

Oscar Leeser  
Mayor

Cary Westin  
Interim City Manager



CITY COUNCIL  
Brian Kennedy, District 1  
Josh Acevedo, District 2  
Cassandra Hernandez, District 3  
Joe Molinar, District 4  
Isabel Salcido, District 5  
Art Fierro, District 6  
Henry Rivera, District 7  
Chris Canales, District 8

## **AGENDA FOR THE REGULAR COUNCIL MEETING**

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**June 11, 2024**

**COUNCIL CHAMBERS, CITY HALL, 300 N. CAMPBELL AND VIRTUALLY  
9:00 AM**

**Teleconference phone number: 1-915-213-4096**

**Toll free number: 1-833-664-9267**

**Conference ID: 131-574-110#**

**AND**

**AGENDA REVIEW MEETING  
COUNCIL CHAMBERS, CITY HALL  
300 N. CAMPBELL AND VIRTUALLY**

**June 10, 2024**

**9:00 AM**

**Teleconference phone number: 1-915-213-4096**

**Toll free number: 1-833-664-9267**

**Conference ID: 216- 594-989#**

Notice is hereby given that an Agenda Review Meeting will be conducted on June 10, 2024 at 9:00 A.M. and a Regular Meeting of the City Council of the City of El Paso will be conducted on June 11, 2024 at 9:00 A.M. Members of the public may view the meeting via the following means:

Via the City's website: <http://www.elpasotexas.gov/videos>

Via television on City15,

YouTube: <https://www.youtube.com/user/cityofelpasotx/videos>

In compliance with the requirement that the City provide two-way communication for members of the public, members of the public may communicate with Council during public comment, and regarding agenda items by calling the following number:

1-915-213-4096 or Toll free number: 1-833-664-9267

**At the prompt please enter the corresponding Conference ID:**

**Agenda Review, June 10, 2024 Conference ID: 216-594-989#**

**Regular Council Meeting, June 11, 2024 Conference ID: 131-574-110#**

**The public is strongly encouraged to sign up to speak on items on this agenda before the start of this meeting on the following links:**

**For Call to the Public:**

**<https://app.smartsheet.com/b/form/dfad29e838da41fd86052bb264abd397>**

**To Speak on Agenda Items:**

**<https://app.smartsheet.com/b/form/7086be5f4ed44a239290caa6185d0bdb>**

**A quorum of City Council must participate in the meeting.**

### **ROLL CALL**

### **INVOCATION BY EL PASO POLICE SENIOR CHAPLAIN DAVID MAYFIELD**

### **PLEDGE OF ALLEGIANCE**

### **MAYOR'S PROCLAMATIONS**

**National HIV Testing Day**

**El Paso Athletic Hall of Fame Class of 2024 and El Paso Sports Commission Week**

**Juneteenth Independence Day**

**El Paso Executive Forum Day**

**Phil Hatch Day**

### **NOTICE TO THE PUBLIC**

All matters listed under the CONSENT AGENDA, including those on the Addition to the Agenda, will be considered by City Council to be routine and will be enacted by one motion unless separate discussion is requested by Council Members. Prior to the vote, members of the audience may ask questions regarding items on the consent agenda. When the vote has been taken, if an item has not been called out for separate discussion, the item has been approved. Council may, however, reconsider any item at any time during the meeting.

### **CONSENT AGENDA - APPROVAL OF MINUTES:**

**Goal 6: Set the Standard for Sound Governance and Fiscal Management**



1. Approval of the Minutes of the Regular City Council Meeting of June 4, 2024, the Agenda Review Meeting of June 3, 2024, and the Work Session of June 3, 2024. [24-792](#)

**All Districts**

City Clerk's Office, Laura D. Prine, (915) 212-0049

**CONSENT AGENDA - REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS:**

2. REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS [24-58](#)

**CONSENT AGENDA - RESOLUTIONS:**

**Goal 2: Set the Standard for a Safe and Secure City**

3. That the City Manager is authorized to sign an Amendment to the Air Medical Services and Support Agreement by and between the City of El Paso and Air Methods, LLC, to amend section 5.8 Base Sites extending an additional thirty (30) days to negotiate a separate lease for the Base Site in parallel with the Agreement. [24-829](#)

**All Districts**

Fire, Chief Jonathan P. Killings, (915) 212-5665

**Goal 3: Promote the Visual Image of El Paso**

4. That the Solid Waste liens on the attachment posted with this agenda be approved (See Attachment A). [24-770](#)

**Districts 2, 3, 4, 5, 7, 8**

Environmental Services Department, Nicholas Ybarra, (915) 212-6000

**Goal 6: Set the Standard for Sound Governance and Fiscal Management**

5. That the City Manager, or designee, be authorized to sign a two-year On-Call Agreement for Professional Services to perform appraisal services on a task order basis between the City of El Paso and each of the following three consultants: [24-805](#)

1. CBRE, Inc.
2. Gayle-Reid Appraisal Services, Inc.
3. Lowery Property Advisors, LLC

Each On-Call Agreement will be for an amount not to exceed One Hundred Thousand and No/00 Dollars (\$100,000.00). In addition, the City Manager is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each

On-Call Agreement. Further, that the City Manager, or designee, is authorized to execute any amendments to the agreements provided such amendments do not increase the contract amounts. Further, that the City Manager, or designee, is authorized to exercise an option to extend the contracts for one year each, such option increasing each contract amount by an additional \$50,000.00 for a total contract amount, including options, not to exceed \$150,000.00.

**All Districts**

Capital Improvement Department, Joaquin Rodriguez, (915) 212-0065

**Goal 8: Nurture and Promote a Healthy, Sustainable Community**

6. A Resolution that the City Council authorizes the Mayor to sign the Amended Interlocal Agreement between the City of El Paso and the Department of State Health Services for the laboratory analysis of milk. [24-766](#)

**All Districts**

Public Health, Hector I. Ocaranza, (915) 212-6502

7. Approve a Resolution to adopt the 2024-2025 Annual Action Plan including attached budgets, for projects to be funded under the Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), Housing Opportunities for Persons with Aids (HOPWA), and Emergency Solutions Grant (ESG) Programs. [24-777](#)

**All Districts**

Community and Human Development, Nicole Ferrini, (915) 212-1659

8. Approve a Resolution authorizing the City Manager to sign all contract, contract amendments, and related documents between the City of El Paso and the State of Texas to receive an allocated \$493,834 in 2024-2025 Homeless Housing and Services Program (HHSP) funds from the Texas Department of Housing and Community Affairs (TDHCA); and authorizing the Director of the Department of Community and Human Development (DCHD) to sign all contracts, amendments and related documents between the City of El Paso and agencies receiving sub-awards of 2024-2025 HHSP funds from the City, as well as all certifications, performance reports, and other related documents. [24-780](#)

**All Districts**

Community and Human Development, Nicole Ferrini, (915) 212-1659

**CONSENT AGENDA - BOARD APPOINTMENTS:**

**Goal 3: Promote the Visual Image of El Paso**

9. Cynthia Renteria to the Historic Landmark Commission by Representative Josh Acevedo, District 2. [24-832](#)

Members of the City Council, Representative Josh Acevedo, (915) 212-0002

**Goal 4: Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments**

10. Bernie Olivas to the Greater El Paso Civic, Convention and Tourism Advisory Board by Representative Art Fierro, District 6. [24-819](#)  
Members of the City Council, Representative Art Fierro, (915) 212-0006
11. Timothy Haddox to the Parks and Recreation Advisory Board by Representative Art Fierro, District 6. [24-822](#)  
Members of the City Council, Representative Art Fierro, (915) 212-0006

**Goal 8: Nurture and Promote a Healthy, Sustainable Community**

12. Benjamin Cohen to the City Accessibility Advisory Committee by Representative Brian Kennedy, District 1. [24-807](#)  
Members of the City Council, Representative Brian Kennedy, (915) 212-0001
13. Silvia Serna to the Fair Housing Task Force by Representative Josh Acevedo, District 2. [24-821](#)  
Members of the City Council, Representative Josh Acevedo, (915) 212-0002

**CONSENT AGENDA - APPLICATIONS FOR TAX REFUNDS:**

**Goal 6: Set the Standard for Sound Governance and Fiscal Management**

14. A refund to CoreLogic/Dovenmuehle Mtg, in the amount of \$21,909.32 for an overpayment made on December 18, 2023 of 2023 taxes, Geo. # S373-999-0020-2050. This action would allow us to comply with state law which requires approval by the legislative body of refunds of tax overpayments greater than \$2,500.00. [24-782](#)  
**All Districts**  
Tax Office, Maria O. Pasillas, (915) 212-1737

**CONSENT AGENDA - REQUESTS TO ISSUE PURCHASE ORDERS:**

**Goal 7: Enhance and Sustain El Paso's Infrastructure Network**

15. The linkage to the Strategic Plan is subsection 7.2 - Improve competitiveness through infrastructure improvements impacting the quality of life. [24-772](#)  
**Award Summary:**  
The request that the Managing Director of Purchasing & Strategic Sourcing be

authorized to issue a Purchase Order to Pavement Marking LLC dba PMI Pavement Marking LLC, referencing Contract 2021-1263 Thermoplastic Striping. This will be a change order to increase the award by \$79,750.00 for a total amount not to exceed \$743,750.00.

Department:	Streets & Maintenance
Award to:	Pavement Marking LLC dba PMI
	Pavement Marking LLC
City & State:	El Paso, Texas
Current Contract Estimated Amount:	\$664,000.00
Change Order Amount:	\$ 79,750.00
Total estimated Amount not to Exceed:	\$743,750.00
Account(s):	532-1000-32020-522270-P3254
Funding Source(s):	General Fund
District(s):	All

This was a Low Bid Award - Unit Price Contract.

**All Districts**

Purchasing and Strategic Sourcing, K. Nicole Cote, (915) 212-1092  
Streets and Maintenance, Richard J. Bristol, (915) 212-7000

**REGULAR AGENDA - MEMBERS OF THE CITY COUNCIL**

**Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development**

16. Discussion and action to approve a Resolution declaring that the expenditure of District 6 discretionary funds, in an amount not to exceed \$2,000, to help sponsor the coffee breaks at this year's Mexico-USA Business Summit taking place June 26th-29th, 2024 in El Paso, Texas. This serves the municipal purpose of fostering local and international business growth by promoting the City of El Paso as an investment destination and presenting information to potential investors on economic incentives provided by the city for economic development. [24-833](#)

**All Districts**

Members of the City Council, Representative Art Fierro, (915) 212-0006

**Goal 2: Set the Standard for a Safe and Secure City**

17. Discussion and action to direct the Interim City Manager and City Attorney to identify appropriate cross-cutting solutions to longstanding hazards related to environmental conditions in the Chamizal Neighborhood, with specific emphasis on addressing the public health concerns of residents. Further, to collaborate with affected property owners and return to Council within 30 days with proposed recommendations for remediation. [24-823](#)

**District 2**

Members of the City Council, Representative Josh Acevedo, (915) 212-0002

## **Goal 8: Nurture and Promote a Healthy, Sustainable Community**

18. Discussion and action on a Resolution to appoint a member to the El Paso Water Utilities Public Service Board of Trustees in the area of expertise of Environmental or Health, as recommended by the El Paso Water Utilities Public Service Board Selection Committee:

[24-797](#)

Ranked 1st: Dr. Hector Ocaranza

Ranked 2nd: Dr. Aldo Maspons

### **All Districts**

Members of the City Council, Mayor Oscar Leeser, (915) 212-0021

### **CALL TO THE PUBLIC – PUBLIC COMMENT:**

Call to the Public will begin at 12:00 p.m. Requests to speak must be received by 9:00 a.m. on the date of the meeting. Sixty minutes in total will be devoted for Call to the Public. This time is reserved for members of the public who would like to address the City Council on items that are not on the City Council Agenda.

Members of the public may communicate with Council during public comment, and regarding agenda items by calling 1-915-213-4096 or toll free number 1-833-664-9267 at the prompt please enter the following Conference ID: 131-574-110#

A sign-up form is available on line for those who wish to sign up in advance of the meeting at: <https://app.smartsheet.com/b/form/dfad29e838da41fd86052bb264abd397>

### **REGULAR AGENDA - FIRST READING OF ORDINANCES:**

#### **INTRODUCTION OF ORDINANCES PURSUANT TO SECTION 3.9 OF THE EL PASO CITY CHARTER:**

**Public comment typically is not taken during the first reading of ordinances. Public comments are invited at the date of the scheduled public hearing.**

Public Hearings will be held as part of the regular City Council meeting that begins at approximately 9:00 a.m. All interested persons present shall have an opportunity to be heard at that time. After the public hearings, Council may also delay taking action on Ordinances; no requirement is made by Section 3.9B of the El Paso City Charter to publish any further notice. Copies of all Ordinances are available for review in the City Clerk's office, 300 N. Campbell, Monday through Thursday, 7:00 a.m. to 6:00 p.m.

## **Goal 3: Promote the Visual Image of El Paso**

19. An Ordinance vacating a ten-foot Public Utility Easement (0.010 Acres of Land) located within Lot 9, Block 12, Stanton Heights Unit Three, City of El Paso, El

[24-761](#)

Paso County, Texas.

Subject Property: 3312 Martina Pl.  
Applicant: Elizabeth Morales, SUET24-00001

**District 6**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553  
Planning and Inspections, Saul J. G. Pina, (915) 212-1612

**PUBLIC HEARING WILL BE HELD ON JULY 2, 2024**

**Goal 6: Set the Standard for Sound Governance and Fiscal Management**

20. An Ordinance authorizing the City Manager to sign a deed and any other documents necessary to convey approximately 0.0061 acres of land legally described as a portion of Section 35, Block 79, Township 2, T&P R.R. Co. Survey, Abstract No. 2139, City of El Paso, El Paso County, Texas.

[24-795](#)

**District 5**

El Paso Water, Rocio Alvarado, (915) 594-5696

**PUBLIC HEARING WILL BE HELD ON JULY 2, 2024**

21. An Ordinance authorizing the City Manager to sign a purchase and sale agreement, a deed and any other documents necessary to convey approximately 16.2097 acres of land, legally described as portion of Section 9, Township 27, South Range 3 East, New Mexico Principle Meridian, Dona Ana County, New Mexico.

[24-796](#)

**Outside City Limits**

El Paso Water, Rocio Alvarado, (915) 594-5493

**PUBLIC HEARING WILL BE HELD ON JULY 2, 2024**

**REGULAR AGENDA – OTHER BIDS, CONTRACTS, PROCUREMENTS:**

**Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development**

22. The linkage to the Strategic Plan is subsection: 1.4 Grow the core business of air transportation.

[24-773](#)

**Award Summary:**

Discussion and action on the award of Solicitation 2024-0055 to Terminal Drive and Bridge Improvements to Jordan Foster Construction, LLC for a total estimated amount of \$1,113,593.95.–This project will consist of resurfacing the inbound and outbound terminal road and employee parking lot due to cracks, potholes, and failing asphalt.

