

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

AGENDA DATE: April 25, 2023
PUBLIC HEARING DATE:

CONTACT PERSON(S) NAME AND PHONE NUMBER: Roberto Tinajero (915)212-7509

DISTRICT(S) AFFECTED: All Districs

STRATEGIC GOAL: Goal 1 - Cultivate an environment conducive to strong economic development.

SUBGOAL: Subgoal 1.5 – Stimulate economic growth through transit and bridges integration.

SUBJECT:

Authorize the City Manager to sign a one-year Agreement between the City of El Paso; the United States of America (General Services Administration); El Paso Infrastructure Collaborative, LLC (EPIC); and Jose and Carmen Silva Family Limited Partnership (Silva) to preserve all terms and conditions in previous Lease Agreements regarding properties next to the Stanton bridge leased by the U.S. General Services Administration and occupied by the U.S. Customs and Border Protection.

BACKGROUND / DISCUSSION:

In 1999 the City of El Paso entered into a Lease and Sub-lease agreements with the United States of America (General Services Administration), El Paso Infrastructure Collaborative, LLC (EPIC), and Jose and Carmen Silva Family Limited Partnership (Silva) to create the Dedicated Commuter Lane (DCL) or SENTRI facility next to the Stanton bridge. These agreements have been amended and extended since then with the last agreement approved in September, 2017 and which expired in August, 2022. U.S. General Services Administration desires to acquire the premises from the parties for the benefit of its current occupant (U.S. Customs and Border Protection). Therefore, a new Agreement has been developed among all interested parties to preserve the same terms and conditions in previous agreements for one year, during which time the U.S. General Services Administration will pursue acquisition of the premises.

PRIOR COUNCIL ACTION:

Original agreements approved in 1999, last agreement approved September, 2017

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: International Bridges

SECONDARY DEPARTMENT: Legal

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

DEPARTMENT HEAD: Roberto Tinajero, M.S., Interim Director for international Bridges



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

STANDSTILL AGREEMENT

THIS STANDSTILL AGREEMENT (the “Agreement”) is entered into by and between the **United States of America** (the “Government”), acting by and through the Administrator of General Services’ authorized representatives (the “GSA”) whose address is 819 Taylor Street Room 11, Fort Worth, TX 76102, the **City of El Paso, Texas**, a Texas Home Rule Municipality (the “City”), whose address is 300 North Campbell El Paso, Texas 79901, and the **El Paso Infrastructure Collaborative, LLC**, a Texas limited liability company (“EPIC”) whose address is 303 N Oregon Street, Suite 610, El Paso, TX 79901 and **Jose and Carmen Silva Family Limited Partnership** (“Silva”) whose address is 6485 Calle Placido, El Paso, TX 79912 (sometimes jointly referred to as the “Parties”).

RECITALS

A. The Government currently desires to acquire Combined Premises (hereinafter defined) in fee simple from the Parties for the benefit of its current federal occupants. In turn, City, EPIC and Silva have expressed their interests in negotiating for the Government’s purchase of the Combined Premises recognizing the Government’s power of eminent domain. The respective interests of the Parties in the Combined Premises are hereinafter set forth.

B. EPIC currently owns certain improved real property in fee simple, more particularly described as Lot 19 and Lot 20, Block 47, CAMPBELL’S ADDITION, El Paso County, Texas; according to the plat thereof recorded in Volume 2, Page 68, Plat Records, El Paso County, Texas (the “EPIC Parcel”) and all improvements constructed by it upon the Combined Premises (hereinafter defined) prior to September 8, 1999, and holds a leasehold interest in Lot 21, Block 33, CAMPBELL’S ADDITION AMENDING SUBDIVISION, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof recorded in Volume 76, Page 81, Plat Records, El Paso County, Texas (the “Silva Parcel”) pursuant to that certain Ground Lease between the Silva Family Limited Partnership dated September 15, 2015, as amended (the “Silva Ground Lease”).

C. Silva currently owns certain improved real property in fee simple, as more particularly described as Lot 21, Block 33, CAMPBELL’S ADDITION AMENDING SUBDIVISION, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof recorded in Volume 76, Page 81, Plat Records, El Paso County, Texas (the “Silva Parcel”).

