

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

**DEPARTMENT:** Strategic Partnerships  
**AGENDA DATE:** January 19, 2021 (Regular)  
**CONTACT PERSON:** Elizabeth Triggs, [TriggsEK@elpasotexas.gov](mailto:TriggsEK@elpasotexas.gov)  
**DISTRICT(S) AFFECTED:** All Districts

**SUBJECT:**

A resolution that the Texas Economic Development Incentive Program – Policy and Guidelines be adopted as the Economic Development Fund contemplated in the January 28, 2020 order issued by the Public Utility Commission of Texas Docket No. 49849.

**BACKGROUND / DISCUSSION:**

Early last year, the City, in its capacity as a primary local utility regulator and franchise agreement grantor, approved the acquisition of El Paso Electric by Sun Jupiter Holdings, as well as the continued use of City-owned right-of-ways in the provision of electric utility service by EPE to its customers following acquisition closing. As consideration for these approvals, the City worked to secure commitments from EPE and IIF that preserve and enhance the utility's presence and investment in our community.

Central to those commitments was the establishment of the Texas Economic Development Fund (the "TED Fund"), an \$80 million fund to be funded by Sun Jupiter over a period of 15 years and administered by the City of El Paso for the purpose of promoting economic development within EPE's Texas service territory. This fund is in addition to the current street rental charge due to the City by EPE as consideration for EPE's use of City-owned streets, sidewalks and other right-of-ways in the delivery of electric service utility to EPE's customers, a portion of which is set aside for the purpose of promoting economic development through the City's "Impact Fund."

In accordance with the amended franchise agreement (Ordinance No. 019022) and the January 28, 2020 order issued by the Public Utility Commission of Texas (Docket No. 49849), the attached policy and guidelines document has been developed to govern the City's administration and use of the TED Fund.

**PRIOR COUNCIL ACTION:**

On February 4, 2020, the City Council approved the acquisition of El Paso Electric by Sun Jupiter and additionally approved the third amendment to the City's franchise agreement with El Paso Electric. As consideration for these approvals, Sun Jupiter agreed to fund the Texas Economic Development Fund and the City agreed to administer the fund contingent on the adoption of a policy governing use of the fund.

**AMOUNT AND SOURCE OF FUNDING:**

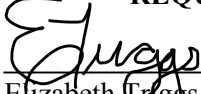
\$80 million funded by Sun Jupiter Holdings LLC funded over a 15 year period beginning December 2020 (approximately \$5.3 million annually) to a restricted fund as described in Ordinance No. 019022.

**BOARD / COMMISSION ACTION:**

N/A

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

**DEPARTMENT HEAD:**

  
Elizabeth Triggs, Strategic Partnerships Officer

**RESOLUTION**

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

That the Texas Economic Development Incentive Program – Policy and Guidelines attached hereto as Exhibit A be adopted as the Economic Development Fund contemplated in the January 28, 2020 order issued by the Public Utility Commission of Texas Docket No. 49849.

**APPROVED THIS** \_\_\_\_\_ **DAY OF** \_\_\_\_\_ **2021.**

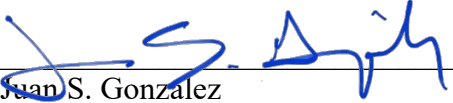
**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leeser  
Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Juan S. Gonzalez  
Sr. Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Elizabeth Triggs  
Strategic Partnerships Officer

## **Exhibit A**

### Texas Economic Development Incentive Program

#### Policy and Guidelines

# **Texas Economic Development Program Policy and Guidelines**

## **SECTION I. BACKGROUND**

On July 29, 2020, the City of El Paso's ("City") sole electric utility service provider, the El Paso Electric Company ("EPE"), was acquired by Sun Jupiter Holdings LLC ("Sun Jupiter"), a wholly owned, indirect subsidiary of the Infrastructure Investments Fund ("IIF"). IIF is a private investment vehicle and long-term investor in infrastructure companies. The change in ownership is intended to, among other things, provide EPE with the ongoing access to capital necessary for its continued investment in safe, clean, affordable, and reliable electric utility service to the more than 436,000 customers it serves in west Texas and southern New Mexico, including the City's residents and businesses.

Beyond its vital role as a utility service provider, EPE is a local economic driver and community partner in the welfare and continued growth of our City. As one of our largest private employers, EPE currently provides quality jobs to more than 1,100 area residents, the majority of whom live, work, and thrive in El Paso. The nearly 120-year-old utility additionally has recently generated an astonishing \$44 million in annual revenue for El Paso County's local taxing jurisdictions, representing a significant resource in the provision of public services to our community. With respect to corporate giving, EPE was responsible for \$1.2 million in annual local charitable contributions last year while its workforce volunteered thousands of hours in support of local causes.

Clearly, EPE's continued presence and investment in our community is paramount to our City's sustained growth and success. In recognition of the utility company's importance to our community's well-being, the City, in its capacity as a primary local utility regulator and voice for our residents and businesses, worked during the months leading up to the successful closing of the acquisition to secure commitments from EPE and IIF that preserve and enhance the utility's presence and investment in our community.

During those discussions, the City focused its efforts on securing commitments that: (1) provide short and long-term benefits to our community; (2) safeguard the quality jobs provided by the utility; (3) promote continued innovation toward renewable and solar energy; and (4) ensure the City continues to receive fair compensation for the use of its streets and sidewalks in EPE's delivery of utility service to its customers. One of those commitments is the establishment of the Texas Economic Development Fund (the "TED Fund") (see **Exhibit A**).

The TED Fund is an \$80 million fund to be funded by Sun Jupiter over a period of 15 years and administered by the City solely for the purpose of promoting economic development within EPE's

Texas Service Area (see **Exhibit B**). The first installment is due by December 15, 2020, with each successive annual installment due by December 15 or the following business day of the applicable year. Contributions to the fund are not recoverable in EPE's rates and are in addition to the annual street rental charge charged to EPE by the City for EPE's use of City-owned right-of-ways in electric utility service delivery as originally established by Ordinance No. 016090 and periodically amended.

In accordance with the obligations contained in **Exhibit A**, on January 19, 2021, the City established, and IIF approved, the Texas Economic Development Program (the "TED Program") Policy and Guidelines to govern the City's administration and use of the TED Fund.

## **SECTION II. PURPOSE AND PROGRAM CATEGORIES**

- A. **Program Purpose.** The purpose of the TED Program is to make funds available for financial incentives in the form of economic development grants and/or loans to promote economic development within EPE's Texas Service Area, as set forth in more detail in Section II.B hereof.
- B. **Program Categories.** Projects may be eligible for assistance through one or more of the following TED Program categories:
1. **Infrastructure Development Assistance.** Financial assistance for public infrastructure improvements associated with specific infrastructure projects benefitting one or more companies committed to creating net-new jobs and/or making new capital investments within EPE's Texas Service Area. Such projects may include, but are not limited to, rail, public roadway, port, airport, water, sewer, gas, and telecommunication improvements.
  2. **Quality Jobs and Investment Assistance.** Financial assistance to offset the costs companies incur when expanding or locating a business operation in EPE's Texas Service Area; such costs may include job training assistance for new employees, building retrofitting, real property acquisition, relocation of equipment, and other expenditures not otherwise eligible under the Infrastructure Development Assistance category. Quality Jobs and Investment Assistance shall only be used in exceptional cases where the impact of the company on EPE's Texas Service Area is significant.

