

**PUBLIC NOTICE**

**ODESSA DEVELOPMENT CORPORATION  
BOARD OF DIRECTORS MEETING**

**City Council Chambers - City Hall, 5<sup>th</sup> Floor  
411 W. 8th Street, Odessa, Texas 79761**

**Wednesday, May 27, 2020, at 2:00 p.m.**

**Odessa Development Corporation Meeting to be held with Social Distancing Guidelines**

The Public can participate in the meeting by joining through [www.webex.com](http://www.webex.com)

Meeting link: <https://cityofodessa-pqj.my.webex.com/cityofodessa-pqj.my/j.php?MTID=md4cada469b4fdbb736899f12e1d60e1f>

By toll free phone number: 1-408-418-9388

Enter meeting number: 126 579 3704

Password: office (633423 from touchtone phones and video systems)

In accordance with the Open Meetings Act, Chapter 551 of the Government Code of Texas, notice is hereby given to all interested persons that the Odessa Development Corporation will meet as set out above to consider the following items:

1. Invocation
2. Discuss and Consider a resolution approving the 2020-2021 Budget Calendar Robert Carroll
3. Adjourn

This notice is being posted on the south door of City Hall and on the bulletin board of the first floor of City Hall, Odessa, Texas, on the City of Odessa's website [www.odessa-tx.gov](http://www.odessa-tx.gov), and on the Odessa Development Corporation's website [www.odessatex.com](http://www.odessatex.com), this the \_\_\_\_\_ day of \_\_\_\_\_, 2020, at \_\_\_\_\_ .m., said time being more than seventy-two hours (72) prior to the time at which the subject meeting will be convened and called to order.

The meeting is available to all persons regardless of disability. Individuals with disabilities who require special assistance should contact the City Secretary's Office at 432-335-3276, or 411 West 8th Street, First Floor, Odessa, Texas, during normal business hours at least twenty-four hours (24) in advance of the meeting.

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Norma Aguilar-Grimaldo, City Secretary

**ODESSA DEVELOPMENT CORPORATION**

**Annual Budget Calendar  
Fiscal Year 2020-2021**

May ____, 2020 <b>Special ODC Meeting</b>	ODC to discuss and approve proposed FY 2020-2021 Budget Calendar
June 1, 2020	Legal to send letter to outside agencies requesting proposals for FY 2020-2021 using the current General Development Plan as guide: Odessa Chamber of Commerce Odessa Hispanic Chamber of Commerce MOTRAN Alliance, Inc. UTPB-SBDC UTPB-Business Challenge CVA Advertising City of Odessa Odessa Black Chamber of Commerce
Cindy Muncy	Preparation of budget estimates for new fiscal year begins
June 11, 2020 <b>ODC Meeting</b>	1) ODC to review and discuss proposed FY 2020-2021 Gen Dev Plan 2) ODC to review and discuss form contract for Contractors
June 30, 2020	Responses due from outside agencies regarding requested ODC funding
Cindy Muncy	City staff completes review of Budget Estimates and proposes recommendations to ODC
July 9, 2020 <b>ODC Meeting</b>	1) ODC to review and approve proposed FY 2020-2021 Gen Dev Plan and forward to City Council Work Session for approval 2) ODC to review and approve form contract and forward to City Council Work Session for approval 3) ODC to review and discuss contractor proposals 4) ODC to review and discuss proposed FY 2020-2021 Budget
July 21, 2020 <b>CC Work Session</b>	1) City Council Work Session Meeting to review and discuss proposed FY 2020-2021 ODC Gen Dev Plan 2) City Council Work Session Meeting to review and discuss form contract for Contractors
July 28, 2020 <b>Council Meeting</b>	1) City Council to approve FY 2020-2021 ODC Gen Dev Plan 2) City Council to approve form contract for Contractors
July 29, 2020	Legal to send contracts to contractors to sign and return NLT 8/28/2020
August 13, 2020 <b>ODC Meeting</b>	ODC to review and approve proposed FY 2020-2021 Budget and forward to City Council Work Session for approval
August 18, 2020 <b>CC Work Session</b>	City Council Work Session Meeting to review and discuss proposed FY 2020-2021 ODC Budget
August 25, 2020 <b>Council Meeting</b>	City Council to approve proposed FY 2020-2021 ODC Budget
September 10, 2020 <b>ODC Meeting</b>	ODC President to sign all contracts
September 11, 2020	Legal to submit contracts for execution by City Manager
October 1, 2020	New fiscal year begins
January 18, 2021	Report submitted to State Comptroller as required by the Economic Development Act for prior year activities (Finance Director does this)