D. The City currently is the holder of a right-of-way easement in and over land municipally known as Ninth Avenue, El Paso, Texas, and in and over an alley in said city known as Alley G, Campbell’s Addition created by the plat recorded in Volume 76, Page 81, Plat Records, El Paso County, Texas, portions of which are more particularly described as follows, and depicted on Exhibit “A” attached hereto and made a part hereof : PARCEL 1: The Southerly 52.00’ feet of the 20’ wide alley in Block 47, CAMPBELL’S ADDITION, El Paso County, Texas, according to the plats thereof recorded in Volume 2, Page 68 and Volume 76, Page 81, Plat Records, El Paso County, Texas, and PARCEL 2: The portion of Ninth Avenue lying between the eastern boundary

of Mesa Street and the western boundary of Stanton Street between Blocks 33 and 47 of CAMPBELL'S ADDITION AMENDING SUBDIVISION, Plat Records, El Paso County, Texas (collectively the "City ROW Parcel").

E. The City until recently has been the Lessee of certain real property and improvements thereon as a month-to-month holdover tenant under the same terms and conditions set forth in that certain Lease Agreement between EPIC, as Lessor, and the City, as Lessee, dated February 1999 (the "EPIC-City Master Lease") which expired under its contractual terms on or around August 2019. Prior to this Agreement, the City has not consummated a lease extension or other agreement to its lease with EPIC to date.

F. The Government has until recently has been the Sublessee of and currently occupies the EPIC Parcel, the Silva Parcel and the City ROW Parcel (the "Combined Premises") being the same property as the Master Leased Premises, including approximately 8,698 rentable square feet of office, as a month-to-month holdover tenant under the same terms and conditions set forth in that certain sublease with City, as sublessor, being Lease No. GS-07B-14711 (hereinafter "Government Lease"), as amended, which expired under its contractual terms on or about August 24, 2022. Prior to this Agreement, the Government has not consummated an extension or other agreement related to the Government Lease with its sublessor, the City. A true and correct legal description of the Combined Premises is attached hereto as Exhibit "B", which is hereby fully incorporated and made a part hereof.

G. All parties understand and agree that there are no current contractual relations between the respective named Parties and that all leasehold estates under the Chamber Master Lease, the EPIC Master Lease, and the Government Lease (collectively, the "Leases") between the Parties are currently in holdover status.

H. The Parties jointly desire to avoid unnecessary condemnation or other tenancy in holdover related lawsuits, actions or claims related to the three identified holdover estates, nor desire the current Government holdover tenancy operations covering the Combined Premises to be disrupted, interrupted, or disturbed.

I. By this Agreement the Parties seek to preserve the status quo, pending the completion of the proposed Government acquisition of the Combined Premises and improvements thereon in fee simple.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth herein, the adequacy of which is hereby acknowledged by the undersigned, the Parties agree as follows:

During the term of this Agreement:

1. The GSA, Silva, and EPIC mutually agree to negotiate, actively and in good faith, for a negotiated acquisition agreement in order for the Government to acquire all right, title and interest in and to the Combined Premises and the improvements thereon in fee simple and, failing such agreement, a lease of the Combined Premises and improvements thereon, subject to the respective rights and remedies of the Parties under applicable eminent domain law.

2. Promptly after the Effective Date EPIC, Silva and the GSA mutually agree to file and process an application with the City to formally vacate the City ROW Easement in accordance with the City's administrative process pursuant to which the ROW Easement Parcel will be conveyed to the respective adjoining landowners by quitclaim deed.

3. The Government will pay the rentals equal to the rent under the Government Lease to the City and comply with all other obligations of the Government set forth in Government Lease as a holdover tenant thereunder (collectively, the "Government Obligations");

4. EPIC will pay the rentals equal to the rent under the Silva Lease to Silva and will comply with all other obligations of EPIC set forth under the Silva Lease as a holdover tenant thereunder (collectively, the "EPIC Obligations"), and

5. The City will continue to pay the rentals to EPIC equal to the rent it receives from the Government, less its Administrative Fee, set forth in the EPIC-City Master Lease and will comply with all other obligations of the City set forth in the EPIC-City Master Lease as a holdover tenant thereunder (collectively, the "City Obligations").