Department: Capital Improvement  
Award to: Jordan Foster Construction, LLC  
City & State: El Paso, TX

Item(s): Base Bid I & II  
Contract Term: 70 Consecutive Calendar Days  
Base Bid I: \$1,049,413.95  
Base Bid II: \$64,180.00  
Total Estimated Award: \$1,113,593.95  
Account(s): 562-3010-62335-580270-PAP00988  
Funding Source(s): Airport Capital  
District(s): All

This was a Low Bid Procurement - unit price contract.

The Purchasing & Strategic Sourcing and Capital Improvement Departments recommend award as indicated to Jordan Foster Construction, LLC the lowest responsive and responsible bidder.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

Work under this unit price contract is only an estimated value and will be ordered, performed, invoiced, and paid by measured quantity. The actual cost of this contract may be higher or lower than the total estimated value and will be the sum total of unit prices at the end of the contract term.

As a part of this award, upon the review of the City Attorney, the City Engineer may without further authorization from City Council approve contract changes which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable law, do not make changes to the prices and are within the appropriate budget.

#### **All Districts**

Purchasing and Strategic Sourcing, K. Nicole Cote, (915) 212-1092  
Capital Improvement, Yvette Hernandez, (915) 212-1860  
Airport, Tony Nevarez, (915) 212-7325

- 23.** Discussion and action that the City Manager, or designee, be authorized to sign a two year On-Call Agreement for Professional Services to perform Land Development / Construction Management services on a task order basis between the City of El Paso and each of the following two (2) consultants:

[24-781](#)

1. Parkhill, Smith & Cooper, Inc.
2. Brock & Bustillos Inc.

Each On-Call Agreement will be for an amount not to exceed \$800,000.00. In addition, the City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed \$50,000.00, if such services are necessary for proper execution of the Project and the increased amounts are within the appropriate budget identified for the identified Project. Further, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such additional Services as also

enumerated within Attachment “C” of the agreement in an amount not to exceed \$50,000.00, if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding \$50,000.00 must have prior approval by City Council through written amendment to this Agreement.

In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement.

**All Districts**

Capital Improvement Department, Yvette Hernandez, (915) 212-1860  
Airport, Tony Nevarez, (915) 212-7325

24. The linkage to the Strategic Plan is subsection: 1.4 Grow the core business of air transportation.

[24-746](#)

**Award Summary:**

Discussion and action on the request that City Manager is authorized to execute the Design-Build documents considered to be the agreement (“Contract”) between the City of El Paso and Jordan Foster Construction, LLC, for the project known as the George Perry Boulevard Extension 2023-0576R in an initial amount of one million thirty one thousand six hundred eighty one and 81/100 dollars (\$1,031,681.81) for work prior to the execution of the Design-Build Amendment; and that the City Engineer is authorized to approve additional preconstruction services in the amount of \$50,000.00 if the services are necessary for the proper execution of the project.

Department:	Capital Improvement
Award to:	Jordan Foster Construction, LLC
City & State:	El Paso, TX
Item(s):	Pre-Construction Services
Total Estimated Award:	\$1,081,681.81
Account(s):	562-3010-62335-580270-PAP00998
Funding Source(s):	Airport Enterprise
District(s):	All

This was a Design-Build Procurement - Service Contract.

The Purchasing & Strategic Sourcing and Capital Improvement Departments recommend award as indicated to Jordan Foster Construction, LLC. The Design-build team offering the best value on the basis of the published selection criteria and on its ranking evaluations.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

Additionally, it is requested that the City Attorney's Office review and that the City Manager or designee be authorized to execute any related contract documents and agreements necessary to effectuate this award.



**All Districts**

Purchasing and Strategic Sourcing, K. Nicole Cote, (915) 212-1092  
Capital Improvement Department, Yvette Hernandez, (915) 212-1860

**Goal 7: Enhance and Sustain El Paso's Infrastructure Network**

25. The linkage to the Strategic Plan is subsection: 7.5 - Set one standard for infrastructure across the city.

[24-771](#)

**Award Summary:**

Discussion and action that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue Purchase Order(s) for Solicitation 2024-0265 Bobcat Proprietary Parts & Services to Total Equipment & Rental of El Paso, LLC dba Bobcat of El Paso, the sole and authorized distributor for a term of three (3) years for an estimated amount of \$450,000.00. Supplier will be required to provide an updated sole source letter and affidavit each year. This contract will allow Streets & Maintenance to purchase parts and services for the Bobcat Proprietary Parts & Services.

**Contract Variance:**

The difference based in comparison to the previous contract is as follows: An increase of \$360,000.00 for the initial term, which represents a 400.00% increase due price increases and additional contract capacity to maintain parts inventory.

Department:	Streets & Maintenance
Award to:	Total Equipment & Rental of El Paso, LLC dba Bobcat of El Paso
City & State:	El Paso, TX
Item(s):	All
Initial Term:	3 Years
Option Term:	N/A
Total Contract Time:	3 Years
Annual Estimated Award:	\$150,000.00
Initial Term Estimated Award:	\$450,000.00
Option Term Estimated Award:	N/A
Total Estimated Award:	\$450,000.00
Account(s):	532-3600-531250-37020-P3701 (Service) 532-3600-531210-37020-P3701 (Parts)
Funding Source(s):	Internal Service Fund
District(s):	All

Non-Competitive Procurement under Local Government General Exemption:  
Section 252.022 - (7) a procurement of items that are available from only one source - (D) captive replacement parts or components for equipment.

The Purchasing & Strategic Sourcing and Streets & Maintenance Departments recommend award as indicated to Total Equipment & Rental of El Paso, LLC dba Bobcat of El Paso under the exemption listed above.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

**All Districts**

Purchasing and Strategic Sourcing, K. Nicole Cote, (915) 212-1092  
Streets and Maintenance, Richard J. Bristol, (915) 212-7000

**REGULAR AGENDA – PUBLIC HEARINGS AND SECOND READING OF ORDINANCES:**

**Goal 2: Set the Standard for a Safe and Secure City**

26. An Ordinance amending Title 5 (Business License and Permit Regulations); Chapter 5.12 (Dealers in Secondhand goods, dealers in crafted precious metals, coin dealers and pawnbrokers); Section 5.12.080 (License-Denial, Appeal) to amend “Hearing Officer” to “Municipal Associate Judge” of the El Paso City Code. [24-733](#)

**All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822  
Municipal Courts, Annabelle Casas, (915) 212-5205

27. An Ordinance amending Title 5 (Business License and Permit Regulations); Chapter 5.13 (Security Alarm Systems); Section 5.13.120 (Appeal from assessment of civil penalty) and Section 5.13.130 (Reinstatement of Permit ) to amend “Hearing Officer” to “Municipal Associate Judge” of the El Paso City Code. [24-734](#)

**All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822  
Municipal Courts, Annabelle Casas, (915) 212-5205

28. An Ordinance amending Title 6 (Transportation for Hire), Chapter 6.04 (Transportation for Hire), to amend Section 6.04.140 (Operating Authority to Permit and Taxicab Zone Permit Denial, Suspension, Revocation - Appeal) to amend “Hearing Officer” to “Municipal Associate Judge” of the El Paso City Code. [24-735](#)

**All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822  
Municipal Courts, Annabelle Casas, (915) 212-5205

29. An Ordinance amending Title 9 (Health and Safety), Chapter 9.20 (Social Host Accountability Ordinance), Section 9.20.100 (Hearings on the Imposition of Civil Penalty - Appeals) to amend “Administrative Hearing Officer” to “Municipal Associate Judge” of the El Paso City Code. [24-757](#)

**All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822  
Municipal Courts, Annabelle Casas, (915) 212-5205

30. An Ordinance amending Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking [24-737](#)

Violations Bureau), Section 12.85.020 (Hearing Officers), Section 12.85.030 (Parking Citations), Section 12.85.050 (Hearings), Section 12.85.060 (Appeal); Section 12.85.065 (Final Judgments), and Section 12.85.100 (Boot Hearing) to amend 'Hearing Officer' to 'Municipal Associate Judge' and 'Municipal Associate Judge' to 'El Paso Municipal Court of Appeals' of the El Paso City Code.

#### **All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822

Municipal Courts, Annabelle Casas, (915) 212-5205

### **Goal 3: Promote the Visual Image of El Paso**

31. An Ordinance changing the zoning of a 17.444 acre Tract of land situated in the O.A. Danielson Survey, Number 316, being a portion of that certain 32.412-acre Tract, and 4.806 acre Tract of land situated in Ysleta Grant Block 56, being a portion of Tract 8 and 9, of said Block 56, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) and R-3 (Residential) to C-4 (Commercial), and imposing a condition. The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

[24-685](#)

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: Gateway East and Southeast of Americas

Applicant: David Ballard, PZRZ23-00041

#### **District 6**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553

Planning and Inspections, Andrew Salloum, (915) 212-1603

32. An Ordinance changing the zoning of all of Tracts 90-A, 92, and 93, S.A. & M.G. Railroad Survey #267, City of El Paso, El Paso County, Texas from R-4 (Residential) to C-3 (Commercial), and imposing conditions. The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

[24-686](#)

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: North of Thorn and West of Doniphan

Applicant: David Ballard, PZRZ24-00003

#### **District 1**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553

Planning and Inspections, Andrew Salloum, (915) 212-1603

### **Goal 6: Set the Standard for Sound Governance and Fiscal Management**

33. An Ordinance authorizing the City Manager to sign a purchase and sale agreement, a deed, and any other documents necessary to convey

[24-707](#)

approximately 0.17 acres of land described as a portion of Tract 5D-1, Block 1, Upper Valley Surveys, in the City of El Paso, El Paso County, Texas.

**District 1**

Streets and Maintenance, Mary Lou Espinoza, (915) 867-2629

**REGULAR AGENDA - OTHER BUSINESS:**

**Goal 6: Set the Standard for Sound Governance and Fiscal Management**

- 34.** Discussion and action on the Resolution that the City reviewed and approves the issuance of the Unlimited Tax Bonds, Series 2024 by Paseo Del Este Municipal Utility District No. 4 with the acknowledgement that the issuance of such bonds does not constitute debt issuance by the City of El Paso. [24-763](#)

**All Districts**

City Manager's Office, Robert Cortinas, (915) 212-1067

- 35.** Discussion and action on the Resolution that the City reviewed and approves the issuance of the Unlimited Tax Bonds, Series 2024 by Paseo Del Este Municipal Utility District No. 2 with the acknowledgement that the issuance of such bonds does not constitute debt issuance by the City of El Paso. [24-769](#)

**All Districts**

City Manager's Office, Robert Cortinas, (915) 212-1067

**EXECUTIVE SESSION**

The City Council of the City of El Paso may retire into EXECUTIVE SESSION pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Chapter 551, Subchapter D, to discuss any of the following: (The items listed below are matters of the sort routinely discussed in Executive Session, but the City Council of the City of El Paso may move to Executive Session any of the items on this agenda, consistent with the terms of the Open Meetings Act and the Rules of City Council.) The City Council will return to open session to take any final action and may also, at any time during the meeting, bring forward any of the following items for public discussion, as appropriate.

Section 551.071	CONSULTATION WITH ATTORNEY
Section 551.072	DELIBERATION REGARDING REAL PROPERTY
Section 551.073	DELIBERATION REGARDING PROSPECTIVE GIFTS
Section 551.074	PERSONNEL MATTERS
Section 551.076	DELIBERATION REGARDING SECURITY DEVICES OR SECURITY AUDITS
Section 551.087	DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS
Section 551.089	DELIBERATION REGARDING SECURITY DEVICES OR SECURITY AUDITS; CLOSED MEETING

**ADJOURN**

**NOTICE TO THE PUBLIC:**

Sign Language interpreters are provided for Regular City Council Meetings. If you need Spanish Interpretation Services, please email [CityClerk@elpasotexas.gov](mailto:CityClerk@elpasotexas.gov) by 12:00 p.m. on the Friday before the meeting.

Si usted necesita servicios de interpretación en español, favor de enviar un correo electrónico a [CityClerk@elpasotexas.gov](mailto:CityClerk@elpasotexas.gov) a mas tardar a las 12:00 p.m. del viernes previo a la fecha de la junta.

**ALL REGULAR CITY COUNCIL AGENDAS ARE PLACED ON THE INTERNET ON THURSDAY PRIOR TO THE MEETING AT THE ADDRESS BELOW:**

<http://www.elpasotexas.gov/>



Legislation Text

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File #: 24-792, Version: 1

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**CITY OF EL PASO, TEXAS**  
**LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

City Clerk's Office, Laura D. Prine, (915) 212-0049

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Approval of the Minutes of the Regular City Council Meeting of June 4, 2024, the Agenda Review Meeting of June 3, 2024, and the Work Session of June 3, 2024.

OSCAR LEESER  
MAYOR

CARY WESTIN  
INTERIM CITY MANAGER



CITY COUNCIL  
BRIAN KENNEDY, DISTRICT 1  
JOSH ACEVEDO, DISTRICT 2  
CASSANDRA HERNANDEZ DISTRICT 3  
JOE MOLINAR, DISTRICT 4  
ISABEL SALCIDO, DISTRICT 5  
ART FIERRO DISTRICT 6  
HENRY RIVERA, DISTRICT 7  
CHRIS CANALES, DISTRICT 8

**AGENDA REVIEW MINUTES  
COUNCIL CHAMBERS AND VIRTUALLY  
CITY HALL, 300 N. CAMPBELL  
June 3, 2024  
9:00 A.M.**

.....  
The City Council met at the above place and date. Meeting was called to order at 9:04 a.m. Mayor Oscar Leeser was present and presiding. The following Council Members answered roll call: Brian Kennedy, Josh Acevedo, Cassandra Hernandez, Joe Molinar, Isabel Salcido, Art Fierro, and Henry Rivera. Chris Canales was absent.

The agenda items for the June 4, 2024 Regular City Council and Mass Transit Board Meetings were reviewed.

.....  
**4. CONSENT AGENDA – RESOLUTIONS**

That the City Manager or his designee is authorized to submit to the Motor Vehicle Crime Prevention Authority the grant application for the City of El Paso Police Department project identified as "Senate Bill 224 Catalytic Converter Grant FY24" to provide financial assistance to the City of El Paso. Requesting \$1,391,615.00. No cash match required. The grant period will be 12 months from the time the statement of grant award is received.

Mayor Leeser and Assistant Police Chief Humberto Talamantes commented.

.....  
**10. CONSENT AGENDA – NOTICE OF CAMPAIGN CONTRIBUTIONS**

For notation pursuant to Section 2.92.080 of the City Code, receipt of campaign contributions by Representative Cassandra Hernandez in the amounts of \$2,500 from Steve Ortega, \$500 from Scott Berry, \$500 Raul Hernandez, and \$500 In-kind Donation from Raul Hernandez.

