

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

DEPARTMENT: Department of the City Manager
Development & Infrastructure Services

AGENDA DATE: September 4, 2007

CONTACT PERSON/PHONE: Patricia D. Adauto, Deputy City Manager
(915) 541-4853

DISTRICT(S) AFFECTED: All Districts

CITY CLERK DEPT.
07 AUG 29 AM 11:58

SUBJECT:

A Resolution authorizing the City Manager to sign a Second Amendment to a Professional Services Agreement by and between the City of El Paso and Dunkin, Sefko & Associates, Inc., for a project known as the Subdivision Ordinance Update, amending the Scope of Work to include additional tasks, to increase the amount of total compensation by an additional Ten Thousand, Five Hundred and Eighty and No/100 Dollars (\$10,580.00), to extend the term of the Agreement to November 30, 2007, and to authorize the City Manager to approve additional tasks and extensions of up to two months.

BACKGROUND / DISCUSSION:

The Consultant – Dunkin, Sefko & Associates, Inc. – was engaged by the City of El Paso to perform professional services for the Subdivision Ordinance Update. The original Agreement required a review of the current regulations and modification of only certain chapters needing revision to bring the code into compliance with state statutes. Subsequently, it was determined that more substantive work would be required so that the text reflected the strategic goals approved by the El Paso City Council, including smart growth initiatives, design flexibility, and improved infrastructure. This required additional time to evaluate and submit the required text revisions. City Council approved an amendment to the Contract to add the additional services, compensation, and time needed to perform those services.

As part of delivery of the amended scope, an Ad Hoc Committee of the City Plan Commission was organized to allow a full vetting of the issues. The Ad Hoc Committee consists of members of the industry, neighborhoods, City staff and the Commission, and meetings have been extensive with the Consultant. The proposed second amendment is requested to allow this continued oversight process (Ad Hoc Committee) so that all issues may be vetted and presented to the El Paso City Council. The increase of \$10,580.00 and the extension of the Agreement to November 30, 2007 will allow additional meetings and trips by the Consultant to attend the Ad Hoc Committee meetings and fully present the issues.

PRIOR COUNCIL ACTION:

- Agreement for Consultant Services
 - Approved on April 11, 2006
 - Funding amount of \$97,000
 - Initial Term of Agreement phased based on deliverable schedule (cumulative total of 400 calendar days)

- First Amendment to the Agreement
 - Approved on June 5, 2007
 - Additional Funding Amount of \$28,080.00; Total \$125,080
 - Term Extension to August 30, 2007

Proposed Second Amendment to the Agreement

Scheduled for September 4, 2007

Additional Funding Amount of \$10,580.00; Total Agreement \$130,660.00 + \$5,000.00 for additional services authorized by the City Manager

Term Extension to November 30, 2007

AMOUNT AND SOURCE OF FUNDING:

Funding Source: 99010273-01101-502215 (Outside Contracts).

BOARD / COMMISSION ACTION:

N/A

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

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

SECTION HEAD:

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

CITY CLERK DEPT.
07 AUG 29 AM 11:58

RESOLUTION

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

That a Second Amendment to a Professional Services Agreement by and between the City of El Paso and Dunkin, Sefko & Associates, Inc., for a project known as the Subdivision Ordinance Update, amending the Scope of Work to include additional tasks, to increase the amount of total compensation by an additional TEN THOUSAND, FIVE HUNDRED AND EIGHTY AND NO/100 DOLLARS (\$10,580.00), to extend the term of the Agreement to November 30, 2007, and to authorize the City Manager to approve additional tasks and extensions of up to two months, be ratified.

ADOPTED THIS _____ DAY OF _____, 2007.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy-Momsen
City Clerk

APPROVED AS TO FORM:



Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:



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

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THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

SECOND AMENDMENT TO AGREEMENT
FOR PROFESSIONAL SERVICES AGREEMENT

THIS Second Amendment is made this _____ day of _____, 2007, by and between **THE CITY OF EL PASO**, hereinafter referred to as the "**Owner**", and **DUNKIN, SEFKO & ASSOCIATES, INC.**, a Texas Corporation, hereinafter referred to as the "**Consultant**".

WHEREAS, on April 11, 2006, the Owner entered into an Agreement for Consultant Services, hereinafter referred to as the "Agreement", with the Consultant to engage the Consultant to perform professional services for a project known as "**SUBDIVISION ORDINANCE UPDATE**", hereinafter referred to as the "**Project**"; and,

WHEREAS, on June 5, 2007, the Agreement was amended to allow the Consultant to perform additional services, to provide for additional compensation for such services, and to extend the term of the Agreement; and,

WHEREAS, the Owner desires to amend the Agreement to add additional services and to provide for additional compensation for such services; and,

WHEREAS, such additional services will require that the term of the Agreement be extended to November 30, 2007 in order for the Consultant to complete the Project,

NOW, THEREFORE, for and in consideration of the promises, terms and conditions and covenants set forth below, the parties hereto agree to amend the Agreement as follows:

1. Article III, Paragraph 3.1 is amended as follows:

3.1 PAYMENT TO CONSULTANT. The Owner shall pay to the Consultant an amount not to exceed **ONE HUNDRED AND THIRTY THOUSAND AND SIX HUNDRED AND SIXTY 00/100 DOLLARS (\$130,660.00)** for all basic services performed pursuant to this Agreement and **FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00)** for any additional services authorized by the City Manager. The Consultant's fee proposal for the performance of all Basic Services is attached hereto as **Attachment "B"**. Payments to the Consultant shall be made pursuant to the schedule enumerated within **Attachment "D"**.

