Agenda Item Form

Agenda Date: Aug. 24, 2004

Districts Affected: #7
Dept. Head/Contact Information: Irene Ramirez, P.E. - 541-4431 04 AUG 19 PM 1:29

Type of Agenda Item:

- ☒ Resolution
- ☐ Tax Installment Agreements
- ☐ RFP/ BID/ Best Value Procurement
- ☐ Application for Facility Use
- ☐ Interlocal Agreements
- ☐ Other _____
- ☐ Staffing Table Changes
- ☐ Tax Refunds
- ☐ Budget Transfer
- ☐ Bldg. Permits/Inspection
- ☒ Contract/Lease Agreement
- ☐ Board Appointments
- ☐ Donations
- ☐ Item Placed by Citizen
- ☐ Introduction of Ordinance
- ☐ Grant Application

Funding Source:

- ☐ General Fund
- ☐ Grant (duration of funds: _____ Months)
- ☒ Other Source: 2004 Bond Issue Project

Legal:

☒ Legal Review Required Attorney Assigned (please scroll down): Raymond Telles ☒ Approved ☐ Denied

Timeline Priority: ☒ High ☐ Medium ☐ Low # of days: 3

Why is this item necessary:
Verdeland Street and Drainage Improvements

Consultant shall prepare construction documents for street and drainage improvements. Proposed work includes a 30 ft. roadway, 5 ft. sidewalks, curb & gutters, driveways, handicap access ramps, streetlights, and City monuments. Land acquisition will be necessary to provide a ponding area for drainage issues within subdivision. Underground storm sewer with pond shall be desired.

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:
The consultant fee includes costs for engineering consulting services.

Statutory or Citizen Concerns:
None

Departmental Concerns:
None

RESOLUTION

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

That the Mayor be authorized to sign an Agreement for Engineering Services by and between the **CITY OF EL PASO** and **Frank X. Spencer & Associates, Inc.,** for a project known as **"Verdeland Street and Drainage Improvements"**, in an amount not to exceed ONE HUNDRED NINETEEN THOUSAND NINE HUNDRED NINETY-ONE and 60/100 DOLLARS ($119,991.60) District # 7

ADOPTED this _____ day of August, 2004.

THE CITY OF EL PASO

_____
Joe Wardy, Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:

Irene D. Ramirez, P.E.
Interim City Engineer

3342/TCUL/ENG/Agr for Eng Services

THE STATE OF TEXAS)
) AN AGREEMENT FOR ENGINEERING SERVICES
COUNTY OF EL PASO)

THIS AGREEMENT, made this ____ **day of August, 2004** by and between **THE CITY OF EL PASO**, a municipal corporation, organized and existing under the laws of the State of Texas, hereinafter called the **"Owner,"** and **FRANK X. SPENCER & ASSOCIATES, INC.,** a Texas corporation, hereinafter called the **"Engineer."**

WHEREAS, the Owner intends to engage the Engineer to perform professional services for a project known as **"Verdeland Street and Drainage Improvements"** hereinafter called the **"Project,"** and further described in Attachment "A", which is attached hereto and made a part hereof for all purposes;

NOW, THEREFORE, the Owner and Engineer for the consideration hereinafter set forth agree as follows:

I. BASIC SERVICES OF THE ENGINEER

A. General

1. The Engineer agrees to perform professional services in connection with the Project as hereinafter stated.

2. The Engineer shall comply with the City of El Paso Engineering Department Construction Document Guidelines, which are available in the City Engineering Department, in the performance of the services requested under the design phase of this Agreement.

3. The Engineer 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.

4. The Owner is relying upon the skill and expert knowledge of the Engineer to furnish the Owner with an accurate work product within the allocated budget. The Owner's review of any documents prepared by the Engineer is only general in nature and its obligation to approve and accept the work in no way relieves the Engineer of responsibility for any specific deficiencies in work product.

B. Report Phase

1. Upon receipt of the Owner's written authorization to proceed with the Report Phase, the Engineer shall:

a. Consult with the owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable program for the Project.

b. Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part B.1.c. of this section and interpreting or incorporating results of any such services for inclusion in the preliminary report referred to in Part B.1.d. of this section.

c. 1) Provide consultation and advice as to necessity of providing or obtaining other services such as: a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, b) Core borings, probings, and hydrographic surveys, c) Laboratory testing, and d) Inspection or other special consultation; 2) Act as the Owner's representative in connection with such services; and 3) If concurred with and authorized by the Owner, provide, procure, or assist him in procuring such additional services.

d. Prepare a preliminary report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general cost estimate for such of the above listed improvements to be included in the Project, and to set forth the Engineer's recommendations.

e. Furnish **ten (10) copies** of the preliminary report and general cost estimate to the Owner.

