

EA

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

DEPARTMENT: Community and Human Development
AGENDA DATE: July 6, 2010
CONTACT PERSON/PHONE: William Lilly, Director / 541-4643
Carmen Arrieta-Candelaria/541-4293
DISTRICT(S) AFFECTED: All Districts

SUBJECT:

City Council is asked to approve the award of solicitation 2010-214R for the amount of \$29,900 to Southwest Fair Housing Council to complete an Analysis of Impediments to Fair Housing Choice. This award is made to the vendor providing the best value to the City.

BACKGROUND / DISCUSSION:

The City, as the recipient of federal funding, is required to take steps to affirmatively further fair housing, which includes conducting an Analysis of Impediments to Fair Housing Choice. The Fair Housing Act of 1968 prohibits discrimination in housing choice to seven protected classes – national origin, color, race, religion, sex, familial status and persons with disabilities.

The City issued a Request for Proposals for an agency to conduct a comprehensive Analysis of Impediments that will be used to evaluate, monitor, address and resolve Fair Housing issues. Five firms submitted proposals and were evaluated and ranked based on the rating criteria that included: Cost – Key personnel – Relevant Experience – Work Proposed and Project Schedule.

The highest rating was received by Southwest Fair Housing Council (SWFHC), which is the largest and oldest private nonprofit fair housing organization in Arizona and has previously completed seven (7) Analysis of Impediments. SWFHC will submit a preliminary draft within 90 days of contract signing and will submit the final draft within 120 days, which is in line with the City's timeline for completing the Fair Housing Analysis of Impediments.

The Analysis of Impediments to Fair Housing Choice will serve as the substantive, logical basis of Fair Housing planning, and provide essential and detailed information to policy-makers, administrative staff, housing providers, lenders and fair housing advocates to determine barriers to fair housing choice. The final planning product will be an assessment of how laws, government policies, real estate practices and local conditions affect the location, availability and accessibility of housing in El Paso.

PRIOR COUNCIL ACTION:

On April 22, 2010, City Council unanimously recommended the preparation of an Analysis of Impediments to Fair Housing Choice.

On June 1, 2010 Council approved a Resolution to amend the City's 2009-2010 Annual Action Plan by adding one new planning activity, which is the Analysis of Impediments to Fair Housing Choice, totaling \$50,000.

AMOUNT AND SOURCE OF FUNDING:

Funding for this new planning activity is currently available in the CD Contingency Account No. G7129CD0001, 35th Year (2009-2010). Upon Council's approval a budget transfer in the amount of \$50,000 will be made from the CD Contingency Account to the new Analysis of Impediments to Fair Housing Choice project account.

BOARD / COMMISSION ACTION:

N/A

*****~~REQUIRED AUTHORIZATION~~*****

DEPARTMENT HEAD:



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

EA

PROJECT FORM

DATE: June 24, 2010

PROJECT: Analysis of Impediments to Fair Housing Choice
SOLICITATION NO: 2010-214R
DEPARTMENT: Community & Human Development
FUNDING SOURCE: CD Grants (35th Year) – Outside Contracts
REPRESENTATIVE DISTRICT(S): All

RECOMMENDATION: Vendor: Southwest Fair Housing Council
Tucson, AZ
Item: All
Amount: \$29,900.00

The Community & Human Development and Financial Services Departments recommend award to the Bidder offering the best value to the City.

Additionally, it is requested that the City Attorney's Office review and that the City Manager be authorized to execute the attached CONSULTING SERVICES AGREEMENT with Southwest Fair Housing Council.

This is a fixed-price, single (one-time) purchase type contract. No prompt payment discount is offered.

RFPs SOLICITED: 7 (1 local)
RFPs RECEIVED: 5
"NO RFPs" RECEIVED: 0

TOTAL RECOMMENDED AWARD: \$29,900.00
One-Time Purchase Amount

COUNCIL APPROVED REJECTED MUNICIPAL CLERK _____

APPROVED:

COUNCIL MEETING DATE: July 6, 2010

Carmen Arrieta-Candelaria
Chief Financial Officer
Financial Services Department, Purchasing Division



CONSULTING SERVICES AGREEMENT

(Solicitation No. 2010-214R: Analysis of Impediment to Fair Housing Choice)

This AGREEMENT is made effective on this _____ day of _____, 2010, by and between the **CITY OF EL PASO**, ("City"), a municipal corporation and home-rule city of the State of Texas and **SOUTHWEST FAIR HOUSING COUNCIL**, ("Contractor"), a non-profit corporation doing business in the State of Texas.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party are as follows:

