

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

**DEPARTMENT:** Internal Auditor

**AGENDA DATE:** August 27, 2019

**CONTACT PERSON NAME/PHONE:** Edmundo Calderon, Chief Internal Auditor, 915-212-1365  
Bruce D. Collins, Director, Purchasing & Strategic Sourcing 915-212-1181

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL NO. 6:** Set the standard for sound governance and fiscal management

**SUBJECT:**

Discussion and action on the award of Solicitation No. 2019-857R Franchise Fee Audit to Avenu Insight & Analytics, LLC, for an initial term of three (3) years on a contingency fee of 28% of the additional franchise fee revenue. The award is to include a two (2) year renewal options for a total five (5) year award.

**BACKGROUND / DISCUSSION:**

Keeping with our goal of increasing audit coverage for revenue streams. Franchise Fees Audits were identified as an opportunity to increasing compliance audits with City of El Paso's revenue streams.

Four (4) responses were received and evaluated on: General overview of agency and services – 15%; Experience in government and franchise fee audit – 30%; Firm's resources & capability – 30%, Proposed hours of engagement – 15%; and References -10%

**SELECTION SUMMARY:**

**PROTEST**

No protest received for this requirement.

Protest received.

**CONTRACT VARIANCE:**

**PRIOR COUNCIL ACTION:**

None

**AMOUNT AND SOURCE OF FUNDING:**

Amount: Contingent on Collections

Department: ; Division: ; Fund: ; Account: ; Program:

210 13130 1000 521010

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**     Edmundo S. Calderon, Chief Internal Auditor *Edmundo S. Calderon*

**COUNCIL PROJECT FORM  
(REQUEST FOR PROPOSAL)**

\*\*\*\*\***POSTING LANGUAGE BELOW**\*\*\*\*\*

Please place the following item on the **REGULAR** agenda for the Council Meeting of **October 1, 2019**.

**Strategic Goal: No. 6: Set the Standard for Sound Governance and Fiscal Management**

Discussion and action that the City Manager be authorized to sign a Service Agreement (Solicitation 2019-857R) to perform analysis and auditing services of the City's franchise fee collections by and between the City of El Paso ("City") and Avenu Insights and Analytics, LLC ("Agency") for a contract term of three (3) years from the date this Service Agreement is approved by the City Council, with two (2) one (1) year options to extend. This award is a contingency-based contract, which shall not exceed 28% of the additional revenue to the City based on the Agency's findings and recovery. In accordance with this award the City Manager or designee is authorized to exercise future options if needed.

In addition, it is requested that the City Attorney's Office review and that the City Manager be authorized to execute any related contract documents and agreements necessary to effectuate this award.

## RESOLUTION

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

**THAT** the City Manager be authorized to sign a Service Agreement (Solicitation 2019-857R) to perform analysis and auditing services of the City's franchise fee collections by and between the City of El Paso ("City") and Avenu Insights and Analytics, LLC ("Agency") for a contract term of three (3) years from the date this Service Agreement is approved by the City Council, with two (2) one (1) year options to extend. This award is a contingency-based contract, which shall not exceed 28% of the additional revenue to the City based on the Agency's findings and recovery. In accordance with this award the City Manager or designee is authorized to exercise future options if needed.

In addition, it is requested that the City Attorney's Office review and that the City Manager be authorized to execute any related contract documents and agreements necessary to effectuate this award.

**APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_ 2019.


### THE CITY OF EL PASO

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

### ATTEST:

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

### APPROVED AS TO FORM:

  
\_\_\_\_\_  
Leslie B. Jean-Pierre  
Assistant City Attorney

### APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Edmundo S. Calderon, CIA, CGAP, CRMA  
Chief Internal Auditor

**2019-857R - FRANCHISE FEE AUDIT EVALUATION SCORE**

	<b>MAXIMUM SCORE</b>	<b>AVENU INSIGHT &amp; ANALYTICS, LLC</b>	<b>CARR, RIGGS &amp; INGRAM, LLC</b>	<b>LAUTERBACH BORSCHOW &amp; CO. P.C.</b>	<b>TRI STEM LTD</b>
<b>A. General Overview of Agency and Services</b>	<b>15</b>	14.25	13	13.25	12
<b>B. Experience in Professional Auditing Services, specifically in government and Franchise Fee audits.</b>	<b>30</b>	28.25	24	20.25	20.5
<b>C. Capacity and Capability of Agency's Resources.</b>	<b>30</b>	28.75	23.5	23	23
<b>D. Number of Hours Dedicated to Engagement.</b>	<b>15</b>	12.75	13	11	10.25
<b>E. Response of References .</b>	<b>10</b>	6.08	9.42	6.67	10
<b>TOTAL</b>		<b>90.08</b>	<b>82.92</b>	<b>74.17</b>	<b>75.75</b>

Only two reference scores are available for Avenu and Lauterbac respectively.



**CITY OF EL PASO  
REQUEST FOR QUALIFICATIONS TABULATION FORM**



Bid Opening Date: MAY 15, 2019

Solicitation #: 2019-857R

Project Name: FRANCHISE FEE AUDIT

Department: INTERNAL AUDIT

BIDDER'S NAME:	LOCATION:	AMENDMENT(S) ACKNOWLEDGED:
AVENU INSIGHTS & ANALYTICS, LLC	CENTREVILLE, VA	YES
CARR, RIGGS & INGRAM, LLC	ENTERPRISE, AL	YES
LAUTERBACH BORSCHOW & CO., P.C.	EL PASO, TX	YES
TRI STEM, LTD	ROBINSON, TX	NO

**RFQs SOLICITED: 10 LOCAL RFQs SOLICITED: 4 RFQs RECEIVED: 4 LOCAL RFQs RECEIVED: 1 NO BIDS: 0**

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

Approved: \_\_\_\_\_ /s/

Date: 5/17/19

2019-857R FRANCHISE FEE AUDIT

## FRANCHISE AUDIT RFP

### **BIDDERS LIST**

1. Sales Tax Assurance  
8700 Manchaca Road, Ste. 106  
Austin, TX 78748
  
2. MuniServices, LLC  
12301 Kurland Drive, Suite 150  
Houston, TX 77034
  
3. BDO USA  
301 Commerce Street  
Fort Worth, TX 76102  
214-243-2925
  
4. Texas Tax Group  
4101 McEwen, Suite 255  
Dallas, TX 75244  
972-275-9191
  
5. BKD LLP,  
10001  
Reunion  
Place  
Suite 400  
San Antonio,  
Texas 78216
  
6. Briggs &  
Veselka Co.,  
9 Greenway  
Plaza #1700  
Houston,  
Texas 77046

7. Grant  
Thornton  
LLP, 1717  
Main St.,  
Suite 1800  
Dallas, TX  
75201
  
8. KPMG LLP,  
2323 Ross  
Ave #1400,  
Dallas, TX  
75201

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**FRANCHISE FEE AUDIT  
SERVICES AGREEMENT  
RFQ NO. 2019-857R**

This Services Agreement (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2019 (“Effective Date”) between the City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas, (“City”), and Avenu Insights and Analytics, LLC (“Agency”).

**WHEREAS**, the City intends to engage the Agency to perform analysis and audit of Municipal Government Franchise Collections; and

**WHEREAS**, the Agency has been selected to perform such services as required by the City, and the Agency was selected through the City’s selection procedure, and in accordance with all applicable state and local laws and ordinance;

**NOW, THEREFORE**, for the consideration set forth in this Agreement and its exhibits, the City and Agency agree as follows:

**SECTION 1. EXHIBITS.** The exhibits listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

**EXHIBIT “A”**        Scope of Services  
**EXHIBIT “B”**        Agency’s Fee Proposal

The following documents comprise this Agreement:

- A.     City’s Request for Qualifications No. 2019-857R (“*RFQ*”)
- B.     Agency Provider’s Proposal (“*Proposal*”).
- C.     This Agreement.

The RFQ and the Proposal are incorporated herein and made part of this Agreement for all purposes; provided, however, that in case of conflict in the language of the RFQ, the Proposal, and this Agreement, the terms and conditions of this Agreement shall control. Where the terms and conditions conflict between the RFQ and Proposal, the terms and conditions of the RFQ shall control.

