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

DEPARTMENT: **Community & Human Development**

AGENDA DATE: **July 19, 2011**

CONTACT PERSON NAME AND PHONE NUMBER: **William L. Lilly 541-4241**
Bruce D. Collins 541-4313

DISTRICT(S) AFFECTED: **All Districts**

SUBJECT:

Approve award of Solicitation No. 2011-203R for Foreclosure Management and Consulting Services between the City of El Paso and the local firm of Firth-Johnston-Martinez to perform foreclosure management services on delinquent loans with the City of El Paso's Community and Human Development Department. The Purchasing Division of Financial Services, the Community and Human Development Department and the review committee recommend approval of this award.

The award is for twenty-four (24) months with the option of up to two 2-year extensions. The estimated annual contract amount of $75,000 for the collection procedures are billed to the borrowers, as part of the process to resolve the loan delinquency.

BACKGROUND / DISCUSSION:

A Request for Qualifications for Professional Services was issued through the Purchasing Dept. on March 22, 2011, to perform foreclosure management and consulting services in the collection of delinquent loans. There were 20 firms that picked up the RFQ. An Addendum was issued to answer questions and provide clarification. The Purchasing Dept. also extended the RFQ receipt date an additional week; however, only one firm responded, which was Firth-Johnston-Martinez.

The City worked with Firth-Johnston-Martinez under the previous foreclosure management contract that recently expired and was pleased with the services provided. Collection amounts of seriously delinquent loans exceeded $258,000.

The Community and Human Development Department's Housing Programs Division provides low-interest amortized loans to investors and homeowners. Although improvements have been made, there are still a number of delinquent loans to resolve. The City of El Paso adopted a policy for Restructuring of Loans in lieu of foreclosure, to accommodate investors and homeowners that are delinquent in payment and desirous of fulfilling their financial obligations. The policy also provides authorization for foreclosure when the borrower has been notified in writing that the loan is in default and given an opportunity to cure the delinquency and the borrower does not.

There were approximately 20 accounts in the foreclosure collection process prior to the contract expiration. The City will be taking a more aggressive approach with delinquent accounts and plans to turn over approximately 200 seriously delinquent loans during the 24-month contract period.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?

December 5, 2006 – Council adopted amended standards of Community and Human Development loan delinquency management in connection with (1) Loan Restructuring in Lieu of Foreclosure; (2) Loan Foreclosure/Lawsuits and (3) Declaring Loans Uncollectible.

January 21, 2010 – the one-year contract extension for foreclosure management services was signed by the City Manager, since it did not exceed the threshold amount for City Council approval.

AMOUNT AND SOURCE OF FUNDING:

The estimated annual contract amount of $75,000 for the collection procedures are billed to the delinquent borrowers, as part of the process to resolve their loan delinquency.

CDBG Revolving Loan Fund: G710RLFAD12, Fund 09937, Account #502109 and HOME Entitlement Grant: G7112HM, Fund 09764, Account #502109

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

CITY OF EL PASO
REQUEST FOR QUALIFICATION TABULATION FORM

Bid Opening Date: April 27, 2011
Project Name: Foreclosure Management and Consulting Services

Solicitation #: 2011-203R
Department: Community and Human Development

FIRTH JOHNSTON MARTINEZ	EL PASO, TX

RFQs SOLICITED: 20 RFQs RECEIVED: 1 RFQs LOCAL: 14 NO RFQs: 0

NOTE: The information contained in this rfp tabulation is for information only and does not constitute actual award/execution of contract.