2. Upon receipt of the report and before the Engineer is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Engineer shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Engineer shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.

C. **Preliminary Design Phase**

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Engineer shall do the following separately for each construction contract:

1. Consult with the Owner to determine the Owner's requirements for the Project.

2. Provide at the Engineer's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the Project and as required by the Scope of Work of this Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.

4. Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.

5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such services.

6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. If the Owner designates various construction contracts into which the Project is to be divided, the Engineer shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Engineer shall prepare separate preliminary design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.

7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria,

drawings, and outline specifications to develop, and establish the scope of each construction contract.

8. Prepare a detailed cost estimate for each construction contract containing the main construction components, based on the information given in the preliminary design documents.

9. Furnish **ten (10) copies** of the above preliminary design documents and cost estimates for each construction contract. If the above preliminary design documents are not approved by the Owner, the Engineer shall furnish **five (5) copies** of the resubmitted preliminary design documents at no additional cost to the Owner. Additional sets required for public utilities and other agencies must be provided by the Engineer at no additional cost to the Owner.

D. <u>Final Design Phase</u>

Upon receipt of the Owner's written authorization to proceed with the Final Design Phase, the Engineer shall do the following separately for each construction contract:

1. Incorporate changes requested by the Owner and other governmental authorities after review of the preliminary design documents and perform redesign necessitated by public utility conflicts.

2. Coordinate closely with utility companies during the Report and the Preliminary Design Phases. The amount of redesign necessary to accommodate utility company comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Engineer as part of the Final Design Phase of this Agreement. The Engineer shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.

3. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Engineer's assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Engineer shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall be fully responsible for obtaining utility clearances.

4. On the basis of the approved preliminary design documents and subject to approval of design criteria, per Sec. I, Part D.1., prepare for incorporation in the construction contract documents detailed drawings and plans,

hereinafter called the **"Drawings,"** to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called **"Specifications."** These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.

5. Advise the Owner of any adjustment to the Engineer's previous cost estimate for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised cost estimate, based on the completed Drawings and Specifications. The Engineer expressly authorizes any person designated by the Owner to review at any time prior to the bidding Phase any cost estimates made by the Engineer. The Engineer agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Engineer's estimates were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Engineer of the full responsibility of preparing reliable estimates. By conducting such reviews, the Owner assumes no responsibility whatsoever.

6. Prepare proposal forms.

7. Furnish to the Owner no less than **ten (10) copies** of the Drawings and as many as needed for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not approved by the Owner, the Engineer shall furnish **five (5) copies** of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner **three (3) copies** of the Specifications and **three (3) copies** of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

8. Furnish to the Owner **thirty (30) copies** of the Drawings and Specifications in final approved form for bidding purposes for each construction contract. Additional sets required for public utilities and other agencies must be provided by the Engineer at no additional cost to the Owner.

E. **<u>Bidding Phase</u>**

Upon receipt of the Owner's written authorization to proceed with the Bidding Phase on each construction contract, the Engineer shall do the following separately for each construction contract:

1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to Bidders by the Owner as required for advertising purposes.

2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.

3. Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.

4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. Deliver **three (3) copies** of all addenda to the Owner for appropriate action.

5. Assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the **three (3) lowest responsible bidders**.

6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

F. <u>Construction Phase</u>

The Construction Phase, for each construction contract, shall commence with the award of the construction contract and shall terminate upon written approval of final payment by the Owner, except that this phase may be extended, if required, by agreement between the Engineer and the Owner. During the Construction Phase the Engineer shall:

1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.

2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with such changes and modifications as may be made in such general Conditions being agreed to by both the Engineer and the Owner.

3. Visit each construction site and stake out centerline and right-of-way for utility relocations to assist the construction contractor and to guard against deficiencies in the permanent work constructed at the site.

4. Visit each construction site at least once each week or more frequently, if necessary, to observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. On the basis of these on-site observations, the Engineer shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Engineer's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the Engineering requirements of the construction contract documents. However, the Engineer shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

   Nothing in this Agreement shall be construed as requiring the Engineer to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. **Such review must be complete within three (3) working days following receipt of submittal documents.** The Engineer shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.

6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed cost estimate for the Owner's approval as required after securing approval of all agencies having approval authority over each construction contract. The Engineer shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract documents, subject to the Owner's interpretation of such terms and conditions.