CITY

City of El Paso
2 Civic Center Plaza- Floor
El Paso, Texas 79901-1196
ATTN: William Lilly
Director, Community and Human Development

CONTRACTOR

Southwest Fair Housing Council
2030 E. Broadway Blvd., Suite 101
Tucson, AZ 85719
ATTN: Richard Rhey, Executive Director

WHEREAS, The City desires to engage the services of the Contractor, pursuant to this Agreement, to provide the City with consulting services and to produce the U.S. Department of Housing and Urban Development ("HUD")-mandated Analysis of Impediments to Fair Housing Choice ("AI"), to be conducted in accordance with the requirements and guidelines under the federal regulations and for the City's use in evaluating, monitoring, addressing, and resolving Fair Housing issues.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS AND AGREEMENTS CONTAINED HEREIN, THE CITY AND THE CONTRACTOR AGREE AS FOLLOWS:

I. SCOPE OF SERVICES

- A. The Contractor will perform the following services as specifically set forth in the scope of services attached hereto as Exhibit "A" and incorporated herein for all purposes.
- B. The City designates the Director of Community and Human Development Department (the "Director") as the Contractor's primary contact during the term of this Agreement.
- C. The City will make available information to the Contractor all relevant extant City-sponsored reports, studies, maps or data requested by Contractor within fourteen (14) days of request. The Director shall facilitate the completion of Contractor's services which require the City's participation, to include: (i) review and comment by the appropriate City staff on the draft AI submitted by Contractor; (ii) authorization to allow designated City staff in departments with information relevant to the AI for purposes of Consultant-conducted interviews for reasonable and limited periods of time for discussions of housing issues; and (iii) authorization of placement of the community survey at public sites to facilitate citizen access and submission, to include City Hall, public libraries, clinics, and offices.

II. CONSIDERATION

- A. The City shall pay to the Contractor an amount not to exceed TWENTY NINE THOUSAND NINE HUNDRED AND 00/100 DOLLARS (\$29,900.00), representing the comprehensive flat fee for all services performed pursuant to this Agreement, as further described in the Scope of Services attached hereto as Exhibit "A".
- B. Payment shall be made in accordance with the following Schedule for Fee for Services and requirements:
- (1) Three (3) installments each in an amount not to exceed SEVEN THOUSAND FOUR HUNDRED SEVENTY-FIVE AND 00/100 DOLLARS (\$7,475.00) and one (1) final fourth (4th) installment for the remaining balance of the Contractor's comprehensive flat fee, which will be paid only upon completion and acceptance of the final AI.
 - (2) Contractor shall submit to the City an invoice on a monthly basis for services performed and expenses incurred in the previous calendar month. Any installment due under this Agreement is not due and payable until the City's receipt of the required invoice(s).
 - (3) City will pay invoices for the services performed as soon as reasonably possible, but not later than thirty (30) days from receipt and in accordance with the installment schedule in this subsection.
- C. It is understood and agreed by the parties that the City will not be obligated to pay for any services not contained in Exhibit "A" or elsewhere in this Agreement and its attachments. 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 Contractor and not passed on to the City or otherwise paid by the City, unless a written amendment to this Contract is executed by both parties allowing for additional costs.

III. TERM OF AGREEMENT

- A. This Agreement commences upon execution of the Agreement and terminates three (3) weeks after completion and acceptance of the final AI as defined in subsection B of this Section, but not later than five (5) months from date of execution. The City Manager may, at her sole discretion and without further authorization from City Council, approve an extension of the term for an additional thirty (30) days.
- B. Completion and acceptance of the final AI shall be the submission of the final AI to the Director and the Director's written acknowledgment that the final AI has sufficiently incorporated all City comments on the draft AI. Prior to completion and acceptance, Contractor shall also give a presentation of the final AI to City staff and to the City Council, the governing body of the City, or its designated reviewing body, as deemed

necessary by the Director. This subsection B shall be subject to the document preparation requirements outlined in the Exhibit "A" and Attachment 1.

