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**El Paso County  
Agenda Item Details**

<b>Item Title:</b>	Economic Development - Interlocal Agreement with City of El Paso for Policy Consulting Procurement (2025-0051)
<b>Submitted By:</b>	Roberto Ransom, Director
<b>Department:</b>	Economic Development
<b>Department Phone Number:</b>	915-546-2177
<b>Subject:</b>	Approve and authorize the County Judge to sign the Interlocal Agreement between the County of El Paso and the City of El Paso to allow the City to use the County's procurement process to contract for the development of their economic development incentive policies. (Contract No. 2025-0051)
<b>Background:</b>	<p>County Economic Development staff recently secured the services of a firm to provide consulting services on the County's Economic Development incentive policy. This procurement was done in coordination with the City Economic Development department to procure the same services for their respective policy. The quote provided by the firm assumes that the City and County will pay the firm each half of the total cost for these services. This interlocal agreement commits both City and County to pay their portion towards the upcoming consulting agreement with the firm and cites the joint procurement endeavor needed to achieve this.</p> <p>If approved by the Court, staff will present the contract with a vendor to complete the analysis of the County and City's existing economic development incentive structure for large commercial and industrial development, providing feedback and comparison data for collective consideration on any major restructuring of this section of the County's 381 policy. This is proposed to occur in tandem with the Department's work on revising other sections of the County's Economic Development Policy.</p> <p>Contract Number: 2025-0051 Contract Term Start: N/A Contract Term End: N/A County Attorney Opinion Number:</p>

**Fiscal Impact:**

Fiscal Impact Historical  
N/A

Fiscal Impact Projected  
N/A

Long Account Number: Amount:

Long Account Number: Amount:

**Budget or Unbudgeted Match:**

**Recommendation:**

Approve and authorize the County Judge to sign the Interlocal Agreement between the County of El Paso and the City of El Paso to allow the City to use the County's procurement process to contract for the development of their economic development incentive policies. (Contract No. 2025-0051)

**Prior Action:**

N/A

**Strategic Plan:**

Goal:

2. Transform Economic Development

Objective:

2.2 Develop and implement an impactful, focused economic development strategy

**Strategic Plan Information:**

n/a

**Estimated Time Needed  
For This Item:**

5 minutes

THE STATE OF TEXAS     §                      INTERLOCAL AGREEMENT BETWEEN  
    §                      THE COUNTY OF EL PASO  
    §                      AND THE CITY OF EL PASO  
 COUNTY OF EL PASO     §

This Interlocal Agreement (“**Agreement**”) is entered into by and between the **CITY OF EL PASO, TEXAS**, a Texas home-rule municipal corporation (the “**City**”), and the **COUNTY OF EL PASO, TEXAS**, a Texas political subdivision (“**County**”), by and through their duly authorized officials, pursuant to the Interlocal Cooperation Act, Chapter 791.001 *et seq.*, Texas Government Code. The City and the County will hereinafter be collectively referred to as the “**Parties**” and individually as the “**Party.**”

## RECITALS

**WHEREAS**, the Texas Interlocal Cooperation Act, V.T.C.A., Government Code §791.001, *et seq.* allows local governments and political subdivisions of the state to contract among each other for the provision of governmental functions and services by an Interlocal contract; and

**WHEREAS**, the City and the County are local governments as defined in Chapter 791 of the Texas Government Code, and have the authority to enter into this Agreement, and have each entered into this Agreement in the appropriate manner prescribed by law; and

**WHEREAS**, economic development is important to the health and vitality of El Paso's regional economy; and

**WHEREAS**, in compliance with applicable federal, state, and local laws, including Chapter 262 of the Texas Local Government Code, the County sought proposals (**Exhibit A**) for the development of its incentive policies, including its Texas Government Code Chapter 381 policies, to make the County more attractive for prospective economic development expansion opportunities (“Services”); and

**WHEREAS**, as a result of the County’s request for proposals, the proposal was awarded to Newmark Global Strategies Economic Incentives Advisory (“Newmark”) for the Services (**Exhibit A**); and

**WHEREAS**, the City also wishes to update its economic development incentive polices, to include its Chapter 380 policies; and

**WHEREAS**, for purposes of efficiency and effectiveness, the City wishes to use the County's procurement process to also contract with Newmark for the same Services, to include updating the City's Chapter 380 incentives policies, pursuant to Texas Local Government Code Chapter 252; and

**WHEREAS**, pursuant to Texas Government Code § 791.025, the City may contract with the County to purchase the Services and satisfies the City's requirement to seek competitive bids for the purchase of the Services; and

**WHEREAS**, the City and the County acknowledge that this Interlocal Agreement is in accordance with the City's and County's respective strategic plans and visions for the promotion of economic development of the El Paso region.

**NOW, THEREFORE**, in consideration of the mutual contributions described herein and the mutual covenants and undertakings of the Parties, the receipt and sufficiency is hereby acknowledged, the Parties agree as follows:

### **SECTION 1. PURPOSE.**

- A. To increase efficiency and effectiveness, the City wishes to use the County's procurement process to contract with Newmark to update its economic development incentive policies, to include its Texas Government Code Chapter 380 policies, to make the City more attractive for prospective economic development expansion opportunities. This Agreement is to memorialize the City's use of the County's procurement process to satisfy the City's requirement to seek competitive bids for the purchase of Services.

### **SECTION 2. AGREEMENT OF THE PARTIES.**

- A. To increase effectiveness and efficiency, the City and County will contract with Newmark under one contract to obtain the Services. The proposed combined contract with Newmark is a separate contract from this Agreement.
- B. Notwithstanding any provision of this Agreement, the proposed combined contract shall in no way limit, impair, or otherwise affect the authority of the governing body of each Party to approve or disapprove under each Party's own guidelines and standards.
- C. Each Party voluntarily wishes to combine efforts and contract with Newmark under one contract, however, each Party is responsible for their portion of the cost for Services as more fully described in the proposed contract with Newmark. In the event the City decides not to enter into a contract with Newmark, the County reserves the right to do so without any liability or continuing obligation to the City under this Agreement.
- D. By executing this Agreement, the City agrees to use the procurement completed by the County, including the terms, conditions, and pricing, as permitted under Chapter 791 of the Texas Government Code and other applicable statutes.

- E. To the extent permitted by law, the County represents and warrants that the City may rely on the County's procurement process as it complies with all applicable competitive bidding and procurement requirements under Texas law, including any requirements outlined in Chapter 262 of the Texas Local Government Code.

### **SECTION 3. PAYMENTS.**

- A. The City shall not reimburse the County for any administrative or other costs incurred by the County in facilitating the use of its procurement, as agreed upon in this Agreement. The City will only be responsible for the costs of the Services it obtains from Newmark as established by the separate contract between the County, Newmark and City.
- B. Pursuant to Texas Government Code § 791.011(d)(3), the Party paying for the performance of governmental functions or services will make those payments from current revenues available to the paying Party.

### **SECTION 4. NO INDEMNIFICATION.**

- A. The Parties agree that neither Party will have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, or damages arising from this Agreement.
- B. Each Party must handle any claims resulting from their actions in this Agreement.
- C. Each Party agrees that each will be responsible for the acts or omissions of its respective representatives. Further, the Parties expressly agree that, in all things relating to this Agreement, they are performing governmental functions, as defined by the Texas Tort Claims Act, and that every act or omission of the Parties which, in any way, pertains to or arises out of this Agreement, falls within the definition of governmental function.
- D. Nothing in this Agreement shall be construed to be a waiver of sovereign immunity by any of the Parties.

