

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

AGENDA DATE: September 10, 2024

CONTACT PERSON(S) NAME AND PHONE NUMBER: Mauro Rojas-Sigala, Traffic Engineer Associate
(915) 212-7072

Richard Bristol, Streets and Maintenance

Director, (915) 212-7015

DISTRICT(S) AFFECTED: 4

STRATEGIC GOAL: 7 – Enhance and Sustain El Paso's Infrastructure Network

SUBGOAL: 7.3 – Enhance a regional comprehensive transportation system

SUBJECT:

A resolution to authorize the City Manager to sign a Custom Street Light Agreement by and between the City of El Paso and the City of El Paso Municipal Management District No. 1 (the "District"), as required by El Paso City Code, §19.16.020, concerning the District's proposal to provide custom street lighting in the form of solar lighting within the District's Campo del Sol development.

BACKGROUND / DISCUSSION:

City of El Paso Municipal Management District No. 1 requested approval to install solar streetlights within the Campo del Sol development. The agreement will allow the City of El Paso to review and approve solar streetlight design and installation within the Campo del Sol subdivision. Solar streetlights are considered a suitable option for this subdivision due to the lack of electrical power sources, complexity of hard wired electrical streetlight installation and opportunity to monitor new sustainable technology.

PRIOR COUNCIL ACTION:

- November 13, 2018 – Ordinance 018871 approved for a Land Exchange Agreement
- March 17, 2020 – Resolution to approve Entitlement Agreement

AMOUNT AND SOURCE OF FUNDING:

N/A

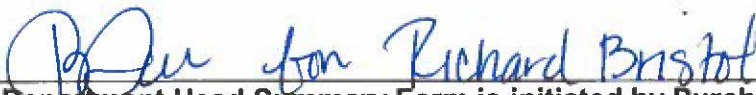
HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Streets and Maintenance

SECONDARY DEPARTMENT: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

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

That the City Manager be authorized to sign a Custom Street Light Agreement by and between the City of El Paso and the City of El Paso Municipal Management District No. 1 (the "District"), as required by El Paso City Code, §19.16.020, concerning the District's proposal to provide custom street lighting in the form of solar lighting within the District's Campo del Sol development.

APPROVED THIS _____ **DAY OF** _____, 2024.

CITY OF EL PASO:

Oscar Leeser, Mayor

ATTEST:

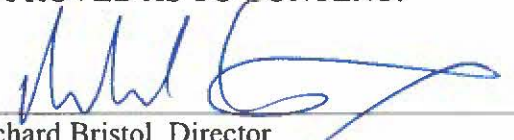
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Richard Bristol, Director
Streets and Maintenance Department

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

CUSTOM STREET LIGHT AGREEMENT

This Custom Street Light Agreement (“Agreement”) is made and entered into by and between The City of El Paso, hereinafter referred to as "City", and the City of El Paso Municipal Management District No. 1, hereinafter referred to as the "District."

RECITALS

WHEREAS, the District is developing Campo del Sol, which is a residential subdivision and proposes to provide custom lighting in the form of solar lights in lieu of the required standard street lighting within Campo del Sol; and

WHEREAS, the El Paso City Code (the “Code”) allows for custom street lighting to be provided by a sub-divider in accordance with §19.16.010 and §19.16.020 of the Code; and

WHEREAS, pursuant to §19.16.020 (A) of the Code, such custom street lighting must be approved by the City Manager or designee; and

WHEREAS, §19.16.020 (D) of the Code requires an agreement between the City and the sub-divider concerning the custom street lighting and requires that the City reserve the right to review and approve all such provisions of the custom lighting agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

1. INCORPORATION OF RECITALS.

The recitals set forth above are incorporated herein by reference.

2. DESCRIPTION.

The District shall install, maintain, and repair custom street lights found within Campo del Sol, El Paso, El Paso County, Texas. Said subdivision is shown on the attached map, marked Attachment "A", which is incorporated herein for all purposes, and is hereinafter referred to as the "Site."

3. THE DISTRICT’S OBLIGATIONS.

- a. The District, at its sole expense, shall install, maintain, and repair the custom street lights located on dedicated streets within the Site and ensure that the street lighting is fully operational at all times.