7. Based on the Engineer's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Engineer's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Engineer shall not be deemed to have represented that the Engineer has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.

8. Conduct with the Owner and construction contractor no more **than two (2) brief preliminary inspections**, at times requested by the construction contractor to determine if the Project is ready for final inspection.

9. Schedule and conduct with the Owner, including representative of the City Engineer and the using department and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The **"punch list"** shall be furnished to the construction contractor and the Owner within **two (2) city working days** after the final inspection.

10. Issue a "Certificate of Substantial Completion" using NSPE document 1910-8-D when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two (2) city working days** after the final inspection.

11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.

12. Furnish the Owner a set of reproducible **(24"X36")** "as-built" original drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints, drawings, and other data furnished

by the construction contractor to the Engineer. Also provide project documents in acceptable electronic media format.

13. Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.

14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.

II. ADDITIONAL SERVICES OF THE ENGINEER

A. General

If authorized in writing by the Owner, through written amendment approved by City Council, the Engineer shall perform or obtain additional services of the following types which are not covered by Section I herein, which shall be paid for by the Owner as indicated in Sec. V, Part B.:

1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.

2. Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

3. 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 construction if the changes are made after approval of preliminary design documents except when the Engineer's preliminary design, pre-final design, or final design estimates exceed the budgeted amount, or in the case where all responsible bids exceed the Engineer's final design estimate by **ten percent (10%)** or more.

4. 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 Engineer.

5. Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.

6. Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.

7. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.

8. 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.

9. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.

10. Inspect each construction contract site prior to expiration of the guarantee period and report observed discrepancies under guarantees provided by the construction contractor.

11. Provide additional or extended services during construction made necessary by: a) Work damaged by fire or other cause during construction; b) prolongation of the construction contract time by more than twenty-five percent (25%), provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Engineer; c) Acceleration of the work schedule involving services beyond normal city working hours; or d) the construction contractor's default under the construction contract due to delinquency or insolvency.

12. Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.

13. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

14. 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 Engineer.

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).

B. <u>Resident Project Services</u>

1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Engineer in order to provide more extensive representation at each construction site during the

Construction Phase. Such resident project representation shall be paid for by the Owner as indicated in Sec. V, Part B.

2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in Attachment "C" which is to be identified, attached to, and made a part of this Agreement before such services begin.

3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Engineer shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Engineer responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

III. THE OWNER'S RESPONSIBILITIES

The Owner shall:

A. Provide available information as to its requirements for each construction contract.

B. Make known all information pertinent to the site of each construction contract, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site available to the Engineer.

C. Obtain access to and make provisions for the Engineer to enter upon public and private lands as required for the Engineer to perform work under this Agreement.

D. Review all studies, reports, sketches, estimates, drawings, specifications, proposals, and other documents presented by the Engineer, and render in writing decisions pertaining thereto within a reasonable time so as not to unreasonably delay the work of the Engineer.

E. Advertise for proposals from bidders, open the proposals at the appointed time and place, and pay for all costs incident thereto.

F. Designate the City Engineer of the City of El Paso as the Owner's representative with respect to the Engineering work to be performed under this Agreement. The City Engineer 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.

G. Assist the Engineer in obtaining approval of all governmental agencies having jurisdiction over the Project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the Project.

IV. PERIOD OF SERVICE

A. The services called for in the **Report Design Phase** of this Agreement shall be completed and the preliminary design documents and cost estimate shall be submitted within **twenty-one (21) consecutive calendar days** following written authorization from the Owner for the Engineer to proceed.

B. After the Owner's acceptance of the report design documents and revised cost estimates for each construction contract, including any specific modifications or changes in scope desired by the Owner, and upon written authorization from the Owner, the Engineer shall proceed with the performance of the services called for in the **Preliminary Design Phase** of this Agreement, so as to deliver completed detailed construction drawings, specifications, design analysis, and cost estimates for review on all authorized work on each contraction contract within **forty-five (45) consecutive calendar days** following authorization to proceed with the Preliminary Design Phase of each construction contract.

C. After the Owner's acceptance of the preliminary design documents and revised cost estimated for each construction contract, including any specific modifications or changes in scope desired by the Owner, and upon written authorization from the Owner, the Engineer shall proceed with the performance of the services called for in the **Final Design Phase** of this Agreement, so as to deliver completed detailed construction drawings, specifications, revised design analysis, and cost estimates for review on all authorized work on each construction contract within **twenty-one (21) consecutive calendar days** following authorization to proceed with the Final Design Phase of each construction contract.