2. Article III, Paragraph 3.2 is amended as follows:

3.2 CONSULTANT'S SERVICES. The Basic Services to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C"**. If authorized by prior written amendment to this Agreement, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"**. Owner shall make payment for such Basic and Additional Services at the rates established by Consultant within **Attachment "B"**. The City Manager is authorized to approve any written amendments for additional services in an amount not to exceed \$5,000.00. Additional services exceeding \$5,000.00 must be approved by City Council.

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3. **Attachment "A"** Basic Scope of Services shall be amended to add the following tasks:

- a. Attendance at one additional meeting for roadways by Craig Farmer, FAICP, of Dunkin, Sefko and Associates, Inc. at a cost of \$2,300 which includes 12 hours at \$130.00 per hour plus actual travel expenses plus 15%, not to exceed \$740.00.
- b. Sixteen additional hours by Craig Farmer, FAICP, of Dunkin, Sefko and Associates, Inc. at a cost of \$2,080.00 (16 hours at \$130.00 per hour).
- c. Attendance at one additional meeting for drainage by Robert Gonzales, PE of Quantum Engineering at a cost of \$1,200.00 (12 hours at \$100.00 per hour).

4. **Attachment "B"** Consultant's Fee Proposal and Hourly Rates is amended to add:

- a. Attendance at one additional meeting for roadways by Craig Farmer, FAICP, of Dunkin, Sefko and Associates, Inc. at a cost of \$2,300 which includes 12 hours at \$130.00 per hour plus actual travel expenses plus 15%, not to exceed \$740.00.
- b. Sixteen additional hours by Craig Farmer, FAICP, of Dunkin, Sefko and Associates, Inc. at a cost of \$2,080.00 (16 hours at \$130.00 per hour).
- d. Attendance at one additional meeting for drainage by Robert Gonzales, PE of Quantum Engineering at a cost of \$1,200.00 (12 hours at \$100.00 per hour).

5. **Attachment "C"** is amended to authorize the City Manager to approve additional services in an amount not to exceed \$5,000.00.

6. **Attachment "D"** is amended to increase the "not to exceed" amount by \$10,580.00 and to specify a completion date for performance of tasks by November 30, 2007. The City Manager is authorized to extend the term of this Agreement up to a period of two months, provided that the not to exceed amount approved by City Council is not increased.

7. All terms and conditions of the Agreement, except as expressly herein amended, shall remain in full force and effect.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

**OWNER:
THE CITY OF EL PASO**

Joyce Wilson, City Manager

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto

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

SIGNATURES CONTINUE ON FOLLOWING PAGE

**CONSULTANT:
DUNKIN, SEFKO & ASSOCIATES, INC.**

By: _____
Dan G. Sefko
President

ACKNOWLEDGEMENTS

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2007,
by _____ as **CITY MANAGER** of the **CITY OF EL PASO, TEXAS.**

Notary Public, State of Texas

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2007,
by **DAN G. SEFKO**, as **PRESIDENT** of **DUNKIN, SEFKO & ASSOCIATES, INC.**

Notary Public, State of Texas

07 AUG 29 AM 11:58
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07 MAY 30 AM 10:29

RESOLUTION

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

That the City Manager be authorized to sign the First Amendment to a Professional Services Agreement by and between the City of El Paso and Dunkin, Sefko & Associates, Inc., for a project known as the Subdivision Ordinance Update, amending the Scope of Work to include additional tasks, to increase the amount of total compensation by an additional TWENTY-EIGHT THOUSAND, EIGHTY AND NO/100 DOLLARS (\$28,080.00) and extending the term of the Agreement to August 30, 2007.

ADOPTED THIS 5th DAY OF June, 2007.

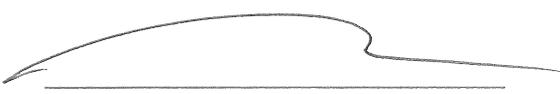
THE CITY OF EL PASO


John F. Cook
Mayor

ATTEST:


Richarda Duffy-Momsen
City Clerk

APPROVED AS TO FORM:


Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:


R. Alan Shubert, P.E., C.B.O.
City Engineer

3A

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

FIRST AMENDMENT TO AGREEMENT
FOR PROFESSIONAL SERVICES AGREEMENT

THIS First Amendment is made this 5th day of JUNE, 2007, by and between THE CITY OF EL PASO, hereinafter referred to as the "Owner", and DUNKIN, SEFKO & ASSOCIATES, INC., a Texas Corporation, hereinafter referred to as the "Consultant".

WHEREAS, on April 11, 2006, the Owner entered into an Agreement for Consultant Services, hereinafter referred to as the "Agreement", with the Consultant to engage the Consultant to perform professional services for a project known as "SUBDIVISION ORDINANCE UPDATE", hereinafter referred to as the "Project"; and,

WHEREAS, the Owner desires that consultant perform additional services, under the Agreement and provide for additional compensation for such services; and,

WHEREAS, the Owner desires to extend the agreement until August 30, 2007 for the Consultant to complete the Project,

NOW, THEREFORE, for and in consideration of the promises, terms and conditions and covenants set forth below, the parties hereto agree to amend the Agreement as follows:

1. Article III, Paragraph 3.1 is amended as follows:

3.1 PAYMENT TO CONSULTANT. The Owner shall pay to the Consultant an amount not to exceed ONE HUNDRED AND TWENTY FIVE THOUSAND AND EIGHTY 00/100 DOLLARS (\$125,080.00) for all basic services performed pursuant to this Agreement. The Consultant's fee proposal for the performance of all Basic Services is attached hereto as Attachment "B". Payments to the Consultant shall be made pursuant to the schedule enumerated within Attachment "D".