6. The Parties will not, absent a default of the Government Obligations, Chamber Obligations, or City Obligations, which continues for more than 30 days after written notice to the respective lessee:

- (a) Undertake to evict any of the respective Parties in their respective Lessee or Sublessee capacity(ies) from any part of the Combined Premises;
- (b) Interfere with the use or occupancy of the Combined Premises by the Government;
- (c) Interrupt the operations, building services, or utilities of the Government from what they were while the lease was in effect;
- (d) Market the space to potential tenants if the Government is planning to remain in the premises; and/or
- (e) Threaten to do any of the acts referenced in A, B, C, or D above.

7. The Government will not condemn the Premises by the power of eminent domain, and will not file a Declaration of Taking with respect to the Combined Premises.

8. The City, EPIC and Silva mutually covenant and agree not to initiate an "inverse condemnation" or other holdover tenancy related claim, action, or lawsuit against the Government

in any federal, state or local court or tribunal with respect to the Combined Premises, or any part thereof provided that the GSA performs its obligations under this Agreement.

9. Each Party agrees not to take any action to alter its position to the detriment of the other Party in any condemnation type action arising out of these facts.

At all times after this Agreement becomes effective:

10. The Government will receive full credit for rents paid to the City during the term of this Agreement as a holdover subtenant under the terms and conditions of Lease No. GS-07B-14711, as amended, for the Term of this Agreement.

11. None of the Parties will seek or accept severance damages or attorney's fees from any other Party for the period this Agreement is in effect.

12. Term and Termination of Agreement. The term of this Agreement shall be for a period of one (1) year from the Effective Date (the "Term"). The Parties agree that all terms and conditions of the Leases will remain in full force and effect during the Term of this Agreement. In the event of the failure of the Government to acquire all right title and interest in and to the Combined Premises as called for under Sections 1 and 2, above, this Agreement shall terminate one year from the full execution of this Agreement, unless the Parties mutually agree in writing to extend the term of this Agreement.

13. Binding Effect. All of the terms, covenants, and provisions herein contained will bind and inure to the benefit of the Parties, their heirs, executors, administrators, personal representatives, successors, trustees, receivers, and assigns as applicable, except as otherwise provided herein.

14. Merger. Except as expressly provided otherwise herein, all prior understandings and agreements with respect to the subject matter of this Agreement, written or oral, are merged into this Agreement. This Agreement represents the final agreement between the Parties with respect to such subject matter, and may not be superseded, except by a separate written agreement signed and agreed to by the Parties.

15. Amendments. Neither this Agreement, nor any terms hereof, may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the Party against whom the enforcement of a change, waiver, discharge, or termination is sought.

16. Construction. Any provision contained in this Agreement that is prohibited or unenforceable will be ineffective to the extent of such prohibition or enforceability without invalidating the remaining provisions hereof. A waiver by a Party of any right, covenant, condition, or remedy in any instance hereunder will not operate as a waiver of such right, covenant, condition, or remedy in any other instance, and waiver by a Party of any breach of the terms hereof will not be a waiver of any additional or subsequent breach. This Agreement will be governed by, and construed in accordance with, the laws of the State of Texas and the United States of America.

17. Effective Date. This Agreement is effective and enforceable only after having been first signed and dated by all other Parties have signed, and second, the Government has signed and delivered this Agreement to the other Parties (the “Effective Date”).

18. No Waiver. The Parties believe and mutually covenant to each other that this Agreement will facilitate settlement negotiations towards the ultimate acquisition by the Government of all right, title and interest in and to the Combined Premises if fee simple. As evidenced by their signatures to this Agreement, the Parties agree that no right, action, or claim either Party may otherwise have against the other Party will be prejudiced or waived by this Agreement.

19. Incorporation of Leases. This Agreement incorporates the terms and conditions of all Leases described herein, as amended, which shall be construed to supplement, and be complementary to, the terms of this Agreement.

20. Counterparts and Electronic Signatures. This Agreement may be executed in counterparts, each of which will be deemed to be a duplicate original, and which together will constitute one and the same instrument. The undersigned parties agree that the electronic signatures, whether digital or encrypted, of the parties included in this agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this Agreement or any other document contemplated hereby bearing an original or electronic signature by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of _____.

**UNITED STATES OF AMERICA,
acting by and through the
Administrator of General Services
and authorized representatives**

Signature: _____
Printed Name: _____
Title: _____
Date: _____

THE STATE OF TEXAS)
)
COUNTY OF TARRANT)

BEFORE ME, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing Standstill Agreement, and known to me to be the _____, _____ Division, Greater Southwest Region, General Services Administration, Fort Worth, Texas, and acknowledged to me that the same was the act and deed of the United States of America and of the Administrator of General Services and that he executed the same as the voluntary act of the United States of America and of the Administrator of General Services for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE at Fort Worth, Texas, this _____ day of _____, 2023.

