

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

**AGENDA DATE:** 10/12/21

**PUBLIC HEARING DATE:** 10/12/21

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Sam Rodriguez, (915) 212-1845

**DISTRICT(S) AFFECTED:** 8

**STRATEGIC GOAL:** No. #7: Enhance and Sustain El Paso's Infrastructure Network

**SUBGOAL:**

**SUBJECT:**

Resolution authorizing the City Manager, or designee, to effectuate the purchase and closing of the property commonly known as 501 Mills Avenue, El Paso, Texas more particularly described as Lot 1, Block 1, El Paso Times Subdivision, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 63, Page 34, Plat Records, El Paso County, Texas, SAVE AND EXCEPT that portion conveyed to the City of El Paso by Warranty Deed recorded under Clerk's File No. 20120092286, Real Property Records, El Paso County, Texas for the appraised value of \$3,600,000. Further, the City Manager or designee is authorized to: (1) execute a Contract of Sale with Texas – New Mexico Newspapers, LLC, for the purchase of the property, (2) sign any and all documents related and/or necessary to effectuate the purchase and closing of the property, (3) exercise all rights and obligations as provided in the Contract of Sale, (4) sign any documents necessary to effectuate any rights or obligations in relation to the purchase and closing of the property and (5) sign any contract amendments provided that such amendments do not increase the purchase price.

**BACKGROUND / DISCUSSION:**

The City of El Paso desires to acquire the building located at 501 Mills, more particularly described as, the El Paso Times Building, for the purchase price of \$3,600,000. Such real property legally described as Lot 1, Block 1, El Paso Times Subdivision, and addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 63, Page 34, Real Property Records, El Paso County, Texas, Save and Except that portion conveyed to the City of El Paso by Warranty Deed recorded under Clerk's file no. 20120092286, Real Property Records, El Paso County, Texas.

**PRIOR COUNCIL ACTION:**

No

**AMOUNT AND SOURCE OF FUNDING:**

Proceeds from the sale of Capital Assets

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?** \_\_\_ YES \_\_\_ NO x N/A

**PRIMARY DEPARTMENT:** N/A

**SECONDARY DEPARTMENT:** N/A

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

**DEPARTMENT HEAD:**

*Mary Lou Espinoza* for Sam Rodriguez

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(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, or designee, is authorized to effectuate the purchase and closing of the property commonly known as 501 Mills Avenue, El Paso, Texas more particularly described as Lot 1, Block 1, El Paso Times Subdivision, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 63, Page 34, Plat Records, El Paso County, Texas, SAVE AND EXCEPT that portion conveyed to the City of El Paso by Warranty Deed recorded under Clerk's File No. 20120092286, Real Property Records, El Paso County, Texas for the appraised value of \$3,600,000. Further, the City Manager or designee is authorized to: (1) execute a Contract of Sale with Texas – New Mexico Newspapers, LLC, for the purchase of the property, (2) sign any and all documents related and/or necessary to effectuate the purchase and closing of the property, (3) exercise all rights and obligations as provided in the Contract of Sale, (4) sign any documents necessary to effectuate any rights or obligations in relation to the purchase and closing of the property and (5) sign any contract amendments provided that such amendments do not increase the purchase price.

**ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.**


**THE CITY OF EL PASO:**

**ATTEST:**

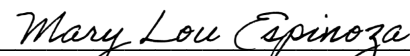
\_\_\_\_\_  
Oscar Leeser  
Mayor

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Omar A. De La Rosa  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Mary Lou Espinoza, Real Estate  
Capital Improvement Department

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (this “**Agreement**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between **TEXAS-NEW MEXICO NEWSPAPERS, LLC**, a Delaware limited liability company formally known as Texas-New Mexico Newspapers Partnership (“**Seller**”), and **CITY OF EL PASO** (“**Buyer**”).

**WHEREAS**, Seller owns that certain real property consisting of approximately 2.36± acres lying and being in El Paso, County of El Paso, Texas, as more particularly described on Exhibit A attached hereto, together with a building of 73,424± square feet and any and all improvements located thereon and all right, title and interest of Seller in and to any and all easements, rights of way, privileges, appurtenances, and rights of same belonging to, and inuring thereto (the “**Property**”). The legal description of the Property is subject to verification by the Title Company.