2. Attachment "A" Basic Scope of Services shall be amended to add the following tasks:

a. Attendance at 10 meetings with 10 additional trips over a 3 and 1/2 month period by Craig Farmer, FAICP, of Dunkin, Sefko and Associates, Inc. and Robert Gonzales, P.E., of Quantum Engineering

b. Two (2) additional trips by Kim Mickelson, AICP, of Mickelson & Palumbo, Consulting Municipal Attorneys.

c. One (1) additional trip by Dan Sefko, AICP of Dunkin, Sefko and Associates, Inc.

3. Attachment "B" Consultant's Fee Proposal and Hourly Rates is amended to add:

a. Attendance at 10 meetings with 10 additional trips over a 3 and 1/2 month period by Craig Farmer, FAICP, of Dunkin, Sefko and Associates, Inc. at a cost of \$15,600 plus travel expenses (10 trips - 12 hrs each @ \$130 per hour)

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b. Attendance at all 10 meetings by Robert Gonzales, P.E., of Quantum Engineering at a cost of \$6,000 (10 meetings – 6 hrs each @ \$100 per hour)

c. Two (2) additional trips by Kim Mickelson, AICP, of Mickelson & Palumbo, Consulting Municipal Attorneys, at a cost of \$4,800 plus travel expenses (2 trips – 12 hrs each @ \$200 per hour)

d. One (1) additional trip by Dan Sefko, AICP of Dunkin, Sefko and Associates, Inc., at a cost of \$1680 plus travel expenses (1 trip – 12 hrs @ \$140 per hour)

4. Attachment "D" is amended to change the amount to exceed to and to specify a completion date for performance of tasks by August 30, 2007.

5. All terms and conditions of the Agreement, except as expressly herein amended, shall remain in full force and effect.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

**OWNER:
THE CITY OF EL PASO**



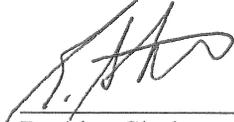
Joyce Wilson
City Manager

APPROVED AS TO FORM:



Lupe Cuellar
Assistant City Attorney

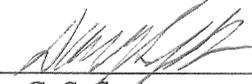
APPROVED AS TO CONTENT:



R. Alan Shubert, P.E., C.B.O.
City Engineer

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**CONSULTANT:
DUNKIN, SEFKO & ASSOCIATES, INC.**

By: 

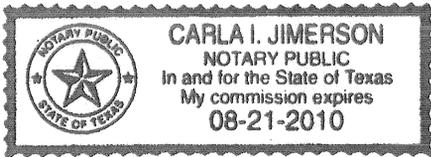
Dan G. Sefko
President

(Acknowledgements begin on next page)

ACKNOWLEDGEMENTS

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

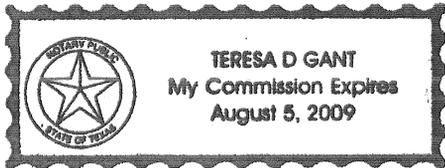
This instrument was acknowledged before me on this 5th day of June, 2007,
by Joyce A. Wilson as CITY MANAGER of the CITY OF EL PASO, TEXAS.



Carla I. Jimerson
Notary Public, State of Texas

THE STATE OF TEXAS)
COUNTY OF ~~EL PASO~~ Dallas)

This instrument was acknowledged before me on this 25th day of May, 2007,
by DAN G. SEFKO, as PRESIDENT of DUNKIN, SEFKO & ASSOCIATES, INC.



Teresa D. Gant
Notary Public, State of Texas

CITY CLERK DEPT.
07 MAY 30 AM 11:22

RESOLUTION

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

That the City Manager be authorized to sign a Professional Services Contract between the City of El Paso and Dunkin, Sefko & Associates, Inc., for a project known as the Subdivision Ordinance Update in an amount not to exceed \$97,000.00.

ADOPTED THIS 11th DAY OF APRIL, 2006.

THE CITY OF EL PASO



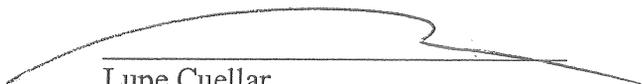
John F. Cook
Mayor

ATTEST:



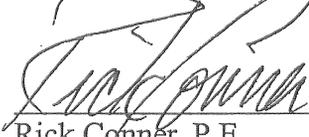
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:



Rick Conner, P.E.
City Engineer

06 APR - 6 AM 11:30
CITY CLERK DEPT.

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR
PROFESSIONAL SERVICES

This Agreement is made this 11th day of April, 2006 by and between the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the "Owner", and Dunkin, Sefko & Associates, Inc., a Texas Corporation, hereinafter referred to as the "Consultant".

WHEREAS, the Owner intends to engage the Consultant to perform professional services for a project known as "SUBDIVISION ORDINANCE UPDATE", hereinafter referred to as the "Project", as further described in Attachment "A"; and

WHEREAS, the Consultant has been selected to perform such services as required by the Owner, and the Consultant was selected through the Owner's selection procedure, in accordance with all applicable state and local laws and ordinances;

NOW, THEREFORE, for the consideration set forth in this Agreement and its attachments, the Owner and Consultant agree as follows:

ARTICLE I.
ATTACHMENTS

1.1 The attachments listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

- Attachment "A" Scope of Services and Project Budget
- Attachment "B" Consultant's Fee Proposal and Hourly Rates
- Attachment "C" Consultant's Basic and Additional Services
- Attachment "D" Payment and Deliverable Schedules
- Attachment "E" Insurance Certificates

ARTICLE II.
PROJECT

2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform professional services for the Project as professional consultant for the Project.. The Project shall consist of the Consultant's completion of the Scope of Services as further described in Attachment "A". Such Scope of Services shall be completed in accordance with the identified phases described in Attachment "D".

