

## **RESOLUTION**

**WHEREAS**, the County of El Paso ("County") and the City of El Paso ("City") would like to enter into an agreement pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, which authorizes local governments to contract with one another to carry out their governmental functions; and

**WHEREAS**, in 2010, County adopted a Stormwater Master Plan which provides for long-term planning objectives to prevent and mitigate harm from stormwater flooding; and

**WHEREAS**, to prevent and mitigate harm from stormwater flooding, County wishes to build a stormwater retention basin in the vicinity of the Greater El Paso Landfill which will intercept stormwater runoff from the upstream watershed and reduce flooding risks for downstream residents and property owners ("Basin project"); and

**WHEREAS**, City and County agree it is in their mutual interest to provide more stormwater system improvements to this area; and

**WHEREAS**, City owns and operates the Greater El Paso Landfill ("landfill"); and

**WHEREAS**, the City and the County wish to enter into this agreement where the City will lease land and provide other support to the County for the County to build Basin project, in order to provide for the public health, safety and welfare of the residents in the El Paso region.

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

That the Mayor of the City of El Paso be authorized to sign the Interlocal Agreement between the City of El Paso and the County of El Paso for the County of El Paso to build a stormwater retention basin in the vicinity of the Greater El Paso Landfill in order to provide for the public health, safety and welfare of the residents in the El Paso region.

That the City Manager or designee be authorized to sign any additional related paperwork, including all understanding and assurances contained therein, and accept, reject, alter, or terminate the

resulting Interlocal Agreement, authorized budget transfers and submit necessary revisions to the operational plan. No cash match is required.

APPROVED this 14th day of MARCH, 2023



CITY OF EL PASO

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Oscar Leeser  
Mayor

ATTEST:

A handwritten signature in blue ink, appearing to read "Laura D. Prine", written over a horizontal line.

Laura D. Prine  
City Clerk

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read "Joyce Garcia", written over a horizontal line.

Joyce Garcia  
Assistant City Attorney

APPROVED AS TO CONTENT:

A handwritten signature in blue ink, appearing to read "Ellen Smyth", written over a horizontal line.

Ellen Smyth,  
Chief Transit and Field Operations Officer

STATE OF TEXAS            }  
                                      }  
 COUNTY OF EL PASO        }

**INTERLOCAL AGREEMENT  
 BETWEEN EL PASO COUNTY TEXAS AND  
 THE CITY OF EL PASO TEXAS FOR  
 STORMWATER IMPROVEMENTS IN THE  
 GREATER EL PASO LANDFILL AREA**

**THIS AGREEMENT** is entered into this 27th day of Feb., 2023, between the City of El Paso, Texas ("City"), and El Paso County, Texas, ("County").

WHEREAS, the County is a political subdivision existing under the laws and Constitution of the State of Texas; and

The City is a municipal organization organized and existing under the laws of the State of Texas and is a body politic and corporate and political subdivision of the State; and

Texas Government Code Chapter 791 provides that any one or more public agencies may contract with each other for the performance of governmental functions or services in which the contracting parties are mutually interested to increase their efficiency and effectiveness; and

The County and the City are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this Agreement, and have each entered into this Agreement by the action of its respective governing body in the appropriate manner prescribed by law; and

The County and the City specify that each party paying for the performance of said functions of government shall make those payments from current revenues available to the paying party;

The City and the County desire to join efforts to develop a viable rural community, with a suitable living environment for all, including for persons of low and moderate income; and

The City owns and operates a public sanitary landfill referred to as the Greater El Paso Landfill ("Landfill") located in an unincorporated area of El Paso County; and

In 2010 the County adopted a Stormwater Master Plan (the "Plan") which provides long-term planning objectives to prevent and mitigate harm from stormwater flooding; and

In support of these efforts, a stormwater retention basin is needed in the vicinity of the Landfill which will intercept stormwater runoff from the upstream watershed and reduce flooding risks for downstream residents and property owners, and

The lack of an existing drainage facility to mediate stormwater runoff for the Landfill area, located within the jurisdictional boundaries of both the County could potentially adversely affect residents' health and well-being; and

The County submitted a grant and loan application for \$3,210,000 to the Texas Water Development Board (TWDB) under the Flood Infrastructure Funds program under abridged application No. 13789 to address stormwater mitigation issues. The proposed mitigation and safety measures include the construction of a stormwater retention basin (the "Basin") and appurtenant improvements known as the HAC7 Stormwater Retention Basin B Project (collectively the "Basin Project") shown on **Attachment 1** in accordance with the El Paso County Stormwater Master Plan prepared in collaboration with El Paso Water; and

This Agreement seeks to properly memorialize the terms and conditions under which Texas Water Development funds and City's contributions will be utilized; and

The construction of the HAC7 Basin Project on the upstream side of the Landfill will intercept upstream runoff alleviating future mediation of this runoff for the development and construction of future landfill cells; and

The HAC7 retention Basin will accommodate runoff from the future adjacent Landfill cells alleviating the requirement of constructing additional retention basins for their developed runoff; and

By combining resources, the County and the City may provide more stormwater system improvements to this area than could be accomplished otherwise by each entity acting alone; and

It is necessary and in the best interests of the City and the County to combine the above described resources for the mutual benefit of their constituents; and

The City and the County hereby agree to enter into this Agreement whereby the City will lease land, provide easements, and provide other support to the County to build the Basin Project and the County will utilize the Basin to mitigate the effects of stormwater flooding in the Landfill area and reduce the threat of harm to the Landfill and the surrounding areas.