## **SECTION III. PROGRAM ADMINISTRATION AND FUNDING**

- A. **Fund Established.** The TED Fund is established as a separate account in the City's general fund to be administered in accordance with this policy, City Ordinance 019022, and the Final Order in Public Utility Commission of Texas Docket No. 49849.
- B. **Fund Composition.** In accordance with Ordinance No. 019022, the TED Fund shall be composed of an aggregate amount of \$80 million funded by IIF in 15 equal installments of \$5,333,333.33 due to the TED Fund the 15<sup>th</sup> day of December of each applicable year, or the

following business day as may be applicable, with the first of the 15 installments due December 15, 2020.

- C. **Annual Fund Balance.** The City shall restrict the use of and carry forward any amounts remaining in the TED Fund at the end of each fiscal year for the TED Program.
- D. **Fund Balance Investment.** Dollars in the TED Fund may be invested by the City for the sole benefit of the TED Fund, and interest accruing on investments and deposits on such fund shall be returned to and remain part of the TED Fund.
- E. **Administering City Department.** The City’s Economic and International Development Department (“EDD”) will administer the TED Fund in accordance with this policy.
- F. **Coordination throughout Texas Service Area.** The EDD shall make reasonable efforts to coordinate with other state and local agencies within EPE’s Texas Service Area regarding the uses of the TED Fund.
- G. **Reassignment of TED Fund.**
  - 1. In the event the City eliminates the EDD or fails to abide by this policy, the City and IIF shall find a replacement entity to administer the balance, if any, of the TED Fund, with the exception that interest accrued on investments and deposits of the TED Fund shall not be subject to reassignment. Elimination of the EDD does not include a change in department name or reassignment of the duties of the EDD to another City department so long as the duties and responsibilities of the department remain substantially similar to those of the EDD.
  - 2. The EDD and City Council shall use their best efforts to (1) award projects on an annual basis during any rolling five calendar year period and (2) allocate all funds within a reasonable time after IIF’s last contribution to the TED Fund.
- H. **Project Review and Award.** Project proposals for financial assistance under the TED Program and amendments to existing TED Program agreements shall be considered on a case-by-case basis and shall only be awarded by the El Paso City Council (“City Council”) at an open meeting of the City Council.
  - 1. **Application.** Applications shall be made through the EDD via the administratively approved application form. To be considered for incentives, Applicants shall be required to submit documentation verifying the project’s compliance with applicable eligibility criteria identified in Sections IV, V, and VI of this policy.
  - 2. **Review and Award.** Complete applications shall be reviewed by the EDD within six months of their receipt and shall be assessed based on the eligibility criteria identified in Section IV, V, and VI of this document, to include an economic impact analysis for EPE’s Texas Service Area. The EDD shall present to City Council for funding under the TED Program only those projects that meet the requirements of the TED Program and that,

based on an economic impact analysis, provide a sufficient net positive impact to EPE's Texas Service Area.

3. **No Obligation.** The City Council is under no obligation to approve any requested incentive under this program and no right to these incentives is either intended or implied.

I. **Program Commitments.** It is the City's intent that in each fiscal year, the TED Program be managed so that actual expenditures and obligations to be recognized at the end of the fiscal year do not exceed any available reserves and appropriations of the program. In the event such expenditures and obligations exceed available program reserves and appropriations, the City shall be solely responsible for the difference.

J. **Reporting.**

1. **Annual Report.** The EDD shall keep detailed records of the TED Program and shall make annual reports to Sun Jupiter, with copy to EPE's General Counsel, by February 1<sup>st</sup> of every year, regarding the activities and uses of the TED Fund during the prior calendar year. Such report shall include at least the following information: the amount of each commitment approved and accepted since the previous report, the amounts of and dates of payment of each grant and/or loan since the previous report, the name of each entity receiving the benefit of such commitment, and a description of the project; whether each funded project is in compliance with the terms of its funding; a short summary of the projects that were declined for funding; the total outstanding commitments; the total unobligated appropriation; and other such information required to comply with the Final Order in Public Utility Commission of Texas Docket No. 49849.

2. **Inspection.** For as long as the TED Fund is in existence and for a period of five years following its termination, Sun Jupiter, its designee, or both shall be permitted, no more than once per year during the City's ordinary business hours and upon not less than 10 business days' written notice to the EDD, to audit, inspect, and reproduce at the City's premises any and all records related to the TED Fund ("Inspection Right"). Sun Jupiter, its designee, or both shall be allowed to utilize the Inspection Right more than once per year to the extent Sun Jupiter or EPE (1) is legally compelled to obtain records related to the TED Fund or (2) requires the information as part of an audit, review, or inspection initiated or required by a third party.

3. **Audits of Projects.** No more than once per year, Sun Jupiter or its designee may request the EDD undertake an audit of any or all projects that have received a loan and/or grant from the TED Fund. The audit shall be paid for out of the TED Fund, and the EDD shall complete the audit within a reasonable time after the request. Within two business days of the audit's completion, the EDD shall provide the results of the audit to Sun Jupiter, with copy to EPE's general counsel.

K. **Anti-Corruption.** The City Council and the EDD shall administer the TED Program and grants of the TED Fund in compliance with all applicable federal, state, and local statutes,

laws, ordinances, codes, rules, or regulations (collectively “Laws”), including, without limitation, those relating to anti-bribery and corruption. Provided the selected entity or its parent company is not publicly traded, the EDD will retain a third party to make commercially reasonable efforts to perform background checks on a selected entity under the TED Program and the entity’s principals, executives, and managers prior to presenting that entity’s project to City Council for funding under the TED Program and shall disqualify any project that is or has principals, executives, or managers that are, or have been, in the past 10 years convicted, charged, or subject to investigation by any governmental authority in connection with corruption, money laundering, or a violation of US or other applicable sanctions based on such background checks. The background checks required by this section will be done in keeping with the standards of Texas statutes regulating the use of background checks for business purposes, and their cost shall be paid for out of the TED Fund.

#### **SECTION IV. ELIGIBILITY CRITERIA**

- A. **Needs-Based Eligibility.** The TED Program is intended to provide support to projects that have financial gaps or for projects that otherwise represent a competitive situation for EPE’s Texas Service Area against non-Texas Service Area locations. Applicants pursuing financial assistance under the TED Program must provide written assurance that “but for” the assistance, the proposed project would not occur or would otherwise be substantially altered so that the economic returns or other associated public benefits secured by TED Program participation would be reduced.
- B. **Geographic Eligibility.** A project must be physically located within EPE’s Texas Service Area to be eligible for participation in the TED Program. Projects located within a Target Area (see **Exhibit C**) shall be given special consideration (see “Investment Eligibility”).
- C. **Investment Eligibility.** A project must not be related to the generation or provision of electric service and meet one of the following investment categories to be considered for financial assistance under the TED Program:
  - 1. **Target Area Projects.** Projects located within a Target Area must create a minimum of 50 net-new jobs and provide at least \$5 million of investment.
  - 2. **Non-Target Area Projects.** Projects located outside of a Target Area must create a minimum of 100 net-new jobs and provide at least \$10 million of investment.
  - 3. **Non-Conforming Projects.** Projects not meeting the Target Area or Non-Target Area project investment eligibility criteria identified in this subsection that nevertheless significantly advance the public purpose of economic development within EPE’s Texas Service Area shall be considered on a case-by-case basis. Examples of high impact projects that may be considered under this category include, but are not limited to, major projects by Fortune 500, Manufacturers 400, or Global 500 listed firms or national or regional headquarters projects.