2.2 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.

2.3 The Owner hereby designates the Planning Director of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The Planning Director shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. Planning Director will render written decisions within a five working days time period.

ARTICLE III. CONSULTANT FEES AND PROJECT BUDGET

3.1 PAYMENT TO CONSULTANT. The Owner shall pay to the Consultant an amount not to exceed **NINETY SEVEN THOUSAND AND 00/100 DOLLARS (\$97,000.00)** for all basic services performed pursuant to this Agreement. The Consultant's fee proposal for the performance of all Basic Services is attached hereto as **Attachment "B"**. Payments to the Consultant shall be made pursuant to the schedule enumerated within **Attachment "D"**.

3.2 CONSULTANT'S SERVICES. The Basic Services to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C"**. If authorized by prior written amendment to this Agreement, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"**. Owner shall make payment for such Basic and Additional Services at the rates established by Consultant within **Attachment "B"**.

3.3 CONSULTANT'S INVOICES. The Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in **Attachment "D"**. Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner

3.3.1 Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.

3.3.2 The Owner agrees to pay invoices for all services performed as soon as reasonably possible but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant

shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.

3.4 COSTS NOT ENUMERATED. 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 Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

ARTICLE IV. PERIOD OF SERVICE AND TERMINATION

4.1 PERIOD OF SERVICE. The services called for by each phase shall begin upon the issuance of a Notice to Proceed from the City Engineer. The Consultant shall complete the requested services in accordance with the timelines and schedules outlined in Attachments "C" and "D".

4.2 TERMINATION. This Agreement may be terminated as provided herein.

4.2.1 TERMINATION BY OWNER. It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Owner from the Consultant is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.

4.2.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Owner

from the Consultant is determined.

4.2.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.

Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

**ARTICLE V.
INSURANCE AND INDEMNIFICATION**

5.1 INSURANCE. The Consultant shall not commence work under this Agreement until the Consultant has obtained sufficient insurance as required herein, and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

5.1.1 WORKERS' COMPENSATION INSURANCE. The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement: "The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the Owner, its partners, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured."

5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE. The Consultant shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Consultant and the Consultant's employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant. The minimum limits of liability and coverages shall be as follows:

a) COMMERCIAL GENERAL LIABILITY

Personal Injury or Death

\$500,000.00 for one person or occurrence

\$1,000,000.00 for two or more persons or occurrences

Property Damage

\$500,000.00 per occurrence

General Aggregate

\$1,000,000.00

b) AUTOMOBILE LIABILITY

Combined Single Limit

\$1,000,000.00 per accident

5.1.3 PROFESSIONAL LIABILITY INSURANCE. The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00) on a claims made basis.

5.1.4 OWNER AS ADDITIONAL INSURED. The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.

5.1.5 PROOF OF INSURANCE. The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.

5.1.6 GENERAL INSURANCE PROVISIONS. All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate. Further, each certificate shall contain the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after **thirty (30) consecutive calendar days** written notice of intent to cancel or materially alter said insurance has been provided to the City of El Paso."

5.2 INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS. Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident.

ARTICLE VI. FEDERAL PROVISIONS

6.1 COMPLIANCE WITH APPLICABLE LAWS - FEDERAL FUNDING REQUIREMENTS

Consultant, at Consultant's sole expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Consultant with respect to the use of federal funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal funds.

Specifically, and not in limitation of the foregoing, Consultant agrees that to the extent required by any agreement between the Owner and any Federal agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project, **including but not limited to:**

--The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.

--The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.

--The Federal Aviation Administration through a Grant Agreement or Cooperative Agreement with the Owner.

Copies of grant assurances will be made available to Consultant. However, provided copies shall in no way be a limitation on the Consultant's obligation to comply with any Federal agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project.

6.1.1 CONTRACT ASSURANCE. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

6.1.2 DBE GOOD FAITH EFFORTS. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract. The offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness. DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

6.2 TERMINATION FOR CANCELLATION OF GRANT.

Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Consultant of the cancellation by certified mail return receipt requested, whereupon the Consultant shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Consultant will be paid for professional services performed to such date, upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

ARTICLE VII. GENERAL PROVISIONS

7.1 CONTRACT TIME. Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment "D"**. It is acknowledged that the Consultant does not have control over all aspects of the design review process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the Planning Director of any delay beyond its control and the Planning Director shall extend the time schedule in the event of delays which the Planning Director reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in **Attachment "D"**.

7.2 CONSULTANT'S QUALITY OF WORK. The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project and in accordance with the time periods established in **Attachment "D"** and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner. Services provided by the Consultant under this Agreement shall be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar circumstances.

7.3 COPYRIGHT AND REPRODUCTION RIGHTS. Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications

and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

7.4 AUDITING RECORDS FOR THE SPECIFIC PROJECT. Consultant's records subject to audit shall include but not be limited to records which, in the Owner's discretion, have a bearing on matters of interest to the Owner in connection with the Consultant's work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense, if applicable. Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Consultant's records have been generated from computerized data, Consultant agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format. The Owner or its designee shall be entitled, at its expense, to audit all of the Consultant's records related to this Project, and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times and places.

