



Antonio Araujo
Mayor

Leticia Miranda
Aldersperson Place 1

David Cantu
Aldersperson Place 2

Lorenzo E. Leyva Sr.
Aldersperson Place 3

Irene D. Jaquez
Aldersperson Place 4

George Almanzar
Aldersperson Place 5

RESOLUTION NO. 2206R.06

**A RESOLUTION BY THE CITY COUNCIL OF THE
CITY OF SAN ELIZARIO TO AUTHORIZE THE MAYOR
TO SIGN A CONSULTATION AGREEMENT FOR PLANNING SERVICES**

WHEREAS, it is the desire of the City of San Elizario (“City”) to enter A Consultation Agreement to obtain planning services; and

WHEREAS, Michael Medina has the requisite training and experience to perform the services required by the City and is willing to perform the services in accordance with the terms and conditions of the Consultation Agreement for Planning Services attached to this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Elizario, Texas, that:

1. The Mayor is authorized to sign and deliver the Consultation Agreement for Planning Services attached to this Resolution on behalf of the City.
2. This Resolution shall be effective immediately upon passage and adoption.

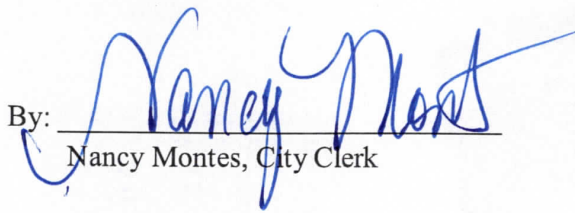
PASSED AND ADOPTED this, the 12 day of April, 2022, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of the City of San Elizario, Texas.

CITY OF SAN ELIZARIO

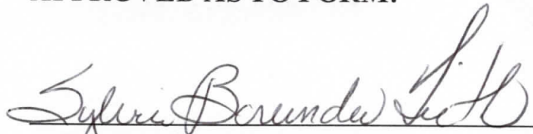
By: Antonio Araujo
Antonio Araujo, Mayor

ATTEST:

San Elizario Resolution
Consultation Agreement
Planning Services

By: 
Nancy Montes, City Clerk

APPROVED AS TO FORM:


Sylvia Borunda Firth, Asst. City Attorney

**CONSULTATION AGREEMENT WITH THE CITY OF SAN ELIZARIO
PLANNING SERVICES**

This Consultation Agreement (the "Agreement") is entered into and made effective on the 15th day of April, 2022 by and between Michael Medina ("Consultant") and the City of San Elizario, Texas ("City").

1. **Scope of Services.** Consultant agrees to provide planning services as further described in **Exhibit A**, which is attached and incorporated herein. Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in paragraph four of this Agreement shall be made and approved by the City prior to the Consultant providing such services, or the right to payment for such additional services shall be **waived**. If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Agreement, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.
2. **Total Compensation.** The total compensation paid by the City to the Consultant, including expenses, under this Agreement shall not exceed \$30,000. Payment schedule will be made in accordance with **Exhibit B**, which is attached and incorporated herein.
3. **Term.** The term of this Agreement shall be in effect until the services have been completed by Consultant, or until which time it is mutually agreed upon the contract shall be in effect. However, both parties agree not to abandon services mid-project. But in no event shall the term extend beyond September 30, 2022. If contract is in effect through September 30, 2022, both parties have the option to revisit terms of contract for an extension, at which time, a new contract will be negotiated.
4. **Amendments.** Any changes to the terms of this Agreement will not be effective unless in writing and signed by both parties.
5. **INDEMNITY. THE CONSULTANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CAUSES OF ACTION, CLAIMS, DEMANDS, DAMAGES, JUDGMENTS, LOSSES, LIENS, COSTS, EXPENSES, ATTORNEYS' FEES AND ANY AND ALL OTHER COSTS, FEES, AND/OR CLAIMS OF ANY KIND OR DESCRIPTION ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THE AGREEMENT OR SERVICES PROVIDED UNDER THE AGREEMENT OR FROM ITS NEGLIGENCE OR WILLFUL ACT, WHETHER SUCH ACT BE BY THE CONSULTANT OR ITS DESIGNEE. THE CITY, AS A GOVERNMENTAL ENTITY IN THE STATE OF TEXAS, SHALL NOT INDEMNIFY THE CONSULTANT.**
6. **Release by Consultant.** The Consultant releases, relinquishes, and discharges the City, its elected officials, officers, directors, agents, employees, representatives, and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense, for any injury to or death of any person (whether employees of either party or other third parties) and any loss or damage to any property that is caused by or alleged to be caused by, arising out of, or in connection

with the work it performed under this Agreement. This release shall apply regardless of whether the claims, demands, and/or causes of action are covered in whole or in part by insurance.