D. Barring an early termination as provided in Section VI.A., this Agreement shall remain in force: 1) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or 2) Unless construction has not begun within a period of **twelve (12) months** after the completion of the services called for in that phase of work last authorized. However, the Owner may determine that this Agreement may remain in full force past the twelve-month period noted above. Such a determination shall be made at the Owner's sole discretion and will be based upon the individual circumstances of this project and this Agreement.

V. PAYMENTS TO THE ENGINEER

A. Payments for Basic Services of The Engineer Under Section I

1. The Owner shall pay the Engineer an amount not to exceed **ONE HUNDRED NINETEEN THOUSAND NINE HUNDRED NINETY-ONE AND 60/100 DOLLARS ($119,991.60)** for all basic services and reimbursables performed hereunder. The Engineer's fee proposal for the performance of all basic services and reimbursables is attached hereto and made a part hereof for all purposes as Attachment "B."

2. Payment on account of said fees for the basic services provided in Sec. V, Part A.1., shall be made as follows:

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

		Payment	Plan Completion
a.	**Report Phase**	**20%**	**100% Report**
b.	**Preliminary Design Phase**	**50%**	**50%**
c.	**Final Design Phase**	**75%**	**100%**
d.	**Bidding Phase**	**80%**	
e.	**Construction Phase**	**100%**	

   Payment for the Report Phase, Preliminary Design, Final Design and Bidding Phases shall be made after each phase has been accepted and approved in writing by the Owner. Payment for the Construction Phase shall be made on a monthly basis. The Owner shall make payments upon presentation of the Engineer's detailed statement and its written approval.

3. Except as specifically set forth herein as a cost for which Engineer can bill Owner, all costs of performing the services required under this Agreement, of every kind and nature whatsoever, including by way of example and not in limitation, overhead costs, payroll expenses, interest charges incurred by Engineer for whatever reason, copies, office and equipment rentals and similar costs, shall be borne by Engineer and not passed on to Owner or otherwise paid by Owner.

B. **Payments for Additional Services of the Engineer Under Section II**

If authorized by written amendment to this Agreement before services are rendered:

1. The Owner shall pay the Engineer for additional services performed by personnel assigned to the regularly established office of the Engineer at the hourly rates established in Attachment "B" hereof, plus the reasonable actual cost of the reimbursable expenses as hereinafter defined.

2. The Owner shall pay the Engineer for additional services performed in connection with administering subcontracts for services of the types provided in Sec. II, Part A., at the **rate of actual cost plus five percent (5%)**.

3. Reimbursable expenses shall mean the reasonable actual expense of transportation and subsistence of principals and employees while traveling in connection with the Project, field office expenses, Resident Project Representative's transportation, toll telephone calls and telegrams, reproduction of reports, drawings and specifications, and similar Project related items.

4. Payments for additional services shall be made monthly upon presentation of the Engineer's detailed statement and its written approval by the Owner.

C. **General**

1. The payroll cost of salaries and wages used as a basis for payment under Sec. V, Part B.1., and Sec. V, Part B.2., shall mean the cost of salaries and wages paid to principals and employees engaged directly on the Project, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation, and holiday pay applicable thereto.

2. If the Engineer's most recent cost estimate for any construction contract is in excess of the estimated Project cost, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Engineer without further compensation.

3. If this Agreement is terminated upon completion of any phase of the Engineer's services, the payments to be made in accordance with Sec. V, Part A.2., on account of that and all prior phases shall constitute total payment for services rendered; if terminated during any phase of the work, the Engineer shall be paid for services performed during such phase on the basis of a reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the Engineer shall be paid to the extent services performed by the Engineer are completed and payment for such services is due, including payment for additional services performed under Sec. V, Part B. Such payment to the Engineer and any employees, subcontractors, or independent contractors employed by the Engineer, and the Engineer shall not be entitled to any other claims or damages against the Owner, including but not limited to lost profits, office expenses, or overhead expenses. Any previous payments made to

the Engineer shall be credited to the payments due under this Agreement. The Owner shall not be responsible for compensation or damages for delay, overhead costs, damages for loss of anticipated profits on work not performed, demobilization or cancellation costs or charges, payroll expenses, or any similar costs on account of any termination.

4. **Suspension/delay of work.** Engineer shall have no claim for compensation or damages for compensation or damages for delay, including but not limited to lost profits, interest expenses incurred by Engineer or office expenses/overhead, should Engineer be prevented from proceeding with the work required of this Agreement by any act or omission of Owner or any reason not under the control of Owner. Engineer agrees that Engineer shall be granted an extension of time to perform the work required of the Agreement but shall not be otherwise compensated for, nor entitled to recover, any costs, expenses or damages arising from or related to such delays; provided further that in the event of termination of the agreement by Owner for any reason including but not limited to Owner's convenience, as of the date of termination, any extension of time shall terminate as well.