STATE OF TEXAS §

COUNTY OF ECTOR §

**ECONOMIC DEVELOPMENT CONTRACTOR AGREEMENT**  
**<COMPANY>**

**WHEREAS**, the Odessa Development Corporation, a Type A Taxing Corporation, (hereinafter referred to as “ODC”) with City Council approval, has adopted a General Development Plan and has received Proposals to accomplish the action steps described in the General Development Plan; and

**WHEREAS**, <Company> (hereinafter referred to as “Contractor”) submitted a Proposal to the Odessa Development Corporation for such economic development purposes and the funds for such proposal have been appropriated for the fiscal year 2020-2021; and

**WHEREAS**, the primary purpose of Contractor is to <describe primary purpose> and to assist ODC in the expansion and creation of new Economic Development in the area; and

**WHEREAS**, this is an eligible cost as defined in Section 504.102, Texas Local Government Code; and

**WHEREAS**, the parties have agreed on the terms and conditions and have set forth such terms and conditions in this Agreement; and

**NOW, THEREFORE**, ODC and Contractor, do hereby agree as follows:

**ARTICLE I**  
**ECONOMIC DEVELOPMENT PROGRAM**

1.1 **General.** Contractor shall provide the economic development services as provided herein and in Exhibits “A” (budget) and “B” (description) which documents are incorporated herein by reference. Such program shall be referred to herein as the “Economic Development Program”. Contractor shall comply with the Economic Development Corporation Act, Chapters 501 and 504, of the Texas Local Government Code.

1.2 **General Development Plan Amendments/Additional ODC Tasks.**

.1 Contractor understands and agrees that the ODC Board of Directors may consider amendments to the adopted General Development Plan during this fiscal year regarding the goals, objectives, action steps and tasks to be performed by each of the ODC Contractors. If amendments are proposed and adopted by the ODC Board of Directors and the City Council, Contractor shall comply with that Amended General Development Plan in lieu of that set forth in this Agreement for the remainder of the Agreement period.

.2 Contractor understands and agrees that the ODC Board may request and require additional specific tasks of Contractor during this fiscal year that are not included in the General Development Plan but are deemed necessary by the ODC Board in furtherance of the ODC’s goals and objectives.

- .3 If the amendments are made to the General Development Plan or the ODC Board of Directors requires additional tasks not included in this Agreement that are not covered by the attached Budget, Contractor shall prepare an amended Budget and request the ODC Board of Directors to consider such amendments to Contractor's Budget prior to undertaking the additional tasks.

### 1.3 **Term and Termination.**

- .1 This Agreement shall become effective on October 1, 2020, and shall terminate on September 30, 2021.
- .2 In the event that Contractor violates the terms or conditions of this Agreement, or fails to provide the agreed services, ODC, with City Council approval, may terminate this Agreement under the following conditions:
  - (i) ODC shall provide written notice of the violations or failures to Contractor. Contractor shall have thirty (30) days to cure the violations or failures to the satisfaction of ODC or to file a written response with the secretary for ODC Board.
  - (ii) If Contractor fails to cure or to file a written response within such 30-day period, ODC, with City Council approval, may terminate this Agreement immediately.
  - (iii) If a written response is filed, ODC shall set a hearing before the Board and provide notice to Contractor. After consideration of the response and the testimony at the hearing, ODC may declare if there has or has not occurred the stated violations or failures. If the Board finds that such violations or failures have occurred, it shall give Contractor an additional thirty (30) days written notice and an opportunity to cure to the satisfaction of ODC. If not cured within such period, ODC, with City Council approval, may terminate this Agreement immediately. Contractor may terminate this agreement upon thirty (30) days written notice to ODC before the expenditure of sales tax funds. Upon this termination, Contractor shall be required to return any unexpended funds received to ODC.

