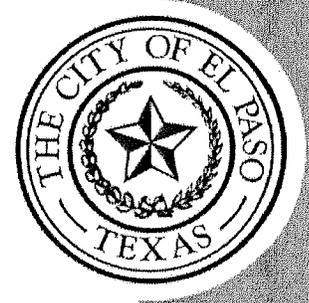


Dedicated to Outstanding Customer Service for a Better Community

SERVICE SOLUTIONS SUCCESS



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

DEPARTMENT: City Development Department

AGENDA DATE: Regular: April 30, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Victor Morrison-Vega, (915) 541-4557

DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to sign an Agreement for Plan Review and Inspection Services by and between the City of El Paso and the El Paso Electric Company "EPEC" whereby the City shall perform plan review and inspection services for the EPEC's new Operations Facility proposed for construction in the City's Extra Territorial Jurisdiction.

BACKGROUND / DISCUSSION:

El Paso Electric is constructing a Distribution and Operations Center within the Extra Territorial Jurisdiction (ETJ) of the City of El Paso.

While the new facility is not required to comply with the City of El Paso Building Codes, EPEC would like to have the City perform plan review and inspection of the construction their facility. This agreement contains the scope of work, terms of the agreement and general provisions.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michal R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Courtney Carlisle Niland

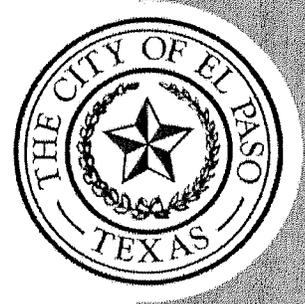
City Manager
Joyce A. Wilson



City Development Department
P.O. Box 1890 · El Paso, Texas 79950-1890
Phone (915) 541-4622 · Fax (915) 541-4799

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SERVICE SOLUTIONS SUCCESS



BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

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

Information copy to appropriate Deputy City Manager

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michel R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Cortney Carlisle Niland

City Manager
Joyce A. Wilson



City Development Department
P.O. Box 1890 · El Paso, Texas 79950-1890
Phone (915) 541-4622 · Fax (915) 541-4799

RESOLUTION

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

That the City Manager be authorized to sign an Agreement for Plan Review and Inspection Services by and between the CITY OF EL PASO ("City") and the EL PASO ELECTRIC COMPANY ("EPEC") whereby the City shall perform plan review and inspection services for the EPEC's new Operations Facility proposed for construction in the City's Extra Territorial Jurisdiction.

ADOPTED this _____ day of _____, 2013.

THE CITY OF EL PASO

ATTEST:

John F. Cook,
Mayor

Richarda D. Momsen,
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Cynthia Osborn
Assistant City Attorney



Mathew McElroy, Director
City Development Department

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT FOR
PLAN REVIEW AND INSPECTION
SERVICES

This Agreement for Plan Review and Inspection Services (the "Agreement") is entered into this ____ day of _____ 2013, by and between the **CITY OF EL PASO**, a Texas municipal corporation (the "City"), and **EL PASO ELECTRIC COMPANY**, a Texas corporation ("EPEC").

WHEREAS, EPEC desires to construct a new Distribution Operations Center outside the city limits of the City of El Paso but within the City's Extra Territorial Jurisdiction ("ETJ"); and

WHEREAS, new facilities constructed within the City's ETJ are not required to comply with the City's building codes and are not subject to the City's plan review and inspection; and

WHEREAS, EPEC desires to have the City conduct plan review and perform inspections of EPEC's new facility to ensure that it is in conformance, to the extent possible, with the City's adopted building codes, as set forth herein; and

WHEREAS, the City and EPEC desire to enter into an agreement whereby City inspectors, as qualified, independent third parties, shall review the plans and specifications and conduct the required inspections for conformance with the requirements of the City's adopted building codes, and EPEC shall compensate the City for the cost of the services, as set forth herein.

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 the following:

SECTION I
SCOPE OF SERVICES

1.1 Responsibilities of the City.

The City hereby agrees to conduct plan review and perform inspection services for the construction of the El Paso Electric Company's ("EPEC") proposed Distribution Operations Center which consists of an operations facility, warehouse facility and fleet services facility to be located at 13511 Montana, El Paso, Texas and more particularly described in Exhibit "A" attached hereto ("Operations Center").

