

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

DEPARTMENT: Financial Services

AGENDA DATE: May 24, 2011

CONTACT PERSON/PHONE: Dr. Mark Sutter – Comptroller, Financial Services (915) 474-4839
Bruce Collins – Purchasing Manager (915) 541-4313

DISTRICT(S) AFFECTED: All

SUBJECT:

Request that the Purchasing Manager for Financial Services, Purchasing Division be authorized to exercise the City's option to extend current Contract 2008-188R Professional Auditing Services with BKD, LLP for one (1) additional year pursuant to the provisions of an award approved by the City Council on July 1, 2008 in conjunction with the City's audit for the fiscal year ended August 31, 2011, and sign an Agreement for Professional Auditing Services for fiscal year 2011. Estimated amount of contract is \$335,420.00.

BACKGROUND / DISCUSSION:

BKD, LLP ("BKD") was one of four respondents to the City's Request for Qualifications ("RFQ") for auditing services for the fiscal year ended August 31, 2008, with an option to extend for four additional one-year terms to be approved by City Council. A committee comprised of Financial Services Department personnel as well as representatives from the Airport and Sun Metro ranked the firms prior to discussing price based on the RFQ process.

As BKD submitted the 2008, 2009, and 2010 audits timely and satisfactorily, it is the recommendation of staff to request City Council to approve a one-year option for the audit for 2011.

PRIOR COUNCIL ACTION:

On July 1, 2008, City Council approved BKD as the City's external auditor for the fiscal year ended August 31, 2008 with four one-year extensions upon the approval of City Council. On May 19, 2009 and again on May 11, 2010, City Council approved the first two of four one-year options to BKD for audit services for the fiscal years ended August 31, 2009 and 2010, respectively.

AMOUNT AND SOURCE OF FUNDING:

Various funding sources include general fund, community development, airport, bridges, solid waste and transit. Anticipated costs for fiscal year ended 2011 is \$335,420. There is no increase in cost from 2009 and 2010. Subsequent year fees to be negotiated on an annual basis and brought forward with any recommendation to Council in subsequent year.

BOARD / COMMISSION ACTION:

N/A.

*****AUTHORIZATION*****

DEPARTMENT HEAD: _____

MOTION
JULY 1, 2008

Motion made, seconded, and unanimously carried to **APPROVE** the Resolution that the City Manager be authorized to sign a letter of understanding by and between the City of El Paso and BKD, LLP, for auditing services in conjunction with the City's audit for the fiscal year ended August 31, 2008, with an option to extend for four additional one-year terms as approved by City Council.

Richarda Duffy Momsen, City Clerk

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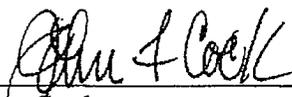
RESOLUTION

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

THAT the City Manager be authorized to sign an Agreement for Professional Auditing Services ("*Agreement*") between the City and BKD, LLP, to provide auditing services in conjunction with the City's audit for the fiscal year ended August 31, 2008, with an option to extend for four (4) additional one-year terms as approved by City Council.

ADOPTED this 1st day of July, 2008.

CITY OF EL PASO



John Cook
Mayor

ATTEST:



Richarda Duffy Mofsen
Municipal Clerk

10:56 AM 7/21/08
CITY OF EL PASO

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Bertha A. Ontiveros
Assistant City Attorney



Carmen Arrieta-Candelaria
Chief Financial Officer
Financial Services

April 11, 2011

Members of City Council
Honorable John Cook, Mayor
Ms. Joyce Wilson, City Manager
Ms. Carmen Arrieta-Candelaria, Financial Services CFO
City of El Paso, Texas
2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901

We are pleased to confirm the arrangements of our engagement and the nature of the services we will provide to the City of El Paso, Texas.

ENGAGEMENT OBJECTIVES

We will audit the basic financial statements of the City of El Paso, Texas and the El Paso International Airport including the Passenger Facility Charge Program as of and for the year ended August 31, 2011, in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the State of Texas *Uniform Grant Management Standards*, issued by the Governor's Office of Budget and Planning, U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments and Nonprofit Organizations*, and the *Passenger Facility Charge Audit Guide for Public Agencies*, issued by the Federal Aviation Administration (PFC Guide). We will also perform agreed upon procedures which will be more specifically defined in separate letters related to Sun Metro's NTD report to the Federal Transit Administration and the City of El Paso's report to the Texas Commission on Environmental Quality.