- b. The District shall pay any and all costs related to, or associated with, the custom street lights. The District shall be perpetually liable for all costs associated with the maintenance of the lighting fixtures, subject to the "Covenants, Assignments" provisions below.
- c. Custom streetlighting placed within the public right-of-way shall meet the lumen level required in the Design Standards for Construction ("DSC") and provide roadwork coverage meeting or exceeding that provided by standard streetlighting. Lighting outside the right-of-way shall meet the lumen level and coverage required of the DSC.

4. COVENANTS, ASSIGNMENTS. The District shall include the District's requirement to provide continuous lighting and perpetual maintenance of the custom street lights in restrictive covenants for the subdivision.

5. CONSIDERATION. This Agreement is entered into for and in consideration of the District's agreement to provide custom streetlights and maintain the Site according to Paragraph 3 of this Agreement, in an effort to encourage the safety of the City of El Paso and encourage environmental stewardship. Said consideration is accepted as full and valuable consideration to the City.

6. CITY REPRESENTATIVE. The City Representative shall be the City Director of Streets and Maintenance, or their designated representative, herein referred to as the "City Representative," who will be authorized to approve all custom street lights proposed by District if the proposed project complies with City ordinances and policies, where appropriate. The City Representative will act on behalf of the City to ascertain that the work is accomplished in accordance with this Agreement and with the guidelines adopted by the City.

7. WORK PERFORMANCE. All work performed by District and its employees shall be done in a good and workmanlike manner, in accordance with all applicable regulations.

8. EQUIPMENT. All equipment, tools and machinery used in connection with this Agreement shall be supplied by the District and shall be maintained in satisfactory working condition. Equipment on the Site shall not be used in any manner that may cause injury to the Site, City property, property of third parties, or any person. All equipment and tools supplied by the District and used at the Site must be removed from the Site at the end of each working day unless storage at the Site has been authorized by the City Representative.

9. EFFECTIVE DATE, TERM, AND TERMINATION.

- a. The Effective Date of this Agreement shall be the date the Agreement is approved by the El Paso City Council. This Agreement shall continue in full force and effect for forty (40) years and shall renew for successive one-year terms thereafter until the completion of the obligations contained herein.
- b. The City may require that any or all of the installed custom lights be removed, at the District's expense, when a finding is made by the City Council based on a recommendation of the City Traffic Engineer or designee placed by the City Traffic Engineer, that the custom lighting creates a City nuisance or is unsafe. Upon such a finding, standard streetlighting pursuant to

Chapter 19 of the City Code shall be required. Said standard lighting shall be furnished and installed by the District to replace the custom lighting.

- c. Upon termination of this Agreement, the City shall have the right, but not the obligation, to assume the responsibility for maintaining the street lighting. Upon termination, the District will not be entitled to any future reimbursement for any improvements.

10. **LEGAL RELATIONSHIP.** The District is an independent contractor and nothing herein shall be construed as creating the relationship of employer and employee or agent between the parties. The District shall not be entitled to any of the benefits established for City employees nor be covered by the City's Worker's Compensation Program. All of the services required hereunder will be performed by agents of the District, and all persons engaged in the work shall be fully qualified to perform the work.

11. **INDEMNITY. THE DISTRICT HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD THE CITY HARMLESS FROM ANY AND ALL DEMANDS, CLAIMS, CAUSES OF ACTION, OR LOSSES FOR PERSONAL INJURY, PROPERTY DAMAGE OR DEATH CAUSED BY OR ARISING OUT OF THE DISTRICT'S OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENT OR ALLEGEDLY NEGLIGENT ACTS OR OMISSIONS ON THE PART OF DISTRICT, OR CLAIMS, DEMANDS, CAUSES OF ACTION OR LOSSES FROM PERSONAL INJURY, PROPERTY DAMAGE OR DEATH CAUSED BY OR ARISING FROM THE DESIGN, INSTALLATION, MAINTENANCE, OR REPAIR OF THE CUSTOM STREET LIGHTING LOCATED ON THE SITE AND INSTALLED BY THE DISTRICT, WHETHER WITHIN OR OUTSIDE OF THE PUBLIC RIGHT OF WAY. THE DISTRICT HEREBY ACKNOWLEDGES THAT IT SHALL BE RESPONSIBLE TO ALL PARTIES FOR THE DISTRICT'S RESPECTIVE ACTS OR OMISSIONS AND THAT THE CITY SHALL IN NO WAY BE RESPONSIBLE THEREFORE.**

12. **COMPLIANCE WITH LAWS, REGULATIONS AND ORDINANCES.**

- a. The District agrees to comply with all applicable laws, regulations and ordinances, including the DSC and Texas Manual on Uniform Traffic Control Devices (collectively "Laws"). Notwithstanding anything to the contrary contained herein, to the extent of any conflict between the terms of this Agreement and the Laws, the terms of the Laws shall control.
- b. The District's street light plans must be approved before any street lights are installed. Street light plans, including photometric study shall be approved by the City Streets and Maintenance illumination group.