### **SECTION 5. TERM and TERMINATION.**

- A. This Agreement may be terminated as provided in this section.
  - 1. **EFFECTIVE DATE.** The terms of this Agreement shall commence on the date that the last Party signs and executes this Agreement ("Effective Date").
  - 2. **TERMINATION FOR CONVENIENCE.** Either Party may terminate this Agreement for any reason by sending a written notice to the non-terminating Party at least 30 thirty calendar days before termination.

3. **TERMINATION BY EITHER PARTY FOR CAUSE.** Either Party may terminate this Agreement if one Party fails to fulfill the obligations set out in this Agreement. Before terminating this Agreement pursuant to this provision, the terminating Party will provide written notice of intent to terminate enumerating the failures for which the termination is being sought and provide at least 30 calendar days to the non-terminating Party to cure such failure.
4. **NON-APPROPRIATION OF FUNDS.** Should either Party not have funding to carry out any obligations of a particular effort conducted under this Agreement, it shall immediately notify the other Party of such fact and of such portions of the Agreement that may be deemed terminated or modified due to lack of funding. Each Party reserves the right to terminate this Agreement at the end its fiscal year by providing at least a twenty (20) day prior written notice to the Party.
5. This Agreement shall terminate and expire on earlier of the date upon completion of the Services, the termination of the contract with Newmark, or the termination of this Agreement in accordance with the terms and conditions contained herein.

## **SECTION 6. GENERAL PROVISIONS.**

- A. **NO WAIVER.** Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- B. **INDEPENDENT CONTRACTOR RELATIONSHIP.** This Agreement does not create an employee-employer relationship between the Parties. As such, the Parties are not subject to the liabilities or obligations of the other which are obtained under the performance of this Agreement.
- C. **NOTICES.** The Parties will send all notices required by this Agreement in writing, postmarked, and delivered by certified mail. All notices are considered received 3 business days after the postmark date. The Parties may change their address by sending a written notice to the other Party. A new address is not official until the change of address notice is received by the other Party as provided in this section. Upon receipt of proper notification of change of address the notified Party will send all further notifications to the new address. Parties will address notices as follows:

To the City of El Paso:                      City of El Paso  
Attn: City Manager  
PO Box 1890

El Paso, Texas 79950-1890

Copy to: City of El Paso  
Attn: Director of Economic Development  
123 W. Mills Ave. Suite 111  
El Paso, Texas 79901  
brasgallakx@elpasotexas.gov

To the County of El Paso: El Paso County  
Attn: County Judge  
500 E. San Antonio Ave., Room 301  
El Paso, Texas 79901

Copy to: El Paso County  
Attn: Economic Development Director  
500 E. San Antonio Ave., Room 312  
El Paso, Texas 79901

- D. **CONFIDENTIALITY.** The Parties acknowledge that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- E. **GOVERNING LAW.** This Agreement is governed by Texas law.
- F. **VENUE.** The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- G. **SEVERABILITY.** A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- H. **HEADINGS.** The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- I. **COMPLIANCE WITH THE LAWS.** The Parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement.
- J. **FORCE MAJEURE.** There is no breach of contract should either Party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or



circumstances whatsoever beyond either party's reasonable control. The delayed Party must resume performing its obligations in this Agreement after the reason for the delay is resolved.

- K. SUCCESSIONS AND ASSIGNS. This Agreement is binding on the Parties. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- L. THIRD-PARTY BENEFICIARIES. There are no third-party beneficiaries for this Agreement.
- M. PROVISIONS SURVIVING THIS AGREEMENT. Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- N. REPRESENTATIONS AND WARRANTIES. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- O. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by all parties.
- P. GOVERNMENTAL FUNCTION. The Parties expressly agree that all actions related to this Agreement constitute the performance of a governmental function.

*(Signatures Begin on the Following Page)*

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the dates established below.

**CITY OF EL PASO:**

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Renard Johnson  
Mayor

Date: \_\_\_\_\_

**ATTEST:**

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Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

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Oscar Gomez  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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Karina Brasgalla, Director  
Economic and International Department

**THE COUNTY OF EL PASO**

\_\_\_\_\_  
El Paso County Judge

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
El Paso County Economic Development Director

## **Exhibit A – Vendor Proposal**

**[Exhibit on Following Page]**

# Exhibit A - Vendor Proposal

**NEWMARK**

## The County and City of El Paso, Texas

Incentives Policy Review  
August 26, 2024

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Presented By:

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Newmark Global Strategy, Economic Incentives Advisory

August 26, 2024

Roberto Ransom, Director of Economic Development  
El Paso County Economic Development  
500 E. San Antonio, Suite 312  
El Paso, TX 79901

Bill Allen, Assistant Director  
Economic & International Development  
123 W. Mills Ave., Suite 111  
El Paso, TX 79901

**Re: Proposal for Economic Incentive Advisory Services for an Incentives Policies Review**

Dear Mr. Roberto Ransom and Mr. Bill Allen,

Newmark Global Strategies Economic Incentives Advisory (EIA) is pleased to present this proposal to conduct an Incentive Policy Review for The City of El Paso Economic and International Development and El Paso County Economic Development. Our highly qualified team of professionals offers a unique combination of skillsets in economic development strategy, corporate site selection, economic incentives advisory and compliance, licensed attorneys, CPAs, and real estate expertise. As a result, we serve as multi-disciplined trusted advisors to our U.S. and international clients, having collectively negotiated over \$15B in incentives globally and evaluated more than 1,000 state and local incentive policies domestically.

Our approach, as summarized in this proposal, is one of partnership. Our service model is an open and transparent process that ensures consensus and eliminates all possibilities of conflict. Our clients have benefited from our unbiased and integrated approach and will gladly testify to our value. We are confident that Newmark, and the proposed project team, will offer valuable insights that inform The City of El Paso and El Paso County, providing unique and creative solutions to assist policy development and adoption.

We appreciate your time and the opportunity to discuss this exciting project in more detail. Please do not hesitate to reach out if you have any questions or need any additional information from us.

Best regards,



Kim L. Moore  
Executive Managing Director, Global Strategy  
[Kim.moore@nmrk.com](mailto:Kim.moore@nmrk.com)

cc: Robert Hess, Vice Chairman, Global Strategy

## **Statement of Work**

### **Exhibit A**

#### **Situation**

The City of El Paso Economic and International Development and El Paso County Economic Development (collectively, the "El Paso EDOs" / "El Paso") are currently evaluating the competitiveness of their newly revised incentive policies. Their objective is to enhance the effectiveness of these policies in attracting national and international projects and to streamline the compliance process associated with the same. While they have achieved success with distribution and light manufacturing industries, there is a desire to diversify their industry base and make sure their policies appeal to urban, suburban and rural communities within the County.

To achieve these goals, the City and County economic development groups seek a partner to assist in the review of these policies, drafting policy updates and improving their compliance process. The revisions will primarily focus on the Chapter 380 and Chapter 381 Direct Incentives Programs.

The following Scope of Work outlines how Newmark Global Strategies Economic Incentives Advisory ("EIA" / "Newmark") will conduct their review and provide recommendations for the local incentives policies and compliance processes.