IV. REPRESENTATION OF CONTRACTOR

The Contractor represents, warrants and agrees as follows:

- A. It will comply with all applicable federal, state and local governmental laws, rules, regulations and all provisions of the City of El Paso Charter and Code of Ordinances, now existing or as may be amended, in the performance of its duties under this Agreement.
- B. It shall obtain and pay for all licenses, permits and certificates required by any applicable statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. The Contractor warrants that it is duly authorized and licensed to perform its duties hereunder in each jurisdiction in which it will act. It further warrants that its employees, agents and subcontractors shall maintain all required professional licenses during the term of the Agreement. If the Contractor receives notice from a licensing authority of a suspension or revocation of a license of Contractor's employee(s), agent(s) or subcontractor(s), the Contractor shall immediately remove such employee, agent or subcontractor from performing any further services under this Contract until such license is reinstated and in good standing. If the Contractor fails to maintain such licenses or fails to remove any employee, agent or subcontractor who performs services under this contract whose license has expired or been revoked or suspended, the City shall be entitled, in its sole discretion, to immediately terminate this Agreement upon notice to the Contractor.
- C. It warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the City shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- D. The Contractor is an independent contractor and is responsible for its respective acts or omission, and the City shall in no way be responsible as an employer to Contractor's employees, agents or subcontractors who perform service in connection with this contract.
- E. Neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

V. CONFIDENTIAL WORK

- A. Contractor recognizes that all materials to be prepared hereunder and all data received by the Contractor shall be kept in strictest confidence. The Contractor shall not divulge such confidential information except as approved in writing by the City or as otherwise required by law.

- B. The Contractor shall establish a method to secure the confidentiality of records or information that the Contractor may have access to in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the City's or its authorized representatives, right of access to records, or other information under this Contract.
- C. If the Contractor receives inquiries regarding documents within its possession pursuant to this Contract, the Contractor shall immediately forward such request to the City Attorney's office for disposition.
- D. The confidentiality of records and any other records related to the performance of this Agreement will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code.

VI. OWNERSHIP

All final reports and other materials prepared by the Contractor for the City shall be the property of the City, however, all work papers and other source materials shall be the property of the Contractor. Contractor shall deliver such materials to the City in accordance with the terms and conditions of this Agreement. The City shall not, without the Contractor's written consent, associate the Contractor's name with the report/product, if a subsequent change is made in such report/product after submission to the City.

VII. INSURANCE REQUIREMENTS

With no intent to limit Contractor's liability or the indemnification provisions set forth below, the Contractor shall provide and maintain certain insurance in full force and effect at all times during the term of this Agreement and any extensions thereto. Such insurance is described as follows:

A. Risks of Limits of Liability. The insurance, at a minimum, must include the following coverage and limits of liability:

| <u>COVERAGE</u> | <u>LIMIT OF LIABILITY</u> |
|---|---|
| Worker's Compensation and | Statutory for Worker's Compensation |
| Employer's Liability | Bodily Injury by Accident \$500,000 (each accident) Bodily Injury by Disease \$250,000 (policy limit) Bodily Injury by Disease \$250,000 (each employee) |
| Comprehensive General: Including Broad Form Coverage, Contractual | Bodily Injury and Property Damage, combined limits of Liability \$500,000 each occurrence |

| | |
|--|--|
| Bodily and Personal Injury | and \$1,000,000 aggregate |
| Excess Liability | Bodily Injury and Property Damage, Combined limits of \$500,000 each occurrence and \$1,000,000 aggregate |
| Automobile Liability Insurance (for automobiles used by the Contractor in the course of its Performance under this Agreement, Including Employer's Non-Ownership And Hired Auto Coverage) | \$500,000 combined single limit per occurrence |
| Professional Liability Coverage | \$1,000,000 per occurrence \$2,000,000 aggregate |

Form of Policies. The insurance may be in one or more policies of insurance, the form of which must be approved by the Purchasing Manager.

Issuers of Policies. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. Each issuer shall be subject to approval by the Purchasing Manager in his sole discretion as to conformance with these requirements.

Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability and Professional Liability, must name the City (and its elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.

Deductibles. A policy may contain deductible amounts only if the Purchasing Manager approves the amount and scope of the deductible. Contractor shall assume and bear any claims or losses to the extent of such deductible amount and waives any claim it may ever have for the same against the City, its officers, agents or employees.

Cancellation. Each policy must expressly state that it may not be canceled or non-renewed unless thirty (30) days advance notice of cancellation or intent not to renew is given in writing to the Purchasing Manager by the insurance company. Contractor shall give written notice to the Purchasing Manager within five (5) days of the date upon which total claims by any party against the Contractor reduce the aggregate amount of coverage below the amounts required by this Contract.

Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its elected and appointed officials, officers, agents or employees.

Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.

Liability for Premium. If any of the policies referred to above do not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate of waiver sufficient to establish that the issuer is entitled to look only to Contractor for any further premium payment and has no right to recover any premiums from the City.