**SECTION 2. SCOPE OF WORK.** The Agency will perform the Scope of Services as described and in accordance to the timelines described in Exhibit “A” (the “Services”). The Agency will provide all materials, employees, licenses and all other items needed to complete the Services.

**SECTION 3. CONSIDERATION.** The City will pay the Agency as described in Exhibit "B" for the Agency's performance of the Services. The City will pay invoices for all Services performed as soon as reasonably possible but not later than thirty (30) days from receipt in accordance with Chapter 2251 of the Texas Government Code. Pursuant to Sections 2251.021(a)(2) & (3), the date of "receipt" is defined as; "the date the performance of the service under the contract is completed" or "the date the governmental entity receives an invoice for the goods or service," and a payment by a governmental entity under a contract executed on or after September 1, 1987, is overdue on the 31st day thereafter. Services shall be deemed "completed" upon completion, submittal, and approval of the final audit report of each franchisee by the City. Pursuant to the Exhibit "A," Agency will also, "provide supporting documents to assist the city to collect underpaid franchise fees" identified in the final audit report.

**SECTION 3. TERM.** The Agreement commences on the Effective Date and ends three (3) years from the Effective Date ("Term"). Prior to the expiration of the Term, the City Manager, or designee, may extend the Term for two (2) one (1) year options.

**SECTION 4. OWNERSHIP OF WORK PRODUCT.** All files and documents generated by Company as a result of its activity under Agreement shall remain at all times the property of the City. The Agency grants a license to the City to reproduce for non-commercial purposes the copies owned by the City under this Agreement.

**SECTION 6. REPRESENTATIONS AND WARRANTIES.** The Agency makes the following representations and warranties to the City as of the Effective Date.

- a. The Agency represents and warrants to the City that the Agency has all required licenses, permits, and expertise to perform the Services.
- b. The person signing this Agreement on behalf of the Agency has the authority to sign this Agreement on behalf of the Agency.

**SECTION 7. INDEMNIFICATION.** Agency or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON DIRECTLY ARISING OUT OF OR DIRECTLY RELATED TO NEGLIGENT OR WILLFUL MISCONDUCT IN THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Agency every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Agency will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Agency may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Agency will pay all judgments finally establishing liability of the City in actions defended by Agency pursuant

to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Agency, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest.. The City will not be responsible for any loss of or damage to the Agency's property from any cause. This provision survives the term of the Agreement.

**SECTION 8. RELEASE.** The Agency releases the City from all claims of property damage, property loss, personal injury, illness, and death sustained by the Agency while performing the Services under this Agreement regardless of whether such property damage, property loss, personal injury, illness, or death was caused by the negligence of the City or the City's officers, employees, and/or agents. This provision survives the term of the Agreement.

**SECTION 9. DAMAGES TO CITY PROPERTY.** The Agency is responsible for all damages caused by the Agency to City property. If the Agency damages any City property, then the City will repair such damage to the City's standards and the City will send an invoice to the Agency for the full costs of the repairs. The Agency will pay in full any invoice sent by the City under this Section within 30 calendar days of receipt.

**SECTION 10. INSURANCE.** The Agency will provide the City and maintain throughout the Term of this Agreement the insurance policies as described in this Section. Prior to performing any Services, Agency will provide the City copies of all insurance policies along with all endorsements and certificates of insurance. The Agency will provide the City all certificates evidencing renewal or replacement of said policies of insurance at least 15 days prior to the expiration or cancellation of any such policies.

- A. Liability Insurance from a solvent company authorized to do business in the State of Texas. The liability insurance must provide coverage for the Agency and its employees in the minimum amounts of \$1,000,000.00 per occurrence for bodily injury or wrongful death and One Million Dollars \$1,000,000 per occurrence for property damage. The Agency will ensure that the liability insurance provides coverage for premises liability, operations liability, products and completed operations liability, personal and advertising injury, contractual liability, broad form property damage liability, and independent Agency liability. If the Agency is performing services near any railroad or streetcar track, then the Agency will provide liability insurance that provides railroad protective liability insurance in the amount of \$1,000,000 Bodily Injury/\$1,000,000 Property Damage Liability per occurrence
- B. Workers Compensation. If required by law, the Agency will obtain a third-party policy of Workers' Compensation insurance coverage providing Statutory Benefits according to the Workers Compensation Act of the State of Texas and/or any other state or federal law as may be applicable to the work and shall cover all of the persons engaged in the work.