**WHEREAS**, Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, upon the terms, covenants and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **Purchase and Sale of Property.**

- (a) Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms, covenants and conditions set forth in this Agreement, the Property. Property address is: 501 Mills Avenue, El Paso, Texas 79901. Certain personal property, listed on Exhibit B attached hereto is excluded from the sale and will be removed by the Seller prior to Closing. Personal property as set forth on Exhibit C attached hereto shall be conveyed (collectively, the “**Personal Property**”) to the Buyer at closing along with the Property and is included in the Purchase Price. Any generator(s) installed in or on the Property are excluded from the sale of the Property unless otherwise agreed to by Seller and Buyer. Any property not listed on Exhibit B or C that remains on the Property after closing is conveyed to the Buyer as of the closing date free of any cost to the Buyer in its “as is, where is” condition.
- (b) The purchase price for the Property shall be equal to Three Million Six Hundred Thousand and no/100 Dollars (\$3,600,000) (“**Purchase Price**”). The Purchase Price shall be payable as follows:
  - (i) No later than 10 business days after the Effective Date (as defined below) Buyer shall wire transfer to Lone Star Title Company of El Paso, Inc., 6701 North Mesa Street, El Paso, Texas 79912 (“**Title Company**”) an initial deposit in the amount of Fifty Thousand and no/100 Dollars (\$50,000) (the “**Deposit**”), to be held by the Title Company as escrow agent, subject to the terms of a mutually satisfactory escrow agreement. If this Agreement is not terminated prior to the expiration of the Inspection Period (as defined in Section 3 below) the Deposit shall become nonrefundable automatically, Seller shall credit such amount against the Purchase Price at the closing of the transaction contemplated by this Agreement (the “**Closing**”) unless Seller defaults on its obligations under this Agreement, in which case the Deposit will be refunded to the Buyer upon termination of this Agreement for default.

- (ii) As used in this Agreement the term “**Effective Date**” shall mean the date that this Agreement is signed by both parties. **NONE OF THE TERMS OR PROVISIONS SET FORTH IN THIS AGREEMENT ARE LEGALLY BINDING UNTIL SIGNED BY BOTH PARTIES.**
- (iii) At Closing Buyer shall pay Seller the balance of the Purchase Price, subject to the adjustments set forth in this Agreement.
- (iv) All payments shall be made by wire transfer of immediately available funds.
- (c) The Closing will be handled by the Title Company (the “**Closing Agent**”) and shall take place pursuant to a commercially reasonable escrow arrangement. The Closing Agent shall be responsible for preparing a closing checklist no later than five (5) days after the expiration of the Inspection Period, a settlement statement for the review and approval of the parties, receiving the Purchase Price proceeds, disbursing the Purchase Price proceeds, causing all documents to be recorded and otherwise conducting the Closing. The “**Closing Date**” for this transaction will occur within fifteen (15) days after the expiration of the Inspection Period on a date designated by Seller in a written notice provided to Buyer at least ten (10) days before the Closing Date.
- (d) On the Closing Date, Seller shall deliver to Buyer (i) a duly executed and acknowledged general warranty deed as attached to this Agreement as Exhibit D (“**Deed**”) conveying title to the Property ; (ii) a sworn affidavit stating, under penalty of perjury, that Seller is not a “foreign person” as defined in the Internal Revenue Code of 1986, as amended (“**Code**”) or other appropriate evidence that Buyer is not required to withhold taxes under Section 1445(a) of the Code; (iii) a title affidavit and indemnity agreement sufficient to enable the Title Company to issue a policy of title insurance without standard exceptions and in form and substance reasonably satisfactory to Seller; and (iv) such other documents or certificates as Title Company or Buyer reasonably requests to effect the Closing and transfer of title to the Property as described herein, such as documents showing the authority of the persons signing on behalf of Seller and releases of any liens.

## 2. **Title Contingency.**

- (a) Buyer shall, at Buyer’s expense, obtain a title insurance commitment issued by the Title Company committing to insure good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, restrictions, easements, and conditions not acceptable to Buyer, in its reasonable discretion, except as otherwise may be specified in this Agreement.
- (b) In the event title is not found by Buyer’s attorney to be good and marketable, the Buyer’s objections to title shall be specified in writing and delivered to Seller within forty five (45) days following the Effective Date (“**Title Objection Notice**”), and Seller shall notify Buyer, within seven (7) days after its receipt of the Title Objection Notice, whether or not Seller will cure the objectionable title matters specified therein (“**Seller’s Cure Notice**”). If Seller is unable or unwilling, in its sole discretion, to eliminate or cure all such objectionable title matters, or to make arrangements satisfactory to Buyer, in its reasonable discretion, to have all such matters eliminated or cured prior to Closing, and provided that Buyer shall not thereafter waive such disapproved matters (in which case such matters shall then be deemed “**Permitted Exceptions**”), Buyer shall have the right, at its option, to terminate this Agreement within ten (10) days after Buyer’s receipt of Seller’s Cure Notice