## **ARTICLE II FUNDING**

2.1 **Economic Development Sales Tax.** ODC's obligation to fund the services required herein shall be paid solely from the Economic Development Sales Tax and shall not be a charge on any other fund or require the levy of a tax.

2.2 **Payment.** ODC shall pay to the Contractor the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) to be used solely for the purpose of conducting the Economic Development Program. ODC shall dispense funds to the Contractor by paying one quarter of the total on or before October 10, January 10, April 10, and July 10.

2.3 **Other Sources.** It is understood and agreed that Contractor will obtain the balance of needed funds from other sources. Contractor may perform services that are not eligible for expenditure of funds by ODC but the percentage of Economic Development Corporation funds received must not exceed the percentage of eligible services performed by Contractor.

2.4 **In-Kind Services.** Contractor shall contribute certain in-kind services to the Economic Development Program. For the purposes of this Agreement, "in-kind services" shall mean the services or use of Contractor officers, employees, buildings, equipment or other facilities that are not acquired, designated and used exclusively in connection with the Economic Development Program. No charges for in-kind services shall be made against the account or funds mentioned in this Agreement. Reimbursement for any such in-kind services may be spent only if provided for in the attached exhibits.

2.5 **Changes in Program.** ODC through its Board may request, from time to time, changes in the scope or focus of the activities conducted or to be conducted by Contractor pursuant to this Agreement. Any change which varies significantly from the scope of services set out in Exhibit "B" and would entail a significant increase in cost or expense to Contractor shall be mutually agreed on by Contractor, the ODC Board of Directors and City Council.

### **ARTICLE III** **REPORTING REQUIREMENTS**

#### **Budget and Financial Reporting.**

- .1 Contractor shall comply with the approved annual contractor budget during the term of this Agreement, copies of which are attached as Exhibit "A."
- .2 On or before the 25th day of each month during the term of this Agreement, Contractor shall make and send to each member of the ODC Board of Directors, the City Council, ODC Treasurer, City Attorney, and file with the City Secretary, a report showing an accounting of all funds received and expended under this Agreement in relation to the authorized budget items shown in Exhibit "A" during the preceding month. Said report shall also show the cumulative expenses and revenues for the preceding month together with all prior months covered by this Agreement. Failure to submit this report within 15 days of its due date might result in the termination of all payments by ODC until all of the reporting requirements have been brought into compliance.
- .3 Contractor shall maintain complete and accurate financial records of each expenditure of Economic Development Program funds made by it. The general method of financial record keeping and reporting proposed by the Contractor to be used in complying with the requirements of this Agreement shall be submitted to and approved by the ODC Board of Directors. The sufficiency of detail of any activity or financial report required by this Agreement shall be determined by the ODC Board of Directors. All of the Contractor's records pertaining to and related with the activities and funds under the Economic Development Program shall be available for inspection by the ODC Board of Directors, City Council, the Treasurer of ODC, designated auditor and City Manager of the City of Odessa at any time during Contractor's normal office hours. The revenue provided by ODC under this Agreement shall be maintained by Contractor in a separate account established for that purpose and shall not be co-mingled with any other money or maintained in any other account.

