED X RETENTION\$ 0	х		CUE6080031967	12/1/2020	12/1/2021		\$	
		KERS COMPENSATION EMPLOYERS' LIABILITY						PER OTH- STATUTE ER		
	ANY	PROPRIETOR/PARTNER/EXECUTIVE CER/MEMBER EXCLUDED?	N/A					E.L. EACH ACCIDENT	\$	1,000,000
A	(Man	datory in NH)	.,,,,		WC6080031953	12/1/2020	12/1/2021	E.L. DISEASE - EA EMPLOYEE	\$	1,000,000
		s, describe under CRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	\$	1,000,000
D	Pro	ofessional Liability			6080169394	12/1/2020	12/2/2021	Each Occurrence		3,000,000
								Aggregate		3,000,000
$\vdash$										

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

_	CERTIFICATE HOLDER	CANCELLATION
	City of El Paso- Capital Improvements 218 N. Campbell St Second Floo El Paso, TX 79901	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
ı		

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Melissa Beaucha

OFFICIONES HOLDED

M Beauchamp/BEAUCH

#### **ATTACHMENT "F"**

## FEDERAL AVIATION ADMINISTRATION (FAA) CONTRACT PROVISIONS

In this Attachment "F", the term "Contractor" shall refer to the "Consultant", and the term "Airport Sponsor" shall refer to the "City".

If there are any conflicts between the terms and conditions of Attachment "F" and Article VI of the Agreement, the terms and conditions of Attachment "F" will prevail.

# A. GENERAL REQUIREMENT FOR CONTRACT

- 1. The contractor (including all subcontractors) are required to insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all subcontracts;
- 2. The contractor (or subcontractor) is required to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services;
- 3. The contractor is responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider; and
- 4. The contractor (or subcontractor) shall not modify the provisions.

Subject to the applicability criteria noted in the specific contract provisions, these contract provisions apply to all work performed on the contract.

# B. FAILURE TO COMPLY

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- 1. Withhold progress payments or final payment,
- 2. Terminate the contract,
- 3. Seek suspension/debarment, or
- 4. Any other action determined to be appropriate by the Airport Sponsor or the FAA.

# C. <u>CONTRACT PROVISIONS</u>

## 1. ACCESS TO RECORDS AND REPORTS (all AIP-funded projects)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized

representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after the final payment is made and all pending matters are closed.

2. <u>BREACH OF CONTRACT TERMS</u> (all contracts that exceed the simplified acquisition threshold as fixed at 41 USC 403(11). This threshold is presently set at \$100,000.)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. <u>BUY AMERICAN PREFERENCES</u> (all AIP-funded projects, if this professional services agreement includes any manufactured product as a deliverable.)

#### **BUY AMERICAN CERTIFICATION**

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

# Type of Certification is based on Type of Project:

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

#### \*\*\*\*

## **Certificate of Buy American Compliance for Total Facility**

(Buildings such as Terminal, SRE, ARFF, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
  - a. Only installing steel and manufactured products produced in the United States; or
  - b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic products
- 3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
  - 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.

- 4. To furnish US domestic product for any waiver request that the FAA rejects.
- 5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

## **Required Documentation**

**Type 3 Waiver -** The cost of components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

- a. Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature
Company Name	Title

\* \* \* \* \*

## **Certificate of Buy American Compliance for Manufactured Products**

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC  $\S$  50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark  $(\checkmark)$  or the letter "X".

Bidder or offeror here	eby certifies	that it will	comply with	149 USC 8	§ 50101 by:
Blace of offerer ner	oo, continues	CIICCO IC TO III	COLLIDITY WILL	, .,	,

- a. Only installing steel and manufactured products produced in the United States, or;
- b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
- c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic product
- 3. To furnish US domestic product for any waiver request that the FAA rejects
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.

- 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver -** The cost of the item components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a. Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature
Company Name	Title

# 4. GENERAL CIVIL RIGHTS PROVISIONS (all contracts)

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- a. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

# 5. <u>CIVIL RIGHTS-TITLE IV COMPLIANCE WITH NONDISCRIMINATION</u> <u>REQUIREMENTS</u> (all AIP funded projects)

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

- 1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities,** as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- 4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontractor or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

# 6. <u>CLEAN AIR AND WATER POLLUTION CONTROL</u> (all contracts that exceed \$100,000)

Contractors and subcontractors agree:

- 1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- 2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- 3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- 4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

# 7. <u>CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS</u> (all contracts that exceed \$100,000)

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in

excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

# 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

#### 4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

# 8. <u>CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)</u> (all contracts that exceed \$25,000)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

# 9. <u>DISADVANTAGED BUSINESS ENTERPRISES</u> (all AIP-funded projects)

Contract Assurance (49 CFR § 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (49 CFR §26.29)**- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame

may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

# 10. <u>FEDERAL FAIR LABOR STANDARDS ACT</u> (FEDERAL MINIMUM WAGE) (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

# 11. <u>LOBBYING AND INFLUENCING FEDERAL EMPLOYEES</u> (all AIP-funded projects)

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## 12. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (all contracts)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

## 13. <u>RIGHTS TO INVENTIONS</u> (all AIP-funded projects)

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

## 14. <u>TERMINATION OF CONTRACT</u> (contracts that exceed \$10,000)

- 1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- 2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- 3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- 4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed

to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

5. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

# 15. TRADE RESTRICTION CLAUSE (all AIP-funded projects)

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

## **16.** <u>TEXTING WHEN DRIVING</u> (all contracts)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.



On-call Professional Services
Energy Management

Solicitation No: 2021-1336R

November 9, 2021



# **Contract Details**



	City-wide	
	\$300,000/contract	
Contract Term:	Two years	
Funding Source:	Operating Funds	



# **Contract Scope**

- Analyses, evaluation, and identification of various methods to expand use of renewable energy in powering the city infrastructure and fleet
- Investment grade energy audits of City facilities to include an analyses of energy usage, building characteristics, weather data, and building use
- Analyses, evaluation, and identification of various methods to reduce energy consumption and demand, improve performance, and address operation and maintenance challenges for street lights infrastructure.
- Analyses, evaluation, and identification of methods to integrate electric or alternative fuel vehicles into the City's fleet including required infrastructure.







# **Procurement Summary**

4

- Request for Qualifications advertised on June 3, 2021
  - ✓ Seven (7) firms submitted Statements of Qualifications (SOQs), five have local offices.
  - ✓ SOQs evaluated on the basis of staff qualifications, firm experience, opportunities and challenges, technical management, and measures used to verify energy reduction/return on investment
- Recommendation
  - Award contracts to the two highest ranked firms:
    - ✓ TEESI
    - ✓ Yearout Energy









# **Mission**

Deliver exceptional services to support a high quality of life and place for our community



Integrity, Respect, Excellence, Accountability, People



Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government



# **Misión**

Brindar servicios excepcionales para respaldar una vida y un lugar de alta calidad para nuestra comunidad



Integridad, Respeto, Excelencia, Responsabilidad, Personas



Desarrollar una economía regional vibrante, vecindarios seguros y hermosos y oportunidades recreativas, culturales y educativas excepcionales impulsadas por un gobierno de alto desempeño

