

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

CITY CLERK DEPT.
07 FEB 21 PM 3:19

DEPARTMENT: Department of the City Manager
AGENDA DATE: February 27, 2007
CONTACT PERSON/PHONE: Patricia D. Adauto, Deputy City Manager
Development & Infrastructure Services
(915) 541-4853
DISTRICT(S) AFFECTED: 3

SUBJECT:

Resolution authorizing the City Manager to sign an Agreement between the City of El Paso and the Medical Center of the Americas Foundation ("MCA"), that provides for the development by MCA of a Master Plan for the area known as the Medical Center of the Americas and the contribution by the City of an amount not to exceed \$250,000.00 to offset a portion of the costs for development of the Master Plan. The term of the Agreement is from the date of execution through December 31, 2007, with extensions allowed upon approval of the City Manager.

BACKGROUND / DISCUSSION:

Pursuant to the El Paso City Council action of October 24, 2006 (see below), the City Manager's Office is recommending approval of the Agreement submitted which provides for the terms under which the MCA will develop the master plan and the City will contribute funding to offset a portion of the costs of the Plan. In summary, the Agreement provides for the following:

- A scope of services pursuant to a Summary Work Plan provided by MCA (Lee, Burkhard, Liu), and additionally a scope of services submitted by the City and attached as Exhibit A to the Agreement;
- A term through December 31, 2007, except that extensions may be granted by the City Manager to insure adoption of the Master Plan by the El Paso City Council;
- The consideration to be paid for performance of services rendered over a phased program and milestones reached;
- Presentation and submission of the Master Plan as a study area plan to be incorporated into the City's comprehensive plan (requires formal adoption by the El Paso City Council); and
- Allows for three staff representatives of the City to work with the Foundation and consultants on the Master Plan development.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

On October 24, 2006, the Mayor's Lyceum presented recommendations regarding the Medical Center of the Americas. These included recommendations to (1) fund an internal planning cell to work with the MCA, and (2) to support a funding request from the MCA for the feasibility study. Motions were unanimously passed to appoint the Deputy City Manager for Development & Infrastructure Services as the City's primary point-of-contact to the MCA, Thomason Hospital and Texas Tech for growth issues in the area; and to support the efforts of the MCA to prepare a feasibility study/master plan for the Medical Center of the Americas up to an amount not to exceed \$250,000.00. The City Manager was authorized to negotiate the terms of the contractual obligations for the master plan development.

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?

OMB has budgeted \$250,000.00 for this effort from contingency funding.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A _____

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

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RESOLUTION

WHEREAS, new development in the Medical Center of the Americas, a campus of medical facilities of approximately 25 acres in the proposed Paso Del Norte Region Downtown El Paso will serve to boost the tax base of the City directly and indirectly, and ultimately assist in relieving the tax burden of all citizens; and

WHEREAS, the MEDICAL CENTER OF THE AMERICAS FOUNDATION, hereinafter referred to as MCA, a non-profit corporation organized under the laws of the State of Texas and pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code has engaged world-class planners to develop the Master Plan for the above area; and

WHEREAS, on October 23, 2006, the El Paso City Council authorized the City Manager "to negotiate the terms of the contractual obligations for a Master Plan" with the MCA, and committed funding for the Master Plan development; and

WHEREAS, an Agreement has been negotiated with MCA to provide the terms under which MCA will develop the Master Plan and the City will contribute funding to offset a portion of the costs of such Plan, to monitor MCA's performance in development of the Plan, and to incorporate activities necessary for such Plan to append the City's comprehensive plan;

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

THAT the City Manager be authorized to sign the Agreement between the City and MCA providing for the development by MCA of a Master Plan for the Medical Center of the Americas and the contribution by the City of an amount not to exceed \$250,000.00 to offset a portion of the costs of the development of the Plan, and that the City Manager be authorized to sign any related documents which might be necessary to accomplish such purpose.

ADOPTED this the _____ day of _____, 2007.