7.5 SUCCESSORS AND ASSIGNS. This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

7.6 VENUE. For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

7.7 GOVERNING LAW. The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

7.8 CAPTIONS. The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.

7.9 SEVERABILITY. Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

7.10 NOTICES. Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner: The City of El Paso
Attn: City Manager
2 Civic Center Plaza
El Paso, Texas 79901

With a Copy to: The City of El Paso
Attn: Planning Director
2 Civic Center Plaza
El Paso, Texas 79901

To the Consultant: Dunkin, Sefko & Associates, Inc.
Attn: Dan Sefko
9603 White Rock Trail
Suite 210
Dallas, Texas 75238

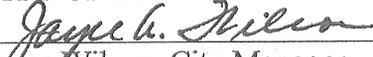
Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

7.11 CONFLICTING PROVISIONS. Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.

7.12 ENTIRE AGREEMENT. This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

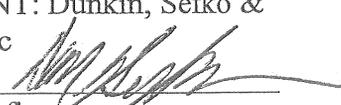
WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:



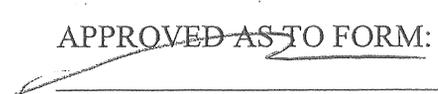
Joyce Wilson, City Manager

CONSULTANT: Dunkin, Sefko &
Associates, Inc



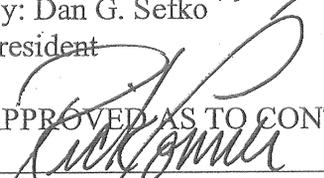
By: Dan G. Sefko
President

~~APPROVED AS TO FORM:~~



Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:



Rick Conner, P.E.
City Engineer

ATTACHMENT "A"
BASIC SCOPE OF SERVICES

**A Strategic Approach to Evaluation of El Paso's
Development Regulations and
Preparation of a New Subdivision Ordinance**

Section I - Introduction

The purpose of this proposal is to investigate, diagnose and make recommendations for improving El Paso's development regulatory system and ordinances; and to draft a new Subdivision Ordinance based on this analysis and the City's Comprehensive Plan. El Paso has experienced growth to its present population of over 600,000 persons. While El Paso has experienced growth, redevelopment is also occurring and will occur in the future. The City's development regulations and specifically the Subdivision regulations should be responsive to this redevelopment and new growth while implementing the recommendations in the Comprehensive Plan. Also, new legislation has been passed that will impact the manner in which the City processes development applications.

Section II - General Approach to the Project

A. Overall Concept and Objectives

We fully understand the City's desire to accommodate growth and redevelopment while ensuring proper development review and appropriate development controls. The City is not alone, of course. Many cities cope daily with outdated and unresponsive development ordinances. The results are frequently debilitating, including unhappy citizens, frustrated developers, and City officials who inevitably feel caught between a rock and a hard place. The difference here is that El Paso recognizes that some of its development regulations may need updating -- and has taken steps necessary to move toward the solution. The paramount objective is easier to state than to achieve: a set of coordinated development standards and procedures in which both those who wish to preserve the character and quality of the community and those who wish to participate in its economic development feel confident.

B. Strategic Approach to Comprehensive Revision of Land Use Regulations

We would propose a work program in two phases. Phase One will include briefly reviewing the City's Comprehensive Plan in order to ensure that any revision is reflective of the City's development objectives (as stated in the Comprehensive Plan) and recent development trends. The major emphasis of Phase One will be a strategic diagnostic analysis of the City's existing development ordinances and development approval process. Phase Two is the actual preparation of a new Subdivision Ordinance to implement the City's comprehensive planning objectives (as stated in the Comprehensive Plan) and the needs as identified by staff, the City Council, Commissioners, developers and citizens. Each phase should provide adequate opportunities for public participation and involvement to ensure that the work products are truly reflective of the community's needs and desires.

The first phase will result in the definition of any problems and issues arising out of the City's current development regulations and practices against the backdrop of community-approved goals and objectives. The City already has taken steps in this direction by initiating efforts to revise its Zoning Ordinance. This effort provides a more up-to-date policy foundation to guide the community's future growth and development. We would propose to build on this effort in undertaking an independent regulatory review, as outlined below, and obtaining consensus on the specific additional recommendations for the Subdivision Ordinance rewrite. The second phase of the work program will be comprised of the actual drafting of the new Subdivision Ordinance. The consensus achieved during the first phase of the project should facilitate and accelerate the drafting process. Each phase is outlined in more detail below.

SECTION III – SCOPE OF SERVICES

PHASE I: Diagnostic Evaluation of Development Regulations & Practices

A. Comprehensive Plan Review

The City's Comprehensive Plan will be briefly reviewed and evaluated as a "launch pad" work effort in the Subdivision Ordinance rewrite process during Phase One of the project (as desired and directed by the City). The City's Comprehensive Plan should be a good indication of today's community goals and objectives, and reflects how El Paso wishes to develop or redevelop in the future. The Comprehensive Plan should have up-to-date community objectives, policies and implementation strategies related to land use, transportation, population changes and trends, economics, natural resources, cultural resources, community facilities, and housing.

B. Regulatory Analysis

The central focus of regulatory analysis will be the current land use and development regulations. There are four essential lines of inquiry in evaluating a community's land use regulations:

- (1) the adequacy of substantive development standards and rules;
- (2) the function and "user-friendliness" of development procedures;
- (3) the format of the regulations; and
- (4) the interrelationships between various components (i.e. zoning and subdivision) of the overall regulatory program.

Analysis of each is crucial to understanding how to tailor the Subdivision regulations to achieve the community's goals and objectives in a manner that is both usable by the City and understandable by the development community. In evaluating the City's regulatory program, it also is important to understand the overall process of the review and approval of development applications. For one thing, it is not enough to know what the ordinances state -- frequently, the community's daily practices deviate substantially from the procedures outlined in the regulations. Second, the manner in which development applications are processed and finally decided is frequently a source of frustration on the part of applicants, either because the process takes too long or because too many conditions are attached to approval. Finally, it is important to fully comprehend the

viewpoints and concerns of public officials who are responsible for administration of the City's development regulations.