Subcontractors. Contractor shall require all subcontractors to carry insurance naming the City as an Additional Insured and meeting all of the above requirements

Delivery of Policies. The originals of all policies referred to above, or copies thereof certified by the agent or attorney-in-fact issuing them together with written proof that the premiums have been paid, shall be deposited by the Contractor with the Purchasing Manager prior to beginning work under this Contract, and thereafter before the beginning of each year of the Term of this Contract. Notwithstanding the termination notice provisions in this Contract, the failure of the Contractor to provide the Purchasing Manager with the above proof of insurance prior to beginning work and thereafter prior to the beginning of each year of the Term of this Contract, shall constitute a default on the part of the Contractor entitling the city, upon three (3) days written notice to Contractor to terminate this Contract. This default provision shall also apply to the proof of insurance requirements under circumstances where a policy is canceled or expires during a given year of the Term. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that the Contractor, throughout the Term of this Contract, continuously and without interruption, maintain in force the required insurance coverage set forth above. Failure of the Contractor to comply with this requirement shall constitute a default of the Contractor allowing the City, at its option, to terminate this Agreement.

VIII. CANCELLATION BY THE CITY

The City shall have the right to cancel for default all or any part of the undelivered portion of this Agreement if the Contractor breaches any of the terms hereof including warranties of the Contractor or if the Contractor becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies that the City may have in law or equity.

IX. GRATUITIES

The City may, by written notice to the Contractor, cancel this Agreement without liability to the Contractor if it is determined by the City that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the City of El Paso with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this Agreement is canceled by the City, pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

X. INDEMNIFICATION

Contractor or its insurer SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND, the City, its elected officials, agents, employees, officers, directors, and representatives of the City, individually or collective, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH FROM PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THE CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACT OR OMISSION BY CONTRACTOR, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS CONTRACT, ALL, WITHOUT HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any person or entity. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by City Charter or any law, the City will promptly forward to Contractor every demand, notice, summons or other process received by the city in any claim or legal proceeding contemplated herein. In addition, Contractor shall promptly advise the City in writing of any claim or demand against the City or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract. Contractor will 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 the Contractor may deem expedient; 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. Contractor will pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section along with all attorney's fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest without relieving Contractor of any of its obligations under this paragraph.

The City will not be responsible for any loss or damage to the Contractor's property from any cause.

XI. SUBCONTRACTOR'S INDEMNITY

Contractor shall require all of its subcontractors to include in their subcontracts indemnity in favor of the City in substantially the same form as above.

XII. TERMINATION OF CONTRACT

This Agreement may be terminated in whole or in part under any one of the following circumstances:

TERMINATION FOR CONVENIENCE: Either party may terminate this Agreement upon written notice, provided such notice specifies an effective date for cancellation of not less than

thirty (30) calendar days from the date such notice is received. All files are property of the City and at the City's request will be delivered at no cost to the City or its designated recipient at the effective date of cancellation. Such right of termination is in addition to and not in lieu of rights of the City set forth herein. In the event of termination by the City, the Contractor shall not be entitled to lost or anticipated profits. The end of the term of contract, unless extended, is pursuant to provisions of the Agreement.

TERMINATION FOR CAUSE: Either party may terminate its performance under this Agreement in the event of default by the other party and a failure by that party to cure such default after receiving notice thereof, all as provided in this Section. Default shall occur if a party fails to observe or perform any of its duties under this Agreement. Should such a default occur, the injured party may deliver a written notice to the defaulting party describing such default and the proposed date of termination. Such proposed date of termination may not be sooner than the 30th day following receipt of the notice. The injured party, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the defaulting party cures such default, then the proposed termination shall be ineffective. If the defaulting party fails to cure such default prior to the proposed date of termination, then the injured party may terminate its performance under this Agreement as of such date.

FORCE MAJEURE: By reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure, as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty. If a party is unable to comply with the provisions of this Agreement by reason of Force Majeure for a period beyond 30 days after the event or cause relied upon, then upon written notice after the thirty (30) days, the City reserves the right to cancel this Agreement without any further liability.

EFFECTS OF TERMINATION: All duties and obligations of the City and the Contractor shall cease upon termination or expiration of this Agreement, except that:

- 1) Contractor shall release and make available to the City all records owned by the City, including all supporting documentation for the claims data contained in the computer database, and the database itself, which the Contractor shall download to one or more ASCII formatted tape(s), to be supplied to the City and shall cooperate fully to effect an orderly transfer of services and claim files.