Notary Public State of Texas

Notary's Name:

My Commission Expires: _____

GSA Signature page to Standstill Agreement

EL PASO INFRASTRUCTURE COLLABORATIVE, LLC

Signature: _____
Printed Name: Andrea Hutchins
Title: Manager
Date: _____

NOTARIAL ACKNOWLEDGMENT
STATE OF TEXAS

COUNTY OF EL PASO

BEFORE ME, a Notary Public in and for the State of Texas, on this day personally appeared Andrea Hutchins, Manager of the El Paso Infrastructure Collaborative, LLC, whose name is subscribed to the foregoing Standstill Agreement and acknowledged to me that the same was the act and deed of such entity, and that he/she executed the same as the voluntary act of the such entity for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE at El Paso, Texas, this _____ day of _____, 2023.

Notary Public for the State of Texas

CITY OF EL PASO, TEXAS

Signature: _____
Printed Name: Tomás González
Title: City Manager
Date: _____

Approved as to Form:

Roberta Brito
Roberta Brito
Assistant City Attorney

Approved as to Content:

Roberto Tinajero
Roberto Tinajero, Interim Director
International Bridges Department

BEFORE ME, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing Standstill Agreement, and known to me to be the _____ of the City of El Paso, Texas, and acknowledged to me that the same was the act and deed of such entity, and that he/she executed the same as the voluntary act of the such municipality for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE at El Paso, Texas, this _____ day of _____, 2023.

Notary Public State of Texas

Notary's Name:

My Commission Expires: _____

JOSE & CARMEN SILVA FAMILY LIMITED PARTNERSHIP

By its General Partner, Jose & Carmen Silva Family General Partner,
LLC

Signature: _____
Printed Name: _____
Title: Manager
Date: _____

NOTARIAL ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF EL PASO

BEFORE ME, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing Standstill Agreement, and known to me to be the Manager of the Jose & Carmen Silva Family General Partner, LLC, the general partner of Jose & Carmen Silva Family Limited Partnership, and acknowledged to me that the same was the act and deed of such entity, and that he/she executed the same as the voluntary act of the such entities for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE at El Paso, Texas, this ____ day of _____, 2023.

Notary Public for the State of Texas

EXHIBIT "A"

City ROW Parcel

Prepared for: The City of El Paso
December 9, 2014
(Parcels 1, 2 and 3)

METES AND BOUNDS DESCRIPTION

Description of a portion of Ninth Avenue out of Block 47, Campbell Addition as recorded in Book 2, Page 68, Plat Records, City of El Paso, El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

Commencing for reference at an existing City of El Paso monument lying 10 feet north and east of the centerline intersection of Stanton Street and Olivas V Aoy from which a found city of El Paso monument lying 10 feet north and 10 feet east of the centerline intersection of Stanton Street and Sixth Avenue bears, North $11^{\circ}44'49''$ West a distance of 655.05 feet; Thence along the monument line of Olivas V Aoy, South $78^{\circ}15'11''$ West a distance of 305.00 feet and South $11^{\circ}44'49''$ East a distance of 310.00 feet to a set chiseled x on the intersection of the easterly right of way line of Mesa Street with the northerly right of way line of Ninth Avenue for the **"TRUE POINT OF BEGINNING"**

Thence along said right of way line, North $78^{\circ}15'11''$ East a distance of 120.00 feet to a set v chiseled on concrete curb on the westerly line of a 20 foot alley in Block 47, Campbell Addition;

Thence along said line, North $11^{\circ}44'49''$ West a distance of 52.00 feet to a point;

Thence leaving said line, North $78^{\circ}15'11''$ East a distance of 20.00 feet to a point on the easterly line of a 20 foot alley out of Block 47, Campbell Addition;

Thence along said line, South $11^{\circ}44'49''$ East a distance of 52.00 feet to a set nail on the northerly right of way line of Ninth Avenue;

Thence along said right of way line, North $78^{\circ}15'11''$ East a distance of 118.61 feet to a point;