C. Issue Development and Proposed Solutions

Once investigation has identified any problems associated with the City's current subdivision and related development regulations, the consultants' task is to devise focused, realistic and usable subdivision solutions. The consultant proposes to structure the work program around development of concrete issues, which themselves fall within the four components of the regulatory program outlined in the preceding section: (1) development and technical standards; (2) development procedures; (3) format of the regulations; and (4) coordination with other regulatory programs. This summary of probable issues arising from analysis of the City's development regulations and procedures is not intended to be exhaustive; other issues may, in fact, be equally or more important and yet others will be identified later in the process. The relative importance and priority attached to the issues will be determined during the diagnostic phase of the project. Once issues are defined and prioritized, however, the consultant will draw upon its extensive municipal experience both as a consultant and in managing planning, engineering, legal building inspection and code enforcement departments for cities to propose workable solutions for the City, as reflected in the work program that follows.

D. Work Program for PHASE I – Diagnostic Evaluation

The consulting team's approach to the project suggests the following work program for Phase I.

Task 1. Review and evaluate the City's adopted Comprehensive Plan as a foundation for the Subdivision Ordinance rewrite effort.

A. Briefly review the current Comprehensive Plan with City staff (and with the City's Planning & Zoning Commission, if directed by the City) to determine the adequacy of the community's development goals and growth objectives. Also, discuss any special sections in the Plan that addresses the City's unique needs, such as major transportation corridors, the unique neighborhoods and employment generators.

B. Make any recommendations or clarifications of the Comprehensive Plan as it relates to the proposed new Subdivision Ordinance to staff, and any other boards or commissions as desired.

Task 2. Investigate and identify shortcomings and problems arising from the City's application of its current subdivision, environmental and other relevant development regulations.

A. Analyze land use conflicts that have occurred within El Paso, and identify any possible causes arising from current development regulations.

B. Analyze various elements of the City's regulatory programs that serve to promulgate current community goals and objectives (as stated in El Paso's

Comprehensive Plan and/or other applicable planning policy documents).

C. Analyze the City's existing zoning, subdivision and development regulations and site plan review practices, and identify any deficiencies or inconsistencies in standards, procedures, format and coordination among the various regulatory programs.

D. Analyze the City's process for reviewing development applications, and identify opportunities for expediting or simplifying approval of applications.

In undertaking this task, the consultant will conduct several interviews with the City's administrative staff (including all City participants in the development review process such as those involved in planning, engineering, code compliance, public safety, and other applicable areas). (One meeting)

Task 3. Prepare a comprehensive "baseline regulatory report" summarizing the results of the investigation and defining issues for deliberation.

The baseline report will be presented to applicable City staff, the Ordinance Review Advisory Board, or City Planning and Zoning Commission, as the City directs, in a workshop forum that is conducive to active dialog and deliberation on issues, problems and other salient topics associated with the City's current development review tools and procedures. (One meeting)

Task 4. Refine issues and devise creative and realistic solutions through interactions with City staff and the Advisory Board (if applicable).

Critical issues and objectives will be formalized and documented as part of this task. This will be accomplished primarily through workshops, which utilize the findings of the baseline report as a "springboard" for brainstorming and interactive dialog staff and the Advisory Board. (One meeting)

Task 5. Prepare and present a "Regulatory Action Plan" as a final report to the City that summarizes the findings of the initial baseline regulatory report, and that makes recommendations pertaining to revisions to the City's development regulations.

The "Regulatory Action Plan" will contain a summary of the proposed resolution of each issue defined in Task 4 above. The report will incorporate a detailed outline of the proposed subdivision regulations in accordance with the recommended format. It will also include recommendations on how El Paso's development review procedures and regulations can be made more user-friendly, as well as things the City can do to enhance its public image and to pro-actively encourage cooperation and high quality products from the development community. Finally, the report will include a section explaining the process for producing the new Subdivision Ordinance. (One meeting)

PHASE II: Preparation of the Subdivision Ordinance

A. General Approach to Preparation of the Subdivision Ordinance

Phase I is designed to achieve a general consensus about the direction of revisions to the

Ordinances, culminating in a Regulatory Action Plan that is approved by the City Council. Although many formats are possible, in undertaking the drafting of the revised Ordinance the consultants would propose to organize the Ordinance into major divisions that follow the general subdivision authority of the City. Some organizational preferences we have for some of these “elements” of the Ordinance are outlined below.

It is important to note that in the preparation of a comprehensive Subdivision Ordinance, that certain differences between zoning, platting, site plan review and engineering regulations must be recognized and coordinated in the final documents. It is anticipated that no changes will be made to the existing zoning map or ordinance existing zoning.

B. Outline of Subdivision Regulations Format

The consultants have found that the following divisions are effective in organizing municipal subdivision regulations:

General Provisions: This division contains the basis for the City’s jurisdiction over plats and the exceptions and exemptions to the regulations. It is particularly important to delineate the precise authority the City exercises within its extraterritorial jurisdiction (if applicable), including its intent if any to proceed to use development plats. These provisions are very important in closing loopholes to the platting rules. This division also should set forth procedures and standards for granting relief from the subdivision regulations, including variances, waivers and petitions for relief from excessive development exactions, as well as enforcement mechanisms under the ordinance.

Subdivision Procedures: This division sets forth the stages of plat approval with precision and each separate procedure authorized under the regulations. For each procedure, the regulations should specify the required contents of the application, the procedure for approval, the time within which the application must be processed, the standards for approval, the effect of approval and the expiration date for the plat. The provisions of this division are extremely important in determining the outcome of any vested rights disputes that arise in the future, since the mere submittal of an application may prevent the City from changing any standards applicable to the project thereafter. Hence, the effect of “sketch plats,” “master plans,” and other preliminary stages of the platting process must be carefully addressed in this section, as well the expiration dates.