- D. **Target Industry Projects.** Target Industry projects are provided special consideration for financial assistance under the TED Program and are generally defined as projects that directly or indirectly, through local supply chain development, support advancement of the following industry sectors: life/biomedical sciences; data processing, hosting, and related services; tourism; business support services; defense and aerospace; advanced manufacturing; and advanced logistics. Projects that fall under one or more of these industry categories may, on a case-by-case basis, be eligible for assistance as a non-conforming project.
- E. **Other Resources Required.** Projects that do not leverage proceeds from the TED Fund with other non-City resources will not be given consideration.
- F. **Incidental Benefit.** Projects must not provide more than an incidental benefit to (1) EPE, Sun Jupiter, or any of their affiliates; (2) City officials and employees; and (3) officials and employees of any governmental or not-for-profit entity that receives funding under the TED Program.
- G. **Anti-Corruption.** A recipient of funding under the TED Program, including such entities principals, may not have been convicted of a violation of any federal, state, or local Laws relating to anti-bribery and corruption within the ten years preceding its application. As a condition of receiving funding under the TED Program, a recipient must agree (a) to comply with all applicable federal, state, and local Laws, including, without limitation, those relating to anti-bribery and corruption; (b) to ongoing audit rights in favor of the EDD during the term of the incentive agreement; and (c) provide information necessary for the EDD to complete background checks as contemplated in Section III. K. above.
- H. **Other Requirements.** In addition, to be eligible for participation in the TED Program, the applicant must demonstrate:
1. The project's public purpose and economic benefit to EPE's Texas Service Area, as demonstrated through an economic impact analysis;
  2. Financial stability and capacity to complete the project; and
  3. Full compliance with all local, state, and federal Laws.

## **SECTION V. INFRASTRUCTURE DEVELOPMENT ASSISTANCE**

- A. **Purpose.** The purpose of the Infrastructure Development Assistance program category is to provide financial assistance for public infrastructure improvements associated with specific infrastructure projects benefitting one or more companies committed to creating net-new jobs and/or making new capital investments within EPE's Texas Service Area, or where such investment will have a direct impact on employment and investment opportunities in the future. Such projects may include, but are not limited to, rail, public roadway, port, airport, water, sewer, gas, and telecommunication improvements but shall not include projects related to the generation or provision of electric service.

- B. **Form of Assistance.** Infrastructure Development Assistance may be provided in the form of a grant or loan to the local governing body or their economic development organizations or other political subdivisions of the state in which the project is located.
- C. **Additional Eligibility Criteria.** To be eligible for financial assistance under the Infrastructure Development Assistance program category, the project must meet the following criteria:
1. **Type and Location of Infrastructure Project.** Eligible public infrastructure improvements include, but are not limited to, rail, public roadway, port, airport, water, sewer, gas, telecommunication, and other significant technological improvements located within EPE's Texas Service Area. Infrastructure Development Assistance may not be applied to private land or to land that is expected to become privately owned. Land owned by a political subdivision of the state and located within EPE's Texas Service Area shall not be considered private land and any such land that is subject to a purchase option by a private entity shall not be considered to be land that is expected to become privately owned so long as the purchase option covering the land may not be exercised for a period of at least five years following the date of approval of an Infrastructure Development Assistance grant or loan made pursuant to this section.
  2. **Job and/or Investment Impact.** Projects being considered under this program category must demonstrate that the infrastructure improvements are necessary for the location or expansion of one or more companies within EPE's Texas Service Area that meet the eligibility criteria listed in Section IV of this policy.
  3. **Local Match Required.** Local matching funds of at least 100 percent for projects located outside of the City limits shall be required from the political subdivision within whose jurisdictional limits the project will be located in order to be eligible for an Infrastructure Development Assistance grant or loan under this program.

## SECTION VI. QUALITY JOB AND INVESTMENT ASSISTANCE

- A. **Purpose.** The purpose of the Quality Job and Investment Assistance program category is to provide financial assistance to offset the costs companies incur when expanding or locating a business operation in EPE's Texas Service Area; such costs may include job training assistance for new employees, building retrofitting, real property acquisition, relocation of equipment, and other expenditures not otherwise eligible under the Infrastructure Development Assistance category but shall not include costs related to the generation or provision of electric service. Quality Jobs and Investment Assistance shall only be used in exceptional cases where the impact of the company on EPE's Texas Service Area is significant.
- B. **Form of Assistance.** Quality Job and Investment Assistance may be provided in the form of a grant or loan directly to the business locating or expanding within EPE's Texas Service Area. If, however, the company is locating within EPE's Texas Service Area but outside of the City limits, the City may opt to contract with the local governing body or their economic development organizations or other political subdivisions of the state within whose

jurisdictional boundaries the company will locate or expand in lieu of contracting directly with the company.

- C. **Additional Eligibility Criteria.** To be eligible for financial assistance under the Quality Job and Investment Assistance program category, the project must meet the following criteria:
1. **Job and/or Investment Impact.** Projects being considered under this program category must meet the eligibility criteria listed under Section IV of this policy.
  2. **Local Match Required.** In order to be eligible for a Quality Job and Investment Assistance grant or loan under this program, local matching funds of at least 100 percent for projects located outside of the City limits shall be required from the political subdivision within whose jurisdictional limits the project will be located. The local match required may take the form of property tax abatements, property tax rebates, grants, or other financial incentives; in addition to in-kind contributions.

## SECTION VII. AMOUNT AND TYPE OF FINANCIAL ASSISTANCE

- A. **Determination of Financial Assistance Amount.** The amount of TED Program financial assistance for eligible projects shall be determined based on the following considerations:
1. **Needs Based.** The amount of TED Program assistance for projects eligible under either assistance category shall be based on a determination of need for financial incentives from the City to ensure the attraction and/or expansion of the eligible project.
  2. **Economic and Fiscal Benefit.** EDD shall conduct an economic and fiscal benefit analysis to demonstrate the benefit of the project, including its potential to generate revenues which outweigh costs associated with the financial assistance provided. Any such analysis shall include other community benefits created by the project that may be difficult to quantify.
  3. **Project-Specific Merits.** In addition to need and economic and fiscal benefit, the amount of TED Program assistance offered to eligible projects shall be evaluated and determined based on the individual merits of each request, including but not limited to, amount of capital investment, location of the project, net-new jobs created, job quality (including salary and benefits package), and type of industry.
  4. **Additional Consideration.** In determining the amount of any grant and/or loan to offer an eligible project, the City will consider and give additional weight to projects that (1) provide a significant number of jobs paying annual wages exceeding the median wage in the El Paso Metropolitan Statistical Area, (2) provide jobs in one of the Target Industries identified in Section IV, and/or (3) strengthen the supply chain associated with one or more Target Industries, as well as the availability of funds in the TED Fund.
  5. **One-Time Commitment.** For the avoidance of doubt, no project will be granted ongoing assistance in the form of evergreen grants; each grant and/or loan shall be a one-time commitment by the TED Fund that may be paid out over a series of years, although there

shall be no prohibition on assistance to previous award recipients for new projects and/or amendments to existing agreements where consideration from the award recipient has been provided for the amendment or new project.