VI. GENERAL CONSIDERATIONS

A. Termination

This Agreement may be terminated without cause for the convenience of the owner by giving **fifteen (15) days written notice**.

In the event of failure to perform in accordance with the terms herein, this Agreement may be terminated by the Owner by giving **seven (7) days written notice**. If this Agreement is so terminated, the Engineer shall be paid as provided in Sec. V, Part C.3. The termination of this Agreement by the Owner shall not be construed as a release of any claims that the Owner may be lawfully entitled to assert against the Engineer, and the Engineer shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of this Agreement by the Engineer. The Owner may withhold any payment to the Engineer for the purpose of setoff until such time as the exact amount of damages due the Owner from the Engineer is determined.

B. Ownership of Documents

Tracings, drawings, plans, specifications, original field survey notes, maps and other recordations prepared or obtained under the terms of this Agreement shall be delivered to and become the property of the Owner prior to payment to the engineer for work under the Construction Phase. If this Agreement is terminated at any time for any reason prior to payment to the Engineer for work under the Construction Phase, all tracings, drawings, plans, specifications, original field survey notes, maps, diskettes, and other recordations prepared or obtained under

the terms of this Agreement shall upon termination be delivered to and become the property of the Owner prior to payment to the Engineer as provided in Sec. V, Part C.3. Sketches, charts, computations, and other data prepared for and under this Agreement shall be made available to the Owner upon request and without restriction on their use, or further compensation to the Engineer. The Owner in requiring ownership of the above listed documents hereby releases the Engineer from all responsibility in connection with their use on any project other than their use on this Project.

C. Estimates

The Engineer is expected to be knowledgeable of the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The estimates of construction cost provided for herein are to be made in light of such knowledge and are expected to be within **ten percent (10%)** of the bid for the base bid item expected from the lowest responsible bidder.

The Engineer's final estimate for the construction of the Project, shall take into account all labor costs which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Engineer in compiling his final estimate for the Project.

D. Project Budget

The Engineer acknowledges that the budget for this Project allocates **NINE HUNDRED EIGHTY-FOUR THOUSAND SEVEN HUNDRED THIRTY-FIVE AND 00/100 DOLLARS ($984,735.00)** for the award of a construction contract base bid, which is to include all features essential to the operation of the Project for its intended use. The Engineer does hereby agree to design the Project such that the Engineer's final estimate for the construction of the Project, including all features essential to its intended use, is within the above budgeted amount for the base bid. The Engineer further understands that payment of the increment for the Final Design Phase is conditional upon the bid of the lowest responsible bidder being within **ten percent (10%)** of his final estimate for the base bid. If all responsible bids exceed the final estimate by more than **ten percent (10%)**, the Engineer expressly agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

E. Insurance

The Engineer shall secure and maintain at his expense such Comprehensive Liability, Property Damage Liability, Vehicle Liability and Workers' Compensation insurance as shall protect him from workers' compensation claims under applicable state law and from all claims from bodily injury, death, or property damage which may arise from the performance of his services under this

Agreement. Provided, the Engineer shall provide or secure public liability insurance for personal injuries or death, arising out of any one accident or other cause, in a minimum sum of **TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($250,000.00)** for one person and **FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($500,000.00)** for two or more persons; and in addition, shall provide property damage liability insurance in a minimum sum of **ONE HUNDRED THOUSAND AND 00/100 DOLLARS ($100,000.00)** for property damages arising out of any one accident or other cause, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claim Act, whichever is greater. Such insurance shall be available on a "per occurrence" basis for death or bodily injury or property damage, which is caused by an occurrence, which takes place during the policy period. The Engineer shall procure and shall maintain at the Engineer's expense Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Engineer, its principals or officers, agents, or employees in the performance of this Agreement.

The Engineer shall maintain said insurance with insurance underwriters authorized to do business in the State of Texas, satisfactory to Owner. All policies required by this Agreement, with the exception of Workers' Compensation and Professional Liability Insurance, shall name the Owner, its officials, servants, agents, and employees as additional insureds. All policies shall identify the name of the City project for which the insurance is being issued. The Engineer shall, prior to the execution of this Agreement, furnish the Owner with a certificate from the insurance carrier showing such insurance to be in full force and effect during the entire term of this Agreement, or shall deposit with Owner copies of said policies, if requested by Owner. Said policies or certificates shall contain a provision that written notice of cancellation or of any material change in said policy by the insurer shall be delivered to Owner **thirty (30) days** in advance of the effective date thereof and shall show the type, amounts, classes of operation covered, effective dates and dates of expiration of policies.