### 3.2 **Activity Reporting.**

- .1 Contractor shall provide a monthly activity report in writing to ODC, to confirm that the public purpose for which the funds are made available is being accomplished and shall present a verbal summary at ODC's monthly meetings.
- .2 Where determined necessary by the Contractor in order to avoid prejudicing the opportunity to attract new and additional industries to Odessa or to accomplish the expansion of existing industries, it shall be acceptable to use a coding system in connection with the records and reports required under this Agreement in order to temporarily keep confidential the identity of such industrial enterprises.
- .3 In this connection, however, details and specific information regarding all activities under the Economic Development Program, including the identity of all industrial enterprises involved, shall be maintained by the Contractor and shall be available to the ODC's and City of Odessa's auditors in performing the audit of the funds involved in the Economic Development Program hereinafter required.

### 3.3 **Informal Reporting.**

- .1 The Activity Reporting Requirements outlined in this Article are for the purpose of providing information to meet the very basic exchange of information. However, to be efficient in the use of economic development funds, to compete in the open market for jobs, to be able to respond to issues and economic development opportunities in a timely manner, to make decisions regarding goals, objectives and priorities and to foster the necessary teamwork between ODC and Contractor, it is necessary to plan and to implement certain informal reporting and interactions which could occur on a frequent basis.
- .2 For these purposes, the parties agree to engage in certain interaction and interoffice communications:
  - (i) When decisions need to be made in regard to negotiations or strategy, Contractor will meet with those persons designated by ODC to develop a plan.
  - (ii) Contractor will meet with the ODC whenever necessary and also develop and distribute, in writing or by oral presentation, reports when needed over and above those required in this Article.

## **ARTICLE IV OTHER REQUIREMENTS**

4.1 **Audit.** In addition to the required reporting covering Contractor's activities and expenditures under this Agreement, a certified audit of the funds and activities of such Economic Development Program shall be made annually as determined by mutual agreement of the parties. The auditors performing the above-described audit shall have access to and the right to examine all records and accounts directly related to the Economic Development Program and such other Contractor records and accounts as may be reasonably necessary to conduct and complete its audit of the Economic Development Program funds..

4.2 **Diversity.** ODC and City of Odessa strongly encourage the voluntary implementation of a Diversity Program whose goal it is to breakdown all barriers between people. Such a program should be designed to empower Contractor's employees and organizational members to create an environment that utilizes the full potential of the Citizens of our Community. ODC or City of Odessa may request to review the program and/or practices to determine whether they are consistent with ODC and City objectives. Future funding may be conditional upon such a program.

4.3 **Civil Rights.** Contractor agrees that as to all of its programs and activities, it will fully comply with all Civil Rights Acts and specifically will not discriminate against any person on the basis of race, color, national original, sex or disability.

4.4 **Drug Free Workplace.** Contractor shall comply with the Drug Free Workplace Act of 1988 including any amendments and administrative regulations, if required by federal law. If not required, ODC strongly recommends compliance with such law on a voluntary basis by Contractor approving a ban on the use and possession of illegal drugs and alcohol in the workplace of Contractor. Such policy should also include some mechanism for enforcement of the prohibition. In future agreements, ODC may require the adoption of a drug free workplace policy, which includes drug testing, as a condition for the payment by ODC of public funds.

4.5 **Excess ODC Funds.** Any funds that are paid by ODC to the Contractor pursuant to this Agreement, and that are not expended by the end of the term of this Agreement, shall be refunded to ODC within 30 days after the receipt of requested audit, unless Contractor can provide ODC with written notice of funds that have not been expended but have been committed, and such commitment is supported by contracts or other written documentation.