#### **Scope of Services**

The services Newmark will provide as part of this engagement are segmented into four key phases:

- 1) Phase 1: Project Mobilization
- 2) Phase 2: Incentives Competitiveness Review
- 3) Phase 3: Existing Contracts and Compliance Review, Assessment and Development
- 4) Phase 4: Incentive Policy Recommendations

*Any service not specifically defined in this agreement is outside the scope of services.*

#### **Phase 1: Project Mobilization**

The purpose of Phase 1 is to refine project parameters, set the scope of research and identify critical paths and priorities for completing the project on time. This phase includes the following activities:

### Task 1.1: Kick-Off Meeting and Data Gathering

Newmark will begin the project with a pre-kickoff meeting with the El Paso EDOs using the following agenda:

- Kick-off the assignment and discuss project timeline, responsibilities of Newmark, El Paso EDOs' expected outcomes and deliverables.
- Identify existing resources such as current Incentives Policy, economic or financial profiles, analyses or studies that are relevant for the project.

### Task 1.2: Business Climate Assessment, Existing Conditions and Competitive Positioning

The purpose of this task is to:

- Document El Paso's general business environment and policy strengths (assets) and weaknesses by conducting a SWOT analysis.
- Understand how existing industry and business activity can support and create future investment and how the incentive policies have supported these activities historically.
- Evaluate economic trends within each target industry especially as it relates to economic incentives.
- Discuss competitors for projects or other Texas jurisdictions to compare incentives policies and offerings.
- Discuss stakeholders for interviews.

## **Phase 2: Incentives Competitiveness Review**

### Task 2.1: Competing Jurisdictions Identification

Newmark will utilize the benchmark communities identified in Task 1 for inclusion in the Incentive Policy evaluation. This will ultimately allow for a deep understanding of the strengths, weaknesses, and degree to which El Paso's Incentive Policies are competitive with the surrounding U.S., state, and local areas.

### Task 2.2: Stakeholder Interviews and Roundtable Discussions

Interviews and roundtable discussions with community stakeholders will be a critical component of developing this analysis. Stakeholders may include city, county, and regional officials; local business leaders; residents; higher education representatives; and others. For this project, we will conduct up to 10 in-person or virtual interviews and three roundtable discussions. The El Paso EDOs may trade individual interviews for roundtables and vice versa as long as the total interactions do not exceed 13. The El Paso EDOs may also request additional engagements for an additional cost.

### Task 2.3: Collection of Incentive Policies from Competing Jurisdictions

Once the four (4) competing jurisdictions have been identified in the previous Task, their respective incentive policies will need to be collected. This will serve as the main data source underlying the comparison of El Paso's Incentive Policies to chosen state and local policies. Each jurisdiction's policy will be examined for its strengths, weaknesses and competitive



elements then ultimately compared to those of El Paso. To make the most efficient use of project time, costs and local connections, Newmark would require that El Paso assist with the collection and manage the collection of incentive policies of the local jurisdictions and transmit to Newmark for review and analysis.

#### *Task 2.4: Incentive Policy Review, Assessment and Development*

Economic Development incentives are a challenging and important activity especially in the changing Texas and Southeastern U.S. legislative environment. With the ever-growing competition in today's marketplace, it becomes necessary for both the public and private sector to focus on utilizing their existing resources in order to successfully concentrate on achievable strategic opportunities. Newmark will evaluate the current incentive practices, policies and laws in the State of Texas, The City of El Paso and El Paso County to determine their efficacy, transparency and that they are being used to the best of their ability creating a win-win situation for both the community and the companies receiving incentives. We will determine if there are opportunities to build on existing strengths and look for opportunities to fill gaps or supplement with creative practices that increase El Paso's competitive advantages while being mindful of the community's fiscal responsibilities. We will determine if there are areas that would benefit from strategic investment to create shovel-ready sites or open up areas to new and speculative development while also taking into account the dynamics of urban, suburban and rural communities in the region. We will evaluate all of the approved policy allowable activities and make recommendations if funds are being underutilized or an opportunity to stimulate growth becomes visible. The purpose of this analysis would be "local optimization" and also regional, national, and global perspectives on incentives and funding, value added activities and emerging trends in incentive packages.

#### *Task 2.5: Competing Jurisdictions Incentive Policy Reviews and Assessments*

Functionally, the review of competing jurisdictions' policies will be similar to the process used to review and analyze El Paso's Incentive Policy. This process will be completed for each jurisdiction.

#### *Task 2.6: Comparison of El Paso's and Competing Jurisdictions' Incentive Policies*

The final – and critical – step will be to compare the Incentive Policy Reviews of competing jurisdictions to those of El Paso's Incentive Policy Review to understand the strengths, shortcomings, competitive elements and areas of opportunity for El Paso's Incentive Policy recommendations.

### **Phase 3: Existing Contracts and Compliance Review, Assessment and Development**

Incentives are designed to be a win-win partnership between the community and the company. We will review a sampling of existing economic development incentives contracts as well as compliance procedures and documentation. We will make recommendations for updated contract language and procedures using our knowledge of government and corporate legal requirements making sure that the contracts are binding and that the companies are in compliance without creating an unfriendly environment for businesses. We will recommend changes to compliance procedures, if necessary, to strengthen the partnership between

company and community as well as making sure the incentive recipients are staying within legal requirements and monitoring projects for claw backs when the company has not met the established terms and conditions of the agreement. These recommendations will allow for government transparency while creating agreements and procedures that are fair to both parties.

## **Phase 4: Incentive Policy Recommendations**

### **Task 4.1: Economic Incentives Best Practices**

Newmark will assemble a list of best practices in economic development incentive programs available in the U.S. including State, and Local programs. We will call out areas where El Paso and the State could emulate or redesign programs to increase El Paso's competitiveness.

### **Task 4.2: Economic Incentives Deal Benchmarking in Target Industries**

Newmark will assemble a list of recent projects in the designated target industry in competing markets in Texas and competing jurisdictions. This analysis will allow El Paso EDOs to understand what they are competing with when proactively marketing El Paso for relocations and expansions.

### **Task 4.3: El Paso Incentive Policy Recommendations**

Newmark will identify targeted actions for key stakeholders to undertake to drive and implement positive change. These recommended measures will be based on realistic and current market opportunities. The recommendations will be segmented into categories that represent their sphere of impact.

### **Task 4.4: Implementation Plan and Success Metrics**

The implementation plan will outline the required steps for the rollout of each strategic initiative and will provide suggestions related to responsible party, priority, timeline, basic implementation steps and success metrics that can be used for long-term goal setting. In alignment with the initiatives of this competitiveness strategy, the implementation plan will include a variety of action steps to address specific parts of the incentives policies or compliance practices.

To provide for long term review and measurement of the implementation plan, the Newmark team will suggest success metrics (or key performance indicators - KPIs) for each initiative, as well as a defined method for gathering data and quantifying the success metrics. Each of the community goals will have an associated quantifiable measure that will allow for progress tracking.

## **Final Deliverables**

The final report will include one digital copy of the complete analysis formatted as a PowerPoint presentation and delivered to the El Paso EDOs as a PDF document. The report will include an executive summary, methodology and approach, key findings, recommendations, and an appendix with supporting content

## On-Site Meetings

This proposal is based on members of the Newmark team visiting the El Paso region once for the project to deliver the final presentation. The final presentation visit will occur over a one or two-day period.