or Seller's failure to send the Seller's Cure Notice by delivering written notice thereof to Seller, whereupon the Deposit shall be returned to Buyer and all liability by reason of this Agreement shall cease except such liability as expressly survives termination. If Buyer does not terminate this Agreement within ten (10) days after Buyer's receipt of Seller's Cure Notice or Seller's failure to send the Seller's Cure Notice, such title objections shall be deemed Permitted Exceptions. Furthermore, if Buyer does not deliver the Title Objection Notice to Seller within the forty-five (45) day-time period referenced above, then Buyer will be deemed to have approved Seller's title to the Property, and all title exceptions shall be deemed Permitted Exceptions.

- (c) Notwithstanding the provisions of Section 2(b) above, the term "Permitted Exceptions" shall not include, and Seller's conveyance of title to the Property shall not be subject to, mechanics' or materialmen's liens, judgment liens, mortgages, deeds of trust, and other liens (excluding real property tax or assessment liens that are not yet due and payable) capable of being satisfied by the payment of a specified sum.
- (d) Buyer shall provide a copy to Seller of any ALTA survey obtained in connection with its purchase of the Property, if any.

3. **Inspection Period.**

- (a) Buyer shall have ninety (90) days after the Effective Date ("**Inspection Period**") to complete any non-invasive investigation (including a Phase I environmental site assessment) reasonably necessary to permit Buyer to determine whether to purchase the Property, in its sole judgment, including the environmental condition of the Property. Prior to performing any such non-invasive inspections of the Property, Buyer shall obtain Seller's approval, which shall not be unreasonably conditioned, withheld or delayed. Throughout the Inspection Period, Buyer may enter upon the Property for the approved inspections at specific times approved by the Seller during Seller's normal business hours upon providing not less than twenty-four (24) hours' advance notice to Seller. Buyer shall not perform any sampling, drilling, testing or excavation at, on, under or around the Property, including but not limited to any Phase II environmental investigations, environmental sampling, and/or subsurface testing of any kind.
- (b) If Buyer does not deliver a written termination notice to Seller prior to the expiration of the Inspection Period, the Inspection Period shall be conclusively presumed to have been satisfied or waived, the Deposit shall be non-refundable pursuant to Section 1(b)(i), and Buyer shall be bound to close as provided in this Agreement. If Buyer does send a written termination notice to Seller prior to the expiration of the Inspection Period, then this Agreement shall be deemed terminated except such liability as expressly survives termination and the Title Company shall promptly refund the Deposit to Buyer. Notwithstanding anything to the contrary, during the Inspection Period, the Buyer may terminate this Agreement for any or no reason and recover the deposit in full.
- (c) All inspections and reports shall be conducted at Buyer's sole risk and expense. In connection with Buyer's inspection of the Property, Buyer shall restore the Property to at least as good as its condition immediately prior to Buyer's entry. Nothing in this Agreement prevents the Seller from filing any claims against the Buyer for any actions from the Buyer or its contractors.