F. Successors and Assigns

This Agreement shall be binding on the Owner, its successors and assigns, and on the Engineer, the Engineer's partners, successors, executors, administrators, legal representatives, and assigns. Neither the Owner nor the Engineer shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the Owner.

G. Compliance with Laws

The Engineer shall comply with all federal, state, and local laws and ordinances applicable to the work covered hereunder.

H. Change of Legal Status

In the event that there is a change in any way of the legal status of the entity that has entered into this Agreement, including but not limited to the dissolution of a partnership or a corporate entity, the Owner shall have the right to: 1) immediately terminate this Agreement for convenience; or 2) consent to the change in the legal status and continue under this Agreement; or 3) enter into an Agreement with any person, corporation, or association that it deems to be qualified to perform the services requested herein with no further legal obligation or liability under this Agreement.

I. Copyright and Reproduction Rights

By execution of the Agreement, the Engineer and the Owner agree that the City is the author of all work performed under this Agreement and as such is the copyright owner and owns all rights comprised in the copyright. Any copyright or other property interest that vests in the Engineer for work performed under this contract is immediately transferred to the Owner. The City shall have the exclusive right to sell, distribute, copy, duplicate, modify, assign or reproduce the work performed by the Engineer for any purpose whatsoever. The Engineer shall retain no rights to any of the work performed by the Engineer under this Agreement unless authorized by the Owner in writing.

J. Conflicting Provisions

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

K. Auditing Records

Engineer'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 Engineer's work 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) Engineer's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, 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 Engineer's records have been generated from computerized data, Engineer 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 to audit all of the Engineer's records related to this Project, and shall be allowed to interview any of the Engineer'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.

VII. SPECIAL PROVISIONS

A. Topographic Surveys

Topographic surveys, to be provided in Basic Services under Sec. I, Part C.2., shall be limited to the area of the various project construction sites.

B. Time of Essence; Liquidated Damages

TIME IS OF THE ESSENCE in this Agreement. The Engineer agrees to accept and adhere to the schedule established in Section IV of this Agreement. Failure of the Engineer to adhere to this schedule without due cause, approved in writing by the City Engineer, shall cause damage to the Owner which the Engineer agrees to compensate at the rate of **ONE HUNDRED and 00/100 DOLLARS ($100.00) per day**, without the right of setoff or counterclaims.

It is hereby understood and mutually agreed, by and between the Engineer and the Owner, that the date of beginning and the time for completion as specified in this Agreement of the work to be done hereunder are **ESSENTIAL CONDITIONS** in this Agreement. It is further mutually understood and agreed that the work embraced in this Agreement shall be commenced on a date to be specified in the **"Notice to Proceed."**

The Engineer agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as shall ensure completion thereof within time specified. It is expressly understood and agreed, by and between the Engineer and the Owner that the time for the completion of the work described herein is a reasonable time for the completion of the same.

If the said Engineer shall neglect, fail, or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Engineer does hereby agree, as a part consideration for the awarding of this Agreement, to pay the Owner the amount specified in this Agreement, not as a penalty but as liquidated damages for such breach of Agreement as hereinafter set forth, for each and every calendar day that the Engineer shall be in default after the time stipulated in this Agreement for completing the work.

The said amount is fixed and agreed upon by and between the Engineer and the Owner because of the impracticability and extreme difficulty of fixing and

ascertaining the actual damages the Owner would in such event sustain, and said amount in agreed to be the amount of damages which the Owner would sustain.

It is further agreed that **TIME IS OF THE ESSENCE** in each of the specifications wherein a definite and certain length of time is fixed for the performance of any act and in every portion of this agreement. Additionally, time shall be of the essence where under this Agreement additional time is allowed for the completion of any work. However, when the Owner determines in writing that the Engineer is without fault and the reasons for a time extension are acceptable, the Engineer shall not be charged with liquidated damages or any excess cost.

C. Equal Employment Opportunity

In providing services under this Agreement, the Engineer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin. The Engineer shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, disability, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this nondiscrimination clause. The Engineer shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age, disability, or national origin. The Engineer shall incorporate the foregoing requirements of this section in all of its subcontracts for work to be performed on this Project.

D. Obligations of the Engineer with Respect to Third Party Relationships

The Engineer shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Project with respect to which assistance is being provided under this Agreement.