APPROVED: [signature] DATE: 4/27/2011

LESLIE & LAY PC
2731 –A MONTANA AVENUE
EL PASO, TX 79903

EQUIFAX GOVERNMENT SERVICES
4360 NORTHEAST EXPRESSWAY
ATLANTA, GA 30340
BN-NDAA
A1-NDAA

TANZY & BORREGO
2610 MONTANA AVENUE
EL PASO, TX 79903

GC SERVICES
6330 GULTON SUITE 400
HOUSTON, TX 77081

JOHNSON & VASQUEZ
4530 MONTANA AVENUE
EL PASO, TX 79903

ARMSTRONG LAW FIRM A2-UNKNOWN
6440 NORTH CENTRAL FREEWAY SUITE 203
DALLAS, TX 75206

GC SERVICES LIMITED PARTNERSHIP
6330 GULFTON
HOUSTON, TX 77081

FIRST AMERICAN TITLE INSURANCE INC
801 N EL PASO
EL PASO, TX 79901

EL PASO TITLE CO
610 N MESA
EL PASO, TX 79901
BN-FTE
see new address*

LONE STAR TITLE CO
6701 N. MESA
EL PASO, TEXAS 79912

LAND AMERICA LAWYERS TITLE
301 E YANDELL DRIVE
EL PASO, TX 79901

FIRTH JOHNSTON MARTINEZ
ATTN: VICTOR M. FIRTH
415 N. MESA, THIRD FLOOR
EL PASO, TX 79901

BBVA COMPASS
ATTN: JIM VOLK
690 SUNLAND PARK DRIVE
EL PASO, TX 79912

AMERINATIONAL COMMUNITY SERVICES, INC.
ATTN: AMBER AMUNDSON
8121 E. FLORENCE AVENUE
DOWNEY, CA 90240

DELGADO, ACOSTA, SPENCER, LINEBARGER & PEREZ, LLP
ATTN: CARMEN PEREZ
221 N. KANSAS SUITE 1400
EL PASO TEXAS 79901

BICKERSTAFF, HEATH, DELGADO ACOSTA LLP
725 S. MESA HILLS
EL PASO, TEXAS 79912

GILBERT LAW FIRM
P.O. BOX 472
EL PASO, TX 79943

ANDERSON, ANDERSON, BRIGHT & CROUT, PC
1533 N. LEE TREVINO DRIVE STE 205
EL PASO, TEXAS 79936

*
EL PASO TITLE CO.
1201 N. MESA STREET SUITE A
EL PASO, TX 79902-4000

CROWSON & CROWSON
725 S. MESA HILLS DRIVE
EL PASO, TX 79912

FORECLOSURE MANAGEMENT AND CONSULTING SERVICES AGREEMENT
(Solicitation No. 2011-203R)

This Foreclosure Management and Consulting Services Agreement ("Agreement") is made effective on this _____ day of _____, 2011, by and between the **CITY OF EL PASO,** ("City"), a municipal corporation and home-rule city of the State of Texas and **FIRTH JOHNSTON MARTINEZ, P.C.** ("Contractor"), a professional legal 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
Firth Johnston Martinez, P.C.
415 North Mesa, Third Floor
El Paso, Texas 79901
ATTN: Victor M. Firth, President

WHEREAS, The City desires to engage the services of the Contractor, pursuant to this Agreement, to provide the City with foreclosure management and consulting services with related follow-up services on certain delinquent loans secured by real property.

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 City designates the Housing Programs Manager of Community and Human Development Department (the "Manager") as the Contractor's primary contact during the term of this Agreement.

B. 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.

II. INCORPORATION OF SOLICITATION DOCUMENTS AND CONTRACTOR'S RESPONSE

A. The Solicitation Documents, including the Solicitation No. 2011-203R and Contractor's Response, are expressly incorporated in this Agreement and made a part of it by reference herein.

B. In the event of a conflict between (i) the body of this Agreement and (ii) either the Solicitation Documents, any issued addenda or errata to the Solicitation Documents, or the Contractor's Response, this Agreement shall control; and the Request for Qualifications and any addenda or errata thereof shall control over the Contractor's Response in the event of any conflict between them.

C. Contractor shall meet and satisfy any standards, requirements, obligations and conditions stated in the Solicitation Documents, whether or not stated in the body of this Agreement.

D. Where the body of this Agreement and the provisions of the Solicitation Documents concern the same or similar requirements, conditions, standards, terms or other matters, they are to be read in conjunction with each other and harmonized to the extent reasonably practicable. Provisions in this Agreement are cumulative of and may augment provisions in the Solicitation Documents, and vice-versa.

III. CONSIDERATION

A. The City shall pay to the Contractor an amount not to exceed SEVENTY FIVE THOUSAND AND 00/100 DOLLARS ($75,000.00) per annum, for all services performed pursuant to this Agreement, as further described in the Scope of Services attached hereto as Exhibit "A", and:

(1) Services will be billed on an hourly basis for each loan collection file at the following rates: $190/hr for senior attorneys; $135/hr for associate attorneys; and $85/hr for paralegal staff. The City will also reimburse Contractor for the following expenses incurred by Contractor:

(i) Foreclosure search fees which have been approved in writing by Manager;
(ii) Certified Mail;
(iii) Filing Fees; and
(iv) Recording fees

(2) Contractor will use its best faith good efforts to utilize cost-saving measures in its delivery of services under this Agreement, including efficient use of paralegal staff over attorney staff, where appropriate.