- (d) Buyer shall cause any of its contractors conducting any inspections to maintain and have in effect commercial general liability insurance, auto insurance, workers compensation insurance and other insurance required by Seller in its reasonable discretion, with such insurance including coverage of not less than \$1,000,000 per occurrence for personal injury, including bodily injury and death, and property damage. Such insurance shall be with companies licensed to do business in the State of where the Property is located. Buyer shall deliver to Seller, prior to commencement of any of Buyer's activities under Section 3(c), certificates of insurance evidencing that the insurance required hereunder has been obtained and is in effect.
- (e) Subject to the requirements of the Texas Public Information Act, or any other laws requiring the disclosure of public documents, Buyer acknowledges that, prior to Closing, any information not otherwise known to the public obtained by Buyer in the conduct of its due diligence shall be treated as confidential and shall be used only to evaluate the acquisition of the Property from Seller and, in such connection, may be provided only to Buyer's professional consultants, potential lenders and investors, and lawyers. Buyer will notify Seller of any requests made by the public for any documents pertaining to any of the information listed in this provision above in order to allow the Seller, at its own expense, to take action regarding such request for information. Notwithstanding anything to the contrary, Seller agrees that this Agreement requires the approval of the El Paso City Council and that this Agreement may be released to the public pursuant to a Public Information Act request.
- (f) Buyer shall not permit any mechanics' or other liens to be filed against the Property by reason of labor or materials furnished to the Property at the direction or request of Buyer or its representatives, agents or contractors. If any such lien is filed against the Property, Buyer shall cause the lien to be discharged of record or bonded within thirty (30) days after notice to Buyer of the filing of any such lien. The provisions of this Section 3(f) shall survive any termination of this Agreement.
- (g) Upon Seller's request, and at no expense to Seller, Buyer shall promptly provide Seller copies of any information and reports obtained by or prepared by Buyer pursuant to this Section 3. The provisions of this Section 3(g) shall survive the Closing or termination (for any reason) of the Agreement.
- (h) Seller will make a good faith effort to deliver to Buyer, within five (5) business days following the Effective Date, copies of the following: ALTA Surveys, "as built" plans for any improvements on the Property, tax bills showing the amount of the current real property tax and the assessed value of the land, environmental reports of the Property and the improvements on the Property, any leases or agreements permitting any third party to enter or occupy any portion of the Property, service agreements relating to the Property, title commitments, feasibility studies, any material studies, reports, tests and surveys with respect to the physical and environmental condition of the Property to the extent in Seller's possession.

4. **Seller's Warranties and As Is Condition.**

- (a) The representations and warranties under this subsection survive the closing for a period of six (6) months and are independent, and in addition, to any warranties or covenants described in the deed signed by the Seller conveying the Property to the Buyer. The Seller

provides to the Buyer the following representations and warranties to the best of Seller's knowledge:

- (i) The Seller has not offered or granted any other party the right or option to acquire, in whole or in part, the Property;
  - (ii) The person signing this Agreement on behalf of the Seller represents that he or she has the authority to bind the Seller and that Seller can carry out the Seller's obligations under this Agreement;
  - (iii) No leasehold rights or interests have been granted and are currently in effect involving the Property;
  - (iv) No work has been performed on the Property or any materials have been provided for work on the Property that could result in a mechanic's or materialman's lien after Closing;
  - (v) The Seller has not received any notices of condemnation regarding the Property;
  - (vi) There is no pending litigation pertaining to the Property;
  - (vii) The Seller has not received notices of any violations regarding zoning;
  - (viii) During Seller's ownership of the Property, neither the land or the improvements on the Property were used for the manufacturing, process, distribution, use, treatment, storage, disposal, transport, or handling of hazardous materials;
  - (ix) At closing, there will be no unpaid utility bills, liens, or claims in connection to the Property or any improvements on the Property.
- (b) **EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT and in the deed executed by the Seller, BUYER HAS AGREED TO ACCEPT POSSESSION OF THE PROPERTY ON THE CLOSING DATE ON AN "AS-IS, WHERE-IS AND WITH ALL FAULTS" BASIS. ANY INFORMATION THAT MAY HAVE BEEN, OR MAY BE, SUPPLIED TO BUYER CONCERNING THE CONDITION OF THE PROPERTY IS FOR THE SOLE PURPOSE OF PERMITTING BUYER TO DETERMINE WHETHER THE PROPERTY IS OF SUCH TYPE AND GENERAL CHARACTER AS MIGHT INTEREST BUYER. SELLER HAS NOT WARRANTED AND DOES NOT WARRANT THE ACCURACY AND/OR COMPLETENESS OF ANY SUCH INFORMATION. BY ACCEPTING THE DEED AT CLOSING, BUYER SHALL BE DEEMED TO HAVE ACKNOWLEDGED TO SELLER THAT BUYER IS THOROUGHLY ACQUAINTED AND SATISFIED WITH ALL ASPECTS OF THE PROPERTY, AND IS ACQUIRING THE PROPERTY "AS-IS, WHERE-IS" AND WITHOUT ANY COVENANTS, WARRANTIES, REPRESENTATIONS OR AGREEMENTS AS TO THE PAST, PRESENT OR ANY FUTURE CONDITION, INCOME, EXPENSE, OPERATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR ANY OTHER MATTER OR THING AFFECTING OR RELATING TO THE PROPERTY, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, EXCEPT ANY REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN. BUYER'S ACCEPTANCE OF TITLE TO THE**