THE CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto

Patricia D. Adauto Deputy City Manager
for Development & Infrastructure
Services

07 FEB 21 PM 3:19
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STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT

THIS Agreement 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 "City", and MEDICAL CENTER OF THE AMERICAS FOUNDATION, a non-profit corporation organized under the laws of the State of Texas and pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, hereinafter referred to as "Contractor."

WITNESSETH:

WHEREAS, Contractor desires to develop a Master Plan for an area known as the Medical Center of the Americas, a campus of medical facilities of approximately 25 acres in the proposed Paso Del Norte Region; and,

WHEREAS, Contractor agrees to provide, or to contract for the provision of, services in accordance with the Scope of Services described herein for the development of the Master Plan; and

WHEREAS, the City desires to participate in the development of such a Master Plan, to be included in the gathering of information, the formation of recommendations contained within the Master Plan, and the evaluation and progress of the Master Plan, and to contribute an amount not to exceed \$250,000.00 to offset a portion of the costs of developing the Master Plan;

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, the parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES

Contractor agrees that it shall develop a Master Plan for the area known as the Medical Center of the Americas in accordance with the Master Plan Summary Work Plan, which was developed by Lee, Burkhart, Liu (LBL), the Consultants selected by the Contractor to develop the Master Plan, and the Scope of Services, a copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes.

2. DURATION

The term of this Agreement shall begin upon the execution of this Agreement by the City and end once the Master Plan has been officially adopted by the El Paso City Council and all documents required under Exhibit "A" have been submitted to the City, but in no event shall this Agreement extend beyond December 31, 2007 unless agreed to, in writing, by both the City and the Contractor. The El Paso City Council authorizes the City Manager to exercise the authority to extend the Agreement under this paragraph.

07 FEB 21 PM 3:19
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3. CONSIDERATION

It is estimated that the costs to complete the Master Plan, to include the design of the construction, will be approximately seven hundred thousand dollars (\$700,000.00). In consideration of Contractor's performance of the services described in the Master Plan Summary Work Plan and Exhibit "A", the City agrees to pay, and Contractor agrees to accept, payment not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) to offset a portion of the costs of development of the Master Plan, provided that prior to any initial payment of any phase of the project by the City, the Contractor has received total funding for that phase of the project, which may include a the portion of the funding for that phase from the City. Payment for the services hereunder shall be made by the City as specified in Exhibit "A", but in no event shall payment exceed One Hundred and Twenty Five Thousand Dollars (\$125,000.00) per phase of the project nor exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) for the total cost of the Project. Additionally, Contractor agrees to allow three representatives of the City to attend any meetings with the Consultant chosen by the Contractor to complete the Master Plan and also allow those representatives to serve as members of any committee established by the Contractor or contained within the Master Plan Summary Work Plan, to include but not be limited to the Master Planning Advisory Board and the Steering Committee.

4. PERSONNEL AND FACILITIES

Contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement and that such personnel shall not be employees of or have any contractual relationship with the City.

Contractor shall provide such office space, equipment, supplies and other materials as may be necessary to accomplish the services outlined herein.

5. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by and between the parties that Contractor is hired and engaged as an independent contractor and is not an officer, agent or employee of the City.

6. PERFORMANCE

The City shall have the right to monitor performance of Contractor's services hereunder on a periodic basis to assure compliance with the provisions of this Agreement. The Contractor will provide reasonable assistance and information when requested by the City.

7. TERMINATION

Either party may terminate this Agreement, for cause, upon 30 days notice to the other party. Should the City terminate for cause, the City shall have a right to copies of all portions of the Master Plan that have been paid for by the City prior to termination or the City may require reimbursement of the City's contribution under Section 8 below.