B. Payment shall be made in accordance with the following requirements:

(1) Contractor shall submit to the City an invoice for services performed on each loan collection file and expenses incurred upon receipt of payment(s) due from the debtor or Contractor's closing of the loan collection file. Any installment due under this Agreement is not due and payable until the City's receipt of the required invoice(s).

(2) 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.

(3) Payment by the City for services rendered under this Agreement evidences the City's acceptance of such services in accordance with the terms of the Agreement.

C. It is understood and agreed by the parties that the City will not be obligated to pay for any services not identified herein. 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 Agreement is executed by both parties allowing for additional costs.

IV. TERM OF AGREEMENT

A. This Agreement commences upon execution of the Agreement and terminates twenty four (24) months thereafter; provided however, the City may, at its option, extend the term for up to two (2) two-year extension periods, subject to appropriation of sufficient funds for additional services under this Agreement.

V. 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 statue, 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 Agreement 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 Agreement 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 Agreement 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 Agreement.

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.

VI. 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 Agreement.

C. If the Contractor receives inquiries regarding documents within its possession pursuant to this Agreement, 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.

VII. 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.

VIII. 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:

COVERAGE	LIMIT OF LIABILITY
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 and Personal Injury	Bodily Injury and Property Damage, combined limits of Liability $500,000 each occurrence 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 Agreement.

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 Agreement, and thereafter before the beginning of each year of the Term of this Agreement. Notwithstanding the termination notice provisions in this Agreement, 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 Agreement, shall constitute a default on the part of the Contractor entitling the city, upon three (3) days written notice to Contractor to terminate this Agreement. 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 Agreement, 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.

IX. 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.

X. 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.

XI. 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 AGREEMENT, 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 AGREEMENT, 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 Agreement. 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.

XII. 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.

XIII. 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.

XIV. 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.

XV. 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.

XVI. 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.

XVII. 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.

XVIII. 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.

XIX. ENTIRE AGREMENT

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.

XX. 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 Agreement shall lie in El Paso, El Paso County, Texas.

XXI. 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.

XXII. 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.

XXIII. 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.

XXIV. 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.

XXV. 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.

XXVI. 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.

XXVII. 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.

XXVIII. 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.

XXIX. 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.

XXX. 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

FIRTH JOHNSTON MARTINEZ, P.C.:

By: _____

Name Printed/Title: Victor M. Firth, President

EXHIBIT "A"

SCOPE OF SERVICES

I. Contractor will perform the following services:

1. Analysis and evaluation regarding single and multi-unit foreclosures, including consultation, making recommendations, and follow-up processing of individual accounts;

2. General consultation and recommendations regarding foreclosure prevention and alternatives focusing on reducing the frequency of the need to foreclose and loan restructuring, and follow-up services on individual accounts;

3. Evaluate, investigate, advise, and provide recommendation with regard to loss mitigation methods and processes when dealing with unreported title transfers, senior lienholder foreclosure, bankruptcy, probate, and non-responsive borrowers to include but not limited to transfer of ownership foreclosure options, loan reinstatement, and ultimate sale of property at foreclosure auction or through litigation, etc.;

4. Organize, prioritize, and manage foreclosure processing of delinquent loan accounts with continuous updates and recommendations for suggested appropriate measures and actions;

5. Retention, coordination, cost controlling, and management of legal counsel necessary to judicially or non-judicially foreclosure and/or coordinate with debtor bankruptcy counsel, bankruptcy trustees, and the bankruptcy court. In this regard, the entity may provide its own counsel or retain and manage the efficient use of outside counsel for the City's benefit;

6. Retention, coordination, cost controlling, and management of legal services necessary to advance or defend the City's position in any subsequent or related litigation. In this regard, the firm may provide its own counsel or retain and manage the efficient use of outside counsel for the City's benefit.

II. To the extend it does not conflict, Contractor's description of Services to be Provided in Contractor's Response to Solicitation No. 2011-203R are expressly incorporated into this Exhibit A, Scope of Services.

ADDENDUM A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, 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 contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, 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 contracts 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.

FIRTH JOHNSTON MARTINEZ, P.C.

By: _____

Victor M. Firth, President

DATE: 6-16-11