7. **Dispute Resolution.** If either the Consultant or the City has a claim or dispute, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute, or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach, or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise all remedies available under law regarding the dispute.
8. **Payment Terms.** All payments will be processed in accordance with Texas Prompt Payment Act, Texas Government Code, Subtitle F, Chapter 2251. The City will pay Consultant within thirty (30) days after receipt of a correct invoice for services. The Consultant may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Consultant concerning the goods, supplies, materials, equipment delivered, or the services performed, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation, or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Consultant and a subcontractor and its suppliers concerning goods, supplies, material or equipment delivered, or the services performed, which caused the payment to be late; or (d) the invoice is not mailed to the City in accordance with Agreement.
9. **Termination for Convenience.** The City shall have the right to terminate this Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Consultant shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Consultant, to the extent of funds appropriated or otherwise legally available for such purposes, for all services performed and obligations incurred prior to the date of termination.
10. **Termination for Cause.** In addition to the termination rights described above, either party may terminate this Agreement effective upon written notice to the other if the other breaches any of the terms and conditions of this Agreement and fails to cure that breach within thirty (30) days after receiving written notice of the breach. In the event of an incurable breach, the non-breaching party may terminate this Agreement effective immediately upon written notice to the breaching party.
11. **Notices.** Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in the first-class mail of the United States properly, or sent via electronic means, addressed to the appropriate party at the address set forth below:

Notice to the Consultant:

Michael Medina
[REDACTED]
[REDACTED]

Notice to the City:

City San Elizario
ATTN: City Administrator
P.O. Box 1723
San Elizario, Texas 79849

12. **Independent Contractor.** The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or joint venture. The Consultant's services shall be those of an independent contractor. The Consultant agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Consultant shall not be within protection or coverage of the City's Worker Compensation insurance, Health Insurance, Liability Insurance, or any other insurance that the City, from time to time, may have in force.
13. **Force Majeure.** The City and the Consultant will exert all efforts to perform the tasks set forth herein within the proposed schedules. However, neither the City nor the Consultant shall be held responsible for inability to perform under this Agreement if such inability is a direct result of a force substantially beyond its control, including but not limited to the following: strikes, riots, civil disturbances, fire, insurrection, war, embargoes, failures of carriers, acts of God, or the public enemy.
14. **No Waiver.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach hereof.
15. **Nondiscrimination.** The Consultant, regarding the work performed by it after award and prior to completion of this Agreement, shall not discriminate on the basis of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by any federal, state, or local law.
16. **Confidential Information.** Each party agrees not to use, disclose, sell, license, publish, reproduce, or otherwise make available the Confidential Information of the other party except and only to the extent necessary to perform under this Agreement or as required by the Texas Public Information Act or other applicable law. Confidential Information shall be designated and marked as such at the time of disclosure. Each party agrees to secure and protect the other party's Confidential Information in a manner consistent with the maintenance of the other party's confidential and proprietary rights in the information and to take appropriate action by instruction or agreement with its employees, consultants, or other agents who are permitted access to the other party's Confidential Information to satisfy its obligations under this Section. The provisions of this paragraph shall survive the term of the Agreement.
17. **Severability.** This Agreement is severable and if any one or more part of it is found to be invalid, such invalidity shall not affect the remainder of this Agreement if it can be given effect without the invalid parts.

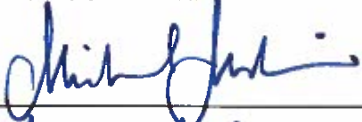
18. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Texas. Venue shall be located in El Paso County, Texas.
19. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and any subsequent successors and assigns. The Consultant shall not subcontract or assign responsibility for performance of any portion of this Agreement without the prior written consent of the City.
20. **Third Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the Consultant.
21. **Entire Agreement.** This Agreement, with all exhibits, includes the entire agreement of the City and the Consultant and supersedes all prior and contemporaneous agreements between the parties, whether oral or written, regarding this agreement.

THE CITY OF SAN ELIZARIO

By: 
Antonio Araujo, Mayor

Date Signed: 4/12/22

CONSULTANT


Michael Medina
(Printed Name)

Date Signed: 04.12.22

Exhibit A

Scope of Services

The items below reflect the projects with which the City of San Elizario would like Consultant to facilitate and complete, as allowed by the terms of this Agreement.