Thence leaving said right of way line, South $11^{\circ}26'14''$ East a distance of 30.37 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, South $29^{\circ}32'48''$ East a distance of 5.09 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, South $11^{\circ}44'49''$ East a distance of 34.78 feet to a set chiseled v on concrete on the southerly right of way line of Ninth Avenue;

Thence along said right of way line, South $78^{\circ}15'11''$ West a distance of 260.00 feet to a set chiseled x on concrete sidewalk on the easterly right of way line of Mesa Street;

Thence along said right of way line North $11^{\circ}44'49''$ West a distance of 70.00 feet to the **TRUE POINT OF BEGINNING** and containing 19,191 Sq. Ft. 0.4406 acres of land more or less.

Note: A Survey drawing of even date accompanies this description.


Ron R. Conde
R.P.L.S. No. 5152



EXHIBIT "B"

Legal Description of Combined Premises

Lot 19 and Lot 20, Block 47, CAMPBELL'S ADDITION, El Paso County, Texas; according to the plat thereof recorded in Volume 2, Page 68, Plat Records, El Paso County, Texas; (the "EPIC Parcel")

Lot 21, Block 33, CAMPBELL'S ADDITION AMENDING SUBDIVISION, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof recorded in Volume 76, Page 81, Plat Records, El Paso County, Texas (the "Silva Parcel")

Prepared for: The City of El Paso
December 9, 2014
(Parcels 1, 2 and 3)

METES AND BOUNDS DESCRIPTION

Description of a portion of Ninth Avenue out of Block 47, Campbell Addition as recorded in Book 2, Page 68, Plat Records, City of El Paso, El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

Commencing for reference at an existing City of El Paso monument lying 10 feet north and east of the centerline intersection of Stanton Street and Olivas V Aoy from which a found city of El Paso monument lying 10 feet north and 10 feet east of the centerline intersection of Stanton Street and Sixth Avenue bears, North 11°44'49" West a distance of 655.05 feet; Thence along the monument line of Olivas V Aoy, South 78°15'11" West a distance of 305.00 feet and South 11°44'49" East a distance of 310.00 feet to a set chiseled x on the intersection of the easterly right of way line of Mesa Street with the northerly right of way line of Ninth Avenue for the "**TRUE POINT OF BEGINNING**"

Thence along said right of way line, North 78°15'11" East a distance of 120.00 feet to a set v chiseled on concrete curb on the westerly line of a 20 foot alley in Block 47, Campbell Addition;

Thence along said line, North 11°44'49" West a distance of 52.00 feet to a point;

Thence leaving said line, North 78°15'11" East a distance of 20.00 feet to a point on the easterly line of a 20 foot alley out of Block 47, Campbell Addition;

Thence along said line, South 11°44'49" East a distance of 52.00 feet to a set nail on the northerly right of way line of Ninth Avenue;

Thence along said right of way line, North 78°15'11" East a distance of 118.61 feet to a point;

Thence leaving said right of way line, South 11°26'14" East a distance of 30.37 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, South 29°32'48" East a distance of 5.09 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, South 11°44'49" East a distance of 34.78 feet to a set chiseled v on concrete on the southerly right of way line of Ninth Avenue;

Thence along said right of way line, South 78°15'11" West a distance of 260.00 feet to a set chiseled x on concrete sidewalk on the easterly right of way line of Mesa Street;

Thence along said right of way line North 11°44'49" West a distance of 70.00 feet to the **TRUE POINT OF BEGINNING**" and containing 19,191 Sq. Ft. 0.4406 acres of land more or less.

Note: A Survey drawing of even date accompanies this description.


Ron R. Conde
R.P.L.S. No. 5152



RESOLUTION

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

That the City Manager be authorized to sign a Standstill Agreement between the City of El Paso; the U.S. GSA; the El Paso Infrastructure Collaborative, LLC; and the Jose and Carmen Silva Family Limited Partnership, preserving all terms and conditions of the parties' previous leases regarding properties on the Stanton International Bridge leased by the GSA. Pursuant to said agreement, the terms and conditions of the parties' previous leases will remain in effect and unchanged for one year during which time the GSA will pursue acquisition of the premises.

APPROVED this ____ day of _____ 2023.


CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

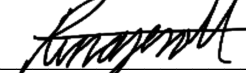
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



Roberto Tinajero, Interim Director
International Bridges Department