8. REIMBURSEMENT OF THE CITY'S CONTRIBUTION

Should the City terminate the Agreement for cause, or should the Contractor fail to acquire the necessary funds to complete the Master Plan, or fail to perform as required under this Agreement, then the Contractor agrees to reimburse the City the total amount of funds paid to the Contractor by the City. Reimbursement must be made within six months from the date of

termination or the date that Contractor determines and notifies the City that they are unable to acquire the necessary funding to complete the Master Plan. The City Manager may extend the period for reimbursement one additional six-month period, provided that prior to the extension, the Contractor has reimbursed at least fifty percent or more of the funds provided by the City.

9. NOTICES

All notices, communications and reports under this Agreement shall be either hand-delivered or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

CITY: Patricia D. Aduato
Deputy City Manager
City of El Paso
#2 Civic Center Plaza
El Paso, Texas 79901-1196

CONTRACTOR: Emma Wollschlager Schwartz
Medical Center of Americas Foundation
201 East Main, Suite 1700
El Paso, Texas 79901

10. INDEMNIFICATION

The City shall not be subject to any obligations or liabilities of Contractor incurred in the performance of this Agreement. Contractor expressly agrees to indemnify and hold harmless the City from any and all liabilities and obligations incurred due to its negligent acts or any omission to act, any actions outside its scope of authority under this Agreement, or any breach of contract.

11. LIABILITY INSURANCE

Contractor shall file a Certificate of Liability Insurance that is satisfactory to the City from an insurance company licensed to do business in Texas, which refers to this Agreement by date, certifying that such insurance coverage is in effect and naming Contractor as the insured and the City of El Paso as an additional insured. Minimum coverage provided by such policy shall be \$250,000 for each person and \$500,000 for each occurrence for bodily injury or death and \$100,000 per occurrence for damage to property. Such policy shall contain a provision that it shall not be canceled or materially altered without written notice via certified mail to the City of El Paso.

12. REGULATIONS

Both parties hereto agree and recognize that laws, rules and regulations related to this Agreement and performance by either party are subject to change. As such, both parties specifically agree that any of the provisions in this Agreement may be changed to bring the services provided hereunder into compliance with such laws, rules, and regulations. Notice of such change will be given to the other party as soon as notice is received by either party of the changes in applicable laws, rules, and regulations; however, any such changes which must take

effect to bring the services provided hereunder into compliance with such changes will take effect as soon as is needed to comply with such changes in the laws, rules, and regulations.

13. AMENDMENTS; WAIVERS

No provision of this Agreement may be amended, modified or waived unless such amendment, modification, waiver or discharge is agreed to in writing by Contractor and on behalf of City by City Manager. Amendments and/or modifications to project plan, project team, schedules, timelines, deliverables and/or fees may be made if agreed to in writing by Contractor and on behalf of City by City Manager. No waiver by either party hereto at any time of any breach by the other party hereto of or compliance with any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

14. COVENANTS BY THE CONTRACTOR

A. NO ASSIGNMENT

Contractor shall not assign, delegate, or attempt to so convey an interest in this Agreement. In the event Contractor does attempt to so convey an interest in this Agreement, said Agreement shall be terminable, at the discretion of the City, without notice to Contractor.

B. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable federal, state and local law including all City ordinances, codes and regulations. In particular, Contractor must file the Assurance required under the City's ordinance to prohibit discrimination against disabled persons. 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 Agreement.

C. PROHIBITED ACTS

(1) Conflict of Interest: Contractor covenants that it has had no interest in, and shall not acquire any interest, direct or indirect, in any contract or subcontract which will conflict in any manner or degree with the performance of the services performed under this Agreement. Any violation of this paragraph, with knowledge express or implied, by the Contractor shall render this Agreement voidable by the Mayor of the City of El Paso or by the El Paso City Council and shall entitle the City to appropriate reimbursement.

(2) Discrimination: Contractor covenants that no person in the United States has been or will be, on the grounds of race, creed, color, national origin or sex, excluded from participation in, denied the benefits of, or subject to discrimination under, any program or activity funded in whole or in part with funds made available to Contractor pursuant to the terms of this Agreement.