- 2) All provisions of this Agreement that expressly or impliedly contemplate or require payment or performance after the expiration or termination of this Agreement shall survive such expiration or termination. Any unpaid obligation due and owing, by either party, as of the date of termination, shall continue to be due and payable.
- 3) Upon termination or expiration of this Agreement, the City shall have option to:
 - a. Assume responsibility of all claims pending as of the effective date of the termination; or
 - b. Require Contractor to continue administering all pending claims as provided herein at the compensation provided in this Agreement. If the City assumes responsibility for all claims, Contractor agrees to do all things necessary to transfer administration of all claims to the City.

XIII. RIGHT OF ASSURANCE

Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, it may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

XIV. ASSIGNMENT

Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto. Any attempted assignment or delegation by either party shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

XV. SUBCONTRACTORS

The Contractor may subcontract with other competent entities to provide services required to be performed under this Agreement. Any work or services approved for subcontracting hereunder, however shall be contracted only by written contract and agreement, and unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontracts with this Agreement shall be Contractor's responsibility. Contractor shall submit a list, identifying the subcontractors who will perform services under this Agreement, within ten (10) days of the effective date of this Agreement. However, all subcontractors must be accepted and approved by the City in writing, and such consent shall not be unreasonably withheld.

Despite City approval of a subcontract or subcontractor, the City shall in no event be obligated to any third party, including any subcontract of the Contractor, for performance of work or services, nor shall City funds ever be used for payment of work or services performed prior to the date of Agreement execution or extending beyond the expiration date of this Agreement.

XVI. SURVIVAL

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the Indemnification provisions hereof.

XVII. AMENDMENT & WAIVER

The parties may amend this Agreement at any time by mutual consent of the parties. Unless otherwise provided herein, this Agreement 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 Agreement 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.

XVIII. ENTIRE CONTRACT

This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto relating to the Agreement. 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. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

XIX. APPLICABLE LAW & VENUE

This Agreement shall be governed by the laws of the State of Texas along with any applicable provisions of Federal law or the City Charter or any ordinance of the City of El Paso. Both parties agree that venue for any litigation arising from this contract shall lie in El Paso, El Paso County, Texas.

XX. ADVERTISING BY CONTRACTOR

The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.

XXI. LEGAL CONSTRUCTION

Every provision of this Agreement is severable, and 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. Where the context of the Agreement require, the singular shall include the plural and the masculine gender shall include feminine.

XXII. NOTICES

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address prescribed in the preamble of this Agreement or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

XXIII. COUNTERPARTS

This Agreement may be executed in one or more counterparts; signature pages may be detached from such separately executed counterparts and reattached to other counterparts, each of which counterparts when executed and delivered shall be an original and all of which shall together constitute one and the same instrument.

XXIV. DISCRIMINATION PROHIBITED

- A. No person in the United States shall, on the grounds of race, creed, color, national origin, (including immigration status where an alien holds proper work authorization), religion, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape or form in employment or under projects or activities funded in whole or in part with funds made available to the Contractor pursuant to this Agreement, as set forth in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and implementing regulations at 24 CFR Part 1; Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07) and implementing regulations at 24 CFR Part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and implementing regulations at 24 CFR Part 8; and Title 1 of the Americans with Disabilities Act of 1990 (ADA) and implementing regulations at 28 CFR Part 35.
- B. Contractor shall comply with all the equal opportunity requirements in 24 CFR Section 5.105; the requirements of Executive Order 11246 (Equal Opportunity) and the implementing regulations at 41 CFR Chapter 60.

XXV. CONFLICT OF INTEREST

- A. Contractor shall ensure that no employee, officer, or agent of Contractor shall participate in the selection, or in the award or administration of a subcontract supported by funds provided if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: 1) The employee, officer, or agent; 2) any member of his or her immediate family; 3) his or her partner; or, 4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. Contractor shall comply with Chapter 171, Texas Local Government Code and 24 CFR 570.489(h) of the federal regulations.
- B. In all cases not governed by subsection A. of this Section, no persons specified in subsection C. of this Section who exercise or have exercised any functions or responsibilities with respect to the activities assisted under this Contract or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have any interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.
- C. The conflict of interest provisions of subsection B. of this Section, apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City or of a subcontractor of the City, including without limitation, Contractor.

XXVI. HATCH ACT

Neither the funds advanced pursuant to this Agreement, nor any personnel that may be employed by the Contractor with funds advanced pursuant to this Agreement shall be in any way or to any extent engaged in any conduct or political activity in contravention of Chapter 15 of Title 5 of the United States Code.