The objectives of our audit are:

- ✓ Expression of an opinion on the conformity of your financial statements, in all material respects, with accounting principles generally accepted in the United States of America.
- ✓ Issuance of a report on your compliance based on the audit of your financial statements.
- ✓ Issuance of a report on your internal control over financial reporting based on the audit of your financial statements.
- ✓ Expression of an opinion on your compliance, in all material respects, with the types of compliance requirements described in the *U. S. Office of Management and Budget Circular A-133 Compliance Supplement* that are applicable to each of your major federal award programs.
- ✓ Expression of an opinion on your compliance, in all material respects, with the types of compliance requirements described in the State of Texas *Uniform Grant Management Standards*, issued by the Governor's Office of Budget and Planning that are applicable to each of your major state award programs.
- ✓ Issuance of a report on your internal control over compliance based on the audit of your compliance with the types of compliance requirements that are applicable to each of your major federal and state award programs.
- ✓ Issuance of a report on your schedule of expenditures of federal and state awards.

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- ✓ Expression of an opinion on your compliance, in all material respects, with the types of compliance requirements described in the PFC Guide that are applicable to your passenger facility charge program (PFC Program).
- ✓ Issuance of a report on your internal control over compliance based on the audit of your compliance with the types of compliance requirements that are applicable to the PFC program.
- ✓ Issuance of a report on your schedule of PFC Revenues and Disbursements.

We will also examine the written assertion about the compliance with Sun Metro's NTD report as prescribed by the Federal Transit Administration and with the City of El Paso's report to the Texas Commission on Environmental Quality made by the management of the City of El Paso, Texas as of and for the year ended August 31, 2011, in accordance with attestation standards established by the American Institute of Certified Public Accountants.

The objective of our examinations is the expression of an opinion on the conformity of the subject matter of the assertion in all material respects, with the applicable criteria against which it is measured. Our report is intended solely for the information and use of the governing body, management and the Federal Transit Administration and is not intended to be and should not be used by anyone other than these specified parties.

OUR RESPONSIBILITIES

Auditing standards generally accepted in the United States of America, *Government Auditing Standards*, OMB Circular A-133, and the State of Texas *Uniform Grant Management Standards* require that we plan and perform:

- ✓ The audit of the financial statements to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.
- ✓ The audit of compliance with the types of compliance requirements described in the OMB Circular A-133 Compliance Supplement and various state agency handbooks/publications applicable to each major federal and state award program to obtain reasonable rather than absolute assurance about whether noncompliance having a direct and material effect on a major federal or state award program occurred.
- ✓ The audit of compliance with the types of compliance requirements described in the PFC Guide applicable to the PFC program to obtain reasonable rather than absolute assurance about whether noncompliance having a direct and material effect on the PFC program occurred.

Accordingly, a material misstatement or noncompliance having a direct and material effect may remain undetected. Our audit of the financial statements is designed to detect misstatements and noncompliance that, in our judgment, could have a material effect on the financial statements taken as a whole. Consequently, our audit will not necessarily detect errors or fraud resulting in an immaterial misstatement of the financial statements.

Likewise, our audit of compliance with the types of compliance requirements applicable to each major federal and state award program and the PFC program are designed to detect noncompliance having a direct and material effect on a major program or the PFC program. Consequently, our audit will not necessarily detect noncompliance having an indirect and material or an immaterial effect on any program.

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An audit also includes obtaining an understanding of the entity and its environment, including internal controls, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing and extent of further audit procedures to be performed. An audit is not designed to provide assurance on internal control or to identify material weaknesses or significant deficiencies. However, we will inform you of any such matters that come to our attention. Because of the limits of internal control, errors, fraud, illegal acts or instances of noncompliance may occur and not be detected. Also, in the future, procedures could become inadequate because of changes in conditions or deterioration in design or operation. Two or more people may also circumvent controls, or management may override the system. We are available to perform additional procedures with regard to fraud detection and prevention at your request, subject to completion of our normal engagement acceptance procedures. The actual terms and fees of such an engagement would be documented in a separate letter to be signed by you and BKD.

Kevin Kemp, CPA is responsible for supervising the engagement and authorizing the signing of the report or reports.

If, for any reason, we are unable to complete our audit or are unable to form or have not formed an opinion, we may decline to express an opinion or decline to issue a report as a result of this engagement. If we discover conditions that may prohibit us from issuing a standard report, we will notify you as well. In such circumstances, further arrangements may be necessary to continue our engagement.

YOUR RESPONSIBILITIES

To facilitate our audit, management is responsible for making all financial records and related information available to us. At the conclusion of our engagement, management will provide to us a letter acknowledging certain responsibilities outlined in this engagement letter and confirming:

- The availability of this information
- Certain representations made during the audit for all periods presented
- The effects of any uncorrected misstatements, if any, resulting from errors or fraud aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole

Management is responsible for fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, for adjusting the financial statements to correct material misstatements and for identifying and ensuring compliance with the laws and regulations applicable to your activities including your federal and state award programs and the PFC program. Management is also responsible for establishing and maintaining effective internal control over financial reporting and setting the proper tone; creating and maintaining a culture of honesty and high ethical standards; and establishing appropriate controls to prevent, deter and detect fraud, illegal acts and instances of noncompliance.