## Timeline

We anticipate an overall project timeline of three (3) months from kick-off meeting for the completion of the tasks outlined in the scope document. Holidays, ability to travel, stakeholder response and individual schedules may impact the overall timeline. There will be regular project status calls throughout the engagement.

## Project Management

Newmark believes that strong project management and communication plans are the key to a successful engagement. As such, we implement the following project management guidelines throughout the project:

- **Single Points of Contact:** Newmark and El Paso EDOs will designate single points of contact. While there will be project communications between many team members on both sides, all communications must copy the single points of contact. All team-wide communications will be led by those points of contact.
- **Client Review:** Project stakeholders must maintain consistent involvement throughout the project. This will speed progress and ensure that interests are clearly communicated to Newmark staff. Newmark will involve the core project team in regular reviews of materials.
- **Status Update Calls:** At project kickoff, Newmark and El Paso EDOs will determine the cadence for recurring status calls, typically bi-weekly, and schedule accordingly. The calls will last approximately 30-60 minutes and be conducted via Microsoft Teams. Other necessary conversations will occur on an ad hoc basis.

## Team

The project team will consist of Newmark's dedicated incentives professionals who maintain expertise in federal, state, and local incentives; location advisory; and economic development strategy.

**Kim Moore**, Executive Managing Director, and leader of Newmark's Economic Incentives Advisory and Economic Development Consulting practice(s), will serve as the project principal, overseeing overall quality control and drawing on her 25+ years of experience.

The core Newmark project team will include **Erin Schwartz**, Managing Director and **Perla Lopez**, Director in the Economic Incentives Advisory practice. In addition, other subject matter experts from the Global Strategy team will provide project management, intellectual and analytical support, as needed.

The El Paso EDOs' project team will consist of executive and staff members who are best able to provide guidance on overall strategic direction and deliver required operational intelligence and data. The El Paso EDOs' project manager(s) (required) and team members can be identified upon commencement of the assignment.

## **Business Arrangements**

Based on the proposed Scope of Work, Newmark estimates a total fixed fee of \$40,000.00 plus expenses for work that will approximately take three (3) months to complete. The fee will be billable upon completion of the project and after delivery of the final recommendations and compliance process update and in market presentation.

If the decision is made to include additional areas or cities within the county for evaluation, it will require an amendment to the agreement to establish new pricing and terms based on the number of programs and cities to be reviewed. Such changes will be negotiated separately through a change order.

## **Payment Terms**

The El Paso EDOs agree to reimburse Newmark for business related project expenses. Reimbursable expenses include the actual cost of travel-related expenses (airfare, hotel, meals, vehicles, parking, etc.) incurred by Newmark in connection with the performance of their duties during the management of this project. Expenses will be billed without mark-up. All expenses for which Newmark shall request reimbursement will be preapproved by the El Paso EDOs in advance via an email request and incurred in accordance with the El Paso EDOs' travel and expense policy in effect at the time of approval. Approval should not be unreasonably withheld.

All fees are quoted in U.S. dollars. Our invoices are due within 30 days of receipt. A service charge will be applied monthly to all accounts not paid in the amount of one and one-half percent (1.5%) of the outstanding amount.

Should the El Paso EDOs cancel the work at any point after official engagement prior to delivery of the final report, the El Paso EDOs agree to pay Newmark for our time and materials expended up to the point of cancellation notification at our Standard Consulting Rates.

*Newmark consulting rates on the following page.*

Newmark's 2024 Consulting Rates are as follows:

Position	Hourly Rate
Vice Chairman	\$570
Executive Managing Director	\$510
Senior Managing Director	\$430
Managing Director	\$350
Regional Manager	\$330
Director	\$275
Associates	\$220

#### Other Business Terms:

Please see the following pages for our standard Consulting Agreement. Note that all pages in this proposal shall be deemed to be Exhibit "A" to our proposed Agreement.

Any further action of this scope is subject to mutual approval and signature of the Consulting Agreement. No work will commence on the Scope of Work until written authorization by all parties has been finalized and executed.

## Authorization

Thank you for the opportunity to present our proposal to The County and City of El Paso. We are confident in our ability to deliver a seamless and integrated approach that will deliver the highest value to your community and its residents. We will act as your trusted advisor through each stage of our engagement.

Accepted by:

Client: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Consultant: Newmark and Company Real Estate, Inc.

Signed: \_\_\_\_\_

Name: Robert Hess

Title: Vice Chairman, Global Strategy

Date: \_\_\_\_\_

# Team Bios



# Kim L. Moore

*CEcD, EDFP, MEDP*  
*Executive Managing Director*  
t 940-390-2670  
kim.moore@nrmk.com

## YEARS OF EXPERIENCE

27

## AREAS OF SPECIALTY

Incentive Negotiation

Compliance Management

Location Strategy

Economic Development  
Strategic Planning

Target Industry Analysis

Economic and Fiscal Impact  
Analysis

Business Development

Kim L. Moore joined Newmark in 2014 as a part of the firm's Global Strategy and Consulting Team, a practice within the firm's Global Corporate Services (GCS). Kim leads the Economic Incentives Advisory and the Economic Development Consulting Services practices. With a diverse background in economic development, incentive negotiation, site selection and strategic planning, Kim leads marketing efforts and strategic planning for both the private and public sectors. Kim is based in Dallas.

Kim has managed multiple projects securing almost 14.7M SF of new and redeveloped space, increasing the tax base with committed investments of more than \$10.5 billion, creating over 28,800 new jobs and negotiating over \$10.6 billion in incentives.

Kim has developed economic development strategic plans, target industry studies and labor surveys for communities, counties and utilities in many U.S. States as well as International Promotion Agencies in Canada and Guatemala. She is often a featured speaker/panelist at multiple economic development and site selection focused conferences.

## Partial Client HQ and Office Relocation List

- AllianceBernstein's global HQ
- AT&T's global HQ
- Farmer Bros. Co.'s HQ including manufacturing and distribution
- MoneyGram International's global HQ
- Santander Consumer USA's HQ and customer contact center
- Corpus Christi (CCREDC) Economic Development Strategy & Target Industry Study
- Cleco Corporate Holdings LLC Economic Development Strategy

## Professional Achievements

- Finalist in the GlobeSt. Elite Women of Influence in CRE, Consulting category, 2019
- Two (2) Forty Under 40 Awards, Dallas Business Journal and DCI / IEDC, 2013
- Three (3) Deals of the Year, Dallas Business Journal Best Real Estate, 2008

## Professional Affiliations

- Full Member, Site Selectors Guild, 2021-2024 (Associate Member, 2021)
- Certified Economic/Community Developer (CEcD), 2020
- Certified Economic Development Finance Professional (EDFP), 2008
- Certified Master Practitioner of Economic Development, 2020
- Member, International Economic Development Council (IEDC), since 2001

## Education

Kim graduated from the University of North Texas with a Bachelor of Business Administration degree majoring in Marketing. She also graduated from the Economic Development Institute sponsored by the University of Oklahoma. Kim completed the Advanced Economic Development Leadership Master Practitioner (MEDP) certification sponsored by the University of New Mexico, Clemson University, Texas Christian University, and the University of Southern Mississippi.