XXVII. INTEREST OF CERTAIN FEDERAL OFFICIALS

No member of or delegate to the Congress of the United States, and no Resident commissioners, shall be entitled to any share or part of this Agreement between City and Contractor or to any benefits arising there from.

XXVIII. POLITICAL AND LOBBYING ACTIVITIES PROHIBITED

- A. None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office, or for publicity, lobbying, and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, or the City Council of the City of El Paso.
- B. Employees of Contractor connected with any activity which is financed in whole or in part by funds provided to Contractor under this Agreement may not during the term of this Agreement:
 - 1. Use their official position or influence to affect the outcome of an election or nomination;
 - 2. Solicit contributions for political purposes; or
 - 3. Take an active part in political management or in political campaigns.
- C. Contractor hereby agrees to sign the Certification Regarding Lobbying, attached hereto and made a part of this Agreement as Addendum A, and if necessary, the Disclosure Lobbying Activities, attached hereto and made a part of the Certification Regarding Lobbying as Addendum A, and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to City. Contractor shall require the language of the Certification and disclosure be included in all subcontracts and that all sub-grantees shall certify and disclose accordingly.

XXIX. DEBARMENT

By signing this Agreement, Contractor certifies that it is not debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24. Further, Contractor is required to immediately report to the City if it is

debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

CITY OF EL PASO:

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



William L. Lilly, Director
Community & Human Development Department

SOUTHWEST FAIR HOUSING COUNCIL:

By: 

Name Printed/Title: ^{Rheyl} Robert Rhey, Executive Director

EXHIBIT "A"

SCOPE OF SERVICES

Contractor will perform services for the City necessary to produce the HUD-mandated Analysis of Impediments to Fair Housing Choice ("AI"), to be conducted in accordance with the requirements and guidelines under the federal regulations. The AI must be completed in accordance with HUD's Fair Housing Planning Guide Volume 1 available online at <http://www.hud.gov/offices/fheo/pdf>.

I. Production of AI

A. The AI for the City of El Paso, Texas will encompass the following elements:

1. An examination of pertinent data including demographic, income, employment and housing data as well as studies that have been completed that relate to fair housing.
2. A review of prior and current activities that promote fair housing, including an assessment of agencies currently providing fair housing programs in the area.
3. An examination of private market issues that relate to the sale or rental of housing, the provision of brokerage services, mortgage lending, insurance sales and underwriting, property appraisal and property management.
4. An analysis and evaluation of public policies and practices which affect the provision of fair housing including but not limited to public services, state and local laws, ordinances and regulations, planning and zoning laws and decisions, land use regulations, community development funding policies and practices in areas of low and high opportunity, procedures and practices of the local public housing authority and property tax policies including, but not limited to tax exemptions.
5. Determine the demand for and availability of physical accessible housing units by Type A, Type B, Section 504 of the 1973 Rehabilitation Act and by other standards for accessibility, and identify ways to address any barriers to finding accessible housing and determining its level of accessibility.
6. Analysis and evaluation of the need for real time database of available Type A apartments in El Paso and a methodology for affirmatively marketing unit availability to English and Spanish-language speakers.
7. Identification of impediments to fair housing listed in order of priority with proposed methods of corrective actions to address identified impediments.

B. The format for the comprehensive AI report is provided in Attachment 1.

C. The following tasks will be completed as part of the Scope of Services:

1. Contractor will identify the public meetings needed in the endeavor of gathering information and the potential groups and local stakeholders needed to participate. Contractor will be responsible for preparing agendas, handouts, and other presentation materials as appropriate as well as maintain notes and results of each public meeting.
2. Approximately ninety (90) days from the date of contract execution, Contractor will provide a draft of the AI report in progress for review and comment by the City prior to submission of final documents.
3. Approximately one hundred-twenty (120) days from the date of contract execution, Contractor will provide four (4) hard copies of the final AI report and one (1) copy on a compact disk.
4. Contractor will make a presentation on the final AI report to the El Paso City Council at a regular public meeting.