**B. Type of Financial Assistance.** Financial Assistance provided under this program shall be in the form of an economic development grant and/or loan. In either case, assistance provided is performance-based.

1. **Grant Funding.** Grant payments will be disbursed based on terms negotiated with the recipient. Generally, payments will not be made until the project receives a Certificate of Occupancy, lease commencement, and/or until construction and startup costs and investment milestones are met; and/or job creation milestones are met.
2. **Loan Funding.** The terms of any loan will generally include an interest rate based on the City's average rate of return at the time of the loan (as determined by the City) or a rate separately negotiated. Normally, loan payments will not be disbursed until the issuance of a Certificate of Occupancy, unless otherwise negotiated. A loan repayment schedule with interest will be negotiated separately for each eligible project. All loan repayments and interest will be deposited back into the TED Fund.

**Exhibit A**

**Third Amendment to El Paso Electric Company Franchise Agreement  
(Ordinance No. 019022)**

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CITY CLERK DEPT  
2020 JAN 28 AM 11:29

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING ORDINANCE NO. 16090, GRANTING A FRANCHISE TO EL PASO ELECTRIC COMPANY, (AS AMENDED BY ORDINANCES NO. 17460 AND 18772, AMENDING THE STREET RENTAL CHARGE) TO REDUCE THE RESTRICTION ON THE STREET RENTAL CHARGE; PROVIDING FOR ADDITIONAL COMPENSATION AND ASSURANCES TO THE CITY; AND PROVIDING CONSENT AS REQUIRED IN SECTION 15.08.013 OF THE CITY CODE AND SECTION 14(b) OF ORDINANCE NO. 16090 UPON THE TERMS AND CONDITIONS DESCRIBED IN THIS ORDINANCE; THE PENALTY AS PROVIDED IN CITY CODE SECTION 15.08.040**

**WHEREAS**, the City Council of the City of El Paso, Texas, ("**City**") granted to El Paso Electric Company ("**Company**" or "**EPE**") a franchise to operate the electric utility for transmission and distribution of electrical energy within the boundaries of the City on July 12, 2005, by Ordinance No. 16090;

**WHEREAS**, the City and Company amended Ordinance No. 16090 to increase the street rental charge on November 16, 2010, and again on March 20, 2018 (collectively referred with Ordinance No. 16090, as the "**Franchise Ordinance**");

**WHEREAS**, EPE, Sun Jupiter Holdings, LLC, a Delaware limited liability company ("**Sun Jupiter**"), and IIF US Holding 2 LP ("**IIF US 2**") filed the Joint Report and Application of EPE, Sun Jupiter, and IIF US 2 for Regulatory Approvals under Texas Utilities Code §§ 14.101, 39.262, and 39.915 with the Public Utility Commission of Texas ("**PUCT**") on August 13, 2019, ("**Joint Application**") seeking the PUCT's approval of the Agreement and Plan of Merger ("**Merger Agreement**") by and among EPE, Sun Jupiter, and Sun Merger Sub Inc. dated as of June 1, 2019, and assigned PUCT Docket No. 49849 ("**Proposed Transaction**");

**WHEREAS**, on September 20, 2019, EPE filed a franchise assignment application with the City pursuant to El Paso City Code § 15.08.013, and paragraph 14(b) of Ordinance 16090 ("**Franchise Application**") in connection with the Proposed Transaction;

**WHEREAS**, after the close of the Proposed Transaction and approval of the Franchise Application, EPE will maintain an existence that is separate and distinct from Sun Jupiter, IIF US 2 and any of its affiliates or subsidiaries, and will continue all obligations of "**Company**" as defined in Ordinance 16090 granting the franchise as amended;

**WHEREAS**, paragraph 14(b) of Ordinance 16090 requires consent of any merger or acquisition of the Company, sale of substantially all of the assets of the Company or change in control of the Company, and a formal assignment is required subsequent to the merger or acquisition;

**WHEREAS**, paragraph 14(b) of Ordinance 16090 requires the governing body of the City's consent to the assignment to be evidenced by an ordinance that fully recites the terms and

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conditions upon which consent is given;

**WHEREAS**, the City Council wishes to consent to the Proposed Transaction and Franchise Application;

**WHEREAS**, in Ordinance No. 017460, the City and Company agreed to increase the Street Rental Charge, which is a percentage of gross revenues the Company receives for the generation, transmission and distribution of electrical energy and other services within the City and for broadband over power line communications services, by 0.75% ("Additional Fee") to be allocated to promotion of economic development within the City;

**WHEREAS**, in Ordinance No. 018772, the City and Company agreed to increase the Street Rental Charge by an additional 1%, and to increase the allocation for promotion of economic development to 1.75% of the Street Rental Charge;

**WHEREAS**, the City wishes to reduce the Street Rental Charge economic development allocation to 1% effective July 29, 2030;

**WHEREAS**, Sun Jupiter is not the franchisee, and is not obligated by any operational requirements contained in City Code § 15.08 nor Ordinance 16090 as amended;

**WHEREAS**, if the Proposed Transaction closes and Sun Jupiter becomes the 100% equity holder of EPE, it will provide additional compensation and assurances to City as provided herein; and

**WHEREAS**, the City's consent to the Proposed Transaction and Franchise Application is conditioned upon the items identified in Section 1.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, THAT:**

**SECTION 1.**

1. After the public hearing, the City Council finds that EPE meets the following requirements of City Code Sections 15.08.012(D) and 15.08.013(C):
  - A. EPE is qualified to render its proposed services;
  - B. EPE is qualified to maintain the public rights-of-way adequately and safely;
  - C. EPE is financially responsible and able to meet the terms of the franchise;
  - D. The proposed use of the rights-of-way will not have a negative impact on the public's use of the rights-of-way; and