1. Processing of development applications within the Historic Overlay and City limits at large. Most of this work will be done once staff has reviewed, and the role of the planner is to certify application is complete. In some cases, staff will need guidance on type of process to undertake, given the applicant's request. Applications include, but are not limited to: Rezoning, Conditional Use Permit, Variance, Certificate of Appropriateness, Certificate of Demolition, and Subdivision.
2. Vasquez Property Resolution – Long-standing request that has posed planning challenges. Platted properties, most of which are land-locked, are looking to obtain utility services but current City codes have minimum standards that are difficult for the family to achieve due to financial constraints.
3. Historic Ordinance Amendment #3 – Complete process of administrative approvals for the following historic overlay requests:
 - a. Landscape materials including vegetation, irrigation, and xeriscaping, in the front, rear, side yards and parkways;
 - b. New fencing on the front, rear, and side yards; Chain-link fence is not an acceptable material for approval under administrative review;
 - c. Location of proposed security bars or grills over structure openings;
 - d. Exterior accessibility ramps when placed in non-character-defining facades;
 - e. Replacement of garage or household exterior doors that match the original doors or original-style doors;
 - f. Walkways, driveways, and aprons;
 - g. Painting of previously painted surfaces, other than brick or any type of stone, with colors compatible with the historic district;
 - h. Installation of outdoor lighting fixtures and security fixtures when such elements complement the design context of the building or structure; or
 - i. Minor alterations not requiring a building permit in a non-character-defining facade and not visible from the street.
4. Ordinance Amendments (in order):
 - a. Zoning (to include on-street parking);
 - b. El Paso Mission Trail Zoning Regulations;
 - c. Ord. 1615.10 Historic Preservation (With goal to merge items b and c into one set of regulations for Historic Overlay.); and
 - d. Subdivision.

5. Sign Ordinance
6. Facilitate update of current zoning map to reflect the changes that have occurred since City's inception and reassess current zones for possible internal zoning changes. This is to include zoning changes in the historic overlay, which, to date, has never been clear whether this is a task for the County of El Paso or the City's responsibility. County of El Paso created the zoning map and retains the editable files.
7. Transportation Planning - Assists with transportation planning analyses for metropolitan transportation planning, short- and long-range transportation planning and policy plans, corridor/sub-area transportation planning, and government financial analysis, and other mobility priorities.

Exhibit B

Supplemental Provisions

Consultant agrees to work up to twenty (20) hours per week (Monday through Friday) at the rate outlined in **Exhibit C**. Consultant will submit a detailed invoice, that is to be submitted bi-weekly, via email, to Leticia Miranda, alderperson1@cityofsanelizario.com and City Administrator Maya Sanchez, msanchez@cityofsanelizario.com. Upon receipt of invoice, City Administrator will review and address any questions/disputes directly with Consultant. Upon receipt of approved invoice, a check will be issued to Consultant within ten (10) days.

The first invoice shall be submitted on Monday, May 2, 2022, and then on every other Monday through the end of the term of this Agreement.

Exhibit C

Payment Terms

Compensation is based on *actual* hours of work/time devoted to providing the described services. The Consultant will be paid at a rate of \$55 per hour, not to exceed twenty (20) hours in a week. The City will reimburse the Consultant for *actual*, non-salary expenses at the rates set forth below. Unless amended by a duly authorized written change order, the total payment for all invoices on this job, including both salary and non-salary expenses, shall not exceed the amount set forth in paragraph 1.03 of this Agreement (\$30,000).

The Consultant must submit *bi-weekly* invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such invoices according to its normal payment procedures.

Expenses shall be reimbursed as follows:

1. Travel

When possible, all work and meetings will be performed remotely. Gas mileage will be provided for in-person meetings or events, requested by the City, at .56 cents/mile. Documentation of travel will be provided as part of detailed, bi-weekly invoice.

Should Consultant be required to attend an in-person meeting or event on behalf of the City that is not at the City's request, Consultant will need to get approval, in writing, from the Mayor or City Administrator, prior to attendance.

2. Equipment/Supplies

Consultant will furnish all equipment and supplies necessary to perform services outlined in this Agreement. The only exception is if the City requires Consultant to use specialized equipment, supplies, or software that are particular to the City and necessary for Consultant to perform requested services. Should this be required, Consultant will provide a requisition request (provided by the City), approved in advance of purchase, and will submit all related receipts and expense reports identified on detailed, bi-weekly invoice.

3. Professional Fees

All professional fees: registration fees, association fees, training fees, must be approved in advance via requisition request with documentation on detailed, bi-weekly invoice.