# Erin Schwartz, CPA

*Managing Director*

t 630-345-0039

[erin.schwartz@nrmk.com](mailto:erin.schwartz@nrmk.com)

## YEARS OF EXPERIENCE

# 5

## AREAS OF SPECIALTY

Statutory Tax Credit Analysis

Financial Modeling

Compliance Management

Project Management

Incentive Negotiation

Erin L. Schwartz joined Newmark in 2024 as a Managing Director with the firm's Economic Incentive Advisory Team, a practice within the firm's Global Corporate Services (GCS). In her role, Erin assists clients in making optimal business decisions related to their new location, expansion, and/or consolidation initiatives by providing financial modeling, feasibility analyses, incentive negotiation, and tax credit consulting. Erin has over 5 years of experience providing tax credit and incentive services to major U.S. clients in the life science, manufacturing/distribution, automotive, and finance industries. Collectively, she has provided support on projects resulting in over \$520 million in investments, 2,750 jobs, and \$150 million in total benefits secured for her clients.

Prior to joining Newmark, Erin was a Consultant at BDO USA PC, a public accounting firm.

## Partial Client List

- Catalent
- Aphen Pharmaceuticals
- Vericel Corporation
- Eisler Capital
- Gibson Brands, Inc.
- Proximo Wine & Spirits
- Tacombi Holding NA, LLC
- CHG Flares

## Professional Affiliations

- Member, Institute of Professionals in Taxation
- Member, American Institute of Certified Public Accountants

## Education

Erin graduated from Loyola University Chicago with a Bachelor of Business Administration in Accounting and a Master of Science in Accounting. Erin has also completed the Institute for Professionals in Taxation Credits & Incentives School and is a Certified Public Accountant (CPA) in the state of Illinois.





# Perla Lopez

Director

t 972-370-6350  
perla.lopez@nmrk.com

## YEARS OF EXPERIENCE

# 10

## AREAS OF SPECIALTY

Compliance Management  
Project Management  
Incentive Negotiation  
Financial Modeling  
Data Analysis

Perla Lopez joined Newmark in 2024 as a Director with the firm's Economic Incentives Advisory Team, a practice within Global Corporate Services (GCS). Lopez guides clients toward making optimal real estate decisions related to their new location, expansion, and/or consolidation initiatives. She provides financial modeling, data analysis, incentives research, negotiation and renegotiation of incentive agreements, and compliance services. Lopez is based in Dallas, Texas.

Lopez has over ten years of experience providing research and incentive services to U.S. and international clients across a wide range of industries. Prior to joining Newmark, Lopez held positions at JLL and Mohr Partners, where she served as Senior Research Manager and Senior Compliance Manager, respectively, spearheading their Research teams. In these roles, she led analysis and reporting on local and regional economies, supporting business development efforts across office, industrial and retail brokerage teams. In addition, Lopez oversaw the application and compliance process for economic incentives projects within Mohr Partners' growing Economic Incentives Practice.

As Compliance Manager for Amazon's Economic Development team in Seattle, Lopez managed a multi-billion-dollar economic incentives portfolio and was instrumental in securing millions in annual incentive benefits for the company. Her strategic efforts significantly contributed to the success of projects in 12 states throughout the Southeastern U.S. region. Lopez was involved in every stage of project development, from inception to compliance. Her duties encompassed contract assessment, risk mitigation, and the implementation of standardized compliance mechanisms and processes. Leading cross-functional projects, Lopez streamlined operating procedures, calculated estimated benefits, and responded to audit requests. Additionally, Lopez played a crucial role in agreement renegotiations, leveraging her extensive compliance experience to inform and enhance negotiation strategies and ensure optimal outcomes.

## Partial Client List

- |                 |                |                   |
|-----------------|----------------|-------------------|
| – Amazon        | – Regal Beloit | – Adecco          |
| – CH Robinson   | – Sodexo       | – Mentor Networks |
| – Curtis Wright | – Dawn Foods   |                   |

## Personal Affiliations

- Relief Society (Presidency 2019, 2020; Events Planning Committee 2022, 2023, 2024)
- Youth Empowerment & Mentorship, Young Women's Organization (Group Leader 2023)

## Education

Lopez graduated from the University of North Texas with a Bachelor of Applied Arts and Sciences, with a focus in Real Estate. She also acquired certification in Alternative Dispute Resolution from the same institution.

# Consulting Agreement

## CONSULTING AGREEMENT

This "Consulting Agreement" (this "Agreement") is entered into on \_\_\_\_\_, 202\_ (the "Effective Date"), by and between \_\_\_\_\_, a \_\_\_\_\_ ("Client"), and Newmark & Company Real Estate, Inc., a New York corporation doing business as Newmark ("Newmark"), through its Global Corporate Services division, and shall confirm the terms and conditions of Client's retention of Newmark to provide the consulting services hereinafter described and defined. Accordingly, Client and Newmark (each, individually, a "Party" and, jointly, the "Parties") hereby agree as follows:

### **1. Term and Termination**

**1.1.** The term of this Agreement (the "Term") shall commence on the Effective Date and shall conclude upon completion of the Services, or the earlier termination of this Agreement in accordance with the terms and conditions contained herein.

**1.2.** Either Party may terminate this Agreement for cause, effective immediately upon delivery of written notice to the other Party. As used herein, "cause" shall mean and refer to:

- A.** The failure by the other Party to perform or comply with any of its material obligations hereunder at the time or times and in the manner required under this Agreement (other than due to a Force Majeure event as set forth in Section 12.4 herein) without curing such failure within thirty (30) days of receipt by the non performing Party of notice of such failure; or
- B.** The other Party's gross negligence in the performance of its obligations under this Agreement; or
- C.** The other Party's intentional or willful default under this Agreement; or
- D.** If the other Party shall file any petition or answer seeking any reorganization, arrangement, composition, liquidation, dissolution or similar relief for itself under the present or any future law relative to insolvency or other relief for debtors, or under any regulation promulgated thereunder; or
- E.** If a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the other Party seeking any reorganization, arrangement, composition, liquidation, dissolution or similar relief under the present or any future law relating to insolvency, or other relief for debtors, and such Party shall acquiesce in the entry of such order, judgment or decree or such order, judgment or decree shall remain un-vacated and un-stayed for an aggregate of sixty (60) days from the date of entry thereof, or any trustee, receiver, conservator or liquidator of such Party or of all or any substantial part of such Party's property shall be appointed without the consent or acquiescence of such Party and such appointment shall remain un-vacated and un-stayed for an aggregate of sixty (60) days; or

- F. If the other Party shall become insolvent or admit in writing its inability to pay its debts as they mature or is generally not paying its debts as they mature or makes an assignment for the benefit of creditors.

1.3. In the event the Services are suspended by Client for more than sixty (60) days, Newmark may terminate this Agreement by giving seven (7) days' written notice to Client and Newmark shall be paid all sums due on a time and materials basis, or as otherwise stated in Exhibit A hereto, prior to such termination.

1.4. The expiration of the Term or any earlier termination of this Agreement shall not affect the rights or obligations of either Party with respect to liability or claims accrued, or arising out of events occurring, prior to the date of expiration or termination, all of which shall survive such expiration or termination.