- E. There are no other relevant facts that would cause City Council to refuse consent.
2. Therefore, the City hereby consents to the Proposed Transaction and Franchise Application as defined herein in accordance with City Code Section 15.08.013 and Ordinance No. 16090, as amended, paragraph 14(b), upon the following terms and conditions:
- A. Company must accept this Ordinance amending Ordinance 16090 as previously amended (“**Franchise Amendment**”) within thirty days of the adoption of this Ordinance.
- B. Final Stipulation in PUCT Docket No. 49849. The Parties will use best efforts to obtain prompt adoption of a final order by the PUCT approving the Joint Application consistent with the terms of this Franchise Amendment.
- C. Sun Jupiter will provide the following additional assurances and compensation to the City, which will be obligated through a separate agreement and are noted here as conditions of the City’s consent:
1. For so long as IIF US 2 owns Sun Jupiter:
    - a. Sun Jupiter will not relocate jobs outside of the EPE service territory and will not reduce EPE’s workforce as a result of the Proposed Transaction and EPE will maintain sufficient employment levels as required to furnish EPE’s customers with safe, adequate, efficient, and reasonable electric service; and
    - b. Sun Jupiter will never move EPE’s headquarters outside the City of El Paso.
  2. Economic Development Fund:
    - a. Eighty million dollars (\$80,000,000) of the Economic Development Fund will be jurisdictionally allocated to Company’s Texas service territory and held in a restricted account for the purpose of promoting economic development in Company’s Texas service territory (“**Texas Economic Development Fund**”).
    - b. Sun Jupiter will fund the Texas Economic Development Fund through fifteen (15) equal annual installments of five million three hundred thirty-three thousand three hundred thirty-three dollars and 33/100 cents (\$5,333,333.33). Contributions to the Texas Economic Development Fund will be due by the 15<sup>th</sup> day of December of each year, with the first of the fifteen (15) installments to be due by the first December 15<sup>th</sup> to occur after the close of the Proposed Transaction.



- c. The City's Economic Development Department ("**EDD**") will administer the Texas Economic Development Fund in accordance with an economic development policy to be developed by the City and approved by Sun Jupiter within six (6) months after the close of the Proposed Transaction ("**Incentive Policy**").
  - d. The City will make reports, at least annually, to the Company's Board of Directors regarding the activities and uses of the Texas Economic Development Fund.
  - e. The City's EDD will make reasonable efforts to coordinate with other state and local agencies within EPE's Texas service territory regarding the uses of the Texas Economic Development Fund.
  - f. If the City eliminates the EDD or the Incentive Policy, or fails to abide by the Incentive Policy, the City and Sun Jupiter will find a replacement entity to administer the balance, if any, of the Texas Economic Development Fund. Elimination of the EDD does not include a change in department name or a reassigning of the duties of the EDD to another City Department so long as the duties and responsibilities of the department remain substantially similar to those of the EDD.
3. General Fund Payments. In addition to the franchise fees currently due to the City under the Franchise Agreement, Sun Jupiter will pay the City, for use in its general fund, seven hundred fifty thousand dollars (\$750,000) per year for a period of ten (10) years. The first payment shall be made no later than thirty (30) days after the close of the Proposed Transaction by electronic funds transfer as designated by the City. Each remaining annual payment will be made on or before the 30th day of June of each corresponding year.
  4. Low Income Assistance Program. Within ninety (90) days of closing of the Proposed Transaction, EPE will coordinate with the City on efforts to enhance EPE's current low income assistance programs and EPE will make recommendations and proposals for consideration to the City. Sun Jupiter will pledge up to one million dollars (\$1,000,000) to be paid in equal installments of two hundred thousand dollars (\$200,000) per year over a period of five (5) years to support enhancements to EPE's low income assistance programs.

## **SECTION 2.**

That Section 3, Police Power, of the Franchise Ordinance is hereby amended to add the following:

Land Use. The Company will coordinate with the City's Engineer within six (6) months after the close of the transaction contemplated in the Final Agreement and Plan of Merger between the Company; Sun Jupiter Holdings LLC ("Sun Jupiter"); and Sun Merger Sub Inc dated June 1, 2019 ("Proposed Transaction"), to identify:

1. Land under the control of the Company that the City desires to utilize for public recreation, exercise, relaxation, travel, or pleasure in accordance with Section 75.0022 of the Texas Civil Practice and Remedies Code and;
2. Poles, lines, conduits, or other construction that the Company maintains that may need to be installed or relocated in accordance with this Section 3.

Maintenance. City and the Company shall coordinate quarterly regarding maintenance issues that affect community safety or aesthetics on land and street lighting under the control of the Company. The Company shall give higher priority to work orders for continuous street lighting on controlled access/State highways and major arterials. During the course of the quarterly meetings, the Company and the City will establish processes and procedures for work orders and develop benchmarks based on industry standards and align with community impacts.

### **SECTION 3.**

New Section 9.5 is created to add the following:

#### **Section 9.5. Renewable Generation Study.**

(a) Within one year after the close of the Proposed Transaction, the Company will complete a study concerning renewable generation, as defined in Texas Utilities Code § 39.904(d) ("Renewable Generation Study"). The Company will share the results of the Renewable Generation Study with the City within thirty (30) days of the Renewable Generation Study's completion. Should the Company not be able to complete the study within one year, the Company may request additional time to complete the Renewable Generation Study from the City, and the City shall not unreasonably withhold its consent to the extension.

(b) The Renewable Generation Study will cover, but is not limited to, the following topics:

1. The technical feasibility of integrating utility-scale renewable generation into the Company's utility system and the changes and impacts to the Company's transmission and distribution system;
2. Possible costs and operational impacts related to the integration of utility-scale renewable generation into the Company's Texas service territory;

3. Legislative or regulatory changes, if any, that may be required to increase utility-scale renewable generation in the Company's Texas service territory and the legislative strategies necessary to implement such legislative or regulatory changes;

4. Potential voluntary renewable generation program offerings to allow customers to increase their use of renewable resources within the El Paso, Texas, city limits and the Company's Texas service territory;

5. Reasonable commitments that the Company can make to increase the integration of renewable generation in the Company's Texas generation portfolio;

6. Grant opportunities for the Company, the City, or both to increase the integration of renewable generation in the Company's Texas generation portfolio; and

7. Potential renewable generation programs to assist with low-income assistance programs such as the Low Income Home Energy Assistance Program or additional incentives for distributed generation.

(c) The Company shall designate material contained in the Renewable Generation Study as confidential to the extent that it relates to critical infrastructure, as that phrase is understood in Texas Government Code § 418.181, or to the extent that it contains sensitive information that would not be subject to public release under the Texas Public Information Act, as codified in chapter 552 of the Texas Government Code. The City will use its best efforts to not publicly distribute such designated material to parties outside of the City. The City will also provide the Company with notice of an open records request implicating such material so that the Company may assert its rights under the Texas Public Information Act.

(d) The Company shall report to the City Council no less than two (2) times per year on the Company's progress towards renewable generation commitments, opportunities, and goals that are identified by the Renewable Generation Study. The City and the Company will coordinate on efforts to implement legislative, regulatory, or other policy changes identified as part of the Renewable Generation Study.