E. Interest of Members of Local Governing Body or Other Public Officials

No member of the governing body of the City of El Paso, State of Texas, and no other public official of the City of El Paso, State of Texas, who exercises any function or responsibility with respect to the Project shall during his or her tenure or for **one (1) year** thereafter, have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project assisted under this Agreement.

F. Law Governing Agreement

For the purpose of determining place of Agreement and the law governing same, this Agreement is entered into in the City and County of El Paso, 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.**

G. INDEMNIFICATION

THE OWNER SHALL NOT BE SUBJECT TO ANY OBLIGATIONS OR LIABILITIES OF THE ENGINEER INCURRED IN THE PERFORMANCE OF THIS AGREEMENT. THE ENGINEER EXPRESSLY AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE OWNER, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING FROM OR RELATING TO ANY ACTS OR OMISSIONS OF THE ENGINEER, ITS PRINCIPALS OR OFFICERS, AGENTS, OR EMPLOYEES IN PERFORMANCE OF THIS AGREEMENT.

H. Authorization To Enter Agreement

If the Engineer signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of the Engineer warrants to the Owner that the Engineer is a duly authorized and existing corporation, that the Engineer is qualified to do business in the State of Texas, that the Engineer has full right and authority to enter into this Agreement, and that each and every person signing on behalf of the Engineer is authorized to do so. Upon the Owner's request, the Engineer shall provide evidence satisfactory to the Owner confirming these representations.

I. Entire Agreement

This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by both parties.

J. Remedies / Sanctions for Breach of Agreement

Violation or breach of any terms of this Agreement by the Engineer shall be grounds for terminating the Agreement, and any increased cost arising from the Engineer's default, breach, or violation of the terms herein shall be paid by the Engineer.

The remedies herein reserved shall be cumulative and additional to any other or further remedies in law or equity. No waiver of a breach of any provisions of this Agreement shall constitute a waiver of any breach of such provision.

K. Notices

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

To the Owner:	**The City of El Paso** **Attn: The Honorable Mayor** **Two Civic Center Plaza, 10th Floor** **El Paso, Texas 79901-1196**
with a copy to:	**The City of El Paso** **Attn: City Engineer** **Two Civic Center Plaza, 4th Floor** **El Paso, Texas 79901-1196**
To the Engineer:	**Frank X. Spencer & Associates, Inc.** **Attn: Victor H. Enciso, P.E.** **1001 Montana** **El Paso, TX 79902**

VIII. COMPLIANCE WITH ALL LAWS - FEDERAL FUNDING REQUIREMENTS

Engineer, at Engineer's expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with all 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 Engineer 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, Engineer agrees that the following covenants shall apply throughout the performance of this Agreement because federal funds are involved and that, in the event of breach of the above covenant or breach of any of the following covenants, Owner shall have the right to terminate this Agreement.

A. Anti-Kickback Rules

Salaries of Architects, Engineers, draftsmen, technical engineers, technicians and other employees and consultants performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740;

63 Stat. 108; Title 18 U.S.C., Sec. 874; and Title 40 U.S.C., Sec. 276c). The Engineer shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

B. Section 3 Clause

The following provisions are incorporated into this Agreement, as required by 24 CFR 135.20 (b):

1. To the extent that the work to be performed under this Agreement is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the Project be awarded to business concerns, which are located in or owned in substantial part by persons residing in the area of the Project.

2. The parties to this Agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this agreement certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.

3. The Engineer shall send to each labor organization, or representative of workers with which the Engineer has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. The Engineer shall include this Section 3 clause in every subcontract for work in connection with the Project and shall, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Engineer shall not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and shall not let

any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the construction contract, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Engineers and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

6. That in the furnishing of services hereunder for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Engineer shall furnish such services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

7. That in the furnishing of services hereunder for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Engineer shall furnish such services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

8. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the performance of this Agreement.

C. **Access to Records**

In accordance with OMB Circular A-102, Attachment "O," Sec. 4h, the Owner, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are directly

pertinent to the Owner's Community Development Block Grant Program for the purpose of making audit, examination excerpts, and transcriptions.

D. Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise herefrom.

E. Davis-Bacon Wages

In preparation of his cost estimates and the Project budget, described in Sec. VI, Part C., and Sec. VI, Part D., hereof, the Engineer shall base such estimates and the project budget on the premise that the regulations and requirements enumerated in 29 CFR Part 5, Subpart A (Davis-Bacon and Related Act) apply to the project and must be followed and obeyed by the selected Engineer.