Subdivision Design Standards: This division sets forth the standards applicable to plats for streets, easements, blocks, sidewalks, water and wastewater utilities, roadways, parks and open space and drainage. The regulations in this division should clearly identify the City’s policies on adequate public facilities and delineate its authority to require dedication and improvement of rights-of-way for each type of public facility, whether on-site or off-site.

Construction and Technical Standards: This division governs the approval of detailed construction plans and construction management procedures. It is anticipated that the City’s construction and technical standards will also be reviewed and revised as necessary.

Completion and Acceptance of Improvements: This division identifies the City’s policies relating to financially guaranteeing construction of required improvements and steps necessary for acceptance of improvements by the City. Provisions for participation in the

costs of improvements by the City and procedures relating to approval of development agreements typically are included in this division.

C. Work Program for PHASE II.

Task 1: Prepare public review draft of the Subdivision Ordinance.

Based upon the approved Regulatory Action Plan, the consultants will undertake the first draft of the revised Subdivision Ordinance. After the initial draft has been prepared, the consultants will meet with the City staff to discuss the content and organization of the draft and suggested revisions. The consultants anticipate that informal public review workshops will be conducted with the Advisory Board, Planning & Zoning Commission and City Council. Suggested revisions will be incorporated. The product of this task is a complete draft of the Ordinance ready for public review and adoption. (One meeting)

Task 2: Convene public workshops to solicit comment on the draft Subdivision Ordinance.

Following release of the public review draft of the Subdivision Ordinance, formal public workshops will be convened to present the elements of the Ordinances and solicit comment in advance of formal public hearings. (Two meetings)

Task 3: Revise public review draft of the Subdivision Ordinance based upon input at the public workshops.

Based upon comments at the public workshops and direction from the City Planning & Zoning Commission and City Council, the consultant will prepare the recommended final draft incorporating appropriate revisions. The product of this task will be a draft Subdivision Ordinance suitable for presentation prior to the public hearing as required by State law.

Task 4: Present the draft Subdivision Ordinance at public hearings.

The consultants will assist the City staff at a scheduled public hearing before the City Council in presenting the draft Subdivision Ordinance to the public. (One meeting)

Task 5: Final revisions to the Subdivision Ordinance.

Based upon testimony at the public hearing and direction from the Planning and Zoning Commission and City Council, the consultants will prepare revisions for final adoption of the Subdivision Ordinance. A final document, as approved by the City Council, will be delivered to the City. The Ordinance will also be delivered in an electronic format suitable for use by the City.

Product

The product of the work program will be a new Subdivision Ordinance that can be distributed in both hard copy and electronic formats, and any applicable maps if so desired.

ATTACHMENT "B"
CONSULTANT'S FEE PROPOSAL AND HOURLY RATES

The following professional fees are estimated based on the scope of services in Attachment "A".

- A. Dunkin Sefko & Associates, Inc. (DSA) \$ 52,000.00
- B. Engineering \$ 25,000.00
- C. Legal Review \$ 20,000.00

Total: \$97,000.00

1.1 The above estimate includes eight meetings (two days each) by DSA and three meetings (two days each) by legal counsel in El Paso, however, this does not include direct reimbursable expenses. Consulting Engineer is located in El Paso and meetings are included in (B) above.

1.2 The following are the Consultant's usual hourly rates:

DSA:

- Dan Sefko \$140.00/hour
- Craig Farmer \$120.00/hour
- Senior Planner \$ 85.00/hour
- Planner/G.I.S. Technician \$ 70.00/hour
- Clerical \$ 45.00/hour

Legal Counsel \$200.00/hour

Engineering:

- Principal Engineer \$115.00/hour
- Project Engineer \$ 85.00/hour
- Senior Engineer \$ 75.00/hour
- Senior CADD Technician \$ 58.00/hour
- Clerical \$ 38.00/hour

Direct costs for all Consultant's:

- Reproduction/Copying (cost) x 1.15
- Miscellaneous (e.g., FedEx, Long Distance Telephone, etc.) (cost) x 1.15
- Mileage \$0.405/mile or direct airfare, whichever is less expensive

ATTACHMENT "C"
AGREEMENT FOR CONSULTING SERVICES

For the Project known as Subdivision Ordinance Update, hereinafter referred to as the Project, the Consultant will provide the Basic and Additional Services as noted herein.

BASIC SERVICES OF THE CONSULTANT
GENERAL

1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated.
2. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.
3. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

PHASE I

1. Upon receipt of the Owner's written authorization to proceed with **Phase I**, the Consultant shall proceed as per Attachment "A".

ADDITIONAL SERVICES OF THE CONSULTANT
GENERAL

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

1. Furnish additional printing and similar services.
2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of the ordinance if the changes are inconsistent with approvals or instructions previously given by the Owner.
3. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.

ATTACHMENT "C"
AGREEMENT FOR CONSULTING SERVICES

4. Prepare documents for alternate ordinances requested by the Owner.
5. Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein
6. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.
7. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.
8. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.
9. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

For the Project known as Subdivision Ordinance Update, hereinafter referred to as the Project, the Owner will compensate the Consultant an amount not to exceed **NINETY SEVEN THOUSAND AND 00/100 DOLLARS (\$97,000.00)** for all Basic Services noted within the Agreement and its attachments.