- C. **Auto Liability.** Automobile Liability Insurance covering all owned, hired, and non-owned motor vehicles used by Agency, its employees, contractors or agents, in connection with the work being performed under this Agreement with limits of liability not less than \$1,000,000.00 for each occurrence Combined Single Limit for Bodily Injury and Property Damage.
- D. **Professional Liability Insurance.** Professional Liability Insurance for the benefit of the City to cover the errors and omissions of the Agency, its principals or officers, agents or employees in the performance of this Agreement with a limit of \$1,000,000.00 on a claims-made basis.
- E. **Form of Policies.** The Agency may provide the insurances required in this Section in one or more policies of insurance, the form of which must be approved by the City's Risk Manager.
- F. **Issuers of Policies.** The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. The City may reject an issuer of an insurance policy in the City's sole discretion.
- G. **Insured Parties.** Each policy, except those for Workers' Compensation, must name the City of El Paso (and their elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.
- H. **Deductibles, Aggregates, and Endorsements.** Agency will obtain the prior written approval of the City's Risk Manager for any deductibles, aggregate caps, and endorsements on any insurance policy required under this Agreement.
- I. **Material Change in Policy(ies).** The Agency will require the insurance policy issuer to provide the City 30 calendar days advance notice of any reduction in coverage under an insurance policy.
- J. **Cancellation.** Each policy must expressly state that it may not be canceled or non-renewed unless thirty (30) days advance notice of cancellation or intent not to renew is given in writing to the City's Purchasing Manager by the insurance company.
- K. **Subrogation.** Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, their elected and appointed officials, officers, agents or employees.
- L. **Endorsement of Primary Insurance.** Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.

**SECTION 11. TERMINATION.** This Agreement may be terminated as provided in this Section.

- A. **TERMINATION FOR CONVENIENCE.** City may terminate this Agreement for any reason, upon 30 calendar days' prior written notice to the non-terminating party. Upon such termination, the Agency will provide one final invoice for all services completed and reimbursable expenses incurred prior to the notice of termination. City will compensate Agency in accordance with this Agreement. The City may withhold any payment to the Agency that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Agency from the City is determined. The City is not obligated to pay for any service that are not in compliance with the terms of this Agreement.
- B. **TERMINATION BY EITHER PARTY FOR CAUSE.** Either party may terminate this Agreement in whole or in part for cause. Such a termination may be made for failure of one party to fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. Prior to termination under this provision, the terminating party will: a) provide written notice of intent to terminate enumerating the failures for which the termination is being sought; and b) provide a minimum of 30 consecutive calendar days to the non-terminating party to cure such failure. The City may immediately terminate this Agreement for default if the Agency violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the City pursuant to this subsection, the City may withhold payments to the Agency for the purpose of setoff until such time as the exact amount due the Agency from the City is determined.
- C. **NON-APPROPRIATION OF FUNDS.** If funds are not appropriated by the City to cover payment obligation(s) under this Agreement, then the City may terminate this Agreement. If the City terminates this Agreement under this provision, then the City is not obligated to make any payments described in this Agreement. Payment obligation(s) related to performance-based, contingency fees for audits shall not be deemed to require and appropriation by the City subject to this subsection.
- D. **TERMINATION NOT A RELEASE.** Termination by either party is not a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party is not relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

**SECTION 12. GENERAL PROVISIONS**

- A. **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 78 STAT. 252, 42 U.S.C. 2000D TO 2000D-4 AND TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION.**