#### **SECTION 4.**

Subsection (b) of Section 13, Compensation, of the Franchise Ordinance, is hereby amended to read as follows:

(b) The City will increase the Street Rental Charge to be paid by the Company to the City on a quarterly basis during the remaining life of this Franchise

by an additional three quarters of one percent (0.75%) effective 2010 (“Additional Fee”) and a supplemental one percent (1.0%) (“Auxiliary Fee”) for a total amount of (i) five percent (5.0%) of the gross revenues the Company receives for the generation, transmission, and distribution of electrical energy and other services within the City and (ii) five and three quarters percent (5.75%) of BPL-related gross revenues within the City of El Paso, except however for any revenues from municipal accounts to the extent that any such revenues are excepted from the Company’s Rate Schedule 94, Supplemental Franchise Fee Rider. The “Economic Development Allocation” is a portion of the Street Rental Charge equal to one and three quarters of one percent (1.75%) of the gross revenues the Company receives for the generation, transmission, and distribution of electrical energy and other services, including BPL services, within the City shall be allocated by the City for promotion of economic development, including economic development incentives for new commercial customers with high electric energy needs, the attraction of companies that will make significant investments of capital and human resources in the community, solar or other renewable energy rebates or incentives, or to increase the City’s capacity in alternative energy research, development, manufacturing and generation, and for such other economic development public purposes including infrastructure as reasonably determined by the City. After July 29, 2030, the Economic Development Allocation will be reduced to one percent (1.00%). The Economic Development Allocation will be placed in a restricted fund to be used solely for the economic development purposes described herein and cannot be commingled with existing Street Rental Charges to support or supplement general fund operations. The City will provide an annual update on the status, uses, and economic impact of Economic Development Allocation to the City Council and the public.

The Company shall pay the Street Rental Charge to the City by electronic funds transfer or by other means of immediately available funds within forty-five (45) days of the end of each calendar quarter (the “Payment Date”). If the Street Rental Charge or any portion thereof is not paid on or before the Payment Date, the unpaid balance shall bear interest at a daily rate equivalent to the prime rate of interest as published by the Wall Street Journal for that date, plus one percent (1%) per annum from the Payment Date until the date such payment is made. If any payment shall be more than thirty (30) days late, the interest shall be paid at such prime rate plus three percent (3%) per annum.

## SECTION 5.

That Section 13, Compensation, of the Franchise Ordinance is hereby amended to add the following:

(c) City Expenses Related to Docket No. 49849. The Company will pay the City two hundred thousand dollars (\$200,000) for the City’s reasonable consultants and attorneys fees incurred due to the City’s intervention in Docket No. 49849 (“City Public

Interest Fees”) no later than thirty (30) days after the later of (1) the close of the Proposed Transaction; (2) Company’s receipt of invoices supporting the City Public Interest Fees; or (3) the termination of the Proposed Transaction for any reason without a closing, provided, however, that the City Public Interest Fees shall not be paid if the City opposes the Proposed Transaction, either directly or indirectly, in any proceeding before a governmental or regulatory body, with the exception of PUCT Docket No. 49849 in which the City originally opposed the Proposed Transaction but subsequently signed the Stipulation.

## SECTION 6.

New Section 18 is created to add the following:

**Section 18. City’s Future Purchase Option.** This Section 18 shall apply for so long as IIF US Holding 2 LP owns Sun Jupiter:

(a) In the event Sun Jupiter decides to consider a sale of one hundred percent (100%) of its equity interests in, or all of the assets and liabilities of the Company (“Sale Transaction”), Sun Jupiter will first provide notice to the City of the potential Sale Transaction (a “Potential Sale Notice”). The City will use best efforts to protect information related to a Sale Transaction from public disclosure consistent with the exceptions in chapter 552 of the Texas Government Code, including, Texas Government Code § 552.110.

(b) Within one hundred twenty (120) days of receipt by the City of a Potential Sale Notice (“Exclusive Offer Period”), the City will have the exclusive right to either (i) make a bona fide binding offer to purchase the Company or all of the assets and liabilities of the Company (“Offer”) or (ii) provide a waiver of the right to make an Offer during the Exclusive Offer Period (“Waiver”). The Offer, if made, shall remain open for at least thirty (30) days during which time Sun Jupiter will consider the Offer in good faith.

(c) If the City makes an Offer during the Exclusive Offer Period and Sun Jupiter does not accept the Offer, Sun Jupiter shall provide a written acknowledgement that (i) Sun Jupiter has provided the City with the Potential Sale Notice and (ii) the City made an Offer and Sun Jupiter did not accept such Offer (“Acknowledgment”). After Sun Jupiter provides the Acknowledgment in accordance with this paragraph, Sun Jupiter may enter into a definitive agreement with a third party for a Sale Transaction if Sun Jupiter reasonably determines such third party’s offer contains terms and conditions that, on the whole, are more favorable to Sun Jupiter than those contained in the Offer. Sun Jupiter shall have twenty-four (24) months to complete the Sale Transaction with such a third party (“Acknowledgment Completion Period”) before a new Potential Sale Notice must be issued.

(d) If the City provides a Waiver in response to a Potential Sale Notice, then Sun Jupiter will invite the City to participate in any process it runs with third party potential acquirers to effectuate a Sale Transaction (“Sale Process”) and the City may make an Offer pursuant to the terms and conditions of the Sale Process, which terms and conditions shall

be applicable to all participants in the Sale Process. Sun Jupiter shall have twenty-four (24) months to complete a Sale Transaction in the Sale Process ("Sale Process Completion Period") before a new Potential Sale Notice must be issued.

(e) For the avoidance of doubt, except during an Acknowledgment Completion Period, a Sale Process (except as set forth in (d) above) or Sale Process Completion Period, the City may make an Offer at any time.

(f) The City will abide by the Texas Government Code exceptions from public disclosure commitment made in paragraph (a) to this Section 18 if the City is making an Offer outside of the Exclusive Offer Period.

(g) The City does not waive any rights with respect to franchise assignment as set forth in El Paso City Code § 15.08.013 or Section 14(b) of this Agreement provided, however, that the City shall not unreasonably withhold any required consent to the assignment of the franchise to a third party following Sun Jupiter's compliance with this Section 18.

**SECTION 7.** This ordinance will be contingent upon, and take effect upon, the final approval of the Proposed Transaction by all relevant regulatory agencies, and closing of the Proposed Transaction, however, the conditions of consent listed in Section 1 Paragraph 2(A) and Sections 4 and 5 shall take effect upon approval by the City Council and acceptance by the Company.

**SECTION 8.** Except as expressly amended herein, the Franchise Ordinance shall continue in full force and effect.

PASSED AND APPROVED this 4th day of February 2020, ~~2020~~ <sup>2020</sup> AM 11:29

CITY CLERK DEPT  
2020 JAN 20 AM 11:29  
2020



CITY OF EL PASO

[Signature]  
Dee Margo, Mayor

ATTEST:

[Signature]  
Laura D. Prine  
City Clerk

APPROVED AS TO FORM:

[Signature]  
Karla M. Nieman  
City Attorney

APPROVED AS TO CONTENT:

[Signature]  
Tomás González  
City Manager

**ACCEPTANCE**

The Amendment of the Franchise granted by the City of El Paso on February 4, 2020, is hereby accepted this 12th day of February, 2020.