PAYMENT SCHEDULE

The compensation for each phase of the basic services on each construction contract shall be made in proportion to the services performed for that phase, so that the compensation made after the approved completion of each phase shall bring the fee up to the following percentages of the total basic compensation:

	Percent of Payment Consultant	Percent of Project to Completion
Phase I *	40%	40%
Phase II **	60%	60%

***Phase I Diagnostic Evaluation \$ 39,000.00**

****Phase II Preparation of Subdivision Ordinance \$ 58,000.00**

Payment for each Phase shall be made on a monthly basis for the percentage of each phase completed but shall not exceed the amounts as outlined above. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and accompanying Summary and Progress Report and the Owner's written approval.

DELIVERABLE SCHEDULE

PHASE I

The services called for in **Phase I** of this Agreement shall be completed and **fifteen copies** of any required documents shall be submitted within **100 consecutive calendar days** following written authorization from the Owner for the Consultant to proceed.

PHASE II— PREPARATION OF THE SUBDIVISION ORDINANCE

The services called for in **Phase II** of this Agreement shall be completed and **ten copies** the required documents and services submitted within **240 consecutive calendar days** following written authorization from the Owner for the Consultant to proceed.

PHASE III—FINAL DOCUMENT PHASE

Submit one set of original and one set of electronic media format copies of all reports to the Owner within sixty days from the date of completion of Phase II.

A. Monthly Invoicing—The Consultant may invoice monthly for the amount of work completed on each phase of the project, but shall not exceed the amount allocated for

each phase. Printing and direct expenses shall be itemized separately. The City shall pay each invoice within 30 days after receipt.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE
09/15/2005

PRODUCER
McLaughlin Brunson Insurance Agency
9535 Forest Lane
Suite 118
Dallas TX 75243

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
Dunkin Sefko & Associates, Inc.
9603 White Rock Trail
Suite 210
Dallas TX 75238

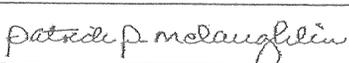
INSURER A: Hudson Insurance Company / ADI
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

SR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER Professional Liability	AEE71585-00	09/17/2005	09/17/2006	\$ 500,000 Per Claim/Aggregate

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 The claims made professional liability coverage is the total aggregate limit for all claims presented within the policy period and is subject to a deductible.

CERTIFICATE HOLDER	ADDITIONAL INSURED: INSURER LETTER: _____	CANCELLATION
Master Certificate		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/30/2005

PRODUCER (972)771-4071 FAX (972)771-4695
K & S Insurance Agency
P O Box 277
701 Justin Road
Rockwall, TX 75087

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

NAIC #

INSURED Dunkin Sefko & Associates Inc.
9603 White Rock Trail, #210
Dallas, TX 75238

INSURER A: Hartford Lloyd's Insurance Co.

INSURER B: Hartford Casualty Insurance Co

INSURER C: Twin City Fire Insurance Co.

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	46SBAFP1808	10/01/2005	10/01/2006	EACH OCCURRENCE	\$ 1,000,000
					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
					MED EXP (Any one person)	\$ 10,000
					PERSONAL & ADV INJURY	\$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	46UECUX0670	10/01/2005	10/01/2006	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN EA ACC AGG	\$
A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE	46SBAFP1808	10/01/2005	10/01/2006	EACH OCCURRENCE	\$ 1,000,000
					AGGREGATE	\$ 1,000,000
						\$
						\$
	DEDUCTIBLE					\$
	RETENTION \$					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	46WBCGC2769	10/01/2005	10/01/2006	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
					E.L. EACH ACCIDENT	\$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
					E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
	OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CANCELLATION

MASTER CERTIFICATE

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Richard Daiker-1/TOMMY

Richard W. Daiker

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

CITY CLERK DEPT.
06 APR -6 AM 11:58

DEPARTMENT: Engineering
AGENDA DATE: April 11, 2006
CONTACT PERSON/PHONE: Rick Conner, City Engineer ext. 4423
DISTRICT(S) AFFECTED: All

SUBJECT:

THAT THE CITY MANAGER BE AUTHORIZED TO SIGN A PROFESSIONAL SERVICES CONTRACT BETWEEN THE CITY OF EL PASO AND DUNKIN SEFKO & ASSOCIATES FOR A PROJECT KNOWN AS CITY OF EL PASO SUBDIVISION REWRITE PROJECT IN AN AMOUNT NOT TO EXCEED \$97,000.

BACKGROUND / DISCUSSION:

At the direction of the City Council, we have gone through the process of selecting a firm to rewrite our Subdivision Regulations. The project is somewhat unique and requires very specialized expertise. At the direction of the Council, the time line was abbreviated. We developed a list of firms specifically qualified to undertake this project, short listed it by doing internal research, and then asked for qualifications from the top two. We have completed the selection process in record time. We believe that Dunkin Sefko & Associates is highly qualified to undertake the project, they have significant experience and expertise in this area. They have agreed to absolutely maximize the use of local El Paso consultants whenever and wherever possible.

PRIOR COUNCIL ACTION:

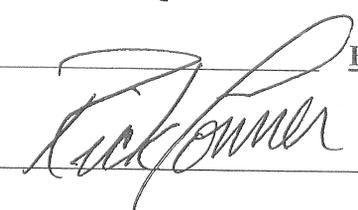
City Council previously discussed this item, and instructed the City Manager to proceed in securing a contract.

AMOUNT AND SOURCE OF FUNDING:

Funding will be from Account 99010273-01101-504405. The Office of Economic Adjustment, a branch of the Federal Government that is assisting communities impacted by the BRAC, in our case, the Fort Bliss expansion, and has verbally committed to paying at least half the cost, though we do not yet have that commitment in writing.

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

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

DEPARTMENT HEAD: _____


APPROVED FOR AGENDA:

CITY MANAGER: _____ DATE: _____