During the performance of this Agreement, Agency, for itself, any permitted assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- (1) **Compliance with Regulations:** Contractor will comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (the "Regulations"), which are incorporated by reference and made a part of this Agreement.
- (2) **Nondiscrimination:** As it pertains to the obligations under this Agreement, Contractor will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier must be notified by Contractor of Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports:** Contractor will provide all information and reports required by the Regulations or directives issued pursuant to the Regulations, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information Contractor will so certify to City, as appropriate, and will set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the City will impose such contract sanctions as it may determine to be appropriate, including but not limited to:
  - a. Withholding of payments to the Contractor under the contract until the Contractor complies, and / or
  - b. Cancellation, termination or suspension of the contract in whole or in part.
- (6) **Incorporation of Provisions:** Contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as City may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request City to enter into such litigation to protect the interests of City and in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

- B. COMPLIANCE WITH LAWS.** Contractor will comply with all applicable federal and state statutes, ordinances, administrative orders, rules or regulations, in addition to any local laws or ordinances relating to its activities and performance under this contract and will procure all licenses and pay all fees or other charges as required, if applicable.
- C. SECTION 4. INDEPENDENT CONTRACTOR RELATIONSHIP.** Nothing in this Agreement creates and employer employee relationship between the parties. The City is not subject to any obligations or liabilities of the Agency incurred in the performance of this Agreement.
- D. CONFIDENTIALITY.** The City will handle all release of information obtained under this Agreement as required under the Texas Public Information Act. The Agency agrees to the release of this Agreement pursuant to a request made under the Texas Public Information Act. This clause survives the completion or termination of this Agreement.
- E. AUDITING RECORDS FOR THE SPECIFIC PROJECT.** The Agency will make available to the City for inspection and copying all records which have a bearing on matters pertaining to the Services performed under this Agreement.
- F. SUCCESSORS AND ASSIGNS.** This Agreement is binding on the City and the Agency, and the Agency's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- G. VENUE.** This Agreement is entered in the City and County of El Paso, Texas. Venue for any dispute pertaining this Agreement is in El Paso County, Texas.
- H. GOVERNING LAW.** This Agreement is governed by Texas law.
- I. CAPTIONS.** The captions of this Agreement are for information purposes only, and in no way affect the substantive terms or conditions of this Agreement.
- J. SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity does not affect the remaining provisions of this Agreement.
- K. NOTICES.** The parties will send all notices required or allowed under this Agreement, in writing and by certified mail or in person, to the addresses described in this Section. All notices are deemed received 3 calendar days following the postmark date on the notice.

To the City:

The City of El Paso  
Attn: City Manager  
P. O. Box 1890  
El Paso, Texas 79950-1890

With a Copy to:                   The City of El Paso  
  Attn: Chief Internal Auditor  
  P. O. Box 1890  
  El Paso, Texas 79950-1890

To the Agency:                    Avenu Insights & Analytics, LLC  
  Attn: Daryl Savage, General Counsel  
  5860 Trinity Parkway, Suite 120  
  Centreville, VA 20120

Either party may change the address above by sending written notification to the other party.

**L. NO THIRD PARTY BENEFICIARIES.** This Agreement is entered for the benefit of the City and the Agency only. No third party has any rights to enforce any obligations or rights under this Agreement.

**M. GOVERNMENTAL FUNCTION.** The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.

**N. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement by the parties.

**WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:**


**CITY OF EL PASO:**

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

AGENCY:

\_\_\_\_\_

APPROVED AS TO FORM:

  
Leslie B. Jean-Pierre  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Edmundo S. Calderon, CIA, CGAP, CRMA  
Chief Internal Auditor

THE STATE OF TEXAS §

§

COUNTY OF EL PASO §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2019,  
by **Tomás González**, as **City Manager** of the **City of El Paso, Texas**.

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

My commission expires:

\_\_\_\_\_



ACKNOWLEDGEMENTS

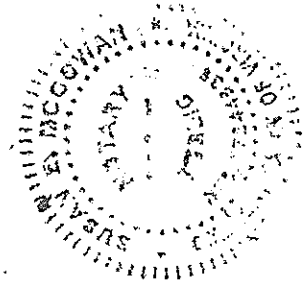
THE STATE OF VIRGINIA   §  
  §  
COUNTY OF FAIRFAX       §

This instrument was acknowledged before me on this 17<sup>th</sup> day of September 2019, by Paul Colangelo, as Chief Executive Officer of Avenu Insights & Analytics, LLC.