Mayor Leeser questioned the following City staff members:

- Ms. Kristen Hamilton-Karam, Deputy City Attorney
- Ms. Laura D. Prine, City Clerk

.....  
**25. REGULAR AGENDA – OTHER BIDS, CONTRACTS, PROCUREMENTS**

Discussion and action on the award of Solicitation No. 2024-0233R Health Insurance Benefits Administrators to the following suppliers: 1) Aetna Dental Inc. - Aetna Life Insurance Company, 2) Colonial Life & Accident Insurance Company, 3) Dearborn Life Insurance Company - Blue Cross Blue Shield of TX, 4) Deer Oaks EAP Services, LLC, 5) Health Care Service Corporation, a Mutual Legal Reserve Company dba Blue Cross Blue Shield of TX, 6) Metropolitan Life Insurance Company - Safeguard Health Plans, Inc., 7) WEX Health, Inc., for an initial term of three (3) years for an estimated amount of \$234,383,214.00. The award also includes a two (2), two (2) year option for an estimated amount of \$312,510,952.00. The total amount of the contract, including the initial term plus the option for a total of seven (7) years, is for an estimated amount of

\$546,894,166.00. The initial period of performance is from December 15, 2024 - December 14, 2027.

**Contract Variance:**

The difference based in comparison to the previous contracts is as follows: An increase of \$64,980,424.20 for the initial term, which represents a 38.36% increase due to price increases.

Department:	Human Resources
Award to Supplier 1:	Aetna Dental Inc. - Aetna Life Insurance Company
City & State:	Hartford, CT
Item(s):	ASO Medical, Pharmacy, U65 Medical, Medicare Advantage, HSA, FI Dental PPO, ASO Dental, ASO Vision
Initial Term:	3 Years
Option Terms:	2 - 2 Years
Total Contract Time:	7 Years
Annual Estimated Award:	\$ 76,365,548.33
Initial Term Estimated Award:	\$229,096,645.00
Option Term Estimated Award:	\$305,462,193.33
Total Estimated Award:	\$534,558,838.33
Award to Supplier 2:	Colonial Life & Accident Insurance Company
City & State:	Chattanooga, TN
Item(s):	Disability Insurance
Initial Term:	3 Years
Option Terms:	2 - 2 Years
Total Contract Time:	7 Years
Annual Estimated Award:	\$141,212.67
Initial Term Estimated Award:	\$423,638.00
Option Term Estimated Award:	\$564,850.67
Total Estimated Award:	\$988,488.67
Award to Supplier 3:	Dearborn Life Insurance Company - Blue Cross Blue Shield of TX
City & State:	Lombard, IL
Item(s):	Basic Life Insurance, Voluntary Life Insurance, FI Vision
Initial Term:	3 Years
Option Terms:	2 - 2 Years
Total Contract Time:	7 Years
Annual Estimated Award:	\$1,421,769.67
Initial Term Estimated Award:	\$4,265,309.00
Option Term Estimated Award:	\$5,687,078.67
Total Estimated Award:	\$9,952,387.67
Award to Supplier 4:	Deer Oaks EAP Services, LLC
City & State:	San Antonio, TX
Item(s):	EAP



Initial Term:	3 Years
Option Terms:	2 - 2 Years
Total Contract Time:	7 Years
Annual Estimated Award:	\$ 69,495.00
Initial Term Estimated Award:	\$208,485.00
Option Term Estimated Award:	\$277,980.00
Total Estimated Award:	\$486,465.00

Award to Supplier 5:	Health Care Service Corporation, a Mutual Legal Reserve Company dba Blue Cross Blue Shield of TX
City & State:	Chicago, IL
Item(s):	COBRA
Initial Term:	3 Years
Option Terms:	2 - 2 Years
Total Contract Time:	7 Years
Annual Estimated Award:	\$ 6,000.00
Initial Term Estimated Award:	\$18,000.00
Option Term Estimated Award:	\$24,000.00
Total Estimated Award:	\$42,000.00

Award to Supplier 6:	Metropolitan Life Insurance Company- Safeguard Health Plans, Inc.
City & State:	New York, NY
Item(s):	FI Dental HMO
Initial Term:	3 Years
Option Terms:	2 - 2 Years
Total Contract Time:	7 Years
Annual Estimated Award:	\$122,940.33
Initial Term Estimated Award:	\$368,821.00
Option Term Estimated Award:	\$491,761.33
Total Estimated Award:	\$860,582.33

Award to Supplier 7:	WEX Health, Inc.
City & State:	Portland, ME
Item(s):	FSA
Initial Term:	3 Years
Option Terms:	2 - 2 Years
Total Contract Time:	7 Years
Annual Estimated Award:	\$ 772.00
Initial Term Estimated Award:	\$2,316.00
Option Term Estimated Award:	\$3,088.00
Total Estimated Award:	\$5,404.00
Total Annual Estimated Award:	\$ 78,127,738.00
Total Initial Term Estimated Award:	\$234,383,214.00
Total Option Term Estimated Award:	\$312,510,952.00
Total Estimated Award:	\$546,894,166.00
Account(s):	209 - 3500 - 14045 - 521120 - P1414
	209 - 3500 - 14045 - 521380 - P1414
	209 - 3500 - 14045 - 522000 - P1414

	209 - 3500 - 14045 - 521180 - P1414
	209 - 3500 - 14045 - 521190 - P1414
	209 - 3500 - 14045 - 521200 - P1414
	209 - 3500 - 14045 - 521410 - P1414
	209 - 3500 - 14045 - 521420 - P1414
Funding Source(s):	Self-Insured Health Insurance, Benefit Payments, Benefits Administrators (TPA), Dental Premium, Optical Premium, Life Premium, Pharmaceutical Administrator, EAP, Benefit Administrator
District(s):	All

This was a Request for Proposals Procurement, service contract.

The Purchasing & Strategic Sourcing Department and Human Resources recommend award as indicated to 1) Aetna Dental Inc. - Aetna Life Insurance Company, 2) Colonial Life & Accident Insurance Company, 3) Dearborn Life Insurance Company - Blue Cross Blue Shield of TX, 4) Deer Oaks EAP Services, LLC, 5) Health Care Service Corporation, a Mutual Legal Reserve Company dba Blue Cross Blue Shield of TX, 6) Metropolitan Life Insurance Company - Safeguard Health Plans, Inc., 7) WEX Health, Inc., the highest ranked offerors based on the evaluation factors established in the evaluation criteria for this procurement. It is also recommended to deem Continental American Insurance Company dba AFLAC Group, CuraLinc LLC dba CureLinc Healthcare, Independent Eye Care MSO, Inc. dba Community Eye Care, LLC, Interflex Payments LLC dba Ameriflex, Minnesota Life Insurance Company, National Benefit Services, LLC and Trustmark Insurance Company nonresponsive due to failure to furnish required documentation with their proposal.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

In accordance with this award, the City Manager or designee is authorized to exercise future options if needed.

Additionally, it is requested that the City Attorney's Office review and that the City Manager or designee be authorized to execute any related contract documents and agreements necessary to effectuate this award.

Mayor Leaser and Representative Hernandez questioned the following City staff members:

- Ms. Paula Salas, Lead Procurement and Contract Analyst
- Ms. Mary Wiggins, Chief Human Resources Officer

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**31. REGULAR AGENDA – OTHER BUSINESS**

Discussion and action on a Resolution authorizing the submission of an application to the United States Department of Defense Fiscal Year 2024 Defense Community Infrastructure Program (“DCIP”) program requesting funds in the amount of \$7,000,000.00, with a \$3,000,000.00 (30%) match required from the City, for the Aerospace and Defense Technology (ADTech) Training Center Project.

Mayor Leeson questioned the following City staff member:

- Mr. Omar Martinez, Grants and Strategic Initiatives Manager

.....

**MASS TRANSIT DEPARTMENT BOARD AGENDA**

**6. REGULAR AGENDA – OTHER BIDS, CONTRACTS, PROCUREMENTS**

Discussion and action on the request that the Managing Director of Purchasing & Strategic Sourcing is authorized to notify Thermo King West, Inc. that the City is terminating Contract No. 2022-0208 A-C Proprietary Parts (Thermo King) for convenience, pursuant to the provisions and requirements of Part 18, Circular 4220.1E, Paragraph A of the FTA Clauses, and that the termination shall be effective as of June 4, 2024.

Mayor Leeson questioned the following City staff members:

- Ms. Janette Nevarez, Procurement Analyst
- Mr. Jerry DeMuro, Deputy Transit Officer for Sun Metro

.....

**7. REGULAR AGENDA – OTHER BIDS, CONTRACTS, PROCUREMENTS**

Discussion and action on the request that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue Purchase Order(s) for Solicitation 2024-0340 AC Proprietary Parts to Thermo King West, Inc. dba Thermo King Chesapeake Inc., the sole and authorized distributor for a term of three (3) years for an estimated amount of \$3,240,000.00. Supplier will be required to provide an updated sole source letter and affidavit each year. This contract will allow Sun Metro to provide the required preventive and corrective maintenance for the Air Conditioner systems in the Sun Metro buses and streetcars.

**Contract Variance:**

The difference based in comparison to the previous contract is as follows: An increase of \$1,740,000.00 for the initial term, which represents a 116.00% increase due to additional contract capacity to maintain parts inventory.

Department:	Mass Transit (Sun Metro)
Award to:	Thermo King West, Inc. dba Thermo King Chesapeake Inc.
City & State:	Tolleson, AZ
Item(s):	All
Initial Term:	3 Years
Option Term:	N/A
Total Contract Time:	3 Years
Annual Estimated Award:	\$1,080,000.00
Initial Term Estimated Award:	\$3,240,000.00
Option Term Estimated Award:	N/A
Total Estimated Award:	\$3,240,000.00
Account(s)	560-3215-60050-531180- P6019-P60FTA117-G60225307
Funding Source(s):	Federal Transit Administration Formula 5307 Grant
District(s):	All

Mayor Leeson questioned the following City staff members:

- Mr. Derek Russell, Lead Procurement and Contract Analyst
- Mr. Anthony Dekeyzer, Mass Transit Director

.....  
Motion made by Representative Rivera, seconded by Representative Molinar, and unanimously carried to **ADJOURN** this meeting at 9:34 a.m.

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, and Rivera

NAYS: None

ABSENT: Representative Canales

.....  
APPROVED AS TO CONTENT:

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

OSCAR LEESER  
MAYOR

CARY WESTIN  
INTERIM CITY MANAGER



CITY COUNCIL  
BRIAN KENNEDY, DISTRICT 1  
JOSH ACEVEDO, DISTRICT 2  
CASSANDRA HERNANDEZ, DISTRICT 3  
JOE MOLINAR, DISTRICT 4  
ISABEL SALCIDO, DISTRICT 5  
ART FIERRO, DISTRICT 6  
HENRY RIVERA, DISTRICT 7  
CHRIS CANALES, DISTRICT 8

**CITY COUNCIL WORK SESSION MINUTES**  
**June 3, 2024**  
**COUNCIL CHAMBERS, CITY HALL AND VIRTUALLY**  
**9:05 A.M.**

.....  
The City Council of the City of El Paso met at the above place and date. Meeting was called to order at 9:34 a.m. Mayor Oscar Leeser was present and presiding and the following Council Members answered roll call: Brian Kennedy, Josh Acevedo, Cassandra Hernandez, Joe Molinar, Isabel Salcido, Art Fierro, and Henry Rivera. Late arrival: Chris Canales at 9:36 a.m.  
.....

**AGENDA**

- .....
1. For Notation Only: Formal Report of the Financial Oversight and Audit Committee meeting held on May 1, 2024.
    1. Discussion and Action on External Audit Results for Fiscal Year 2023.
      - Motion made by Representative Molinar, seconded by Representative Acevedo, and approved by Representative Kennedy, Representative Acevedo, Representative Fierro and Representative Molinar to accept the audit results.
    2. Discussion and Action to include an audit in the FY 2023-2024 Audit Plan of the Sun Bowl Game Agreement.
      - Motion made by Representative Acevedo, seconded by Representative Molinar and approved by Representative Kennedy, Representative Acevedo, Representative Fierro and Representative Molinar to include the audit in the FY2023-2024 Audit Plan.
    3. Discussion and Action on the results of the City Council and City Manager's Office P-Card and Travel Review-Years 2020,2021,2022 and 2023.
      - Motion made by Representative Kennedy, seconded by Representative Fierro and approved by Representative Kennedy, Representative Acevedo, Representative Fierro and Representative Molinar to postpone the agenda item to the next FOAC meeting.
    4. Discussion and action on the results of the City Council and City Managers Commercial Fuel Card Review-Years 2020,2021 and Years 2020 to 2023 Recap.
      - Motion made by Representative Molinar, seconded by Representative Acevedo and approved by Representative Kennedy, Representative Acevedo, Representative Fierro and Representative Molinar to accept the project results.
    5. Discussion and Action on directing staff to review the Internal Audit Charter for any proposed revisions.
      - Motion made by Representative Molinar, seconded by Representative Acevedo and approved by Representative Kennedy, Representative Acevedo and Representative Molinar to postpone the agenda item to the next FOAC meeting.

6. Discussion and Action on FY2023-2024 Audit Plan 2<sup>nd</sup> Quarter Updates.
  - Motion made by Representative Acevedo, seconded by Representative Fierro and approved by Representative Kennedy, Representative Acevedo, Representative Fierro and Representative Molinar to postpone the agenda item to the next FOAC meeting.

7. Discussion and Action on Client Surveys.

Mr. Edmundo Calderon, Chief Internal Auditor, provided a briefing of the May 1, 2024 meeting.

**NO ACTION** was taken on this item.

- 
2. Presentation and discussion providing a report from the following Goal Teams:

1. Vision Block: Safe and Beautiful Neighborhoods:

**Goal 2 (Safe and Secure City)**

Assistant Fire Chief Dennis Redd and Police Executive Assistant Chief Zina Silva presented a PowerPoint Presentation (copy on file in the City Clerk's Office).

Mayor Leeser and Representatives Acevedo, Hernandez, Molinar, and Rivera commented.

The following City staff members commented:

- Fire Chief Jonathan Killings
- Police Chief Peter Pacillas
- Mr. Robert Cortinas, Chief Financial Officer
- Mr. Cary Westin, Interim City Manager
- Ms. Yvette Hernandez, City Engineer
- Ms. Lilia Worrell, Municipal Court Director

**Goal 7 (Infrastructure)**

Mr. Rene Barraza, Streets and Maintenance Administrative Services Manager, presented a PowerPoint presentation (copy on file in the City Clerk's Office).

Mayor Leeser and Representatives Acevedo, Hernandez, Molinar, Rivera, and Canales commented.

The following City staff members commented:

- Ms. Yvette Hernandez, City Engineer
- Mr. Anthony Dekeyzer, Sun Metro Director
- Mr. Forest Clancy, Environmental Services Assistant Director
- Mr. Cary Westin, Interim City Manager
- Mr. Robert Cortinas, Chief Financial Officer

**Goal 8 (Healthy, Sustainable Community)**

Mr. Terry Kebschull, Animal Services Director, presented a PowerPoint presentation (copy on file in the City Clerk's Office).

