

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

**DEPARTMENT:** Capital Improvement Department

**AGENDA DATE:** March 20, 2018

**CONTACT PERSON/PHONE:** Sam Rodriguez, P.E., City Engineer, 212-0065

**DISTRICT(S) AFFECTED:** 3 and 8

**STRATEGIC GOAL:** No. 7: Enhance and Sustain El Paso's Infrastructure Network

**SUBJECT:**

That the City Manager be authorized to sign a License Agreement by and between the City of El Paso and Jordan Foster Construction, LLC for the use of City-owned property municipally known and numbered as 4320 Delta, El Paso, Texas as a temporary construction yard to support the construction project for the South Central Street Drainage Improvements and Parkway-Phase I Project.

**BACKGROUND / DISCUSSION:**

The City Council previously approved funds for the South Central Street Drainage Improvements and Parkway-Phase I on January 9, 2018. The budget amount for this project is \$10,762,346.60. This project entails smart growth applications, improving drainage and pedestrian safety, providing ADA accessibility; pavement rehabilitation and parkway beautification, signage and striping, landscaping, irrigation, and parkway structures. The new improvements will provide connectivity, walkability and ease of travel for residents, and improve drainage and protect residences from flooding in the neighborhood. The following streets will be improved: Flower Drive, Val Verde Street, Modesto Gomez Channel, and Alicia Drive. The License Agreement is for a two-year term with a monthly fee required of \$400 per month to be paid by the Contractor to the City of El Paso.

**SELECTION SUMMARY:**

N/A

**PROTEST**

☒ No protest received for this requirement.

☐ Protest received.

**COUNCIL REPRESENTATIVE BRIEFING:**

Was a briefing provided? ☐ Yes or ☒ Not Applicable (Routine)  
If yes, select the applicable districts.

- ☐ District 1
- ☐ District 2
- ☐ District 3
- ☐ District 4
- ☐ District 5
- ☐ District 6

## RESOLUTION

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

That the City Manager be authorized to sign a License Agreement by and between the City of El Paso and Jordan Foster Construction, LLC for the use of approximately 0.60 acres, being a portion of E.R. Talley Survey 6 & 7 ABST #180, City of El Paso, El Paso County, Texas, as a temporary construction yard to support the construction project for the South Central Street Drainage Improvements and Parkway-Phase I Project.

ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2018.

CITY OF EL PASO

\_\_\_\_\_  
Dee Margo  
Mayor

ATTEST:

\_\_\_\_\_  
Laura D. Prine  
City Clerk

APPROVED AS TO FORM:

*Theresa Cullen*

\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

APPROVED AS TO CONTENT:

*Michael Vonusek*

*Ful* \_\_\_\_\_  
Sam Rodriguez, P.E., City Engineer  
Capital Improvement Department

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO   )

**LICENSE AGREEMENT**

This License Agreement ("Agreement") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the **CITY OF EL PASO** ("City"), and **JORDAN FOSTER CONSTRUCTION, LLC** ("Licensee").

**WITNESSETH:**

**WHEREAS**, the City awarded Licensee the South Central Street and Drainage Improvements and Parkway-Phase I Project (the "Project"); and

**WHEREAS**, Licensee has requested permission to use a portion of City-owned property as a temporary contractor's yard for the Project, and the City agrees to allow the use as specified herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE I  
PROPERTY AND PRIVILEGES**

**1.01. Description of Licensed Property.** The City does hereby permit Licensee's use of the Property as described as follows:

Approximately 0.60 acres being a portion of E.R. Talley Survey 6 & 7 ABST #180, City of El Paso, El Paso County, Texas, and more fully depicted in Exhibit "A" attached hereto and incorporated herein by reference ("Property").

**1.02 Description of General Privileges, Uses and Rights.** Licensee agrees that the use of the Property is limited to a temporary construction yard and is limited to the storage of construction materials and equipment to support the Project.

**1.03 Restrictions of Privileges, Uses and Rights.** Licensee agrees not to construct any permanent structures, nor place any signage or fencing on the Property without the express written consent of the City Engineer for the City of El Paso.

**1.04 Term.** The term of this Agreement will commence upon the Effective Date of this License Agreement. Licensee will provide the City Engineer with a timeline for completion of

the Project and use of the Staging Area Property, and Lessee will inform Lessor in writing and in advance of any changes to the timeline for completion of the Project.

Lessor retains the right to terminate this License Agreement at any time by providing Lessee with thirty (30) days' written notice.

## **ARTICLE II OBLIGATIONS OF THE CITY**

**2.01. Quiet Enjoyment.** The City agrees that upon Licensee's payment of license fee and performing all of the covenants, conditions, and agreements herein set forth, Licensee shall and may peaceably and quietly have, hold, and enjoy the Property for the terms of this Agreement.