4.6 **Property.** The parties agree to the following conditions regarding property rights:

- .1 **Equipment.** Title to any equipment purchased with ODC funds, in excess of \$1,000.00, shall vest in ODC; and when this Agreement terminates and is not renewed, Contractor shall deliver such equipment to the Treasurer of ODC. In order to inventory the equipment, "Odessa Development Corporation" shall be stamped or written on such equipment. In the case of material that has a copyright and is being purchased with ODC funds, it shall be registered in the name of Odessa Development Corporation.
- .2 **Records.** Any records and documents that are developed for the purpose of accomplishing services on behalf of ODC by Contractor, and necessary to continue to provide such services, or to show the rights or responsibilities of ODC shall be the joint property of ODC and Contractor with equal rights of use and access.
- .3 **Ownership of Documents.** Upon acceptance or approval by ODC, all reports, information and other data, given to, prepared or assembled by Contractor under this Agreement, shall be the joint property of ODC and Contractor with equal rights of use and access. Contractor or ODC may make copies of any and all documents for its files. Any written or artistic works, motion pictures, sound recordings, computer programs, electronic databases, forms, and any other item that is copyrightable, and created in the course and scope of this Agreement, shall be works made for hire; and the copyright ownership shall be owned jointly by ODC and Contractor.

**ARTICLE V**  
**GENERAL TERMS AND CONDITIONS**

5.1 **Entire Agreement.** This Agreement, including all attachments, exhibits, and addenda, embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to matters in this Agreement. **In the event of conflicting provisions between this Agreement and the attachments, this Agreement shall be controlling.**

5.2 **Amendments/Modification to Agreement.** This Agreement, and any exhibits, attachments, or addendum, may be amended or modified only by a written instrument executed by all Parties. If there are any conflicts between the Amendment and a previous version, the terms of the Amendment will prevail.

5.3 **Independent Contractor.** It is expressly understood and agreed that as to the services rendered by Contractor in conducting the Economic Development Program under this Agreement, Contractor shall be considered an independent Contractor insofar as its relationship to ODC. Accordingly, the officers and employees of Contractor used or involved in the Economic Development Program under this Agreement shall not be considered, for any purpose, to be the officers and employees of ODC.

5.4 **Venue and Applicable Law.** The obligations of the parties to this Agreement are performable in Ector County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Ector County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

5.5 **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. There shall not be a higher duty or responsibility for any party because they draft the Agreement.

5.6 **Notices.** All notices, communications and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the address shown below. Mailed notices shall be deemed communicated as of five (5) days after mailing.

If intended for ODC to:

Norma Aguilar-Grimaldo  
ODC Assistant Secretary  
P.O. Box 4398  
Odessa, Texas 79760-4398

If intended for Contractor, to:

5.7 **Indemnity.** *Contractor agrees to and shall indemnify and hold harmless ODC, to the extent permitted at law, the City of Odessa, their officials, officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees for injury to or death of any person, or for damage to any property arising out of or in connection with Contractor's operation or the expenditure of funds authorized by this Agreement, or any services provided by Contractor funded or partially funded by this Agreement. Such indemnification shall apply*

*whether the claims, losses, damages, causes of action, suits or liability arise from the concurring, but not the sole, negligence of ODC, the City of Odessa, their officials, officers, agents or employees.*

*[Signature page to follow]*

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2020.

ATTEST:

“ODC”  
Odessa Development Corporation

\_\_\_\_\_  
Norma Aguilar-Grimaldo, City Secretary as  
Assistant Secretary to ODC Board

By: \_\_\_\_\_  
Tim Edgmon, Board President

“CONTRACTOR”  
<Name of Company>

By: \_\_\_\_\_  
Name, Title

CITY OF ODESSA APPROVAL

By: \_\_\_\_\_  
Michael Marrero, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert Carroll, Sr. Assistant City Attorney, as  
Attorney for ODC

**Treasurer to ODC Board = City of Odessa Director of Finance**

**Exhibit A - Annual Contractor Budget**

**Exhibit B - Contractor Services for ODC Economic Development Program**

(ODC)

STATE OF TEXAS §

COUNTY OF ECTOR §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by Tim Edgmon, President of Odessa Development Corporation.

\_\_\_\_\_  
Notary Public in and for the State of Texas

(CONTRACTOR)

STATE OF TEXAS §

COUNTY OF ECTOR §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by <Name>, <Title> of <Company>.

\_\_\_\_\_  
Notary Public in and for the State of Texas