**NO ACTION** was taken on this item.

- .....
3. Discussion on how the City will implement Phase I and Phase II of the Department of Labor's final rule on overtime pay requirements for executive, administrative, and professional employees.

Ms. Mary Wiggins, Chief Human Resources Officer, presented a PowerPoint presentation (copy on file in the City Clerk's Office).

Mayor Leeser and Representative Canales commented.

Mr. Cary Westin, Interim City Manager, commented.

**NO ACTION** was taken on this item.

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**EXECUTIVE SESSION**

Motion made by Representative Rivera, seconded by Representative Molinar, and unanimously carried that the City Council **RETIRE** into **EXECUTIVE SESSION** at 10:57 a.m. pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Sections 551.071 - 551.089 to discuss the following items:

Section 551.071 CONSULTATION WITH ATTORNEY  
Section 551.074 PERSONNEL MATTERS

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Rivera, and Canales

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Fierro

Motion made by Representative Rivera, seconded by Representative Canales, and unanimously carried to **ADJOURN** the Executive Session at 12:36 p.m. and **RECONVENE** the meeting of the City Council at which time a motion was made.

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, Rivera, and Canales

NAYS: None

- .....
- EX1.** Application of El Paso Electric Company for Approval of a Distribution Cost Recovery Factor; HQ#UTILITY-7 (551.071)

**NO ACTION** was taken on this item.

- .....
- EX2.** Application of El Paso Electric Company's Approval to Implement a Time-Varying Rate Pilot Program; HQ#UTILITY-41 (551.071)

Representative Acevedo verbally disclosed a \$750 contribution received from El Paso Electric Political Action Committee.

Motion made by Mayor Pro Tempore Kennedy, seconded by Representative Molinar, and unanimously carried that the City Attorney in consultation with the City Manager be **AUTHORIZED** to retain outside counsel and any other necessary consultants, and to file an intervention in *El Paso Electric Company's Statement of Intent and Application to Implement a Time-Varying Rate Pilot Program and Tariffs* filed on May 23, 2024, under the Texas Public

Utility Commission, Docket No. 56658, in Matter Number UTILITY-41, and to take all steps necessary, including the execution of any required documents, in order to effectuate this authority.

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, Rivera, and Canales

NAYS: None

.....  
**EX3.** Closeout of the 2012 Contract with El Paso Zoological Society, HQ#2062 (551.071)

**NO ACTION** was taken on this item.

.....  
**EX4.** City Attorney Annual Performance Evaluation HQ#2689 (551.071) (551.074)

**NO ACTION** was taken on this item.

.....  
Motion made by Representative Rivera, seconded by Representative Molinar, and unanimously carried to **ADJOURN** the meeting at 12:38 p.m.

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, Rivera, and Canales

NAYS: None

.....  
APPROVED AS TO CONTENT:

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



OSCAR LEESER  
MAYOR

CARY WESTIN  
INTERIM CITY MANAGER



CITY COUNCIL  
BRIAN KENNEDY, DISTRICT 1  
JOSH ACEVEDO, DISTRICT 2  
CASSANDRA HERNANDEZ, DISTRICT 3  
JOE MOLINAR, DISTRICT 4  
ISABEL SALCIDO, DISTRICT 5  
ART FIERRO, DISTRICT 6  
HENRY RIVERA, DISTRICT 7  
CHRIS CANALES, DISTRICT 8

## MINUTES FOR REGULAR COUNCIL MEETING

JUNE 4, 2024  
COUNCIL CHAMBERS, CITY HALL AND VIRTUALLY  
9:00 AM

### ROLL CALL

The City Council of the City of El Paso met on the above time and date. Meeting was called to order at 9:04 a.m. Mayor Pro Tempore Brian Kennedy was present and presiding and the following Council Members answered roll call: Josh Acevedo, Joe Molinar, Isabel Salcido, Henry Rivera, and Chris Canales. Late arrivals: Art Fierro at 9:08 a.m. and Cassandra Hernandez at 9:09 a.m. Mayor Oscar Leeser requested to be excused.

### INVOCATION BY EL PASO POLICE CHAPLAIN RABBI LEVI GREENBERG

### PLEDGE OF ALLEGIANCE

### MAYOR'S PROCLAMATIONS

Pride Month

El Paso High School Mock Trial Team Day

Franklin High School Mariachi Estrella Del Oeste Week

Chapin High School Boys Basketball Team Day

Women Veterans Day

### NOTICE TO THE PUBLIC

Motion made by Alternate Mayor Pro Tempore Molinar, seconded by Representative Fierro, and unanimously carried to **APPROVE, AS REVISED**, all matters listed under the Consent Agenda unless otherwise noted. (Items approved, postponed, or deleted pursuant to the vote on the Consent Agenda will be shown with an asterisk {\*}).

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, Rivera and Canales

NAYS: None

**CONSENT AGENDA – APPROVAL OF MINUTES:**

**Goal 6: Set the Standard for Sound Governance and Fiscal Management**

1. \*Motion made, seconded, and unanimously carried to **APPROVE** the Minutes of the Regular City Council Meetings of May 7, 2024 and May 21, 2024, the Agenda Review Meeting of May 20, 2024, and the Work Session of May 20, 2024.

**CONSENT AGENDA – REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS:**

2. **REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS**

\*Motion made, seconded, and unanimously carried to **EXCUSE** Mayor Oscar Leeser from the Regular City Council meeting of June 4, 2024

**CONSENT AGENDA – RESOLUTIONS:**

**Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development**

3. **\*RESOLUTION**

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

**WHEREAS**, United Parcel Service (“UPS”) is a tenant of the City leasing property at 23 Spur Drive- 28 Leigh Fisher Blvd., El Paso, Texas; and

**WHEREAS**, UPS is seeking grant funding through the Texas Volkswagen Environmental Mitigation Program (TxVEMP) and Texas Commission on Environmental Quality (TCEQ) to replace and purchase older class 4-7 local freight trucks with new all-electric models and to install electrical vehicle refueling stations on the leased premises; and

**WHEREAS**, the City has determined that should UPS be awarded the grant, the City consents to the installation of the refueling infrastructure on City property.

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

That the City Manager, or designee, be authorized to sign the Texas Volkswagen Environmental Mitigation Program Application (“TxVEMP”) granting the City’s consent to the installation of the refueling infrastructure on City property located at 23 Spur Drive, El Paso, Texas 79906.

**Goal 2: Set the Standard for a Safe and Secure City**

4. **\*RESOLUTION**

**WHEREAS**, under the provisions of the Texas Transportation Code Chapter 1006 and Texas Administrative Code Title 43; Part 3; Chapter 57, the City of El Paso (the "City") are eligible to receive grants from the Motor Vehicle Crime Prevention Authority ("MVCPA") to provide financial support to law enforcement agencies for economic automobile theft enforcement teams and to combat motor vehicle burglary in the jurisdiction; and

**WHEREAS**, this grant program will assist this jurisdiction to combat motor vehicle burglary and theft; and

**WHEREAS**, the El Paso City Council seeks to receive grant funding through the MVCPA grant application, for the El Paso Police Department project identified as "Senate Bill 224 Catalytic Converter Grant FY24;" and

**WHEREAS**, the El Paso City Council designates the City Manager or his designee as the City's authorized official.

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

**1. THAT**, the City Manager or his designee is authorized to submit to the Motor Vehicle Crime Prevention Authority, the grant application for the City of El Paso Police Department project identified as "Senate Bill 224 Catalytic Converter Grant FY24" to provide financial assistance to the City of El Paso.

**2. THAT**, the City of El Paso shall provide all matching funds for said grant, if applicable.

**3. THAT**, the City Manager or designee is authorized to apply for, accept, decline, modify, alter and/or terminate said grant, and all other necessary documents to accept said grant.

**4. THAT**, the City Council agrees that in the event of loss or misuse of said grant funds, the City of El Paso will return all funds for said grant to the MVCPA.

**5. BE IT FURTHER RESOLVED THAT**, the City Manager or designee is authorized to sign any related paperwork, including but not limited to, the actual grant contract, the authorization of budget transfers, and/or revisions to the operation plan, as well as any grant amendments, corrections, or extensions of the grant agreement which increase, decrease, or de-obligate program funds, provided that no additional City funds are required.

**CONSENT AGENDA – SPECIAL APPOINTMENT:**

**Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development**

**5.**

**\*R E S O L U T I O N**

**WHEREAS**, Texas House Bill No. 4730, 86th Session of the Texas Legislature, Regular Session, created the City of El Paso Municipal Management District No. 1 ("MMD1") effective January 1, 2020; and

**WHEREAS**, during the March 17th, 2020 regular council meeting, the City Council of the City of El Paso consented to the creation of the MMD1 located within the boundaries of the City of El Paso, Texas.; and

**WHEREAS**, the City Council of the City of El Paso, Texas appointed five persons to serve as initial directors for MMD1; and

**WHEREAS**, Section 375.064 of the Texas Local Government Code and Section 3972.0203 of Texas Special District Local Laws Code provide that each succeeding Board of Directors of the MMD1 ("Board") shall recommend, to the City Council of the City of El Paso, persons to serve on the Board; and

**WHEREAS**, during the March 7, 2024 meeting the Board approved recommending Ryan Burkhardt and William Kell be reappointed to the Board.

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

That the City Council of the City of El Paso hereby appoints the following persons to serve as Directors on the Board for the City of El Paso Municipal Management District No. 1 for four year terms expiring in June 2028:

- Ryan Burkhardt
- William Kell

.....  
**Goal 7: Enhance and Sustain El Paso's Infrastructure Network**  
.....

**6. \*RESOLUTION**

**WHEREAS**, the By-laws and Procedures for the Metropolitan Planning Organization's Transportation Policy Board (TPB) provide that the El Paso International Airport shall have representation on the TPB; and

**WHEREAS**, the TPB Bylaws provide that representatives of local units of government shall be appointed by and serve at the pleasure of the appointing local units of government they represent; and

**WHEREAS**, there is currently a vacancy on the TPB for a representative from the El Paso International Airport; and

**WHEREAS**, the City of El Paso now desires to appoint Interim Director of Aviation Juan Antonio Nevarez as El Paso International Airport's representative to the TPB replacing former Chief Operations Officer, Sam Rodriguez.

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

That Interim Director of Aviation Juan Antonio Nevarez be appointed as the representative for the El Paso International Airport to the Transportation Policy Board (TPB) for the Metropolitan Planning Organization, to replace former Chief Operations Officer Sam Rodriguez; and the Mayor shall sign a letter informing the Metropolitan Planning Organization of the change in representation.

.....  
**CONSENT AGENDA – BOARD RE- APPOINTMENTS:**  
.....

**Goal 3: Promote the Visual Image of El Paso**  
.....

7. \*Motion made, seconded, and unanimously carried to **RE-APPOINT** Albert Apodaca to the City Plan Commission by Representative Art Fierro, District 6.  
.....

**CONSENT AGENDA – BOARD APPOINTMENTS:**  
.....

**Goal 3: Promote the Visual Image of El Paso**  
.....

8. \*Motion made, seconded, and unanimously carried to **APPOINT** Gloria Franco Clark to the Zoning Board of Adjustment as a Regular Member by Representative Henry Rivera, District 7.
9. \*Motion made, seconded, and unanimously carried to **APPOINT** Christine Elizabeth Foster Loveridge to the Zoning Board of Adjustment as a Regular Member by Representative Josh Acevedo, District 2.

Representative Acevedo commented.

Ms. Patricia Osmond, citizen, commented.

#### **CONSENT AGENDA – NOTICE OF CAMPAIGN CONTRIBUTIONS:**

##### **Goal 5: Promote Transparent and Consistent Communication Amongst All Members of the**

10. \*Motion made, seconded, and unanimously carried to **NOTE** pursuant to Section 2.92.080 of the City Code, receipt of campaign contributions by Representative Cassandra Hernandez in the amounts of \$2,500 from Steve Ortega, \$500 from Scott Berry, \$500 Raul Hernandez, and \$500 In-kind Donation from Raul Hernandez.

#### **CONSENT AGENDA – REQUEST TO ISSUE PURCHASE ORDERS:**

##### **Goal 7: Enhance and Sustain El Paso's Infrastructure Network**

11. \*Motion made, seconded, and unanimously carried that the Managing Director of Purchasing & Strategic Sourcing be **AUTHORIZED** to issue a Purchase Order to Bridgestone Hosepower, LLC dba Hose Power USA and/or Complete Safety, referencing Contract 2019-475 High Pressure - Low Pressure and Brake Coupled Hoses, Hose Machine Rental & Field Service. This will be a change order to increase the award by \$67,500.00 for a total amount not to exceed \$562,500.00.

Department:	Streets & Maintenance
Award to:	Bridgestone Hosepower, LLC dba Hose Power USA and/or Complete Safety
City & State:	El Paso, Texas
Current Contract Estimated Amount:	\$495,000.00
Change Order Amount:	\$67,500.00
Total estimated Amount not to Exceed:	\$562,500.00
Account(s):	532-3600-531250-37020-P3701 532-3600-531210-37020-P3701
Funding Source(s):	Inventory Purchases Materials and Supplies (Internal Service Fund) Equipment Outside Repair Services (Internal Service Fund)
District(s):	All

This was a Low Bid Award- Unit Price Contract.

#### **CONSENT AGENDA – BEST VALUE PROCUREMENTS:**

##### **Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development**

12. \*Motion made, seconded, and unanimously carried to **AWARD** Solicitation 2024-0183 Armored Car Services to Trans America Protection Corporation, for an initial term of three (3) years for an estimated amount of \$234,000.00. The award also includes a two (2) year option for an estimated amount of \$156,000.00. The total contract time is for five (5) years for a total estimated amount of \$390,000.00. This contract will provide transportation of monies between three International Bridges and the bank.

**Contract Variance:**

The difference based in comparison to the previous contract is as follows: An increase of \$72,000.00 for the initial term, which represents a 44.44% increase due to current market prices.

Department:	International Bridges
Award to:	Trans America Protection Corporation
City & State:	El Paso, TX
Item(s):	All
Initial Term:	3 Years
Option Term:	2 Years
Total Contract Time:	5 Years
Annual Estimated Award:	\$78,000.00
Initial Term Estimated Award:	\$234,000.00
Option Term Estimated Award:	\$156,000.00
Total Estimated Award	\$390,000.00
Account(s)	522120-564-3300-64830
Funding Source(s):	International Bridges Operations
District(s):	All Districts

This was a Best Value Procurement - service contract.

The Purchasing & Strategic Sourcing Department and International Bridges Department recommend award as indicated to Trans America Protection Corporation highest ranked bidder based on the evaluation criteria for this solicitation.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

In accordance with this award, the City Manager or designee is authorized to exercise future options if needed.

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**Goal 8: Nurture and Promote a Healthy, Sustainable Community**  
.....