## **ARTICLE III OBLIGATIONS OF LICENSEE**

**3.01 Condition and Maintenance of Property.** Licensee accepts the Property in its condition "AS IS", with all faults. In accepting the Property, the Licensee is solely relying on its own inspection and judgment and not in reliance of any representation made by the City. The City shall assume no responsibility as to the suitability of the Property for Licensee's intended purpose.

**3.02. Net License.** This Agreement shall be without cost to the City. It shall be the sole responsibility of Licensee to:

- A. Keep and maintain the Property, and any improvements or signage located thereon, in good repair and condition at all times.
- B. Insure that all trash, garbage or refuse is properly disposed of and does not blow onto surrounding property.
- C. Make all required repairs for any damage to Property caused as a result of Licensee's use thereof.
- D. Insure that no trash, garbage or refuse remain in the construction yard upon termination of this Agreement.
- E. Pay all costs related to any required permits prior to operating the construction yard.
- F. Submit a traffic control plan for approval and not commence operation until such time as it has been approved by appropriate parties.

- G. Promptly repair all damages to street infrastructure for Edna Street and Delta Street, including but not limited to curb, gutter, and sidewalk, which are damaged for Licensee's use of the Property and from its equipment travelling from the Property to the Project site.
- H. Pay all taxes and governmental charges of any kind whatsoever that may be assessed against the City or the Licensee, with respect to the Property or any improvements thereon, during the term of this Agreement.
- I. Pay all casualty, bond, and liability insurance premiums required by this Agreement.

**3.03. Compliance With Laws.** Licensee agrees that it will operate and maintain the temporary contractor's yard on the Property in accordance with all 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 City or Licensee, with respect to the use, occupation or alteration of the Property and any improvements thereon, including any laws applicable to the operation of a temporary construction yard.

**3.04 Approval of Plans.** The City's approval of any plans, specifications or working drawings for Licensee's requested improvements, or alterations of improvements, shall create no responsibility or liability on the part of the City for their completeness, design sufficiency or compliance with all laws, rules, and regulations of federal, state, county and municipal authorities.

**3.05 Trash, Garbage, and other Refuse.** Licensee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Property, of all trash, garbage and other refuse caused as a result of the Licensee's activities, in a timely manner so as no accumulation of such trash, garbage, or other refuse shall occur.

**3.06. Security.** Licensee shall be responsible for the security of the Property at such times as the Property is utilized as a temporary construction yard pursuant to this agreement.

#### **ARTICLE IV LICENSE FEE**

**4.01. License Fee.** The fee for this license shall be **FOUR HUNDRED AND 00/100 DOLLARS (\$400.00)** per month and shall be paid to the Financial Services Department not later than the first day of each month during the term of this Agreement. Failure to make such payment, or any other fees required herein, will result in termination of this Agreement.

**4.02. Place of Payment.** All rental payments provided herein shall be paid to the Financial Services Department at the following address:

Financial Services Department  
P.O. Box 1890  
El Paso, Texas 79950-1890  
ATTN: Rudy Valdez, CID Project Manager

## ARTICLE V INSURANCE AND INDEMNIFICATION

**5.01. Liability Insurance.** Licensee, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of the City and Licensee, as their respective interests may appear, comprehensive general liability insurance in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for bodily injury to one person for each occurrence, Five Hundred Thousand Dollars (\$500,000.00) for bodily injuries to more than one person arising out of each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater. Further, Licensee agrees to include the City of El Paso, as owner of the Property, as an additional insured. A copy of the insurance policy, or certificate, issued by an insurance company authorized and licensed to do business in the State of Texas and reflecting the coverage required herein, shall be furnished to the City Engineer prior to the commencement of operations on the Property. It is understood and agreed that failure to provide the required insurance or evidence of insurance coverage shall preclude the use of the Property, as otherwise agreed herein. Licensee does hereby state and warrant that any entity providing services to Licensee fully complies with all workmen's compensation requirements in the State of Texas.

**5.02. Authorized Insurance Companies.** All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by the City. Such policies shall contain:

- A. A statement of the coverage;
- B. A statement certifying the City to be listed as an additional insured;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days prior written notice to the City.

**5.03. Indemnification.** LICENSEE AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF LICENSEE'S BUSINESS ON THE PROPERTY, ITS USE OF THE PROPERTY, OR FROM ANY BREACH ON THE PART OF LICENSEE OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF LICENSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PROPERTY INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF THE CITY. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST THE CITY BY REASON OF ANY SUCH CLAIM, LICENSEE, UPON NOTICE FROM THE CITY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO THE CITY.