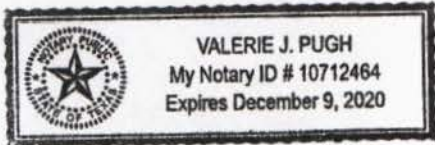
**EL PASO ELECTRIC COMPANY**

By: Adrian J. Rodriguez  
Adrian J. Rodriguez  
Interim Chief Executive Officer

**APPROVED AS TO FORM**  
OFFICE OF THE GENERAL COUNSEL AKTB

**STATE OF TEXAS**            §  
   §  
**COUNTY OF EL PASO**   §

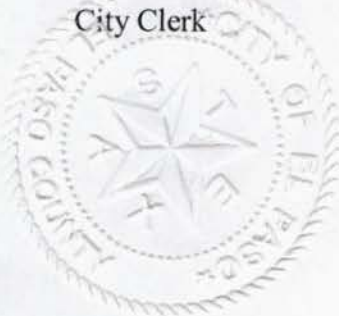
This instrument was acknowledged before me this 12 day of February, 2020, by Adrian Jose Rodriguez, Chief Executive Officer of El Paso Electric Company, a Texas corporation, on behalf of said corporation.



Valerie J Pugh  
Notary Public in and for the  
State of Texas

Received for filing this 12<sup>th</sup> day of February, 2020.

Laura D. Prine  
Laura D. Prine  
City Clerk





**Exhibit B**

**El Paso Electric Texas Service Area**

# GENERATION STATION

# CAPACITY (MW)

|                          |     |
|--------------------------|-----|
| Newman Power Station     | 736 |
| Rio Grande Power Station | 278 |
| Copper Power Station     | 63  |
| Palo Verde Power Station | 633 |
| Montana Power Station    | 352 |



**NEW MEXICO**  
**TEXAS**

**MÉXICO**

 Generating Station

 Major Distribution Stations

 Company Lines

**Exhibit C**  
**Target Areas**

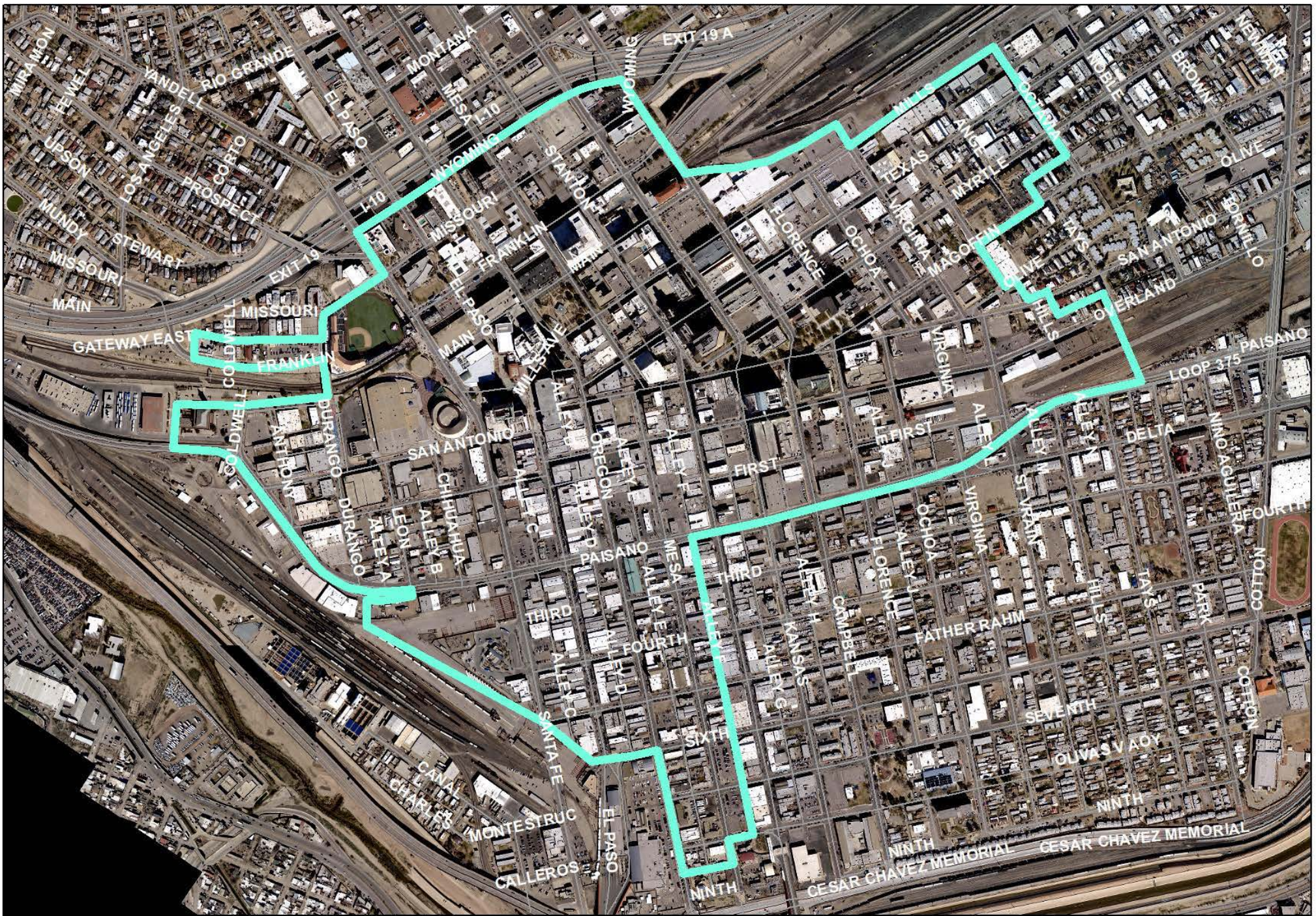


This map is designed for illustrative purposes only. The features depicted here are approximate and more site-specific studies may be required to draw accurate conclusions. Enlargements of this map to scales greater than its original can induce errors and may lead to misinterpretations of the data. The Planning & Inspections Department Planning Division makes no claim to its accuracy or completeness.