13. \*Motion made, seconded, and unanimously carried to **AWARD** Solicitation 2024-0037 Laboratory Services to Eurofins Environment Testing America Holdings, Inc. dba Eurofins Environment Testing South Central, LLC, for an initial term of three (3) years for an estimated amount of \$180,000.00. The award also includes a two (2) year option for an estimated amount of \$120,000.00. The total contract time is for five (5) years for a total estimated amount of \$300,000.00. This contract will provide Laboratory Services Department to meet air quality grant requirements.

**Contract Variance:**

The difference based in comparison to the previous contract is as follows: An increase of \$72,000.00 for the initial term, which represents a 66.67% increase due to price increases.

Department: Environmental Services  
 Award to: Eurofins Environment Testing America Holdings, Inc. dba  
 Eurofins Environment Testing South Central, LLC  
 City & State: Leola, PA  
 Item(s): All  
 Initial Term: 3 Years  
 Option Term: 2 Years  
 Total Contract Time: 5 Years  
 Annual Estimated Award: \$60,000.00  
 Initial Term Estimated Award: \$180,000.00  
 Option Term Estimated Award: \$120,000.00  
 Total Estimated Award: \$300,000.00  
 Account(s): 522150-334-3110-34030  
 Funding Source(s): Environmental Services-Grants  
 District(s): All Districts

This was a Best Value Procurement - service contract.

The Purchasing & Strategic Sourcing Department and Environmental Services

Department recommend award as indicated to Eurofins Environment Testing America Holdings, Inc. dba Eurofins Environment Testing South Central, LLC to the highest ranked bidder based on the evaluation criteria for this solicitation.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

In accordance with this award, the City Manager or designee is authorized to exercise future options if needed.

**REGULAR AGENDA – MEMBERS OF THE CITY COUNCIL:**

**Goal 6: Set the Standard for Sound Governance and Fiscal Management**

**14. RESOLUTION**

**WHEREAS**, Representative Rivera, City Council Representative for District 7, wishes to allocate \$6,200.00 from District 7's discretionary funds for the purchase of digital sound level meters for utilization by the El Paso Police Department's Code Enforcement Division; and

**WHEREAS**, the City Council finds that the expenditure of District 7 discretionary funds serves a municipal purpose of implementing effective code enforcement strategies to reduce nuisances and improve overall health and safety.

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

**THAT** the City Council declares that the expenditure of District 7 discretionary funds in the amount of \$6,200.00 for the purchase of digital sound level meters for utilization by the El Paso Police Department's Code Enforcement Division serves a municipal purpose of implementing effective code enforcement strategies to reduce nuisances and improve overall health and safety; and

**THAT** the City Manager, or designee, is authorized to effectuate any budget transfers and execute any related documents necessary to ensure that the funds are properly expended for the municipal purpose.

Representative Rivera commented.

Mr. Cary Westin, Interim City Manager, commented.

Ms. Patricia Osmond, citizen, commented.

Motion made by Representative Rivera, seconded by Representative Salcido, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, Rivera, and Canales

NAYS: None

15.

## RESOLUTION

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

That the City Council declares that the expenditure of District 7 discretionary funds, in an amount not to exceed \$90,000.00, for the purchase, freight, and installation of canopies for existing picnic benches at Thomas Manor Park, serves the municipal purpose of enhancing the quality of life of the citizens of El Paso through promoting community recreation, and by fostering community pride and encouraging civic engagement; and

Further, that the City Manager, or designee, be authorized to effectuate any budget transfers and execute any contracts and/or related documents necessary to ensure that the funds are properly expended for the municipal purpose.

Representatives Hernandez and Rivera commented.

Mr. Cary Westin, Interim City Manager, commented.

Ms. Lisa Turner, citizen, commented.

Motion made by Representative Rivera, seconded by Representative Molinar, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, Rivera, and Canales

NAYS: None

The Regular City Council meeting was **RECESSED** at 10:05 a.m. in order to convene the Mass Transit Department Board meeting.

The Regular City Council meeting was **RECONVENED** at 10:14 a.m.

### **REGULAR AGENDA – OPERATIONAL FOCUS UPDATES:**

#### **Goal 6: Set the Standard for Sound Governance and Fiscal Management**



16. Presentation and discussion on a report by Moss Adams, LLP on the financial and grants audit of the City of El Paso ("City"). The report to the City Council will include the audit opinion regarding the City financial statements and a brief overview of the financial results for the City for the fiscal year ending August 31, 2023.

Mr. Kory Hoggan, Partner at Moss Adams, LLP, presented a PowerPoint presentation (copy on file in the City Clerk's Office).

Representative Hernandez commented.

Ms. Patricia Osmond, citizen, commented.

**NO ACTION** was taken on this item.

.....  
The Regular City Council meeting was **RECESSED** at 11:47 a.m.

The Regular City Council meeting was **RECONVENED** at 12:00 p.m.

.....  
**CALL TO THE PUBLIC – PUBLIC COMMENT:**

The following members of the public commented:

1. Ms. Elizabeth Crawford
2. Mr. Ron Comeau
3. Ms. Hilda Villegas
4. Ms. Patricia Osmond
5. Ms. Lisa Turner
6. Ms. Marcy Chavez
7. Mr. Benjamin Alva

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**REGULAR AGENDA – FIRST READING OF ORDINANCES:**

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Motion made by Representative Rivera, seconded by Representative Fierro, and unanimously carried that the following Ordinances having been introduced pursuant to Section 3.9 of the El Paso City Charter, be **ADVERTISED** for public hearing.

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, Rivera, and Canales

NAYS: None

.....  
**Goal 2: Set the Standard for a Safe and Secure City**

- .....
17. An Ordinance amending Title 5 (Business License and Permit Regulations); Chapter 5.12 (Dealers in Secondhand goods, dealers in crafted precious metals, coin dealers and pawnbrokers); Section 5.12.080 (License-Denial, Appeal) to amend "Hearing Officer" to "Municipal Associate Judge" of the El Paso City Code.

Ms. Lilia Worrell, Municipal Courts Director, commented.

Ms. Patricia Osmond, citizen, commented.

- .....
18. An Ordinance amending Title 5 (Business License and Permit Regulations); Chapter 5.13 (Security Alarm Systems); Section 5.13.120 (Appeal from assessment of civil penalty) and

Section 5.13.130 (Reinstatement of Permit ) to amend “Hearing Officer” to “Municipal Associate Judge” of the El Paso City Code.

Ms. Patricia Osmond, citizen, commented.

- .....
19. An Ordinance amending Title 6 (Transportation for Hire), Chapter 6.04 (Transportation for Hire), to amend Section 6.04.140 (Operating Authority to Permit and Taxicab Zone Permit Denial, Suspension, Revocation - Appeal) to amend “Hearing Officer” to “Municipal Associate Judge” of the El Paso City Code.
- .....
20. An Ordinance amending Title 9 (Health and Safety), Chapter 9.20 (Social Host Accountability Ordinance), Section 9.20.100 (Hearings on the Imposition of Civil Penalty - Appeals) to amend “Administrative Hearing Officer” to “Municipal Associate Judge” of the El Paso City Code.
- .....
21. An Ordinance amending Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.020 (Hearing Officers), Section 12.85.030 (Parking Citations), Section 12.85.050 (Hearings), Section 12.85.060 (Appeal);Section 12.85.065 (Final Judgments), and Section 12.85.100 (Boot Hearing) to amend ‘Hearing Officer’ to ‘Municipal Associate Judge’ and ‘Municipal Associate Judge’ to ‘El Paso Municipal Court of Appeals’ of the El Paso City Code.
- .....

#### **Goal 6: Set the Standard for Sound Governance and Fiscal Management**

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22. An Ordinance authorizing the City Manager to sign a purchase and sale agreement, a deed, and any other documents necessary to convey approximately 0.17 acres of land described as a portion of Tract 5D-1, Block 1, Upper Valley Surveys, in the City of El Paso, El Paso County, Texas.

Representative Canales commented.

Ms. Ellen Smyth, Chief Transit and Field Operations Officer, commented.

Ms. Patricia Osmond, citizen, commented.

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#### **PUBLIC HEARING WILL BE HELD ON JUNE 11, 2024 FOR ITEMS 17 THROUGH 22**

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#### **REGULAR AGENDA – OTHER BIDS, CONTRACTS, PROCUREMENTS:**

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#### **Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development**

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23. Motion made by Representative Hernandez, seconded by Representative Molinar, and unanimously carried to **AWARD** Solicitation 2024-0356R ELP Solar Covered Parking - ConRAC to GS Solar, LLC dba Big Sun Solar for installation services for an estimated amount of \$4,704,944.00. The award also includes maintenance services for an initial term of three (3) years for an estimated amount of \$50,704.00 and a two (2) year option for an estimated amount of \$35,516.00 for a total maintenance contract time is for five (5) years for an estimated amount of \$86,220.00. This contract will allow for installation of a covered parking solar photovoltaic array on the top level of the existing parking structure at the Consolidated Car Rental Agency Complex (ConRAC) at the EPIA. This project aligns with the sustainability goals and initiatives of both the City of El Paso and EPIA. The photovoltaic (PV) system will be designed and sized to maximize potential cost reductions in the terminal’s electrical energy consumption.

**Contract Variance:**

N/A

Department:	El Paso International Airport
Award to:	GS Solar, LLC dba Big Sun Solar
City & State:	San Antonio, TX
Item(s):	Installation and Maintenance
Installation Estimated Award:	\$4,704,944.00
Maintenance Initial Term:	3 Years
Maintenance Option Term:	2 Years
Total Contract Time:	5 Years Maintenance
Initial Term Estimated Award:	\$50,704.00
Maintenance Option Term Estimated Award:	\$35,516.00
Total Estimated Award	\$4,791,164.00
Account(s)	62-3010-580270-62335 562-3080-580270-62335
Funding Source(s):	Federal Aviation Administration Supplemental Airport Enterprise Fund
District(s):	All

This was a Request for Proposals Procurement - Service Contract.

The Purchasing & Strategic Sourcing Department and El Paso International Airport Department recommend award as indicated to GS Solar, LLC dba Big Sun Solar the highest ranked offeror based on the evaluation factors established in the evaluation criteria for this procurement, and that the proposal submitted by Arrow Building Corp be deemed non-responsive for failing to provide a proposed cost on the prescribed form included with the solicitation.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

Representative Hernandez commented.

The following City staff members commented:

- Ms. Crystal Paz, Lead Procurement and Contract Analyst
- Ms. Shane Brooks, Aviation Development Assistant Director
- Mr. Cary Westin, Interim City Manager

Ms. Patricia Osmond, citizen, commented.

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, Rivera, and Canales

NAYS: None

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**Goal 3: Promote the Visual Image of El Paso**

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24. Motion made by Representative Canales, seconded by Representative Rivera and carried to **AWARD** Solicitation 2024-0071 Domestic Fine Art Shipping to Iron Mountain Incorporated dba Crozier Fine Arts, for an initial term of three (3) years for an estimated amount of \$1,241,130.00. The award also includes a two (2) year option for an estimated amount of

\$827,420.00. The total contract time is for five (5) years for a total estimated amount of \$2,068,550.00. This contract will provide the Museums and Cultural Affairs Department a specialized fine art shipper in order to safely and securely transport artwork used in exhibitions.

**Contract Variance:**

The difference based in comparison to the previous contract is as follows: An increase of \$151,530.00 for the initial term, which represents a 13.91% increase due to price increases.

Department:	Museum and Cultural Affairs
Award to:	Iron Mountain Incorporated dba Crozier Fine Arts
City & State:	New York, NY
Item(s):	All
Initial Term:	3 Years
Option Term:	2 Years
Total Contract Time:	5 Years
Annual Estimated Award:	\$413,710.00
Initial Term Estimated Award:	\$1,241,130.00
Option Term Estimated Award:	\$827,420.00
Total Estimated Award:	\$2,068,550.00
Account(s):	522150-454-1000-54000
Funding Source(s):	General Fund
District(s):	All Districts

This was a Best Value Procurement - service contract.

The Purchasing & Strategic Sourcing Department and Museum and Cultural Affairs Department recommend award as indicated to Iron Mountain Incorporated dba Crozier Fine Arts highest ranked bidder based on the evaluation criteria for this solicitation.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

In accordance with this award, the City Manager or designee is authorized to exercise future options if needed.

Representative Canales commented.

Ms. Claudia Cardoza, Museums and Cultural Affairs Assistant Director, commented.

Ms. Patricia Osmond citizen, commented.

AYES: Representatives Kennedy, Acevedo, Hernandez, Salcido, Fierro, Rivera, and Canales  
NAYS: Representative Molinar

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**Goal 6: Set the Standard for Sound Governance and Fiscal Management**  
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- 25.** Motion made by Representative Fierro, seconded by Representative Canales, and carried to **AWARD** Solicitation No. 2024-0233R Health Insurance Benefits Administrators to the following suppliers: 1) Aetna Dental Inc. - Aetna Life Insurance Company, 2) Colonial Life & Accident Insurance Company, 3) Dearborn Life Insurance Company - Blue Cross Blue Shield of TX, 4) Deer Oaks EAP Services, LLC, 5) Health Care Service Corporation, a Mutual Legal Reserve Company dba Blue Cross Blue Shield of TX, 6) Metropolitan Life Insurance Company - Safeguard Health Plans, Inc., 7) WEX Health, Inc., for an initial term of three (3)

years for an estimated amount of \$234,383,214.00. The award also includes a two (2), two (2) year option for an estimated amount of \$312,510,952.00. The total amount of the contract, including the initial term plus the option for a total of seven (7) years, is for an estimated amount of \$546,894,166.00. The initial period of performance is from December 15, 2024 - December 14, 2027.

**Contract Variance:**

The difference based in comparison to the previous contracts is as follows: An increase of \$64,980,424.20 for the initial term, which represents a 38.36% increase due to price increases.