**PROPERTY AND POSSESSION OF THE PROPERTY AT THE CLOSING SHALL ALSO CONSTITUTE A WAIVER AND RELEASE BY BUYER OF SELLER OF ANY AND ALL CLAIMS OR LIABILITIES PERTAINING TO THE CONDITION OF THE PROPERTY INCLUDING, WITHOUT LIMITATION, THE EXISTENCE OF ANY HAZARDOUS SUBSTANCES, PETROLEUM PRODUCTS, ASBESTOS AND/OR ANY OTHER PHYSICAL AND/OR ENVIRONMENTAL CONDITIONS IN, ON, UNDER OR ABOUT THE PROPERTY, EXCEPT FOR ANY CLAIMS OR LIABILITIES ARISING OUT OF ANY FRAUD COMMITTED BY SELLER. BUYER ACKNOWLEDGES THAT THE INSPECTION PERIOD PROVIDES BUYER AND ITS EXPERTS AND CONSULTANTS WITH AMPLE OPPORTUNITY TO INVESTIGATE THE PROPERTY. Nothing in this provision affects any warranties of title made in the deed signed by the Seller.**

- (c) Except for Section 4(a) above which shall survive the closing for a six (6) month period, the provisions of this **Section 4** shall survive Closing and the transfer of title.
5. **Prorations.** Real estate taxes and assessments will be prorated as of the date of Closing, based upon the last actual tax bills available. If the actual tax bills are not available for the current tax fiscal year, then prorations will be based on the tax bills for the prior tax fiscal year and, upon the request of either party, the parties will re-prorate and adjust the tax prorations when the tax bills for the current tax fiscal year of Closing become available.
6. **Costs/Closing Credit.** Buyer shall pay all fees associated with the preparation of any title commitment, as well as the premium for a standard owner's policy of title insurance, any additional premium required for an ALTA extended owner's policy of title insurance, and the cost of any endorsements requested by Buyer. Buyer shall also pay for all fees incurred for recording the Deed, preparing any survey map that may be desired by Buyer, and any state and local transfer, conveyance and recordation taxes and fees. Seller and Buyer shall share equally the escrow fees charged by the Title Company. Each party shall pay its own attorneys' fees.
7. **Buyer's Certificate.** Buyer hereby makes the following representations to Seller:
- (a) Buyer is the City of El Paso.
- (b) Buyer has the full power, authority and legal right to execute and deliver this Agreement and to consummate the transactions and perform its obligations as contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action, and this Agreement has been duly and validly executed and delivered by Buyer.
- (c) Buyer nor any of their affiliates, nor any of its partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor will they become, a person or entity with whom United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including, without limitation, the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.



With a copy to:

City of El Paso  
Capital Improvement Department  
218 N. Campbell Street, Third Floor  
El Paso, TX 79901  
Attn: Sam Rodriguez, City Engineer  
Email: [RodriguezS3@elpasotexas.gov](mailto:RodriguezS3@elpasotexas.gov)

Any such notice or communication shall be sufficient if sent (i) by registered or certified mail, return receipt requested, postage prepaid; (ii) by hand delivery; (iii) by overnight courier service; or (iv) by telecopy or email, with an original by first class mail. Any such notice or communication shall be effective when delivered to the recipient or upon refusal of such delivery.