 Airport Land

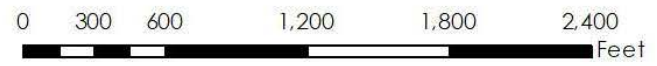




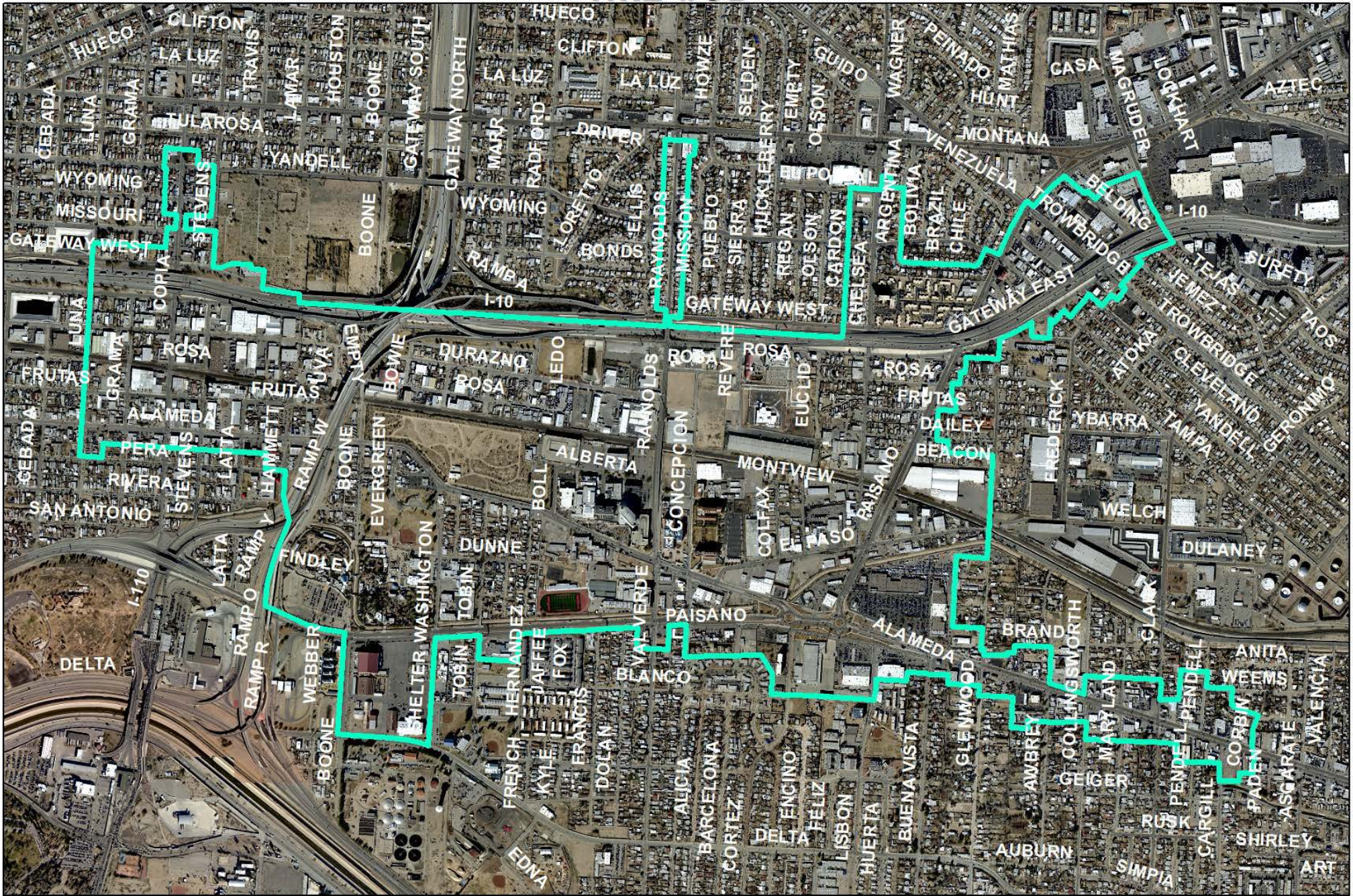
This map is designed for illustrative purposes only. The features depicted here are approximate and more site-specific studies may be required to draw accurate conclusions. Enlargements of this map to scales greater than its original can induce errors and may lead to misinterpretations of the data. The Planning & Inspections Department Planning Division makes no claim to its accuracy or completeness.



 Downtown Plan Area



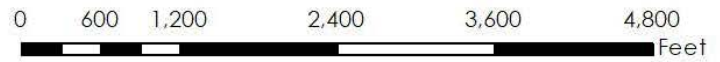
# TIRZ #6B

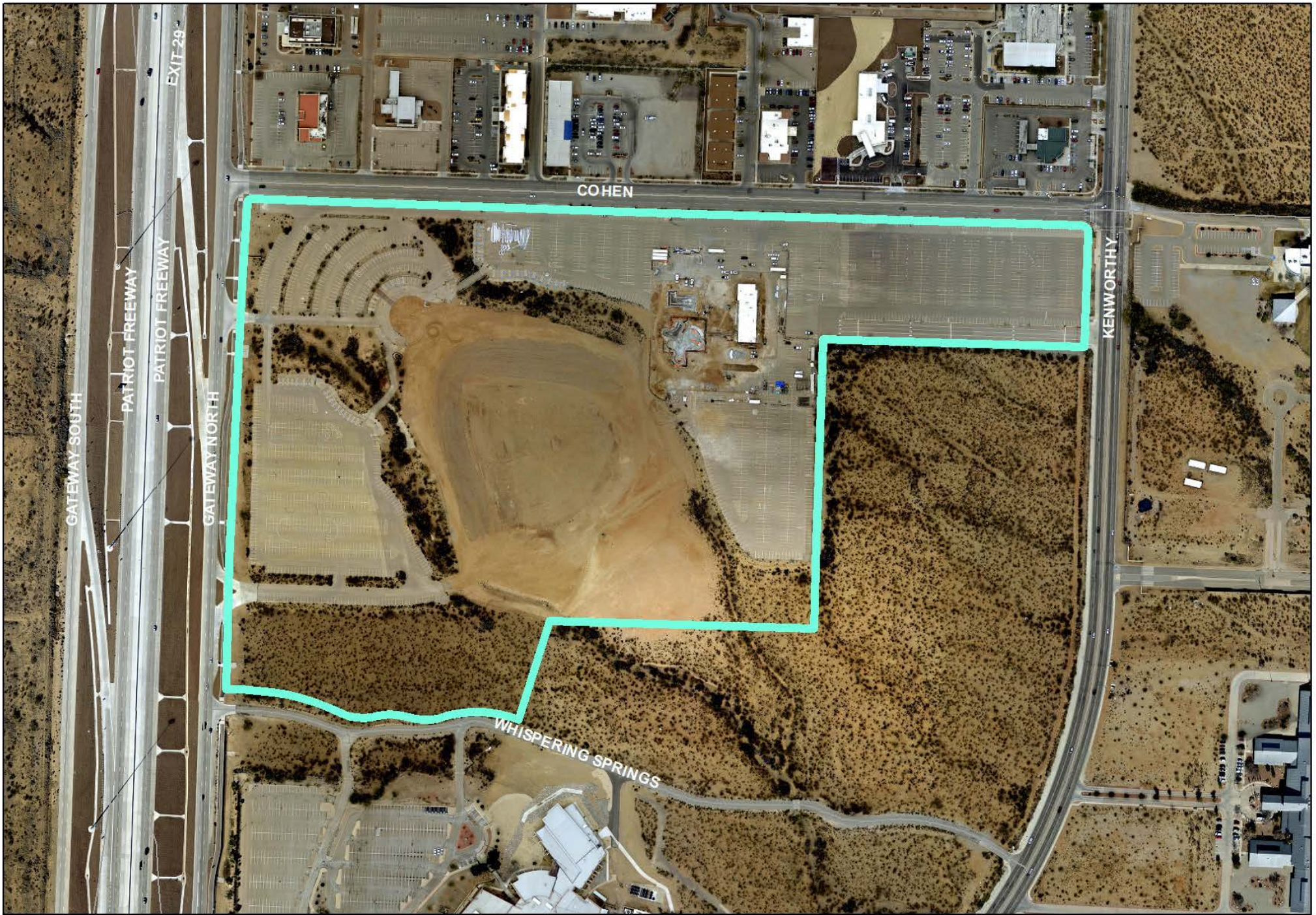


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 TIRZ 6B





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 TIRZ #11

0 125 250 500 750 1,000 Feet