## **ARTICLE VI TERMINATION, CANCELLATION AND ASSIGNMENT**

**6.01. Termination.** Termination for convenience shall be permitted by either party, upon thirty (30) days' written notice.

**6.02 Removal of Equipment.** Licensee shall remove all equipment and materials at the end of the Agreement. Any equipment or materials remaining on the Property for more than ten (10) days after the expiration of this Agreement shall be deemed to have been abandoned and become the property of the City.

**6.03. Cancellation.** This Agreement shall be subject to cancellation by the City in the event Licensee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after the City has notified Licensee in writing that payment was not received when due;
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Licensee's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Property;
- E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Licensee, and such default continues for a period of thirty (30) days after receipt of written notice from the

City to cure such default, unless during such thirty-day period, Licensee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;

- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Licensee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

**6.04. Assignment.** There shall be no assignment of this Agreement without the prior written consent of the City and any attempt by Licensee to assign this Agreement without the prior written consent of the City is void and shall be an event of default which may, at the option of the City, result in termination.

## **ARTICLE VII GENERAL PROVISIONS**

**7.01 No Rights in Realty.** Nothing in this Agreement shall be construed as the grant of any other right in realty to the Licensee, its officers or employees.

**7.02 Agreement Made in Writing.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the use of the Property. No amendment or modification of the terms hereof shall be binding unless the same shall be in writing and signed by the parties hereto.

**7.03 Paragraph Headings.** The table of contents and the captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not define, limit or augment the scope, context or intent of this Agreement or any part or parts of this Agreement.

**7.04 Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there may be added a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**7.05 Agreement Made in Texas.** The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas.

**7.06 Attorney's Fees.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.



**7.07 Successors and Assigns.** All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the City and Licensee and their successors, assigns, legal representatives, heirs, executors and administrators.

**7.08 Notices.** All notices provided to be given under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

CITY: City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890  
Attn: Rudy Valdez, CID Project Manager

LICENSEE: Jordan Foster Construction, LLC  
Attn: Fernando Villalva, Project Manager  
7700 C. F. Jordan Drive  
El Paso, Texas 79912

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown on the return receipt for delivery, rejection, or undeliverable. Any party may change the address to which notices shall thereafter be given upon three (3) days' prior written notice to all other parties in the manner set forth in this paragraph.

**7.09 Authorization To Enter Agreement.** The person signing this Agreement, if done so on behalf of the Licensee, warrants that he/she has both the authority to do so and the authority to bind the Licensee to this Agreement and all the terms and conditions contained herein.

**7.10 Effective Date.** This Agreement shall be effective as of the date this Agreement is fully executed by both parties. All proposals, negotiations, notices and representations with reference to matters covered by this Agreement are merged in this instrument, and no amendment or modification thereof shall be valid unless evidence in writing is signed by both parties.


[Signatures begin on the following page]

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

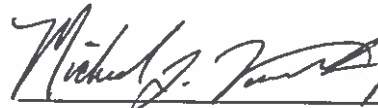

**THE CITY OF EL PASO**

\_\_\_\_\_  
Tomás González  
City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

**APPROVED AS TO CONTENT:**

   
For Sam Rodriguez, P.E., City Engineer  
Capital Improvement Department

**ACKNOWLEDGMENT**

THE STATE OF TEXAS    )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2018,  
by as **Tomás González, City Manager of the City of El Paso (City).**

\_\_\_\_\_  
Notary Public, State of Texas

[Signatures continue on following page]