12. **Broker's Commission.** Except for BellCornerstone, which has been retained by Seller and whom Seller agrees to pay a commission pursuant to a separate agreement, the parties represent that they have not dealt with any broker, agent, or finder in connection with this transaction. Except as described in the preceding sentence, each party hereby warrants and represents to the other that no person or entity can properly claim a right to a commission, broker's fee or other compensation based on contacts or understandings between such claimant and Seller or Buyer.
13. **Casualty Loss/Condemnation.** As used herein, the term "Casualty Loss" means any destruction by fire, storm or other casualty, or any taking or pending or threatened taking, in condemnation or under the right of eminent domain, of the Property or a portion thereof, in each case, prior to Closing. Seller shall promptly give Buyer written notice ("**Casualty Notice**") of any Casualty Loss of which Seller becomes aware. In the event of a Casualty Loss in excess of \$50,000.00, Buyer shall have the option, which must be exercised within thirty (30) days after its receipt of the Casualty Notice, to terminate this Agreement or to proceed with the Closing. If Buyer elects to terminate this Agreement, the Deposit shall be returned to Buyer and all rights, duties, obligations and liabilities created hereunder shall cease except such liability as expressly survives termination. If Buyer proceeds with Closing, whether or not the Casualty Loss exceeds \$50,000.00, it shall acquire the Property in accordance with the terms hereof and Seller shall transfer to Buyer all of its rights to unpaid insurance proceeds, claims, awards and other payments arising out of such Casualty Loss and pay to Buyer all sums paid to Seller as insurance proceeds, awards or other payments arising out of such Casualty Loss. Seller shall at times keep the Property insured for the full insurable value thereof. The terms and provisions of this **Section 14** shall survive the Closing. Notwithstanding anything to the contrary, as of the Effective Date, the Seller will not make any improvements or alterations to the Property without the Buyer's consent. As of the Effective Date, the Seller must maintain the Property in a good state of repair.
14. **Like-Kind Seller Exchange.** Buyer agrees that, at any time prior to the Closing Date, Seller may elect to effect a simultaneous or non-simultaneous tax-deferred exchange pursuant to Section 1031, and the regulations pertaining thereto, of the Internal Revenue Code of 1986, as amended. Buyer shall cooperate with the Seller in connection with any such exchange in any reasonable manner which shall not impose any out of pocket cost or liability upon the Buyer, including without limitation by executing any and all customary and commercially reasonable documents, including escrow instructions or agreements consenting to Seller's assignment of its rights and obligations hereunder to an exchange entity, which may be necessary to carry out such an exchange; provided, however, Seller's election to effect such an exchange shall not delay the Closing Date.

15. **Remedies.**

- (a) If Seller fails to perform any of Seller's material obligations under this Agreement, and the same continues until the date that is the earlier of (i) the Closing Date or (ii) five (5) days after Seller's receipt of written notice from Buyer, Buyer may, as Buyer's sole remedy for Seller's failure, either pursue specific performance of this Agreement or cancel this Agreement within ten (10) business days after the expiration of the relevant time period specified in clauses (i) and (ii) above, in which event the Deposit shall be returned to Buyer.
- (b) If Buyer fails to perform any of Buyer's material obligations under this Agreement and the same continues until the date that is the earlier of (i) the Closing Date or (ii) five (5) days after Buyer's receipt of written notice from Seller, Seller may, as Seller's sole remedy for Buyer's failure, cancel this Agreement within ten (10) business days after the expiration of the relevant time period specified in clauses (i) and (ii) above, in which case the Deposit will be paid to Seller as liquidated damages,. Seller and Buyer hereby agree that it would be impracticable and extremely difficult to fix the amount of Seller's actual damages and further agree that the Deposit is a reasonable estimate of the amount Seller might be damaged as a result of Buyer's failure to perform under this Agreement.

16. **Miscellaneous.**

- (a) Paragraph headings contained herein are included solely for convenience of reference and shall in no way affect the construction of this Agreement. The headings are not intended to limit or define the meaning of any provision of this Agreement. Any exhibits to this Agreement are fully incorporated in the text of this Agreement.
- (b) IT IS HEREBY EXPRESSLY AGREED BY THE PARTIES THAT TIME IS "OF THE ESSENCE" WITH RESPECT TO THE CLOSING OF THIS AGREEMENT AND THE CLOSING DATE.
- (c) This Agreement shall be governed by the law of the State where the Property is located.
- (d) Each party shall execute, acknowledge, and deliver, at or after the Closing date, such further assurances, instruments and documents as the other may reasonably request in order to fulfill the intent of this Agreement and the transactions contemplated hereby.
- (e) If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.
- (f) This Agreement may be executed in counterparts, and transmitted by facsimile by and to each of the parties, and each such counterpart shall be deemed an original, and all of them together shall constitute a single instrument.
- (g) The parties acknowledge that each party and its counsel have reviewed, commented on and approved this Agreement and any rule of construction otherwise requiring any ambiguities within this Agreement to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