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OTHER SERVICES

We may perform other services for you not covered by this engagement letter. You agree to assume full responsibility for the substantive outcomes of the services described above and for any other services that we may provide, including any findings that may result. You also acknowledge that those services are adequate for your purposes and that you will establish and monitor the performance of those services to ensure that they meet management's objectives. Any and all decisions involving management functions related to those services will be made by you, and you accept full responsibility for such decisions. We understand that you will designate a management-level individual to be responsible and accountable for overseeing the performance of those services, and that you will have determined this individual is qualified to conduct such oversight.

ENGAGEMENT FEES

The fee for our services, based upon the testing of five major federal or state programs, will be \$335,420. If the city has more than five major federal or state programs, \$5,000 per each additional program will be charged. Our fees are based upon the understanding that your personnel will be available to assist us. Assistance from your personnel is expected to include:

- Preparing audit schedules to support all significant balance sheet and certain other accounts
- Responding to auditor inquiries
- Preparing confirmation and other letters
- Pulling selected invoices and other documents from files
- Helping to resolve any differences or exceptions noted.

We will provide you with a detailed list of assistance needed before the audit begins.

Our timely completion of the audit depends on your timely and accurate schedule and analyses preparation and on the availability of your personnel to provide other assistance. If there are inaccuracies or delays in preparing this material, or if we experience other assistance difficulties that add a significant amount of time to our work, our fees will increase. If these circumstances occur, we will promptly notify you to discuss alternative solutions and the impact on our fees.

Our engagement fee does not include any time for post-engagement consultation with your personnel or third parties, consent letters and related procedures for the use of our reports in offering documents, inquiries from regulators or testimony or deposition regarding any subpoena. Charges for such services will be billed separately.

Our fees may also increase if our duties or responsibilities are increased by rulemaking of any regulatory body or any additional new accounting or auditing standards. We will consult with you in the event any other regulations or standards are issued that may impact our fees.

If our invoices for this or any other engagement you may have with BKD are not paid within 30 days, we may suspend or terminate our services for this or any other engagement. In the event our work is suspended or terminated as a result of nonpayment, you agree we will not be responsible for any consequences to you.

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OTHER ENGAGEMENT MATTERS AND LIMITATIONS

Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. BKD will be required to make working papers available to the City upon request and to respond to reasonable inquiries of successor auditors and to allow the successor to review working papers relating to matters of continuing audit significance. The City also acknowledges and grants assent that representatives of the cognizant or oversight agency or their designee, other government staffs and the U.S. General Accounting Office shall have access to the working papers upon their request; and that BKD shall maintain the working papers for a period of at least three years after the date of the report, or for a longer period if BKD is requested to do so by the cognizant or oversight agency. You agree that we have no legal responsibility to you in the event we provide such documents or information, provided that BKD provides written notice to the City.

During the course of BKD's engagement, BKD may accumulate records containing data, which should be reflected in the City's books and records. The City will determine that all such data, if necessary, will be so reflected. Accordingly, the City will not expect BKD to maintain copies of such records in BKD's possession.

To the extent permitted by Texas law, you agree to indemnify and hold harmless BKD and its personnel from any claims, liabilities, costs and expenses relating to our services under this agreement attributable to false or incomplete representations by management, except to the extent determined to have resulted from the intentional or deliberate misconduct of BKD personnel.

You agree that any dispute regarding this engagement will, prior to resorting to litigation, be submitted to mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. Any mediator used shall have expertise in Texas law regarding local government entities and will be mutually agreed upon by both parties. The results of the mediation proceeding shall be binding only if each of us agrees to be bound. We will share any costs of mediation proceedings equally.

Either of us may terminate these services at any time. Both of us must agree, in writing, to any future modifications or extensions. If services are terminated, you agree to pay us for time expended to date.

If any provision of this agreement is declared invalid or unenforceable, no other provision of this agreement is affected and all other provisions remain in full force and effect.

We may from time to time utilize third-party service providers, *e.g.*, domestic software processors or legal counsel, or disclose confidential information about you to third-party service providers in serving your account. We remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures and safeguards to protect the confidentiality of your information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information. In the event we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider.

We will, at our discretion or upon your request, deliver financial or other confidential information to you electronically via email or other mechanism. You recognize and accept the risk involved, particularly in email delivery as the Internet is not necessarily a secure medium of communication as messages can be intercepted and read by those determined to do so.