## **2. The Services**

2.1. Newmark shall provide the consulting services (the "Services") specified and described in Exhibit A hereto (the "Scope of Services"). Newmark may hire subcontractors, who shall report directly to Newmark, to carry out certain aspects of the Services. Newmark shall obtain Client's prior approval before utilizing any subcontractor, which approval shall not be unreasonably withheld, delayed, or conditioned; provided, however, that no such consent shall be required if the subcontractor is an entity that controls, is controlled by, or is under common control with, Newmark (each, a "Newmark Affiliate"). At Client's request, Newmark shall meet with Client and provide Client with periodic status reports regarding the Services. Nothing in this Agreement or the Scope of Services is intended, or shall be construed or enforced, to constitute an exclusive relationship between Client and Newmark, to preclude Client from seeking similar or identical consulting services from any other party, or to preclude Newmark from providing similar or identical consulting services to any other party.

2.2. The Services shall be provided solely for the benefit of Client and, unless Newmark has first consented thereto in writing (which consent may be granted or withheld in Newmark's sole and absolute discretion), no tangible or intangible product of the Services shall be provided to or relied upon by any third party or used in connection with any financing or securities offering.

3. **Fees.** In consideration of Newmark's performance of the Services, Client shall pay to Newmark the fees specified in the Scope of Services, in the manner and upon all terms contained in the Scope of Services and this Agreement.

## **4. Newmark's Personnel**

4.1. Newmark and its personnel shall have the necessary knowledge, skills, experience, qualifications, and ability to provide and perform the Services.

4.2. Newmark's relationship to Client in the performance of the Services is that of an independent contractor. Newmark shall pay all wages, salaries and/or other amounts due its employees or independent contractors in connection with Services and shall be responsible for all reports and obligations relating to social security, income tax withholding, unemployment compensation, worker's compensation, and similar matters, to the extent applicable. Newmark shall cover or insure all its employees and independent contractors performing the Services, in compliance with applicable laws relating to worker's compensation and/or employer's liability insurance.

4.3. Client shall not participate in any decisions as to compensation, hours or other working conditions of Newmark employees. If requested by Client, however, Newmark shall replace any Newmark employee whom Client reasonably believes may be engaged in improper conduct, is in the reasonable opinion of Client unqualified to perform assigned duties or has violated any material, established, generally applicable procedure regarding Client security or confidentiality (provided Newmark has received written copies thereof and any changes thereto in advance), provided that Newmark shall not be required to take any action that violates legal requirements. In the event any such employee is involved in illegal or unethical conduct, Newmark shall reassign such employee immediately upon Client's request.

4.4. Newmark agrees that, in conformity with applicable law and regulations, it shall not discriminate against qualified individuals based on their status as protected veterans or individuals with disabilities. Newmark further agrees that it will not discriminate against individuals based on their race, color, religion, sex, or national origin. Newmark and any sub-contractors shall take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

## **5. Confidential Information**

5.1. Confidential Information may be marked, orally identified as confidential (and subsequently confirmed in writing) or exchanged under circumstances in which it is reasonable to presume it is confidential, including but not limited to, software (in object and source code form) trade secrets and related documentation, and any technical information. Each Party will protect and will cause its employees, subcontractors, agents, consultants and other representatives to protect the confidentiality of all Information received from the other Party with the same degree of care as it uses to protect its own Information, but in no event with less than a reasonable degree of care. Newmark shall be permitted to disclose any Information to third parties to the extent that such disclosure is required to perform the Services. Such Information shall not be deemed confidential, however, if it is (A) already known to the receiving Party, free of restriction when disclosed; (B) becomes publicly available through no wrongful act or breach of this Agreement; (C) rightfully received from a third party without restriction; (D) independently developed by without use of or reference to Information; (E) required to be disclosed by applicable law, regulation, or order of a court of competent jurisdiction; or (F) necessary in the defense of any claim or litigation arising hereunder. Upon expiration or earlier termination hereunder, and upon written demand by the other Party, each Party shall provide the other Party with its Confidential Information in its possession; provided, however, that neither Party shall be obligated to delete any Confidential Information material maintained in its normal back up media, including but not limited to such Confidential Information that is contained in an archived computer system backup that was made in accordance with its security and/or disaster recovery procedures.

5.2. Notwithstanding the foregoing, Newmark may disclose the contents of this Agreement in connection with the payment or collection of its fee and either Party may disclose information to prospective lenders and their respective attorneys, accountants, or other financial advisors in connection with performing their obligations hereunder.

5.3. Notwithstanding the foregoing, Client consents to the retention and use by Newmark and its affiliates of information and data that Client communicates from time to time.

5.4. The confidentiality obligations of each Party under this Agreement will survive any expiration or termination of this Agreement for a period of one (1) year.

6. **No Agency Relationship Created.** Under no circumstances shall Newmark be deemed to be an agent of Client for the purposes of this Agreement. Newmark's duties shall be limited to the terms hereof. Newmark shall not represent itself as authorized to enter into any contract or agreement on behalf of Client.

7. **Indemnification**

7.1. Newmark shall defend, indemnify, and hold Client harmless from and against any and all liabilities, claims, lawsuits, judgments, damages, costs and expenses, including reasonable attorneys' fees and disbursements, asserted or incurred by any third party and arising out of or resulting from (A) any material breach of this Agreement by Newmark, (B) the gross negligence or willful misconduct of Newmark, or (C) any act of Newmark that is outside the scope of, or is not incident to, the Services.

7.2. Client shall defend, indemnify, and hold Newmark and the Newmark Affiliates harmless from and against any and all liabilities, claims, lawsuits, judgments, damages, costs and expenses, including reasonable attorneys' fees and disbursements, asserted or incurred by any third party and arising out of or resulting from (A) any material breach of this Agreement by Client, (B) the gross negligence or willful misconduct of Client, or (C) any act of Newmark that is within the scope of, or is incident to, the Services, or is under any other express direction provided by Client, and is performed in accordance with this Agreement or such other express direction.

7.3. In the event of a claim or suit to which the foregoing indemnification provisions apply, the indemnified Party shall: (A) give the indemnifying Party prompt written notice of any such claim; (B) permit the indemnifying Party to defend any such claim with counsel of its own choosing, reasonably acceptable to the indemnified Party; (C) cooperate with the reasonable requests of the indemnifying Party in the defense of any such claim; and (D) not settle any such claim without the indemnifying Party's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

7.4. Nothing contained in this Paragraph 7 shall relieve either Party from responsibility for its own sole and active negligence, its own gross negligence, or its own intentional misconduct.

8. **Newmark's Insurance.** Throughout the Term, Newmark shall arrange for, carry, and maintain at their own expense the following insurance coverages:

8.1. Workers' Compensation, so as to provide statutory benefits as required by the laws of each state in which the Services are being provided, and Employer's Liability insurance with limits of liability of no less than \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit covering all employees of Newmark engaged in the performance of the Services.

8.2. Fidelity insurance with a limit of liability of not less than \$1,000,000 per Loss, to insure against loss of assets caused by the dishonest conduct of Newmark and any of its employees.

8.3. Professional Liability insurance with a limit of liability of not less than \$1,000,000 each claim and \$1,000,000 aggregate.

**8.4.** Commercial General Liability insurance providing coverage against damages due to bodily injury (including death), property damage and personal and advertising injury arising in connection with the Services provided under this Agreement and any action or activity on, or condition of, any of Client's real property at which Services are performed. Such insurance shall: (i) be occurrence-based; (ii) provide limits of liability in an amount not less than \$1,000,000 each occurrence and \$1,000,000 aggregate (including excess and/or umbrella limits), and (iii) include at least those coverages generally included in the most current ISO Commercial General Liability insurance policy form (or its equivalent).