II. Methodology to Carry Out Scope of Services

A. Contractor will perform the tasks identified in the Scope of Services using the outlined methodology that follows. Contractor uses established HUD approved community-based methods to conduct AIs that encourages broad based community participation. The sources and methods Contractor will use for data and information gathering for the AI will include, but are not limited to, the following:

1. Contractor will review existing studies, reports, GIS mapping, articles, printed materials, and online websites relevant to the areas of investigation. Any local information requiring in-person collection will be done during work visits to El Paso.
2. Contractor will conduct twenty (20) in-depth interviews regarding fair housing with city staff, non-profit staff, community groups and real estate agents in El Paso.
3. Contractor will conduct a community survey that targets a cross-section of at least two hundred (200) El Paso residents to understand local fair housing awareness and housing discrimination. The survey will be available for completion online, download, and in hard copy at distribution sites in El Paso.
4. Contractor will conduct three (3) focus groups to understand key fair housing issues in El Paso, taking comments and questions regarding fair housing and identify fair housing impediments. One focus group will target staff of public and private housing agencies, another for housing providers, and a third for housing consumers.
5. If after submission of the final draft of the AI, HUD requires or requests revisions or additional information, Contractor will perform these additional services as part of this Scope of Services at no additional cost.

B. Contractor staff will conduct on-site work visits to El Paso as needed to accomplish the following:

1. Meet with the appropriate city staff: to identify points of contact; clarify procedures for collecting information that the City currently has available; share the strategy to develop the Plan of Action and its long-term implementation.

2. Meet with the staff of public and private agencies that have AI related information to open lines of communication and establish mechanisms for data collection.

3. Establish distribution sites for the AI community survey and establish the procedures for dissemination and collection of the surveys. This includes meeting with agencies and organizations to make the AI community survey available to the public through their websites.

4. Identify people knowledgeable about housing sales and rental, housing programs, civil rights, housing discrimination, home lending and the current problems in the housing market, home insurance and people familiar with programs for persons with disabilities for interviews in El Paso.

5. Present the AI to the City Council.

6. Meet with AI participants to plan the on-going implementation of the Plan over the next five years.

C. In support of the technical requirements of this effort, Contractor will utilize the services of the following sub-contractor:

National Community Reinvestment Coalition (NCRC) or comparable agency will be engaged to provide analysis of Home Mortgage Disclosure Act data. Contractor's fee for services is inclusive of all sub-contractor costs for NCRC or comparable agency.

ADDENDUM A

CERTIFICATION REGARDING LOBBYING

Certification for Agreements, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

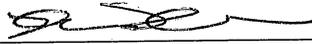
(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Agreement, 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 Agreement, 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 a Federal Agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-ILL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and Agreements under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of the 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.

SOUTHWEST FAIR HOUSING
COUNCIL:

By: 

Title: Executive Director

**ANALYSIS OF IMPEDIMENTS (AI)
SUGGESTED FORMAT AND TOPICS FOR INCLUSION**

Introduction and Executive Summary of the Analysis

- Statement of the purpose of the AI;
- Description of the process undertaken to develop the AI, including who led the process, the participants involved, the methodology used, and the funding source(s); and
- Conclusions of the AI, including the impediments found, and a summary of the actions planned to address these impediments.

Background Data about the Jurisdiction

- Demographic data, including population by race, ethnicity, and limited English proficiency; income; and employment;
- Housing market profile, including rent profile, homeownership profile, residential development activity, affordable housing needs, housing costs, vacancy rates, public housing, availability of accessible housing and whether it is sufficient by type for the identified needs, and level of accessibility;
- Maps showing areas of minority concentration, location of assisted housing, and concentrations of low- and very low-income residents; and
- Other relevant data, such as employment or transportation data that might affect fair housing choice.

Evaluation of Jurisdiction's Current Fair Housing Status

- Description of information gathered about discriminatory behaviors in the jurisdiction, including information about fair housing complaints; compliance reviews where HUD has issued a charge or made a finding of discrimination; and fair housing discrimination suits filed by the Department of Justice or private plaintiffs;
- Assessment of current public and private fair housing programs and activities in the jurisdiction;
- Explanation of reasons for any trends or patterns identified in the review of data, including discussion of fair housing issues facing each of the protected classes in real estate and real estate related transactions (sale and rental of housing, appraisal, insurance, and lending activities); and
- Discussion of other fair housing concerns or problems.

Identification of Impediments to Fair Housing Choice

- Impediments in the public sector
 - Description and analysis of zoning, site selection, and property tax policies and practices;
 - Description of building codes and analysis of how they impact or affect accessibility issues, including but not limited to, Title 18, Chapter 18.08, 18.08.170 (Accessibility for People with Physical Disabilities) of the El Paso City Code;
 - Analysis and evaluation of the need for and if so needed, the process for creating a real time database of available Type A apartments in El Paso and a methodology for affirmatively marketing unit availability to English and Spanish-language speakers;
 - Review and analysis of neighborhood revitalization strategies and relationships to the delivery of municipal and other services;
 - Analysis of the impact of: (1) tenant selection issues by the local public housing authority and other assisted or insured housing providers, and (2) the sale of subsidized housing and possible displacement; and
 - Where there has been a determination of unlawful segregation or other housing discrimination by a court or by HUD, an analysis of the actions that can be taken by the City to help remedy the discriminatory or segregated condition.