**LICENSEE: JORDAN FOSTER  
CONSTRUCTION, LLC**

By: [Signature]  
Printed Name: Matt Hardison  
Title: Operations Manager

**ACKNOWLEDGMENT**

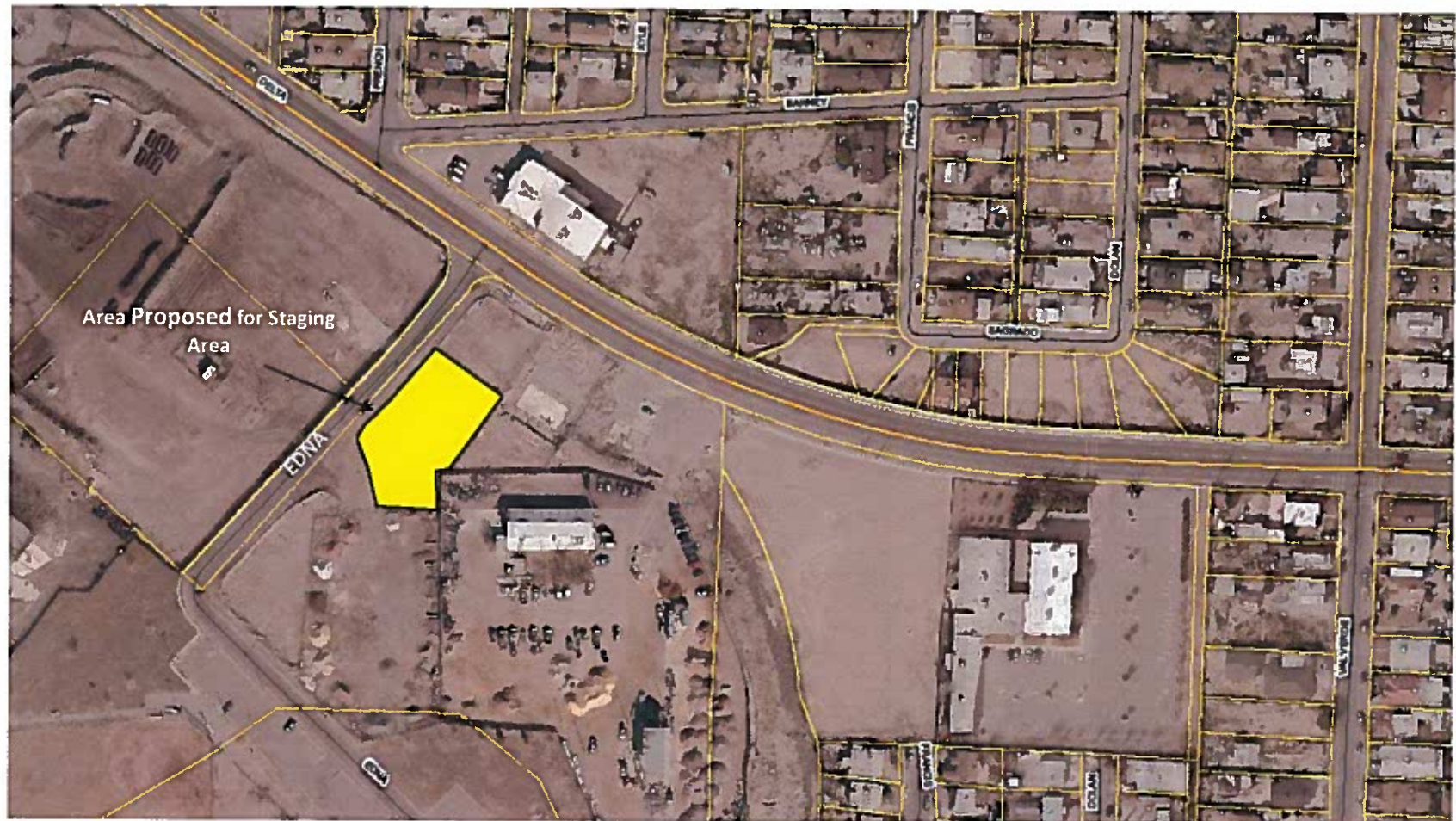
THE STATE OF Texas )  
 )  
COUNTY OF El Paso )

This instrument was acknowledged before me on this 13<sup>th</sup> day of March, 2018,  
by Matt Hardison as Operations Manager of JORDAN FOSTER  
CONSTRUCTION, LLC (Licensee).



[Signature]  
Notary Public, State of Texas

## EXHIBIT "A"





# Capital Improvement Project Update

## South Central Street Drainage Improvements and Parkway-Phase I Project (Staging Area for Contractor)

### *Strategic Plan Goal:*

### *7) Enhance and Sustain El Paso's Infrastructure Network*

March 20, 2018

*"Delivering Outstanding Services"*



## South Central Street Drainage Improvements and Parkway-Phase I Project (Staging Area for Contractor)

<b>Project Manager</b>	Rudy Valdez
<b>District</b>	3 & 8
<b>Approved Budget</b>	Phase I Project = \$ 10,762,346.60
<b>Source(s) of Funding</b>	2013 Street Infrastructure CO's
<b>Contractor</b>	Jordan Foster Construction, LLC
<b>Terms of Lease Agreement</b>	Two-Year Term - \$400 per month to be paid to City by Contractor





# South Central Street Drainage Improvements and Parkway-Phase I Project (Staging Area for Contractor)

## Project Location





# South Central Street Drainage Improvements and Parkway-Phase I Project (Staging Area for Contractor)

## Project Location



Subject Property for Staging Area



Looking North on Edna Street Toward Delta





# **South Central Street Drainage Improvements and Parkway-Phase I Project (Staging Area for Contractor)**

**End of Presentation**

## **Questions & Comments**