Department:	Human Resources
Award to Supplier 1:	Aetna Dental Inc. - Aetna Life Insurance Company
City & State:	Hartford, CT
Item(s):	ASO Medical, Pharmacy, U65 Medical, Medicare Advantage, HSA, FI Dental PPO, ASO Dental, ASO Vision
Initial Term:	3 Years
Option Terms:	2 - 2 Years
Total Contract Time:	7 Years
Annual Estimated Award:	\$ 76,365,548.33
Initial Term Estimated Award:	\$229,096,645.00
Option Term Estimated Award:	\$305,462,193.33
Total Estimated Award:	\$534,558,838.33

Award to Supplier 2:	Colonial Life & Accident Insurance Company
City & State:	Chattanooga, TN
Item(s):	Disability Insurance
Initial Term:	3 Years
Option Terms:	2 - 2 Years
Total Contract Time:	7 Years
Annual Estimated Award:	\$141,212.67
Initial Term Estimated Award:	\$423,638.00
Option Term Estimated Award:	\$564,850.67
Total Estimated Award:	\$988,488.67

Award to Supplier 3:	Dearborn Life Insurance Company - Blue Cross Blue Shield of TX
City & State:	Lombard, IL
Item(s):	Basic Life Insurance, Voluntary Life Insurance, FI Vision
Initial Term:	3 Years
Option Terms:	2 - 2 Years
Total Contract Time:	7 Years
Annual Estimated Award:	\$1,421,769.67
Initial Term Estimated Award:	\$4,265,309.00
Option Term Estimated Award:	\$5,687,078.67
Total Estimated Award:	\$9,952,387.67

Award to Supplier 4:	Deer Oaks EAP Services, LLC
City & State:	San Antonio, TX
Item(s):	EAP
Initial Term:	3 Years
Option Terms:	2 - 2 Years

Total Contract Time:	7 Years
Annual Estimated Award:	\$ 69,495.00
Initial Term Estimated Award:	\$208,485.00
Option Term Estimated Award:	\$277,980.00
Total Estimated Award:	\$486,465.00

Award to Supplier 5:	Health Care Service Corporation, a Mutual Legal Reserve Company dba Blue Cross Blue Shield of TX
City & State:	Chicago, IL
Item(s):	COBRA
Initial Term:	3 Years
Option Terms:	2 - 2 Years
Total Contract Time:	7 Years
Annual Estimated Award:	\$ 6,000.00
Initial Term Estimated Award:	\$18,000.00
Option Term Estimated Award:	\$24,000.00
Total Estimated Award:	\$42,000.00

Award to Supplier 6:	Metropolitan Life Insurance Company- Safeguard Health Plans, Inc.
City & State:	New York, NY
Item(s):	FI Dental HMO
Initial Term:	3 Years
Option Terms:	2 - 2 Years
Total Contract Time:	7 Years
Annual Estimated Award:	\$122,940.33
Initial Term Estimated Award:	\$368,821.00
Option Term Estimated Award:	\$491,761.33
Total Estimated Award:	\$860,582.33

Award to Supplier 7:	WEX Health, Inc.
City & State:	Portland, ME
Item(s):	FSA
Initial Term:	3 Years
Option Terms:	2 - 2 Years
Total Contract Time:	7 Years
Annual Estimated Award:	\$ 772.00
Initial Term Estimated Award:	\$2,316.00
Option Term Estimated Award:	\$3,088.00
Total Estimated Award:	\$5,404.00
Total Annual Estimated Award:	\$ 78,127,738.00
Total Initial Term Estimated Award:	\$234,383,214.00
Total Option Term Estimated Award:	\$312,510,952.00
Total Estimated Award:	\$546,894,166.00
Account(s):	209 - 3500 - 14045 - 521120 - P1414
	209 - 3500 - 14045 - 521380 - P1414
	209 - 3500 - 14045 - 522000 - P1414
	209 - 3500 - 14045 - 521180 - P1414
	209 - 3500 - 14045 - 521190 - P1414
	209 - 3500 - 14045 - 521200 - P1414
	209 - 3500 - 14045 - 521410 - P1414
	209 - 3500 - 14045 - 521420 - P1414

Funding Source(s): Self-Insured Health Insurance, Benefit Payments, Benefits Administrators (TPA), Dental Premium, Optical Premium, Life Premium, Pharmaceutical Administrator, EAP, Benefit Administrator

District(s): All

This was a Request for Proposals Procurement, service contract.

The Purchasing & Strategic Sourcing Department and Human Resources recommend award as indicated to 1) Aetna Dental Inc. - Aetna Life Insurance Company, 2) Colonial Life & Accident Insurance Company, 3) Dearborn Life Insurance Company - Blue Cross Blue Shield of TX, 4) Deer Oaks EAP Services, LLC, 5) Health Care Service Corporation, a Mutual Legal Reserve Company dba Blue Cross Blue Shield of TX, 6) Metropolitan Life Insurance Company - Safeguard Health Plans, Inc., 7) WEX Health, Inc., the highest ranked offerors based on the evaluation factors established in the evaluation criteria for this procurement. It is also recommended to deem Continental American Insurance Company dba AFLAC Group, CuraLinc LLC dba CureLinc Healthcare, Independent Eye Care MSO, Inc. dba Community Eye Care, LLC, Interflex Payments LLC dba Ameriflex, Minnesota Life Insurance Company, National Benefit Services, LLC and Trustmark Insurance Company nonresponsive due to failure to furnish required documentation with their proposal.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

In accordance with this award, the City Manager or designee is authorized to exercise future options if needed.

Additionally, it is requested that the City Attorney's Office review and that the City Manager or designee be authorized to execute any related contract documents and agreements necessary to effectuate this award.

Ms. Mary Wiggins, Chief Human Resources Officer, presented a PowerPoint presentation (copy on file in the City Clerk's Office).

Ms. Natalie Haskins, Gallagher Insurance, Risk Management and Consulting Representative, commented.

Representatives Acevedo, Hernandez, Fierro, and Canales commented.

- Mr. Robert Cortinas, Chief Financial Officer
- Ms. Paula Salas, Lead Procurement and Contract Analyst
- Mr. Cary Westin, Interim City Manager

AYES: Representatives Kennedy, Molinar, Salcido, Fierro, Rivera, and Canales

NAYS: Representatives Acevedo and Hernandez

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## **REGULAR AGENDA – PUBLIC HEARINGS AND SECOND READING OF ORDINANCES:**

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### **Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development**

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26. \*Motion made, seconded, and unanimously carried to **POSTPONE FOUR WEEKS** the public hearing of an Ordinance authorizing the City Manager to sign a contract of sale with Notes

Live Inc, a Colorado corporation, for the sale of approximately 17 acres of property located at the Northeast corner of Cohen Avenue and Gateway Boulevard North, El Paso, TX 79924, legally described as a portion of Block 7, Castner Range Subdivision No. 1, City of El Paso, El Paso County, Texas.

- .....
27. \*Motion made, seconded, and unanimously carried to **POSTPONE FOUR WEEKS** the public hearing of an Ordinance approving amendment number three to the Final Project and Financing Plan for Tax Increment Reinvestment Zone Number Eleven, City of El Paso, Texas; making various findings related to such Plan; providing for severability; and providing an effective date.
- .....

**Goal 3: Promote the Visual Image of El Paso**

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28. **ORDINANCE 019637**

The City Clerk read an Ordinance entitled: **AN ORDINANCE CHANGING THE ZONING OF ALL OF TRACTS 4C-1 AND 4C-1B, BLOCK 52, YSLETA GRANT, CITY OF EL PASO, EL PASO COUNTY, TEXAS FROM A-2/SC (APARTMENT/SPECIAL CONTRACT) AND A-2/H/SC (APARTMENT/HISTORIC/SPECIAL CONTRACT) TO C-1/SC (COMMERCIAL / SPECIAL CONTRACT) AND C-1/H/SC (COMMERCIAL / HISTORIC /SPECIAL CONTRACT). THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.**

**THE PROPOSED REZONING MEETS THE INTENT OF THE FUTURE LAND USE DESIGNATION FOR THE PROPERTY AND IS IN ACCORDANCE WITH *PLAN EL PASO*, THE CITY'S COMPREHENSIVE PLAN.**

Motion duly made by Representative Rivera, seconded by Representative Hernandez, and carried that the Ordinance be **ADOPTED**.

Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, Rivera, and Canales

NAYS: None

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same is hereby **ADOPTED**.

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**Goal 6: Set the Standard for Sound Governance and Fiscal Management**

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29. \*Motion made, seconded, and unanimously carried to **POSTPONE FOUR WEEKS** the public hearing of an Ordinance authorizing the City Manager to execute a quitclaim (tax resale) deed conveying all right, title and interest in real property described as The North 140 ft. of Lot 7, Block 4, Buena Vista Addition, El Paso County, Texas, to the City of El Paso ("City"), in accordance with Section 34.05(h) of the Tax Code.

Offer originated from The El Paso Municipal Drainage Utility, by and through El Paso Water Utilities Public Service Board, a component unit of the City of El Paso, a Texas municipal corporation ("EPWater").

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30. \*Motion made, seconded, and unanimously carried to **POSTPONE FOUR WEEKS** the public hearing of an Ordinance authorizing the City Manager to execute a quitclaim (tax resale) deed conveying all right, title and interest in real property described as Tract 2-P-2-B, Block 6, Ascarate Grant, El Paso County, Texas, as described in Volume 2948, Page 1719, Official Records of El Paso County, Texas, to the City of El Paso ("City"), in accordance with Section 34.05(h) of the Tax Code.

Offer originated from The El Paso Municipal Drainage Utility, by and through El Paso Water Utilities Public Service Board, a component unit of the City of El Paso, a Texas municipal corporation ("EPWater").

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**REGULAR AGENDA – OTHER BUSINESS:**  
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**Goal 7: Enhance and Sustain El Paso's Infrastructure Network**  
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31. **R E S O L U T I O N**

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

**THAT** City staff is authorized to submit an application to the United States Department of Defense Fiscal Year 2024 Defense Community Infrastructure Program ("DCIP") program requesting funds in the amount of \$7,000,000, with a \$3,000,000 (30%) match required from the City, for the Aerospace and Defense Technology (ADTech) Training Center Project;

**THAT** the City Manager, or designee, is authorized to sign any documents necessary for the proper submission of said application;

**THAT** the City Manager, or designee, is authorized to sign any documents necessary to accept a grant resulting from said application, after consultation with the City Attorney's Office;

**THAT** the City Manager, or designee, is authorized to sign any documents related to a grant resulting from the application, including, but not limited to, revisions to the project scope, and revisions that increase, decrease or de-obligate program funds;

**THAT** the City Manager, or designee, is authorized to explore funding sources and partnerships that leverage the strength of said application and any grant resulting from said application.

Ms. Faouziath Moustapha, Airport Grant Writer, presented a PowerPoint presentation (copy on file in the City Clerk's Office).

Representative Hernandez commented.

Mr. Cary Westin, Interim City Manager commented.

Ms. Patricia Osmond, citizen, commented.

Motion made by Alternate Mayor Pro Tempore Molinar, seconded by Representative Fierro, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, Rivera, and Canales

NAYS: None

32.

**RESOLUTION**

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

**THAT** the City of El Paso City Council authorizes the submission of a grant application to the U.S. Department of Transportation (USDOT) Fiscal Year (FY) 2023 Active Transportation Infrastructure Investment Program (ATIIP) program requesting funds in the amount of \$1,500,000, with no match required from the City, for the Stanton-Texas Active Transportation Project Development Study ("Application");

**THAT** the City Manager, or designee, is authorized to sign any documents necessary for the proper submission of the Application;

**THAT** the City Manager, or designee, is authorized to sign any documents necessary to accept a grant resulting from the Application, after consultation with the City Attorney's Office;

**THAT** the City Manager, or designee, is authorized to sign any documents related to a grant resulting from the Application, including, but not limited to, revisions to the project scope of work, revisions that increase, decrease or de-obligate program funds, revisions to the operation plan, and documents to reject, amend, correct, and/or terminate the grant;  
**THAT** the City Manager, or designee, is authorized to explore funding sources and partnerships that leverage the strength of the Application and any grant resulting from the Application.

Motion made by Representative Rivera, seconded by Representative Fierro, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, Rivera, and Canales

NAYS: None

33.

**RESOLUTION**

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

**THAT** the City Manager, or designee, be authorized to sign an Advance Funding Agreement by and between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation, for the Congestion Mitigation and Air Quality Program grant improvements for the Traffic Management Center Upgrade, Phase 3 project, which has an estimated total project cost of \$5,361,500.00 of which the estimated local government participation amount is estimated at \$2,941,500.00. Further, that the City Manager, or designee, is authorized to sign all documents, agreement amendments, and perform all actions required to carry out the obligations of the City under this Agreement.

**1<sup>ST</sup> MOTION**

\*Motion made, seconded, and unanimously carried to **REVISE** the item.

**2<sup>ND</sup> AND FINAL MOTION**

Motion made by Alternate Mayor Pro Tempore Molinar, seconded by Representative Fierro, and unanimously carried to **APPROVE, AS REVISED**, the Resolution.

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, Rivera, and Canales  
NAYS: None

<b><u>ADJOURN</u></b>

Motion made by Representative Rivera, seconded by Representative Molinar, and unanimously carried to **ADJOURN** this meeting at 12:22 p.m.

AYES: Representatives Kennedy, Acevedo, Hernandez, Molinar, Salcido, Fierro, Rivera, and Canales  
NAYS: None

APPROVED AS TO CONTENT:

---

Laura D. Prine, City Clerk



El Paso, TX

300 N. Campbell  
El Paso, TX

Legislation Text

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**File #: 24-58, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.  
No Title's, No emails. Please use ARIAL 10 Font.*

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS



Legislation Text

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File #: 24-829, Version: 1

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**CITY OF EL PASO, TEXAS**  
**LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Fire, Chief Jonathan P. Killings, (915) 212-5665

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

That the City Manager is authorized to sign an Amendment to the Air Medical Services and Support Agreement by and between the City of El Paso and Air Methods, LLC, to amend section 5.8 Base Sites extending an additional thirty (30) days to negotiate a separate lease for the Base Site in parallel with the Agreement.

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

**DEPARTMENT:** Fire Department

**AGENDA DATE:** June 11, 2024

**PUBLIC HEARING DATE:** n/a

**CONTACT PERSON NAME AND PHONE NUMBER:** Chief Jonathan P. Killings, (915) 212-5665

**DISTRICT(S) AFFECTED:** All Districts

**STRATEGIC GOAL:** Goal 2: Set the Standard for a Safe and Secure City

**SUBGOAL:** 2.3 Increase public safety operational efficiency

**SUBJECT:**

That the City Manager is authorized to sign an Amendment to the Air Medical Services and Support Agreement by and between the City of El Paso and Air Methods, LLC, to amend section 5.8 Base Sites extending an additional thirty (30) days to negotiate a separate lease for the Base Site in parallel with the Agreement.

**BACKGROUND / DISCUSSION:**

EPFD is an institution committed to providing emergency services, including fire-fighting and medical services, primarily to residents and visitors of the City of El Paso, Texas. EPFD desires to gain access to a high-quality air medical transport service program to provide Medically Necessary patient transports. AMC is an organization with experience and expertise in the provision of air medical transport services; and EPFD and AMC have expressed a desire to cooperate in pursuing a mutually beneficial approach to operating the Flight Program from the Base Site located in El Paso, Texas, offering Medically Necessary air medical transport services. EPFD and AMC are requesting an amendment to Section 5.08 Base Site of the Air Medical Service and Support Agreement in order to negotiate a separate lease for the Base Site

**PRIOR COUNCIL ACTION:**

Council approved the contract between EPFD and Air Methods, LLC on April 30, 2024.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?** ☒ YES ☐ NO

**PRIMARY DEPARTMENT:** Fire Department

**SECONDARY DEPARTMENT:**

\*\*\*\*\*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 is authorized to sign an Amendment to the Air Medical Services and Support Agreement by and between the City of El Paso and Air Methods, LLC, to amend section 5.8 Base Sites extending an additional thirty (30) days to negotiate a separate lease for the Base Site in parallel with the Agreement.