A. Plan Review Services.

Certified Plan Reviewers and Certified Building Inspectors ("Inspectors") shall review the plans and specifications for the Operations Center buildings ("Plans") for conformance with the requirements of the City's adopted 2009 family of International Codes as published by the ICC, subject to the exceptions noted below, and the National Electric Code as published by the NFPA (the "Codes") and conduct the inspections. An Inspector shall be a City employee or a third party Inspector under contract with the City who maintains, as a minimum, a current certification from

the ICC. The Inspectors shall examine conformance with conditions for structural integrity, architectural and life safety compliance, (except for items falling under the jurisdiction of the El Paso County Emergency Services District No. 2), and mechanical, electrical and plumbing design. The review of the Plans shall be completed within ten (10) days from the submission to the City. Upon completion of the review, the Inspectors shall prepare a summary list of any conditions contained in the Plans that are not in conformance with the Codes (“City’s Comments”) and send a copy to EPEC, attn: Danny Salazar, EPEC Facilities Project Management and Jorge Mora, Architect (collectively, “EPEC Representatives”).

EPEC, at its sole option, may make changes to the Plans in conformance with the City’s Comments and shall resubmit the revised Plans to the City for review. The City shall review the revised Plans within ten (10) days of receipt and shall provide the EPEC Representatives with written confirmation of the Plan’s conformance or a list of remaining non-conforming items.

The Inspectors shall limit the review of the Plans to conformance with the Codes as specifically set forth in this Agreement and shall not review the Plans for conformance with any other requirements not specifically set forth herein, including but not limited to conformance with the City’s grading, landscape, drainage, parking, or irrigation requirements, or conformance with the fire codes which fall within the jurisdiction of the El Paso County Emergency Services District #2.

B. Inspection Services.

Inspectors shall perform a maximum of two inspections per trade, per week, during regular business hours, for the term of this Agreement to inspect for conformance with the Codes. The inspections shall examine conformance conditions only for structural integrity, architectural life safety requirements, mechanical, electrical and plumbing design as reflected in the Plans.

The Inspectors shall prepare a summary list of any conditions of the work that are not in conformance with the approved Plans and shall send a copy to EPEC Representatives. EPEC may, at its sole option, make suggested corrections. The Inspectors shall re-inspect the work and issue either a Certificate of Occupancy confirming that the Operations Center is in conformance with the Codes or a list of remaining non-conforming items.

The City shall not perform any inspections that may be required or performed by the County Health Code or by the El Paso County Emergency Services District # 2.

The City shall not perform any inspections related to the following El Paso City Code Chapters; Chapter 15.20 Stormwater Management, Chapter 18.44 Grading, Chapter 18.46 Landscape, Chapter 18.47 Irrigation Systems, Chapter 19.19 Stormwater Management Requirements, Chapter 20.18 Sign Regulations, Title 20 Zoning, or fire code compliance under the El Paso County Emergency Services District # 2 rules and regulations.

1.2 Responsibilities of EPEC.

EPEC hereby agrees to the following in conjunction with the plan review and inspection services to be provided by the City for the construction of the new Operations Center.

A. EPEC shall pay the required lump sum fee of **SIXTY-EIGHT THOUSAND FIVE HUNDRED AND NO/00 DOLLARS (\$68,500.00)** for the Plan Review and Inspections as set forth in this Agreement. The fee shall be paid at the time the Plans are initially submitted to the City for review.

B. Additional inspections, exceeding the inspections set forth in Section 1.1 (B), will result in additional fees as follows, which shall be paid at the time of the request for additional inspection:

- a. After hours, weekend or holiday inspections; \$144 per individual inspection visit; plus
- b. \$72 per hour after the initial two hours.

C. After hour inspections, weekend inspections, and re-inspections, and any inspections required during option period, must be scheduled 24 hours in advance.

D. EPEC shall provide access to the Operations Facility, Warehouse Facility, and Fleet Services Facility to be inspected and shall identify a contact person on site, for all inspections. Any re-inspection required as a result of lack of access to the facility or lack of contact person required for inspection, shall result in an additional fee in accordance with paragraph 1.2 (B) herein.

SECTION II TERM

2.1 The term of this Agreement shall be the later of (i) the City's issuance of a Certificate of Occupancy for the Operations Facility, or (ii) a list of remaining non-conforming items for the Operations Facility, or (iii) Eighteen (18) months from the date this Agreement is executed by the City Manager for the City of El Paso, subject to the termination provisions noted herein.