13. **BINDING AGREEMENT.** The individual signing this Agreement acknowledges that he/she is authorized to do so and further warrants that he/she is authorized to commit and bind District to the terms and conditions of this Agreement.

14. **NOTICES.** All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
ATTN: City Director of Planning and Inspections
801 Texas Avenue
El Paso, Texas 79901-1196

City of El Paso
ATTN: City Manager
300 Campbell Street
El Paso, Texas 79901-1196

El Paso Municipal Management District
c/o Coats | Rose PC
Attn: Mallory Craig
9 Greenway Plaza, Suite 1000
Houston, Texas 7046

15. WAIVER. Neither this Agreement nor any of the terms hereof may be waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the waiver or modification shall be sought. No failure or delay of any Party, in any one or more instances (i) in exercising any power, right or remedy under this Agreement or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Agreement, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy.

16. OTHER SERVICES. Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of either of the Parties to undertake or not to undertake any other service, or to provide or not to provide any service, except as specifically set forth in this Agreement or in a separate written instrument executed by both Parties.

17. GOVERNMENTAL FUNCTION. The Parties agree that in all things relating to this Agreement, City and the District are performing a governmental function, as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission by either, which in any way pertains to or arises out of this Agreement, falls within the definition of Governmental Functions and Services, in accordance with Chapter 791 of the Texas Government Code.

18. INDEPENDENT CONTRACTOR. Nothing contained in this Agreement shall be construed as establishing a partnership or joint obligations among the parties. City and District each retain the right to conduct its business as it sees fit. Both Parties acknowledge that neither is an agent, servant, employee of the other, nor are the Parties engaged in a joint enterprise, and each party is responsible for its own acts and deeds and for those of its agents or employees during the performance of the scope of work.

19. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be deemed to waive,

modify or amend any legal defense available at law or in equity to either of the Parties nor to create any legal rights or claims on behalf of any third party. Neither of the Parties waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas of the United States.

20. AMENDMENTS AND MODIFICATIONS. This Agreement may not be amended or modified except in writing and executed by both Parties to this Agreement and authorized by their respective governing bodies.

21. GOVERNING LAW AND VENUE. This Agreement shall be construed and enforced in accordance with the laws of the United States and the State of Texas. For any and all disputes arising under this Agreement, venue shall be in El Paso County, Texas.

22. SUCCESSORS AND ASSIGNS. This Agreement shall bind and benefit the respective Parties and their legal successors, and shall not be assignable, in whole or in part, by any Party hereto without first obtaining the written consent of the other Party.

23. SEVERABILITY. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof; but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of the Parties shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

24. EXECUTION IN COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date first written above, when both Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

25. ENTIRE AGREEMENT. This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, whether written or oral.


(SIGNATURES ON FOLLOWING PAGE)

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

THE CITY OF EL PASO:

Dionne L. Mack, City Manager

APPROVED AS TO FORM:



Roberta Brito
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Richard Bristol, Director
Streets and Maintenance Department

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
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This instrument was acknowledged before me on the ____ day of _____, 2024,
by **Dionne L. Mack**, as City Manager of the **City of El Paso, Texas**.

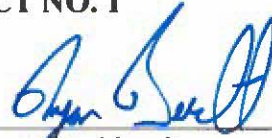
Notary Public, State of Texas

My Commission Expires:

THE DISTRICT:

**CITY OF EL PASO MUNICIPAL MANAGEMENT
DISTRICT NO. 1**

By:

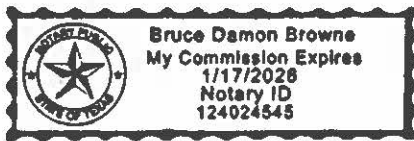


Ryan Burkhardt
Chair of City Of El Paso Municipal Management
District No. 1

ACKNOWLEDGEMENT

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

This instrument was acknowledged before me on the 2ND day of AUGUST, 2024,
by Ryan Burkhardt, as Chair of City of El Paso Municipal Management District No. 1.



Notary Public, State of Texas

My Commission Expires:

1/17/2026