Approved this \_\_\_\_ day of \_\_\_\_\_ 2024.

### CITY OF EL PASO

\_\_\_\_\_  
Oscar Leaser  
Mayor

### ATTEST:

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

### APPROVED AS TO FORM:

\_\_\_\_\_  


Carlos L. Armendariz  
Assistant City Attorney

### APPROVED AS TO CONTENT:

\_\_\_\_\_  


Jonathan Killings, Fire Chief  
El Paso Fire Department

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO    )

First Amendment to  
Air Medical Services and Support Agreement

This First Amendment (“**Amendment**”) to the Air Medical Services and Support Agreement (the “**Agreement**”) is entered on April 23, 2024 (“**Effective Date**”) between the **CITY OF EL PASO on behalf of the EL PASO FIRE DEPARTMENT (“EPFD”)**, a home-rule municipality existing under the laws of the State of Texas, and **AIR METHODS, LLC**, a Delaware limited liability company (“**AMC**”).

**WITNESSETH:**

**WHEREAS**, EPFD and AMC entered into the Agreement on April 23, 2024, to establish a flight program for air medical transport services; and

**WHEREAS**, EPFD and AMC (or “Parties” herein) wish to amend their current Agreement to extend the time period to execute a lease for the Base Site located at 12230 Pine Springs Dr, El Paso, Texas 79936; and

**NOW THEREFORE**, the Parties agree as follows:

**1. The Agreement Section 5.08 – Base Sites** is amended as follows:

**Section 5.08 Base Sites.**

As of the Commencement Date, EPFD shall provide at its sole cost one (1) Base Site located at 12230 Pine Spring Dr. El Paso, Texas 79936 (Fire Station 35) for the purpose of basing the Primary Helicopter, aviation crew, Clinical Crew (defined below) and maintenance facilities. Each Base Site shall include the items outlined in Exhibit B

Page 1 of 4



attached hereto. The Parties agree to negotiate a separate lease for the Base Site in parallel with this Agreement and will execute such lease within ninety (90) days of the El Paso City Council's approval of both agreements. EPFD and AMC shall mutually agree in writing upon any new Base Site or change in a Base Site location.

AMC will provide access to a hangar in the region for weather and maintenance considerations as needed.

Each of EPFD and AMC shall obtain and maintain, at such Party's own expense, all licenses, approvals and operating permits from the FAA, the State of Texas and/or other agencies necessary for operation at the Base Site.

2. **Ratification.** Except as herein amended, all other terms and conditions of the Agreement not specifically modified by this First Amendment shall remain unchanged and in full force and effect.
3. **Effective Date.** This First Amendment shall be effective upon the date it is approved by the El Paso City Council.

*(Signatures begin on the following page)*

**EXECUTED**, this \_\_\_\_ day of \_\_\_\_\_ 2024.

**CITY OF EL PASO**

\_\_\_\_\_  
Cary Westin  
City Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Carlos L. Armendariz  
Assistant City Attorney

\_\_\_\_\_  
Jonathan P. Killings, Fire Chief  
El Paso Fire Department

**ACKNOWLEDGMENT**

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

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_ 2024, by  
**Cary Westin as City Manager of the City of El Paso, Texas.**

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas

*(Signatures continue on the following page)*

**AIR METHODS, LLC**

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

**THE STATE OF** \_\_\_\_\_ )

)

**COUNTY OF** \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_ 2024,  
by \_\_\_\_\_, \_\_\_\_\_ of **AIR METHODS, LLC** on behalf of said company.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

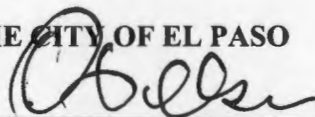
# RESOLUTION

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

That the City Manager be authorized to sign, on behalf of the City of El Paso, an Air Medical Services and Support Agreement between Air Methods, LLC, a Missouri limited liability company and the City of El Paso for operating the Flight Program from the Base Site located in the City of El Paso, El Paso County, Texas, offering medically necessary air medical transport services for an initial term of five (5) years with three (3) successive options to extend for 1 (one) year terms beyond the initial term.

APPROVED this the 23 day of APRIL 2024.

THE CITY OF EL PASO



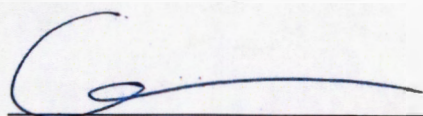
Oscar Lesser  
Mayor

ATTEST:



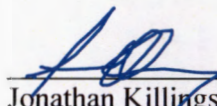
Laura D. Prince  
City Clerk

APPROVED AS TO FORM:



Carlos L. Armendariz  
Assistant City Attorney

APPROVED AS TO CONTENT:



Jonathan Killings, Chief  
El Paso Fire Department

**AIR MEDICAL SERVICES AND SUPPORT AGREEMENT**

**by and between**

**City of EL PASO**

**and**

**AIR METHODS, LLC**

**Dated August 1, 2024**

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## **EXHIBITS**

Exhibit A – Primary Helicopter

Exhibit B – Base Site Requirements

Exhibit C – Fees

Exhibit D – Medical Equipment List

Exhibit E – Clinical Crew, Program Manager and Medical Director Qualifications

Exhibit F – Standards of Conduct



Exhibit G – Joint Marketing Program

Exhibit H – HIPAA Business Associate Agreement

## GLOSSARY OF TERMS

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“AMC Area Manager” means the representative AMC designates as the management contact responsible for the day-to-day administrative oversight for the Flight Program and such other duties and responsibilities as set forth in this Agreement.

“AMC Billing Entities” means (i) Mercy Air Service, Inc., a California corporation and a wholly-owned subsidiary of AMC; (ii) LifeNet, Inc., a Missouri corporation and a wholly-owned subsidiary of Mercy Air Service, Inc.; and (iii) Rocky Mountain Holdings, L.L.C., a Delaware limited liability company and a wholly-owned subsidiary of AMC.

“AMC Regional Vice President” means the AMC regional representative assigned to the Flight Program with responsibility for business operations of the Flight Program and such other duties and responsibilities as set forth in this Agreement.

“Backup Helicopter” means one or more Helicopters, as set forth in Section 5.5 that provides air medical services when a Primary Helicopter is not available.

“Base Site” means a base of operations for the Primary Helicopter.

“CAMTS” means The Commission on Accreditation of Medical Transport Systems.

“EPFD Program Director” means the EPFD appointed representative with overall responsibility for the clinical aspects of the Flight Program and such other duties and responsibilities as set forth in this Agreement.

“FAA” means the Federal Aviation Administration.

“FARs” means the Federal Aviation Regulations set forth in 14 C.F.R. Part 135.

“Flight Program” means the air medical services program contemplated by this Agreement operating and licensed under the name “El Paso Fire STAR”.

“Helicopter” means the Primary Helicopter, any Backup Helicopter, and any other helicopter operated in connection with the Flight Program as a result of this Agreement.

“IFR” means Instrument Flight Rules of the FAA.

“Medically Necessary” means the patient’s condition is such that the time needed to transport a patient by land, or the instability of transportation by land, poses a threat to the patient’s survival or seriously endangers the patient’s health, as more fully defined in the rules, regulations and manuals of Medicare.

“Primary Helicopter” means each Helicopter described in Exhibit A.

“VFR” means Visual Flight Rules of the FAA.

## AIR MEDICAL SERVICES AND SUPPORT AGREEMENT

---

This Air Medical Services and Support Agreement (this “Agreement”) is made on the last date of signature below by and between the **City of El Paso**, on behalf of the El Paso Fire Department, having its principal place of business at 300 North Campbell, El Paso, Texas 79901 (“EPFD”), and **Air Methods, LLC**, a Delaware limited liability company having its principal place of business at 5500 South Quebec Street, Suite 300, Greenwood Village, CO 80111 (“AMC”). AMC and EPFD are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

**WHEREAS**, EPFD is an institution committed to providing emergency services, including fire-fighting and medical services, primarily to residents and visitors of the City of El Paso, Texas;

**WHEREAS**, EPFD desires to gain access to a high-quality air medical transport service program to provide Medically Necessary patient transports;

**WHEREAS**, AMC is an organization with experience and expertise in the provision of air medical transport services; and

**WHEREAS**, EPFD and AMC have expressed a desire to cooperate in pursuing a mutually beneficial approach to operating the Flight Program from the Base Site located in El Paso, Texas, offering Medically Necessary air medical transport services;

**NOW THEREFORE**, in consideration of the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

### **1.0 PURPOSE AND SCOPE**

#### **1.1 Purpose**

The purpose of this Agreement is to establish the Flight Program through cooperation between EPFD and AMC. This service will be available 24 hours per day, 365 days per year through the Base Sites.

#### **1.2 Transport Decisions**

AMC will accept Medically Necessary transport requests from any medical institution or emergency medical service agency within the community. AMC shall honor all transport requests directed to AMC on a “first come-first served” basis or utilizing standard triage principles whenever 2 transports are requested for the same period. The Parties hereby acknowledge that the Flight Program is for the benefit of the community as a whole and that neither AMC nor EPFD shall have any influence, control over or involvement in decisions regarding the referral or transport of patients from one facility to another. Referring and receiving physicians make referral and transport decisions and patients will be transported to the closest appropriate facility in accordance with the needs and best interest of the patient.

#### **1.3 EPFD Use of Air Medical Transport Services**

During the Term (defined below), except where the patient or patient’s legal representative has specifically requested otherwise, or where applicable laws or regulations otherwise require, EPFD shall use AMC as EPFD’s preferred provider of air medical transport services. This means that if EPFD has a need for any air medical transport services and such transport is Medically Necessary, EPFD shall request that AMC provide such services before EPFD requests such services from any other provider of air medical transport services. To this end, EPFD shall cause all of its officers, directors, agents and

employees, together with any and all other persons providing or rendering any medical services at, on behalf of, or through EPFD or its facilities, to request any necessary or desirable air medical services from AMC prior to requesting such services from any other provider thereof. EPFD shall utilize the applicable communications center for requests to AMC for air transport services. Subject to the availability of the Helicopter, AMC shall dispatch and launch the Helicopter. If the Helicopter is unavailable or unable to respond to EPFD's request for any reason (including without limitation that such Helicopter is responding to another call or request, is out of service, or is experiencing mechanical or other difficulties or if weather conditions preclude safe flight operations), or if AMC refuses the flight for any other reason, or if it is advisable or required that the patient be transported by another provider for medical or regulatory reasons, then EPFD may request emergency air medical services from another provider.

#### **1.4 No Exclusivity**

Nothing in this Agreement shall be construed as creating an exclusive arrangement between EPFD and AMC.

### **2.0 TERM AND TERMINATION**

#### **2.1 Term**

This Agreement will commence on August 1, 2024 (the "Commencement Date") and will expire on July 31, 2029 (the "Initial Term") and may be extended for three (3) successive 1-year terms beyond the Initial Term (each, a "Renewal Term", and together with the Initial Term, the "Term") if both parties agree. If AMC wishes to renew, then, AMC shall give notice to the City at least ninety (90) calendar days prior to the expiration of the Initial or Renewal Term.

#### **2.2 Termination for Cause**

Either Party may terminate this Agreement immediately due to an uncured breach by the other Party pursuant to Section 4.1.

#### **2.3 Termination for Decline in Revenue**

In the event that the revenue producing flight volume or payor mix drops to a financially unviable situation that is beyond AMC's reasonable expectations, AMC may terminate this Agreement with respect to one or more Base Sites (up to and including termination of the entire Agreement) with a written notice served to EPFD at least ninety (90) days prior to the ceasing of operations.

#### **2.4 Termination without Cause**

After the first twelve (12) months of the Initial Term, each party shall have the right to terminate this Agreement by giving the other party at least one hundred eighty (180) days' written notice to terminate.

### **3.0 LEGAL OR REGULATORY CONCERNS**

Notwithstanding any other provision in this Agreement, in the event that either Party has reasonably determined that: (i) any federal or state law or regulation makes it unlawful for either Party to be bound by the terms of this Agreement; (ii) one or more of the provisions of this Agreement may jeopardize either Party's participation in or payments under Medicare, Medicaid, any successors to these programs, or any other material payor

arrangement; (iii) this Agreement does not conform with any federal or state laws or regulations or accreditation standards passed subsequent to the Commencement Date; or (iv) the provisions of this Agreement may jeopardize EPFD's tax-exempt status or may subject either Party to monetary penalties under any state or federal law, either Party may give the other notice of intent to amend this Agreement to the Parties' satisfaction. The Parties agree to immediately enter into good faith negotiations to adjust or amend this Agreement accordingly. Notwithstanding Section 2.0, if after 30 days of such negotiations the Parties cannot reach agreement, either Party may terminate this Agreement upon 60 days' prior written notice to the other Party.

#### **4.0 EVENTS OF DEFAULT**

The following occurrences are events of "default" pursuant to this Agreement:

##### **4.1 Breach by Either Party**

In the event that either Party has breached any material representation, warranty, or covenant in this Agreement, the non-breaching Party shall provide to the breaching Party a written description of such breach ("Notice"). If the breaching Party is unable to correct such breach within 60 days of the Notice, the non-breaching Party shall have the right to terminate this Agreement immediately upon written notice; provided, however, that if such breach is not susceptible to being cured within 60 days, and the breaching Party is diligently working to cure such breach, then such Party shall have an additional 30 days.

##### **4.2 Resolution of Disputes**

In order to have a productive and efficient relationship, the Parties will strive to maintain open, direct, and efficient communications with each other. The EPFD Program Director will communicate with the appropriate AMC representative regularly and as necessary regarding the Parties' performance of obligations under this Agreement.

All claims, disputes, and controversies arising out of or in relation to an alleged breach of this Agreement shall follow the following procedure.

Either Party may request a peer-to-peer review to resolve any issues or disputes. Upon such a request, both Parties shall make available an individual with appropriate credentials for a telephone call or other communication within 15 days of the request.

With respect to issues for which the peer-to-peer review process has been exhausted, either Party may request an in-person meeting to resolve the issue. Within 45 days of such request, senior position delegates from the Parties shall meet in-person in a good faith effort to resolve the dispute.

If the Parties are unable to resolve the dispute through peer-to-peer review or a good faith meeting, the Parties shall resolve the dispute through binding arbitration conducted in accordance with the procedures in this Agreement and administered by the American Arbitration Association under its Commercial Arbitration Rules (the "AAA Rules"), and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof; provided, however, a Party shall not be required to use the foregoing dispute resolution procedures or otherwise follow the provisions of this Section regarding any dispute with respect to which a Party is seeking purely injunctive or other equitable, nonmonetary relief, and such Party shall be entitled to seek such relief before any court having jurisdiction over such dispute and the Parties. In the event of a conflict between the AAA Rules and this Agreement, the provisions of this Agreement shall control. For all disputes regardless of the amount in dispute, the



arbitration shall be conducted by one arbitrator mutually agreed upon by the Parties. The arbitrator may construe or interpret this Agreement but may not vary or ignore any of the terms of this Agreement. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act and resolved by the arbitrator. No potential arbitrator may serve unless he or she has agreed in writing to abide and be bound by these procedures. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrator have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. All aspects of the arbitration shall be treated as confidential. Neither the Parties nor the arbitrator shall disclose the content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such other Party a reasonable opportunity to protect its interests. The Parties shall be permitted to conduct reasonable discovery consistent with the AAA Rules, taking into consideration the idea of proportionality as appropriate to limit the costs and burden of discovery. The Parties shall conduct all arbitration in a location mutually agreeable to the Parties. The prevailing Party shall be entitled to recover attorneys' fees, expert fees, and other expenses of the arbitration.