- Impediments in the private sector
 - Description and analysis of policies and practices related to real estate transactions, including appraisals, insurance, and lending activities.

- Impediments in the public and private sectors
 - Fair housing enforcement in the public and private sectors;
 - Informational programs by the public and private sectors; and
 - Visitability in housing.

Conclusions and Recommendations

COMMITTEE SCORE SHEET

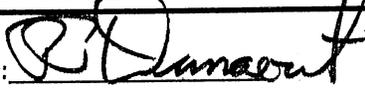
SOLICITATION NO: 2010-214R

SOLICITATION TITLE: ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE

| | | BORDER FAIR HOUSING & ECONOMIC JUSTICE CENTER | BROWNE, BORTZ AND CODDINGTON | ERNEST SWIGER CONSULTING, INC. | MGT. OF AMERICA, INC | SOUTHWEST FAIR HOUSING COUNCIL |
|--------------------------------------|----|--|---|---|-----------------------------|---|
| | | EL PASO, TX | DENVER, CO | STROUDSBURG, PA | AUSTIN, TX | TUCSON, AZ |
| Cost | | \$50,000.00 | \$74,650.00 | \$27,900.00 | \$54,831.00 | \$29,900.00 |
| # points | 25 | 14.0 | 9.3 | 25.0 | 12.7 | 23.3 |
| Key Personnel | | | | | | |
| # points | 15 | 8 | 14 | 11 | 13 | 13 |
| Relevant Experience | | | | | | |
| # points | 20 | 9 | 20 | 14 | 13 | 19 |
| Work Proposed to be performed | | | | | | |
| # points | 20 | 12 | 16 | 14 | 16 | 19 |
| Project Schedule | | | | | | |
| # points | 15 | 8 | 14 | 11 | 13 | 15 |
| Minority Status | | | | | | |
| # points | 5 | 0 | 0 | 0 | 0 | 0 |
| GRAND TOTAL | | 51.0 | 73.3 | 75.0 | 67.7 | 89.3 |

CITY OF EL PASO REQUEST FOR PROPOSALS

| | |
|--|--|
| TITLE: ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE | DEPARTMENT: COMMUNITY AND HUMAN DEVELOPMENT |
| DATE: JUNE 2, 2010 | BID #: 2010-214R |
| BORDER FAIR HOUSING & ECONOMIC JUSTICE CENTER | EL PASO, TX |
| BROWNE, BORTZ AND CODDINGTON (D.B.A. BBC RESEARCH & CONSULTING) | DENVER, CO |
| ERNEST SWIGER CONSULTING, INC. | STROUDSBURG, PA |
| MGT. OF AMERICA, INC. | AUSTIN, TX |
| SOUTHWEST FAIR HOUSING COUNCIL | TUCSON, AZ |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| RFPs SOLICITED: 7 | RFPs RECEIVED: 5 |
| RFPs LOCAL: 1 | NO RFPs: 0 |

APPROVED: 

DATE: 6/3/2010

NATIONAL ASSOCIATION OF HOUSING
AND REDEVELOPMENT OFFICIALS
630 EYE STREET NW
WASHINGTON, DC 20001

NATIONAL COMMUNITY DEVELOPMENT
ASSOCIATION
522 21ST STREET NW #120
WASHINGTON, DC 20006

FAIR HOUSING INITIATIVES PROGRAM
(FHIP)
451 7TH STREET SW
WASHINGTON, DC 20410

BBC RESEARCH & CONSULTING
3773 CHERRY CREEK NORTH DRIVE
SUITE 850
DENVER, CO 80209

SOUTHWEST FAIR HOUSING COUNCIL
2030 E. BROADWAY SUITE 101
TUCSON, AZ 85719

BORDER FAIR HOUSING AND ECONOMIC
JUSTICE CENTER
ATTN: ANIBAL OLAGUE
3414 MONTANA
EL PASO, TX 79902

SWIGER CONSULTING, INC.
ATTN: DR. ERNEST SWIGER, AICP
212 ACORN LANE
STROUDSBURG, PA 18360