**8.5.** Commercial automobile liability for owned and hired motor vehicles in an amount of \$1,000,000 combined single limit.

## **9. Limitation of Liability**

**9.1.** Newmark's advice and recommendations are advisory only and Newmark assumes no liability for any adverse impact on Client.

**9.2.** Except with regard to the Parties' respective obligations under Section 7 of this Agreement, the liability of either Party to the other Party, or to any person or entity claiming under, by or through such other Party, arising out of this Agreement shall be limited to direct damages, and in no event will either Party be liable for any loss of or damage to revenues, profits, goodwill or other special, incidental, exemplary, punitive, indirect, or consequential damages of any kind, even if such Party has been advised of the possibility of such damages.

**9.3.** As used in this Agreement, "Newmark" means only Newmark & Company Real Estate, Inc. No principal, manager, member, officer, director, employee, or partner (general or limited) of Newmark or any Newmark Affiliate shall have any personal liability under any provision of this Agreement. If Newmark or any Newmark Affiliate involved in performance of the Services defaults in the performance of any of its obligations under this Agreement or otherwise, Client shall look solely to the assets of Newmark or such Newmark Affiliate, and not to the assets, interest, or rights of any principal, manager, member, officer, director, employee, or partner (general or limited) of Newmark or such Newmark Affiliate, for satisfaction of Client's remedies.

**9.4.** The total liability under this Agreement of Newmark and any Newmark Affiliate involved in performance of the Services to Client or to any person or entity claiming under, by or through Client, regardless of the other nature of the claim made by Client or such person or entity, shall not exceed the total of the fees actually paid to Newmark in connection with the Services that gave rise to such liability.

**9.5.** All claims hereunder must be brought within one (1) year of the date of the first occurrence of the event giving rise to such claim.

## **10. Representations and Warranties**

**10.1.** Newmark represents and warrants that the Services will be performed in compliance with applicable laws and regulations, and in a professional and workmanlike manner.

**10.2.** Newmark makes no express or implied representations or warranties with respect to the Services and guarantees no particular outcome or result. Newmark does not provide legal advice and does not represent or guarantee that any particular course of conduct, strategy, or action suggested by it conforms to any applicable law or regulation. Client acknowledges that the work product provided by other consultants and service providers will be the responsibility of such persons and Newmark does not warrant or guarantee, or have any liability with respect to, their performance or work product.

**10.3.** Newmark shall not be responsible for detecting or dealing with any pre-existing or existing conditions of any real property connected to the Services that may adversely affect the operations, maintenance, value, desirability, or use of such property by Client or the health or safety of persons at such property. Client acknowledges that Newmark is not an environmental expert or consultant with respect to any environmental conditions or issues pertaining to any such property, and Newmark shall not be responsible for detecting, handling, removing, remediating or otherwise determining how to deal with any pre-existing or existing conditions or hazardous materials located at any such property, nor shall Newmark in any way be responsible for the storage, transportation, disposal, abatement, cleanup or removal of, or other dealings with, hazardous materials at any such property.

**11. Intellectual Property.** In the event the Services involve the use of any software owned by or licensed to Newmark (the "Software") and/or Client's access to Newmark's database(s) or computer system (the "System"), the same shall be governed by and subject to the following provisions:

**11.1.** As a condition to accessing the System, Client acknowledges that (A) the System is provided via a third party, and (B) it has sufficient technology for remote access to the System. Client shall ensure that it and all persons who receive access to the System use it solely for the purpose described in Exhibit A. Client shall fully comply with all of Newmark's agreements, requirements and restrictions relating to the use of, and access to, the System, including but not limited to the "Access Terms" contained in the attached Exhibit B, which is incorporated herein by this reference.

**11.2.** Client acknowledges that Newmark owns or holds a certain license to use and sublicense various preexisting documentation, processes, development tools, routines, subroutines, graphics and other programs, data and materials ("Background Technology") that Newmark may include in the Services. Newmark retains all right, title and interest including all copyright, patent rights and trade secrets rights in the Background Technology. Subject to full payment of the fees due under this Agreement, Newmark grants Client a limited, non-exclusive, non-transferable, revocable, end-user license to use the Background Technology in the Services developed for Client under this Agreement, however, Client shall make no other use of the Background Technology. Client shall indemnify, defend and hold Newmark and the Newmark Affiliates harmless from and against any and all claims, costs, demands, losses, liens, debts, expenses, liability or damages (including, without limitation, reasonable legal fees and expenses) in any way relating to, arising out of or concerning the use of any Background Technology or the use of the System.

**11.3.** All methodologies, systems, procedures, management tools, workshops, Software, concepts, ideas, inventions, know-how and other intellectual capital that Newmark has developed, created or acquired prior to performing Services under this



Agreement, or develops, creates or acquires during the term of this Agreement or thereafter ("Newmark's Intellectual Capital") are and shall remain the sole and exclusive proprietary property of Newmark, and Client shall not have or acquire any right, claim, title or interest in or to any of Newmark's Intellectual Capital. Furthermore, Client shall receive no ownership of or right to any of Newmark's working papers or manuals, such as administrative and quality assurance documentation or internal correspondence. Performance of the Services by Newmark shall not be deemed to be a prohibition of, or interfere in any manner with, Newmark's provision of similar services to third parties, provided that Newmark in so doing does not use or disclose any confidential information of Client.

**11.4.** To the maximum extent permitted by applicable law, Newmark disclaims all warranties (express or implied), guaranties, conditions, covenants and representations relating to the services or the system. without limiting the generality of the foregoing, Newmark cannot and does not guaranty or warrant that the Software or System will be free from viruses, worms, Trojan horses, spyware, adware, or other code that manifest contaminating or destructive properties.

## **12. Miscellaneous Provisions**

**12.1.** Client represents and warrants to Newmark that it has the full authority to enter into this Agreement and that the individual executing this Agreement on Client's behalf is authorized to act on behalf of Client and to bind Client to the terms and conditions hereof.

**12.2.** In the event any provision of this Agreement is found to be void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the Parties with the same effect as though the void or unenforceable part had been severed and deleted.

**12.3.** Any notices to be given hereunder by either Party to the other may be effected (i) by personal delivery in writing, (ii) by registered or certified mail, return receipt requested, postage prepaid; (iii) by electronic mail; or (iv) by reputable overnight express delivery service (e.g., UPS or Federal Express) to the persons listed below at the addresses shown. Mailed notices shall be addressed to the Parties at the following addresses:

If to Client: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
e-mail: \_\_\_\_\_

If to Newmark:       Newmark  
Global Corporate Services  
Attn: \_\_\_\_\_  
125 Park Avenue  
New York, NY 10017  
e-mail: \_\_\_\_\_

And to:

Newmark

Attn: Legal Department  
18401 Von Karman Avenue, Suite 150  
Irvine, California 92612  
e-mail: legaldept@ngkf.com

Either Party may change the address by written notice in accordance with this Paragraph 12.3. Notice delivered personally will be deemed communicated as of actual receipt; mailed notice will be deemed delivered as of actual receipt; electronic mail will be deemed delivered when sent with confirmation and without any indication of non-delivery to the addressee; overnight express delivery service will be deemed delivered as of one (1) business day after sending.