(3) Discriminatory Criteria: Contractor may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, creed, color, sex or national origin, or of defeating or substantially impairing

accomplishment of the objects of programs funded pursuant to this contract with respect to individuals of a particular race, color, national origin, creed or sex.

D. NON-RELIGIOUS ACTIVITIES

Contractor will provide the stated services in a manner that is exclusively non-religious in nature and scope. There will be no religious services, proselytizing, instruction, or any other religious influences in connection with the stated services.

E. ACCESSIBILITY STANDARDS:

Contractor must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons. Failure to do so in any manner that impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder shall constitute a breach of this Agreement. Contractor will comply with any federal law that applies to grantees of the City.

F. SUBCONTRACTORS

The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them.

15. ENTIRE AGREEMENT

This Agreement constitutes and expresses the entire agreement of the parties hereto in reference to the services of the Contractor for the City, all promises, representations, and understandings relative hereto being herein merged.

16. EXECUTORY AUTHORITY WARRANTED

All signatories to this Agreement warrant their authority to execute this document.

IN WITNESS WHEREOF, the Parties have executed this Agreement in the City of El Paso on the _____ day of _____, 2007.

CITY OF EL PASO

Joyce A. Wilson, City Manager

APPROVED AS TO FORM:

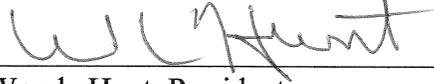
Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto, Deputy City Manager
for Development and Infrastructure Services

07 FEB 21 PM 3:19
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**MEDICAL CENTER OF THE
AMERICAS FOUNDATION**



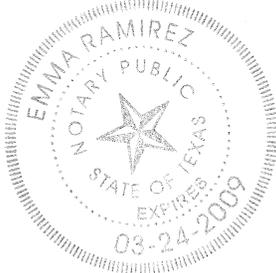
Woody Hunt, President
Medical Center of the Americas Foundation

07 FEB 21 PM 3:19
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ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 14th day of February 2007, by Woody Hunt, as President of the Medical Center of the Americas Foundation.



Emma Ramirez
Notary Public, State of
TEXAS

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2007, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

07 FEB 21 PM 3:19
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EXHIBIT "A"

SCOPE OF SERVICES

I. Medical Center of the Americas Foundation as Contractor under the foregoing Agreement, agrees to provide the following additional/expanded services in development of the Master Plan for the Medical Center of the Americas (MCA):

- a. Review of current best practice models (nationally and internationally) for design of a region-wide campus of medical facilities that serves as a health delivery, education and research center, and a summary/presentation of those models and specific elements.
- b. Review of recent medical campus construction sites, that includes an assessment of what was implemented, what worked and what did not; followed by an assessment of the opportunities from those experiences in the local setting within the MCA.
- c. Analysis and identification of economic drivers for the MCA.
- d. Recommendations for land use/zoning designations and design guidelines/standards for the MCA to be included as part of the Zoning Plan.
- e. Recommendations for potential reuse of existing buildings, new development and soft sites, and new office/retail/residential development opportunities within the MCA as an initial or future phase development.
- f. Factors of influence in nearby, adjacent neighborhoods (both positive and negative).
- g. Recommendations on structures and organizational models to lead the MCA redevelopment efforts, roles of public and private sectors, and tools and incentives needed to catalyze initial activities.
- h. Presentation and submission of the master planning document as a study area plan under the City's comprehensive planning process to the El Paso City Plan Commission and the El Paso City Council for its formal adoption. This will include providing hard copy drafts and presenting power point slide shows and other visuals as needed for presentation of the master planning document, and for providing response(s) to any questions asked. Edits requested by either the El Paso City Plan Commission or the El Paso City Council shall also be made as necessary to the master planning document. This work shall be conducted by individuals designated by Contractor and may or may not include representatives of Consultants or subcontractors, as determined by Contractor.
- i. Submission to the City of (i) a maximum of fifteen (15) hard color copies and two (2) electronic media files of the draft final master planning document for presentation to the El Paso City Plan Commission as a study area plan amending the City's comprehensive plan; (ii) a maximum of fifteen (15) hard color copies and two (2) electronic media files