**NOW THEREFORE**, in consideration of the premises, and of the terms, provisions, and mutual promises contained in this Agreement which fairly compensate the performing party, it is mutually agreed as follows:

## 1.0 CITY'S DUTIES

1.1 The City will lease approximately 28 acres of City-owned land (the "Site") to the County for use by the County to build, develop, and maintain the Basin. The Site is more specifically described in **Attachment 2** which is incorporated into and made a part of this Agreement for all purposes. The City agrees to lease the Site to the County for a term of 30 years commencing on date City council approves the Agreement and terminating on January 31, 2053. Rent will be one dollar (\$1.00) per each 12 month period. The County may pay all or any portion of the Lease rental payment in advance for the entire term. Upon mutual agreement, the Lease may be extended beyond the initial 30 year term.

1.2 In the event that upon final design, the County determines that additional land is needed for the Basin Project, the City agrees to lease the additional required land

to the County at no additional cost to the County, provided that the additional land development does not unreasonably interfere with the City's Landfill operations.

- 1.3 In the event the City determines that the City will need the Site at the end of the initial term, the City will give the County a written notice of no less than 1 year prior to the desired date of vacation and the County will vacate the Site upon the designated date. In the event the City requests the County vacate the Site under this paragraph, the City will not be required to replace the Basin.
- 1.4 The City agrees to grant to the County a non-exclusive 50 foot-wide ingress and egress access surface easement from Ascension Drive (or other mutually agreeable access point) across City-owned property to the Site. The easement will be used by the County to access, exit and maintain the Basin and may be relocated from time to time in response to the City's ongoing Landfill operations. The City will coordinate with the County in good faith to minimize the frequency of easement relocations or interference with Landfill operations. The County may, upon consultation and approval by City, improve the easement area to improve safe vehicular transit. The easement will run in part over existing utility easements. The County will be responsible for coordinating with other utilities utilizing the existing utility easement as needed.
- 1.5 The City will allow the County's Basin contractor(s) to stockpile additional excess materials, developed from the preparatory work and final grading work for the Basin Project, on City's existing stockpile on City property proximate to the Landfill for later disposal by City.
- 1.6 Due to the proximity of the Basin to the Landfill, the Basin may be subject to collecting wind-blown debris, sand, and other materials emanating from the Landfill resulting in more frequent required Basin maintenance by the County. The City will allow the County to dispose of the maintenance debris collected from the Basin at the Landfill without further charge to the County.
- 1.7 County funding will consist of Flood Infrastructure Funds in the amount of Three Million Two Hundred Ten Thousand Dollars (\$3,210,000.00) plus an additional Two Hundred Ninety Thousand Dollars (\$290,000.00) worth of County earthwork for a total of Three Million Five Hundred Thousand Dollars (\$3,500,000; "Total County Funding").

## **2.0 COUNTY DUTIES**

- 2.1 The County applied for and received funding approval from the Texas Water Development Board in June 2021 for the Basin Project. The County will allocate the TWDB funds received to pay for the construction of this stormwater project (HAC7).
- 2.2 The County will provide the required documentation and matching funds necessary

to secure the Flood Infrastructure Fund monies.

- 2.3 The County will provide all engineering designs for the location and construction of the Basin Project.
- 2.4 The County will work in good faith to coordinate with the City to locate the Basin south of the existing pipeline easement as requested by City to minimize the impact on future Landfill cells.
- 2.5 The County will provide to the City the survey and legal description necessary to accurately determine the location and configuration of the Basin site including the easement.
- 2.6 The County will perform any necessary rough grading operations, as determined by the County.
- 2.7 The County will also provide a topographic survey after the rough grading for the earthwork services operations are complete. The survey will be used to verify conformance with the rough grading plan and will be within one foot of the rough grading plan and within 5 acre-feet of the estimated earthwork volume to be completed by the County.
- 2.8 The County will assume responsibility for the maintenance of the Basin. It is anticipated that the Basin will be conducted on an annual basis, but this schedule may be subject to change based on the necessity and disposal of the cleared debris. This shall be solely at the discretion of the County.
- 2.9 The County will develop retention capacity within the Basin to capture stormwater runoff from the City's landfill cell (up to 200 acres in size) immediately coterminous to the County's Basin.
- 2.10 The County will use the Site only for the purposes stated in this Agreement and for no other purpose without the City's written consent.
- 2.11 At all times the County will in good faith use its best efforts to coordinate with the City on the use of the Site.
- 2.12 County will not cause or permit any mechanics' or other liens to be filed against the fee of the Site or against County's leasehold interests by reason of any work, labor, services, or material supplied.