**12.4.** No delay or failure in performance by Newmark shall constitute a breach or default under this Agreement if and to the extent that the delay or failure is caused by a Force Majeure event. If the Services are delayed by reason of a Force Majeure event, Newmark shall notify Client. Once the Force Majeure event ends or ceases to substantially interfere with performance of the Services, Newmark shall resume performance of the Services as soon as practicable. In the event of any such excused delay, the time for performance of the Services (other than a payment obligation) shall be extended for a period equal to the time lost by reason of the delay. As used herein, "Force Majeure" means any event beyond Newmark's control and which Newmark is unable to prevent by the exercise of reasonable diligence, including, without limitation, the combined action of workers, strikes, embargos, fire, acts of terrorism, explosions and other catastrophes, casualties, a moratorium on construction, delays in transportation, governmental delays in granting permits or approvals, changes in laws, expropriation or condemnation of property, governmental actions or regulations, unavailability or shortages of materials, national emergency, plague, pandemic, epidemic, outbreaks of infectious disease or any other public health crisis, quarantine and any related social, employment or travel restrictions, or other employee restrictions, war, civil disturbance, floods, unusually severe weather conditions or other acts of God or public enemy. In the event the Force Majeure event continues for longer than one hundred eighty (180) days, Newmark may terminate the Agreement upon thirty (30) days' written notice, without liability to Client by reason of such termination.

**12.5.** Client hereby authorizes Newmark to identify Client as Newmark's client on Newmark's website, in promotional and advertising materials, press releases, solicitations of other clients, and similar verbal, written, and electronic (including video) materials. Such identification of Client may include the use of Client's logo, and any trademarked, registered, or copyrighted identifiers of Client.

**12.6.** In the event there is any conflict between the terms and conditions of this Agreement and the terms and conditions of the Scope of Services, the terms and conditions of this Agreement shall prevail and govern.

**12.7.** This Agreement (A) contains the entire understanding of the Parties with respect to the subject matter hereof; (B) may not be changed or modified orally but only by written instrument signed by the Parties; (C) shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties; (D) shall be governed by and construed in accordance with the laws of the State of New York, applicable to agreements made and to be performed entirely within that state, without regard to conflicts of laws principles, and shall be resolved in a court proceeding within the State of New York; and (E) shall not be strictly construed against or for Client or Newmark,

both Parties agreeing that they have participated fully and equally in the preparation of this Agreement.

**12.8.** In the event any litigation is brought with respect to any dispute between the Parties arising out of this Agreement, the non-prevailing Party in such litigation shall reimburse the prevailing Party for all of its out-of-pocket costs incurred, including reasonable attorneys' fees and disbursements, in connection with such litigation and the costs of collection of any settlement or judgment thereon.

**12.9.** If there is a failure to make any payment to Newmark at the time required herein, the delinquent sum(s) shall bear interest at the rate of twelve percent (12%) per year or the maximum rate permitted by law, whichever is lower.

**12.10.** Client shall at all times during the Term act in a timely and judicious manner with respect to matters important to the progress of the Services. In the event there is any delay not caused by Newmark that causes the Services to be suspended for more than thirty (30) days and the Services are subsequently resumed by Newmark, Client shall reimburse Newmark for any consequential additional costs of performance.

**12.11.** During the Term hereof and for a period of one (1) year after the expiration or earlier termination of this Agreement, Client and any organization directly or indirectly controlled by Client shall not, under any circumstances, directly or indirectly approach, pursue, engage, or solicit for employment any employee or independent contractor of Newmark or any Newmark Affiliate during the term of such employee's employment by or such independent contractor's association with Newmark or any Newmark Affiliate. This Paragraph 12.11 shall not apply to individuals responding to a general employment advertisement. The provisions of this Paragraph 12.11 shall survive the expiration of the Term or the termination of this Agreement.

**12.12.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute a fully executed agreement, with the same effect and validity as a single, original agreement signed by both Parties. To facilitate execution of this Agreement by the Parties, facsimile, electronic, and .pdf signatures shall have the same validity and effect as original signatures.

**12.13.** Each Party represents and warrants to the other that neither it, nor any of its owners (including shareholders, partners and members, as applicable), are on the OFAC SDN list. Each Party shall comply with the export control laws of the United States which may include the United States Export Administration Regulations, the Trading With the Enemy Act, the International Emergency Economic Powers Act, the Arms Export Control Act and regulations promulgated by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") as amended from time to time (collectively, the "Export Control Laws"). If and to the extent that Client decides that such Services shall be outsourced to Newmark in any such prohibited country or countries, Newmark shall not be obligated to perform any such Services. Client agrees that all actions taken by it in furtherance of fulfillment of this Agreement shall be in compliance with applicable Export Control Laws. Client agrees not to export or license any of Newmark's technology or software products to any parties located in Iran, Iraq, Libya, Syria, Sudan, or Yemen or any other countries prohibited under United States embargoes or sanctions programs maintained by the OFAC or otherwise prohibited under the Export Control Laws.

**12.14.** By acceptance of this Agreement, each Party agrees to strictly abide by the Foreign Corrupt Practices Act ("FCPA") which forbids certain payments and other practices in connection with the overseas business activities of U.S. companies. These include anti-bribery provisions (corruptly giving money or authorizing the giving of money or other things of value to a foreign government official, an official of a foreign political party, a candidate for foreign political office, or a foreign political party) for the purpose of influencing any act or decision of such official in his/her official capacity, influencing such official "to do or omit to do" any act in violation of his/her or its lawful duties, or inducing such official to use his/her influence with a foreign government or instrumentality thereof to affect or influence any government action or decision which would assist the donor in obtaining business or directing business to any person or entity. As the FCPA carries criminal and monetary penalties and are investigated and prosecuted by the U.S. Government, each Party agrees to take all reasonable steps to ensure compliance.

**IN WITNESS WHEREOF**, the Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

[Legal Company Name],

Newmark & Company Real Estate, Inc.,

a [Jurisdiction] [Entity Form]

a New York corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT A**

### **Scope of Services and Fees**

See the attached document, which is attached solely for the purpose of defining the Scope of Work and the Fees, and shall not supplement, supplant, or otherwise amend the provisions of this Agreement.

## EXHIBIT B

### Access Terms

You agree to comply with these terms and conditions (the "Access Terms") as well as such other restrictions or limitations as may be specified by the Sources from time to time with respect to the Source Products (as defined below). As used herein, "Source(s)" means, collectively, direct and indirect third party or affiliated licensors, vendors, service providers, subcontractors and sources of (i) any of the Services, or any part thereof, or (ii) any system, software, products, services, materials, content, data, applications or hardware accessible through or using the Services (the "Source Products"). "Services" means, collectively, any and all electronic systems, software, capabilities, content and services, including the Source Products, access to which or use of which were, are or will be provided or made available to you, whether provided directly to you or through Provider or any third party. "Provider" means Newmark & Company Real Estate, Inc., a New York corporation doing business as Newmark, or any of its affiliate(s) designated by Provider from time to time; "affiliate" means any entity existing from time to time which directly or indirectly controls, is controlled by, or is under common control with Provider; "you" means, collectively, the entity agreeing to these Access terms and its Representatives; "Representatives" means any and all of your partners, officers, directors, agents, employees, users and any other persons or entities which are authorized to act on your behalf; and "including" means "including without limitation."

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[End of Access Terms]