F. 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 Engineer of the cancellation by certified mail-return receipt requested, whereupon the Engineer shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Engineer will be paid for professional services performed to said date upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

OWNER: THE CITY OF EL PASO

_____
Joe Wardy, Mayor

ATTEST:

_____
Richarda Duffy Momsen, City Clerk

ENGINEER: Frank X. Spencer & Associates, Inc.

By: _____
Victor H. Enciso, P.E.
Principal

APPROVED AS TO FORM:

Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:

Irene D. Ramirez, P.E.
Interim City Engineer

ACKNOWLEDGMENTS

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of August, 2004, by **Joe Wardy** as **Mayor of the City of El Paso, Texas**.

_____
Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF El PASO)

This instrument was acknowledged before me on this _____ day of August, 2004, by **Victor H. Enciso, P.E.,** as **Principal** of **Frank X. Spencer & Associates, Inc.**

_____
Notary Public, State of Texas

ATTACHMENT " A "

PROJECT SCOPE

TITLE: **Verdeland Street and Drainage Improvements**

LOCATION: **DIST. 7 (Verdeland Dr. from Lomaland Dr. to Eastland St.)**

CONSTRUCTION BUDGET: **$984,735**

GENERAL DESCRIPTION: Consultant shall prepare construction documents for street and drainage improvements. Proposed work includes a 30 ft. roadway, 5 ft. sidewalks, curb & gutters, driveways, handicap access ramps, streetlights, and City monuments. Land acquisition will be necessary to provide a ponding area for drainage issues within subdivision. Underground storm sewer with pond shall be desired.

SERVICES REQUIRED:

[X]	Investigation	[X]	Planning
[X]	Design	[X]	Soils Investigation
[X]	Bidding Phase	[X]	Utility Services & Stubouts
[X]	Construction Phase	[X]	Report Phase (if applicable)
[X]	TDLR Approval	[ ]	Building Service & Inspections Approval
[X]	Public Involvement	[X]	Clarify Possible Encroachments (if applicable)
[X]	Utility Coordination with appropriate owner	[X]	Adjustment Inside Adjacent Properties (if applicable)

PRODUCTS REQUIRED:

[X]	Drawings	[X]	Specifications
[X]	Cost Estimates	[X]	Design Analysis
[X]	Reports	[X]	Metes & Bounds Description For Land Acquisition

GENERAL REQUIREMENTS AND CRITERIA:

1. Design must meet all applicable City Codes and Ordinances.
2. Design must comply with Engineering Department Guidelines.
3. Design must comply with all local, state and federal laws and regulations, including but not limited to the Americans with Disabilities Act.

OTHER CONSIDERATIONS:

1. Work to be coordinated with the Engineering Department.
2. Design shall follow City of El Paso Information Services and Communication Department requirements for computer and telephone systems. (if applicable)
3. TDLR Approval
4. Land Acquisition (if applicable)

PROJECT SCHEDULE: (Consecutive Calendar Days)

Report Phase	21 Days
Preliminary Design Phase	45 Days
Final Design Phase	21 Days

ATTACHMENT "B"

Verdeland Street and Drainage Improvements
Price Proposal
Frank X. Spencer & Assoc., Inc.

Assignment	Unit Type	Units	Direct Cost	Indirect Cost	Hourly Extension	Extension
3-Men Crew	Hr	140	32.87	87.13	120	$ 16,800.00
R.P.L.S	Hr	12	28.76	76.24	105	$ 1,260.00
Survey Tech	Hr	39	16.44	43.56	60	$ 2,340.00
Principal	Hr	46	36.98	98.02	135	$ 6,210.00
E.I.T.	Hr	512	18.63	49.37	68	$ 34,816.00
Clerical	Hr	135	8.21	21.79	30	$ 4,050.00
CAD I	Hr	285	12.32	32.68	45	$ 12,825.00
CAD II	Hr	296	10.95	29.05	40	$ 11,840.00
Photocopies	Hr	2550	0.30	-	0.30	$ 765.00
Blue Prints	Hr	3050	1.20	-	1.20	$ 3,660.00
Total						$94,566.00

FXSA, Inc.

Labor and Expenses	$ 94,566.00	
Profit 10%	$ 9,456.60	
Sub-Total		$ 104,022.60

Licon Engineering

Labor and Expenses	$ 3,228.00	
Sub-Total		$ 3,228.00

EMC Consultants

Labor and Expenses	$ 8,156.06	
Sub-Total		$ 8,156.06

Urban Oasis

Labor and Expenses	$ 4,585.65	
Sub-Total		$ 4,585.65

Total Surveying, Engineering, Landscaping, and Testing **$ 119,991.60**

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