of the draft final master planning document recommended by the El Paso City Plan Commission for presentation to the El Paso City Council as a study area plan amending the City’s comprehensive plan; and (iii) a maximum of fifteen (15) hard color copies and two (2) electronic media files of the officially approved master planning document. Any hard copies or electronic media files requested by the City in addition to the submissions listed in this section at any point during the term of the contract or after the termination of the contract shall be paid for by the City. Contractor will invoice City as described in Exhibit A, Section III.c. below.

II. The designated City officials shall be involved in all stages of input, preparation, and evaluation of the recommendations associated with the Master Plan for the MCA, and shall be frequently updated on the status of work and timeframes for draft presentation. The designated City’s officials shall be included on the Master Plan Advisory Committee, and through participation in such Advisory Committee be made informed of the content of any deliverables stipulated within the Master Plan Summary Work Plan. The City’s three designated officials are: Deputy City Manager, Development & Infrastructure Services – Department of the City Manager; Director – Economic Development Department; and Deputy Director for Planning – Development Services Department. The Deputy City Manager, Development & Infrastructure Services – Department of the City Manager shall serve as the City’s direct Point-of-Contact for all activities related to this Agreement. Additionally, prior to the release of the final recommendations associated with the Master Plan completion, a formal briefing to the Mayor and members of the El Paso City Council shall be conducted. Briefings shall be conducted by individuals designated by Contractor and may or may not include representatives of Consultants or subcontractors, as determined by Contractor.

III. Once Contractor has provided verification to the City that Contractor has received total funding for a phase of the Master Plan, the City shall make payment of their portion directly to the Medical Center of the Americas Foundation, and shall be based on completion of milestones within the Master Plan Summary Work Plan, which was developed by Lee, Burkhardt, Liu (LBL), the Consultants selected by Contractor to develop the Master Plan, as shown below. As milestones have been completed, proper invoicing to the City for each task within a phase shall be submitted with proper documentation.

PHASE I - \$125,000.00 total paid incrementally as follows:

Initial and up-front payment made within fifteen (15) days after all of the following have been completed: approval and execution of a Consultant contract by the Medical Center of the Americas Foundation; approval of the Agreement between the City and the Medical Center of the Americas Foundation; and written verification by the Medical Center of the Americas Foundation that one-hundred (100) percent of the Foundation’s proportionate funding for the phase has been received and is available for payment (estimated at \$276,604.00).	\$25,000.00
At completion of Phase I – 2.0 Master Plan Development, Track I.	\$20,000.00

At completion of Phase I – 2.0 Master Plan Development, Track II.	\$20,000.00
At completion of Phase I – 2.0 Master Plan Development, Track III.	\$20,000.00
At completion of Phase I – Phasing & Implementation Plans, Cost Estimates, and Financial Feasibility Model.	\$20,000.00
At completion of Phase I – Project Deliverable Submission, Exterior Master Plan Presentations, and Owner Review of Phase I materials.	\$20,000.00

PHASE II - \$125,000.00 total paid incrementally as follows:

Upon written verification by the Medical Center of the Americas Foundation that one-hundred (100) percent of the Foundation’s proportionate funding for the phase has been received and is available for payment (estimated at \$417,086.00), and at completion of Phase II – Track II Finalization.	\$20,000.00
At completion of Phase II – Track III Finalization.	\$20,000.00
At completion of Phase II – Phasing & Implementation Plans, Cost Estimates, and Financial Feasibility Model.	\$20,000.00
At completion of Phase II – Final Master Planning Document, Project Deliverable Submission, and Exterior Master Plan Presentations.	\$40,000.00
At formal adoption of the Master Plan for the MCA by the El Paso City Council and all documents required under this Agreement have been provided to the City.	\$25,000.00