- (h) Subject to the terms of Section 3(e) herein, Seller and Buyer each hereby covenants and agrees with the other that it will use its reasonable efforts, acting in good faith, not to disclose or permit the disclosure of the existence or the terms of this Agreement, or the transactions contemplated herein, to any other person, without the other party's consent; provided, however, Buyer may disclose this Agreement and the transactions contemplated herein to Buyer's attorneys, consultants or other agents, or as required by law or by any governmental agency, or reasonably believed by Buyer's attorneys to be required by law; and provided further that Seller may disclose this Agreement and the transactions contemplated herein to Seller's attorneys or as required by law or by any governmental agency, or reasonably believed by Seller's attorneys to be required by law.
  - (i) In the event that any time period set forth in this Agreement would otherwise expire on a Saturday, Sunday or holiday, such time period shall be deemed to be automatically extended to the next business day.
17. **Complete Agreement and Amendments.** This Agreement, including any exhibits, expresses the entire agreement of the parties. There are no other understandings, oral or written, which in any manner alter or enlarge its terms. This Agreement supersedes any and all prior agreements between the parties hereto regarding the Property. This Agreement may be amended, but only in writing and only if such writing is executed by the party to be charged.

*Signature page follows*

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the day and year first above written.

**SELLER: TEXAS-NEW MEXICO  
NEWSPAPERS, LLC**

**BUYER: CITY OF EL PASO**

By: Mark Maring

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

Name: Mark Maring

Name: Tomas Gonzalez

Title: SVP of Finance & Treasurer

Title: City Manager

Date: October 5, 2021

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

## **EXHIBIT A**

Legal Description of Property  
[to be confirmed with the title commitment]

**401 Mills Avenue, El Paso, Texas 79901**  
**(also known 501 East Mills Avenue, El Paso, Texas)**

Property ID: 86356

Geographic ID: E38099900100100

Legal Description: Lot 1, Block 1, El Paso Times Subdivision, and addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 63, Page 34, Real Property Records, El Paso County, Texas, Save and Except that portion conveyed to the City of El Paso by Warranty Deed recorded under Clerk's file no. 20120092286, Real Property Records, El Paso County, Texas.

## **EXHIBIT B**

### **Excluded Personal Property**

The following personal property is not included in the sale:

1. Newspaper archives, artwork, historic memorabilia and collectibles, office equipment, computers and related technology equipment, phone systems, and security systems.
2. Inventory and Motor Vehicles
3. Printing Press



## **EXHIBIT C**

### **Included Personal Property**

Office furniture, equipment not specifically marked by Seller, and any of the personal property not listed on Exhibit B is included in the sale, in its “as is, where is” condition.

EXHIBIT "D"

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**GENERAL WARRANTY DEED**

Effective Date: [REDACTED], 20 [REDACTED]

Grantor: Texas-New Mexico Newspapers, LLC, a Delaware limited liability company formally known as Texas-New Mexico Newspapers Partnership.

Grantor's Mailing Address: 7950 Jones Branch Drive, McLean, VA 22107 [REDACTED]  
[REDACTED]

Grantee: **City of El Paso, Texas**, a Texas home-rule municipality [REDACTED]

Grantee's Mailing Address: City of El Paso  
P.O Box 1890  
El Paso, Texas 79950-1890

**PROPERTY (INCLUDING ANY IMPROVEMENTS):**

[REDACTED], as more particularly described in the attached survey and metes and bounds as **Attachment "A"**.

**CONSIDERATION**

\$10.00 and other valuable consideration, receipt of which is hereby acknowledged.

**EXCEPTIONS TO CONVEYANCE**

See permitted exceptions attached to this deed as Attachment "B"

**RESERVATIONS TO CONVEYANCE**

NONE

**WARRANTY AND CONVEYANCE:**

Grantor, for the Consideration and subject to the reservations from and exceptions to conveyance, grants sells and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, successors and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's

successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance.

For the same Consideration, Grantor hereby grants, sells, and conveys assigns and delivers to Grantee, all right, title and interest, if any, of Grantor, as owner of the Property in and to (i) strips or gores, if any, between the Property and abutting properties, (ii) any land lying in or under the bed of any street, alley, road or right of way, opened or proposed, abutting or adjacent to the Property, and (iii) any easements, rights of way, rights of ingress and egress or other interest in, on or to, any land, highway, street, road or avenue, open or proposed, in, on, across from, in front of, abutting, adjoining or otherwise appurtenant to the Property, as well as all other rights, privileges and appurtenances owned by Grantor and in any way related to the Property and other rights and interests of Grantor hereunder conveyed.

When the context requires, singular nouns and pronouns include the plural.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED by Grantor the \_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR:

█

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

█

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
by █, in its capacity as █, on behalf of Grantor.

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