You agree you will not modify these documents for internal use or for distribution to third parties. You also understand that we may on occasion send you documents marked as draft and understand that those are for your review purpose only, should not be distributed in any way and should be destroyed as soon as possible.

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This engagement letter represents the entire agreement regarding the services described herein and supersedes all prior negotiations, proposals, representations or agreements, written or oral, regarding these services. It shall be binding on heirs, successors and assigns of you and BKD.

If you intend to include these financial statements and our report in an offering document at some future date, you agree to seek our permission to do so at that time. You agree to provide reasonable notice to allow sufficient time for us to perform certain additional procedures. Any time you intend to publish or otherwise reproduce these financial statements and our report and make reference to our firm name in any manner in connection therewith, you agree to provide us with printers' proofs or masters for our review and approval before printing or other reproduction. You will also provide us with a copy of the final reproduced material for our approval before it is distributed. Our fees for such services are in addition to those discussed elsewhere in this letter.

You agree to notify us if you desire to place these financial statements or our report thereon on an electronic site. You recognize that we have no responsibility as auditors to review information contained in electronic sites.

BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of **BKD, LLP** have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, unlike the partners in a general partnership, the partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for any debts, obligations or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract or otherwise.

HIPAA BUSINESS ASSOCIATE AGREEMENT

We agree not to use or disclose Protected Health Information of your employees (hereinafter referred to as "PHI") obtained or produced in any form of media during the course of our work in a manner prohibited by HIPAA, as amended. We may use or disclose PHI for purposes of (a) performing our engagement, (b) management and administration of BKD, or (c) carrying out legal responsibilities of BKD. We represent to you that we have implemented what we consider to be appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of your PHI.

With respect to your PHI, we will report to you any breach (as defined in 45 CFR 164.402), material security incident or use or disclosure not authorized by this agreement and, to the extent practical, assist you in mitigating any harmful effects caused by breaches, material security incidents or unauthorized uses or disclosures of which we become aware. To assist you in fulfilling your responsibility to notify impacted individuals and others of a breach involving unsecured PHI (as required under 45 CFR 164.400 et seq.), in this report we will identify to you, to the extent reasonably possible:

1. Each individual whose unsecured PHI was subject to the breach.
2. Any other available information you are required to include in your notification to such individual(s) or others under 45 CFR 164.404(c).

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We agree that any material violation of these confidentiality provisions entitles you to terminate this engagement.

BKD agrees to:

1. Upon their request, make available to the Secretary of Health and Human Services (HHS) our internal practices and books and records relating to the use and disclosure of PHI for purposes of determining your compliance with the Security and Privacy Rule, subject to any applicable legal privileges.
2. Make available information necessary for you to make an accounting of disclosures of PHI about an individual.
3. To the extent we maintain information that is part of a Designated Record Set, make available information necessary for you to respond to requests by individuals for access to PHI that is not in your possession but is considered part of a Designated Record Set.
4. Upon receipt of a written request from you, incorporate any amendments or corrections to PHI contained in our workpapers in accordance with the Security and Privacy Rule to the extent such PHI is considered part of a Designated Record Set.

For purposes of this agreement, the term "Security and Privacy Rule" refers to the final rules published to implement the Administrative Simplification provisions of the *Health Insurance Portability and Accountability Act of 1996*, specifically 45 CFR Parts 160 and 164. The terms "Protected Health Information" and "Designated Record Set" have the same meaning as defined in the Security and Privacy Rule.

At the conclusion or termination of this engagement, any PHI retained by us will be subject to the same safeguards as for active engagements.

We will obtain from any agents, including subcontractors, to whom we provide PHI received from you, or created or received by us on behalf of you, an agreement to the same restrictions and conditions that apply to us with respect to such PHI.

To the extent that any relevant provision of HIPAA is eliminated or held to be invalid by a court of competent jurisdiction, the corresponding portion of this agreement shall be deemed of no force and effect for any purpose. To the extent that any relevant provision of HIPAA is materially amended in a manner that changes the obligations of business associates or covered entities that are embodied in term(s) of this engagement, the Parties agree to negotiate in good faith appropriate amendment(s) to this engagement to give effect to such revised obligations. In addition, the terms of this engagement should be construed in light of any interpretation and/or guidance on HIPAA issued by HHS from time to time.

If the above arrangements are acceptable to you, please sign the enclosed copy of this letter and return it to us.

BKD, LLP

BKD, LLP

Members of City Council
Honorable John Cook, Mayor
Ms. Joyce Wilson, City Manager
Ms. Carmen Arrieta-Candelaria, Financial Services CFO
City of El Paso, Texas

The services and arrangements described in this letter are in accordance with our understanding and are acceptable to us.

City of El Paso, Texas

Signature

Printed Name and Title

Date: _____