SECTION III TERMINATION

3.1 If either party determines that it can no longer participate in the requirements of this Agreement for any reason, that party shall notify the other party in writing at least **ten (10) days** in advance of its intent to withdraw from this Agreement and terminate its participation in the activities required hereunder. Such termination shall become effective upon the eleventh (11th) day after receipt of such notice. Such termination shall result in a reimbursement to EPEC of the unused portion of the required fee set forth above, paid by EPEC to the City. Such unused portion of the required fee shall be based on the actual cost incurred by the City for services performed under this Agreement. The City shall provide EPEC upon termination of the Agreement with an itemized statement of costs incurred to the date of termination and a refund of the unused portion of the fee.

**SECTION IV
CONTRACTUAL RELATIONSHIP.**

4.1 No legal relationship is intended to be created by this Agreement, to include but not be limited to landlord-tenant, employer-employee, or principal-agent.

4.2 EPEC acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the City to any obligation other than the obligations set forth in this Agreement. The City also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind EPEC to any obligation other than the obligations set forth in this Agreement.

4.3 Nothing in this Agreement shall be construed as an agreement by EPEC to submit to the jurisdiction of the City. The City shall have no authority over the property, project or EPEC.

**SECTION V
RISK ALLOCATION – LIMITATION OF LIABILITY**

5.1 Liability.

This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

5.2 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 shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further including, mental anguish and emotional distress - as a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. Neither party hereto shall be liable to the other party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other party regardless of whether the party receiving said information from the other party was advised, had other reason to know, or in fact knew thereof.

5.3 Intentional Risk Allocation.

The City and EPEC each acknowledge 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.

5.4 No Indemnification.

The parties expressly agree that, except as provided herein, neither party shall have the right to seek indemnification or contribution from the other party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

SECTION VI IMMUNITY

6.1 Sovereign Immunity.

The City reserves, and does not waive, its right of sovereign immunity and similar rights and does not waive its rights under the Texas Tort Claims Act. Nor shall the City be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules, or regulations.

SECTION VII GENERAL PROVISIONS

7.1 Complete Agreement.

This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. 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 Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto.

7.2 Amendment/Assignment.

This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner, unless done so in writing and signed by the authorized representatives of the parties.

7.3 Governing Law.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas.

7.4 Venue.

The Parties hereto agree that this Agreement shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso County, Texas. Should the need for dispute resolution arise, venue is in El Paso County, Texas.

7.5 Severability.

All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

7.6 Section Headings.

The section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

7.7 Notices.

All notices provided 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:

City:	City Clerk City of El Paso P.O. box 1890 El Paso, Texas 79950-1890	Copy to:	Director Development Services Department P.O. box 1890 El Paso, Texas 79950-1890
EPEC:	El Paso Electric Company P.O. Box 982 El Paso, Texas 79960	Copy to:	General Counsel's Office Attn: Jeff Weikert P.O. Box 982 El Paso, Texas 79960
Architect:	Mijares-Mora Architects, Inc. Attn: Jorge L. Mora, A.I.A. 111 N. Festival Dr. El Paso, Texas 79912		
Contractor:	CF Jordan Construction, LLC Attn: _____ 7700 C.F. Jordan Drive El Paso, Texas 79912		

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. Either party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other party in the manner set forth herein.

7.9 Representation of Counsel; Mutual Negotiation.

Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

7.10 Execution and Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts when making such proof.

(Signatures begin on following page)

EXECUTED this _____ day of _____ 2013.

CITY OF EL PASO

Joyce A. Wilson
City Manager

EL PASO ELECTRIC COMPANY

By: Steven P. Bossler
Title: Vice President / Treasurer

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM
OFFICE OF THE GENERAL COUNSEL
Gordon Davis Johnson & Stone P.C. *for YG*

APPROVED AS TO FORM:

Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew S. McElroy, Director
City Development Department

(Acknowledgments begin on following page)

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2013
by **Joyce A. Wilson** as **City Manager** of the **City of El Paso**.

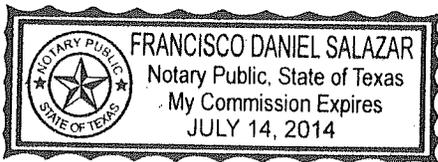
Notary Public, State of Texas

My commission expires:

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 4th day of APRIL, 2013
by STEVEN P BUSSETT as VICE PRESIDENT - TREASURER of **El Paso Electric
Company**, on behalf of the El Paso Electric Company, a Texas corporation.



Francisco Daniel Salazar
Notary Public, State of Texas

My commission expires:

7-14-14