Susan E. McCowan  
Notary Public, State of Virginia

My commission expires:

03/31/2022  
# 7244936



**ATTACHMENT "A"**  
**FRANCHISE FEE AUDIT**  
**SCOPE OF SERVICES**

**A. AGREED UPON PROCEDURES:**

**Scope of Services**

1. Compare the franchisees payments, exclusions, and other computations related to the franchise agreement, or relevant state law.
2. Compare the actual payments made to the city for timeliness and accuracy.
3. Review findings with Franchisees and obtain the franchisee's position on the findings.
4. Report and present the results, potential monies due, and any penalties and interest.
5. Provide supporting documents to assist the city to collect underpaid franchise fees.

The scope of services shall include, but not necessarily be limited to the following:

**Objectives and Expectations**

1. Determine terms of the existing agreements under which businesses within the City operate.
2. Perform audit services of records for those businesses to determine if businesses operating within the City are reporting and remitting to the City of El Paso in accordance with the existing franchise agreements.

**Deliverables**

Provide a comprehensive report that analyzes the City's franchise fees.

1. Ordinance, return and administration review as well as recommend improvements for Franchisee compliance and revenue generation and administration.
2. Analysis & compliance review services
  - a) Obtain and analyze information.
  - b) Conduct unobtrusive collection of information on each Franchisee.
    - c) Perform discovery services designed to identify and locate Franchisees requiring additional investigation or examination to determine compliance.
3. Field Audit Services
  - a) Provide City with detailed information and resources for draft engagement announcement letters and other correspondence necessary between the City and the Franchisee throughout the audit.
  - b) Perform on-site examination of records, as necessary.
  - c) Verify accuracy of data submitted with all relevant financial information necessary to complete the audit.
  - d) Coordinate with City as necessary to review findings and recommendations.
4. Comprehensive Reporting
  - a) Review and recommendation reporting.

- b) Audit findings reporting by Franchisee based upon completed audits.
- c) Annual trend and revenue analysis reporting.
- d) Reporting of other relevant information with regard to ordinance compliance and related matters.

5. Other services as deemed necessary

**ATTACHMENT "B"**  
**AGENCY'S FEE PROPOSAL**

**PRICING NARRATIVE**

**PRICING SCHEDULE #1.**

For all audits of certificated telecommunication providers ("CTPs") under Texas P.U.C. SUBTS. R. § 26, provided the audit period is less than two years, an hourly fee of \$125 will apply for hours spent conducting the audit. Notwithstanding the foregoing, if the audit period for CTP's under Texas P.U.C. SUBTS. R. § 26 is two years or more based upon the periodic and timely provision of the requisite notices to the CTP's to allow the audit period to extend to such a timeframe, then Avenu will perform the audits at a one-time, performance-based contingency fee of 28% of the additional franchise fee revenue, including any applicable penalties and interest, received by the City as a result of our Franchise Fee Compliance Review Services.

**PRICING SCHEDULE #2.**

For all other Utility providers, including CTPs (cable/video providers) under Texas P.U.C. SUBTS. R. § 28, a one-time, performance-based contingency fee, as shown in the table below, of the additional franchise fee revenue, including any applicable penalties and interest, received by the City as a result of our Franchise Fee Compliance Review Services.

**Contingent Fee on Findings - 28%**

For deficiencies otherwise deemed lawfully and collectable pursuant to audit findings approved by the City but for which the City subsequently elects not to collect, the City shall notify Consultant of its election not to pursue ("waive") collection of said deficiencies. In such instances, Avenu's fee shall be an hourly rate of \$125 per hour spent on the project to date or one-half (½) of the fee Avenu would have been entitled to but for the waived portion of the deficiency, whichever is greater.

**Additional Consulting**

The City may request that Avenu provide additional consulting services at any time during the term of the Agreement. If Avenu and the City agree on the scope of the additional consulting services requested, then Avenu shall provide the additional consulting on a Time and Materials basis. Depending on the personnel assigned to perform the work, Avenu's standard hourly rates range from \$75 per hour to \$200 per hour.

These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.