### 3.0 MISCELLANEOUS

- 3.1 This Agreement is contingent upon receipt of the funding described above, by County.

- 3.2 **Term.** This Agreement shall become effective upon execution by both parties and approval by city council. The term of the Agreement shall be for 30 years commencing on date City Council approves the Agreement and terminating on January 31, 2053.
- 3.3 **Conflict with Applicable Law.** Nothing in this Agreement shall be construed to require the commission of any act contrary to law. In the event there is any conflict between any provision of this Agreement and any applicable law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment, contrary to which the parties have no legal right to contract, the latter shall prevail. The Agreement shall be modified only to the extent necessary to conform to the Agreement to the applicable law and bring the Agreement within the legal requirements and only during the time the conflicts exists.
- 3.4 **No Waiver.** No waiver by any party of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the provision or any other provision.
- 3.5 **Entire Agreement.** This Agreement contains the entire contract among the parties, and each party acknowledges that no other party has made (either directly or through any agent or representative) any representation or Agreements in connection with this Agreement not specifically set forth within this Agreement. This Agreement may be modified or amended only by Agreement in writing executed by the City and County, and not otherwise.
- 3.6 **Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created under this Agreement are performable in El Paso County, Texas.
- 3.7 **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted under this Agreement shall be in writing and shall either be (i) personally delivered against a written receipt, (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the Parties at the addresses set forth below, or at another addresses as may have been specified by written notice delivered in accordance with this Agreement:

If to the City:

Ellen Smyth, P.E  
Chief Transit and Field Operations Officer  
Environmental Services Department  
7968 San Paulo  
El Paso, TX 79907  
915-212-6000

If to County: County of El Paso  
Attention: Office of the County Judge  
500 E. San Antonio Avenue, Suite 301  
El Paso, Texas 79901

With copy to: County Attorney  
Attn: Erich A. Morales (or Successor)  
500 E. San Antonio Avenue, Suite 503  
El Paso, Texas 79901

Public Works Department  
Attention: Norma R. Palacios (or Successor)  
800 E. Overland, Suite 200  
El Paso, Texas 79901

Each notice demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

- 3.8 **Additional Documents.** The Parties covenant and agree that they will execute any other further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.
- 3.9 **Assignment.** This Agreement shall not be assignable.
- 3.10 **Authority to Execute.** The execution and performance of this Agreement by each of the Parties have been duly authorized by all necessary law, resolutions, ordinances or government body action, and this Agreement constitutes the valid and enforceable obligations of the Parties in accordance with its terms.
- 3.11 **Commitment of Current Revenues Only.** The County will pay for any expenses under this Interlocal Agreement out of current revenues only (including Grant/Loan Funds specifically awarded by the Texas Water Development Board, for the El HAC7 project). The County has not created or set any interest or sinking fund for obligations created under this Agreement. In the event that the governing body of any party does not appropriate sufficient funds to meet of the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. The County agrees to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party pursuant to the provisions of Tex. Loc. Govt. Code Ann. 271.903
- 3.12 **Severability.** Should any phrase, clause, sentence or section of this Agreement be judicially declared to be invalid, unenforceable or void, such decision will not have the effect of invalidating or voiding the remainder of this Agreement, and such part

of this Agreement will be deemed to have been stricken and the remainder of this Agreement will have the same force and effect as if such part or parts had never been included.

- 3.13 **Indemnification.** To the extent allowed by law, the County shall indemnify and hold the City harmless from any loss, damage, or injury to any person or property arising from use of the Site by the County or its agents or invitees, or caused by any defect any improvement or equipment use arising from any act or omission of the County or any of its employees, agents, or invitees or from any accident or other casualty on the Site brought about by County's failure to maintain the premises in safe condition.

Signature page for the City of El Paso, Interlocal Agreement between the City of El Paso and the County of El Paso, Texas.



CITY OF EL PASO

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Oscar Leeser

Mayor

Date: MARCH 14, 2023

ATTEST:

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Laura D. Prine

City Clerk

APPROVED AS TO FORM:

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Joyce Garcia

Assistant City Attorney

APPROVED AS TO CONTENT:

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Ellen Smyth

Chief Transit and Field Operations Officer

Signature page for El Paso County, Interlocal Agreement between the City of El Paso and El Paso County, Texas.



THE COUNTY OF EL PASO

ATTEST:

Ricardo A. Samaniego  
Ricardo A. Samaniego  
County Judge

Delia Briones  
Delia Briones  
County Clerk

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

Norma R. Palacios  
Norma R. Palacios  
Executive Director of Public Works

E. A. Morales  
Erich A. Morales  
Assistant County Attorney

EXECUTED THIS 27th day of February, 2023.