## **5.0 AVIATION SERVICES**

### **5.1 Aircraft Type and Configuration**

On the Commencement Date, AMC will provide and operate, at AMC's own expense, one (1) EC130T2 single-engine helicopter in single pilot VFR configuration located in El Paso, Texas (the "Primary Helicopter") and equipped as outlined in Exhibit A. The Primary Helicopter will be painted and identified in colors and paint scheme as AMC and EPFD mutually agree. Subsequent aircraft selection will be at AMC's discretion in consultation with EPFD.

### **5.2 Aviation Crew**

AMC shall provide, at AMC's own expense, a sufficient number of pilots to staff the Flight Program.

All pilots assigned to the Flight Program shall: (i) possess a Commercial Pilots Certificate Rating; (ii) have an FAA Instrument Helicopter Rating with instrument experience; (iii) have a minimum of 2,000 hours helicopter flight experience, at least 100 of those hours at night, 5 hours in type and 2 hours of local orientation flight time; (iv) possess a valid FAA Second Class Medical Certificate; (v) have completed the Helicopter approved ground and flight training programs as specified by AMC's FAA-approved pilot training program, as well as AMC indoctrination and any other applicable training programs; (vi) prior to assignment to the Flight Program, have successfully completed a pilot proficiency flight in the applicable Helicopter completed by an FAA examiner or an AMC check airman; (vii) be familiar and knowledgeable of the helipads, heliports, hospitals, refueling centers and airports ordinarily served by the Flight Program and all applicable regulatory requirements; (viii) conform to EPFD and AMC dress code and conduct guidelines while on duty; (ix) adhere to the Standards of Conduct described in Exhibit F; and (x) be available to participate in appropriate committees, monthly staff meetings and training and orientation programs as requested by EPFD and approved by AMC. AMC shall provide aviation staff uniforms, to include helmets, and night vision goggles ("NVGs").

### **5.3 Aircraft Maintenance**

AMC shall ensure the airworthiness of each Helicopter operated in the Flight Program. AMC may either maintain the Helicopters with its own staff or retain a qualified third party to do so. AMC shall conduct

the maintenance of the Helicopters at its sole cost and in accordance with all current FAA regulations, manufacturer issued mandatory Service Bulletins, FAA issued Helicopter Airworthiness Directives, applicable federal and state laws, and AMC's maintenance practices and procedures.

AMC will assign a sufficient number of maintenance technicians to each Base Site. All maintenance technicians assigned to the Flight Program shall possess an FAA Airframe and Powerplant License and be rated and licensed to maintain the Helicopters. Maintenance shall be available 24 hours per day, 365 days per year, in accordance with AMC policies and procedures. AMC shall, at its sole cost, be responsible for providing any facilities needed for major maintenance.

#### **5.4 Aircraft Modification**

EPFD shall follow AMC's established policies and procedures to request any modifications to the Helicopters. All modifications are subject to AMC's prior written approval and shall be at EPFD's sole cost and expense. Modifications include, but are not limited to, any changes, additions, or substitutions to the interior or exterior of the Helicopter and any changes to the portable medical equipment. EPFD shall not purchase any equipment, fixtures, components, or parts to be installed on or carried in the Helicopter without AMC's prior written approval.

#### **5.5 Backup Services**

AMC shall use reasonable efforts to arrange for backup services through the availability of a similarly equipped Backup Helicopter, as necessary. AMC shall determine, in its sole discretion, the most effective way to provide backup services during periods when the Primary Helicopter is not available.

#### **5.6 Licenses and Certification**

AMC shall obtain and maintain, at AMC's own expense, all licenses, permits, and operating permits from the FAA, the State of Texas and/or other agencies necessary for operation of the Helicopters.

AMC shall comply with all federal, state and local laws, statutes, rules, regulations, and orders applicable to the operation of the Helicopters, including 14 C.F.R. Part 135.

#### **5.7 Operational Control**

AMC shall have operational control of all aspects of the Flight Program at all times, as it relates to non-clinical matters. Notwithstanding any other provision of this Agreement, AMC shall have sole and exclusive authority over initiating, conducting, and terminating each flight. All transport requests pursuant to this Agreement shall be subject to and conducted in accordance with AMC's operational procedures. The pilot on duty shall have complete authority to make all decisions concerning the suitability of weather conditions, landing areas, condition of the Helicopter for flight, loading of the Helicopter, and all other factors affecting flight safety and compliance with FAA regulations.

EPFD agrees that all written material it publishes, in whatever media, including its billing statements and pages on any website EPFD maintains referring to the Flight Program or any air medical services thereunder, shall contain the legend: AVIATION SERVICES PROVIDED BY AIR METHODS CORPORATION or such similar legend as the Parties may agree upon. In addition, each Helicopter shall bear a legend on its fuselage, legible from the ground (when the aircraft is stationary), identifying AIR METHODS CORPORATION as the operator of the Helicopter.

Both AMC and EPFD shall comply with any and all applicable FAA flight safety requirements for air medical programs.

AMC shall make a copy of AMC's proprietary operating standards available to EPFD upon reasonable request. EPFD will not release any information that is identified by AMC to be proprietary or trade secret information, unless authorized by AMC in writing or otherwise required by law.

AMC shall participate in EPFD requested training, public relations, disaster situations, and other non-medical related flights, subject to AMC's approval and in accordance with Exhibit G.

## **5.8 Base Sites**

As of the Commencement Date, EPFD shall provide at its sole cost one (1) Base Site located at 12230 Pine Spring Dr. El Paso, Texas 79936 (Fire Station 35) for the purpose of basing the Primary Helicopter, aviation crew, Clinical Crew (defined below) and maintenance facilities. Each Base Site shall include the items outlined in Exhibit B attached hereto. The Parties agree to negotiate a separate lease for the Base Site in parallel with this Agreement and will execute such lease within sixty (60) days of the El Paso City Council's approval of both agreements. EPFD and AMC shall mutually agree in writing upon any new Base Site or change in a Base Site location.

AMC will provide access to a hangar in the region for weather and maintenance considerations as needed.

Each of EPFD and AMC shall obtain and maintain, at such Party's own expense, all licenses, approvals and operating permits from the FAA, the State of Texas and/or other agencies necessary for operation at the Base Site.

## **5.9 AMC Area Manager**

AMC shall designate an AMC Area Manager who will be responsible for the day-to-day administrative oversight of the Flight Program.

# **6.0 CLINICAL SERVICES**

## **6.1 Clinical Crew**

The Flight Program will be staffed at all times with a qualified medical crew composed of one (1) Registered Nurse supplied by AMC and one (1) Paramedic supplied by EPFD (the "Clinical Crew"). The Parties shall mutually agree upon any change in the Clinical Crew composition. The Clinical Crew shall be available to allow AMC to respond immediately to all flight requests on a 24 hours per day, 365 days per year basis. Clinical Crew members will meet the minimum qualifications listed on Exhibit E and will adhere to the standards of conduct described in Exhibit F. For clarification, the Parties acknowledge that there may be certain transports in which a local hospital provides a specialty team to provide clinical care for a specific patient and that such transports may not include one or both Clinical Crew members.

AMC shall reimburse EPFD for the provision of Paramedics to the Flight Program in accordance with Exhibit C.



The Clinical Crew shall meet and comply with all AMC, Texas Department of Health, and CAMTS standards, policies, protocols and procedures. AMC shall share such proprietary standards, policies, protocols and procedures with the Clinical Crew and EPFD concurrently with the execution and delivery of this Agreement and from time to time following the Commencement Date upon EPFD's reasonable request, subject to confidentiality obligations set forth below.

The Clinical Crew shall participate in AMC safety, compliance and quality audits and programs, at AMC's request. AMC shall provide proprietary training programs about its standards, policies, protocols and procedures at the Base Site. For the benefit of integrity of care, EPFD Paramedics, both those onboarding at the commencement of the Agreement and those onboarding at any other point during the Term, shall receive clinical training for purposes of the Flight Program at EPFD's sole cost through AMC's Ascend Clinical Training Program pursuant to a Clinical Education Agreement between EPFD and AMC affiliate AMC CE, LLC to be entered into contemporaneously with this Agreement; provided, however, that notwithstanding any training provided by AMC or its affiliate, AMC and its affiliate shall have no liability or responsibility for the clinical competency or actions of the EPFD Paramedics assigned to the Flight Program. EPFD will have the sole responsibility to train its Paramedics and to ensure each Paramedic meets the requirements set forth on Exhibit E. Likewise, EPFD shall have no responsibility or liability for the clinical competency or actions of the AMC Registered Nurses assigned to the Flight Program.

EPFD shall participate in the Flight Program's CAMTS accreditation process. Each Clinical Crew member shall be required to meet all educational, certification, and experience standards recommended by CAMTS and outlined in the proprietary Air Methods Medical Operations Manual, which AMC shall provide to EPFD and the Clinical Crew subject to the confidentiality obligations set forth below. The Parties recognize that compliance with such minimum standards is material to this Agreement.

EPFD, at its sole cost, will also provide safety and communications equipment for its Paramedics as approved by the AMC safety department. AMC will provide uniforms, helmets and NVGs for the Clinical Crew.

In addition to the Ascend Clinical Training, the EPFD Paramedics shall participate in appropriate committees, monthly staff meetings and training and orientation programs at AMC's request and will be expected to adhere to the same performance standards as AMC employees.

## **6.2 Medical Oversight**

AMC shall provide physician medical oversight including online and offline medical command for the Flight Program. A medical director (the "Medical Director") who is mutually agreed upon by the Parties shall provide medical oversight. The Medical Director shall comply with all state and federal regulations as applicable for emergency medical service medical directors. The Medical Director will implement clinical care protocols for the Clinical Crew and operate a quality improvement program in accordance with AMC procedures. The Medical Director shall meet all educational and experience recommendations of CAMTS and all other qualifications described in Exhibit E. The Medical Director shall be responsible for all medical aspects of, and all medical decisions and directions relating to the Flight Program, and AMC shall be responsible for all decisions, directions and actions of the Medical Director.

### **6.3 Medical Equipment**

AMC shall provide and maintain all of the medical equipment for each Helicopter. The equipment list, as set forth on Exhibit D, shall be adjusted from time to time to remain in compliance with state EMS regulations and applicable governmental regulations, and to remain consistent with medical equipment used by AMC in the Flight Program.

### **6.4 Medical Supplies**

AMC shall provide all of the medical supplies used on each Helicopter. AMC may adjust the supply inventory list from time to time to remain in compliance with state EMS regulations and applicable governmental regulations, and to remain consistent with medical equipment used by AMC in the Flight Program.

### **6.5 Program Management**

EPFD shall provide, at its sole expense, a Program Director with oversight responsibility for the Flight Program. The Program Director, who shall meet regularly with designated contacts to obtain Flight Program performance feedback. The Program Director will participate as requested by AMC in AMC regional meetings, conference calls, and other initiatives. The Parties agree that the Program Director will be EPFD's Fire Chief or designee.

### **6.6 Paramedic Staffing and Out-of-Service Time**

In the event that EPFD is unable to provide qualified and fully trained Paramedics during the first one hundred twenty (120) days following the Commencement Date, AMC reserves the right to provide its own paramedics to staff open shifts during such time period, and AMC shall reduce the Clinical Crew Fee set forth on Exhibit C as described below for any shift in which EPFD does not provide a Paramedic.

In the event the Flight Program is out of service for lack of a Paramedic, AMC reserves the right to reduce the Clinical Crew Fee set forth on Exhibit C accordingly. AMC's payment of fixed monthly clinical crew fees for the Clinical Crew, as described in Exhibit C, will be reduced by 1/30th for each 24-hour shift in which EPFD does not provide an EPFD Paramedic.

## **7.0 TRAINING**

AMC shall provide, at AMC's sole expense, all of the necessary aviation and flight safety training for aviation staff in accordance with AMC's pilot training program, as well as all necessary aviation and flight safety training for Clinical Crew in accordance with AMC's training procedures. AMC shall use reasonable efforts to provide additional aviation and flight safety training for Clinical Crew as EPFD may reasonably request or as AMC may recommend. The Parties shall mutually agree in advance in writing on the allocation of cost for such additional training.

## **8.0 COMMUNICATION CENTER SERVICES**

AMC shall provide communication center services for the Flight Program through an established communication center ("AirCom"), 24 hours per day, 365 days per year. AirCom shall accept critical care transport requests from any referral source and any receiving facility in accordance with AMC's policies and procedures. AirCom shall be responsible for assigned operational aspects of communications including, but not limited to, alerts, communication and coordination with the flight team and ground agencies, and flight-following, in compliance

with AMC policies and FAA regulations and standards. AMC shall provide guidance and training for AirCom to ensure that all communication center functions meet these requirements.

EPFD shall supply radios and cell phones for the EPFD Paramedics.

## **9.0 ADDITIONAL SERVICES**

### **9.1 Community Education and Outreach**

AMC and EPFD shall, upon mutual agreement, develop a comprehensive community education and outreach plan for the Flight Program (the “Plan”). The Plan shall be consistent with EPFD’s mission and goals and AMC’s capabilities and shall cause no conflict of interest between AMC and EPFD. The Plan shall include development of specific services that will be provided by the Flight Program, identification of regional hospital affiliations and a budget for the resources necessary to implement the Plan. AMC will assign a business development manager (“Account Executive”), as further described in Exhibit G, to support the Flight Program in addition to his/her other duties for AMC. AMC and EPFD shall share equally the costs of implementing the Plan, in addition to all other costs each pays pursuant to this Agreement, including but not limited to personnel costs, aviation costs beyond those enumerated in Exhibit G, advertising costs and the cost of educational materials, which shall not exceed \$800 per Party, per Base Site, per month. AMC and EPFD representatives shall jointly review the Plan and progress against the Plan on a quarterly basis. The Parties shall make modifications and alteration of the Plan upon mutual agreement.

### **9.2 Customer Conference**

If deemed necessary at AMC’s sole discretion, AMC may sponsor EPFD representatives to attend the annual AMC customer conference in accordance with AMC’s policies. AMC conducts the conference for the purpose of continuing education with regard to air medical transport, trends in the air medical industry, and updates on AMC policies, procedures, performance, objectives and other operational issues.

## **10.0 THIRD PARTY BILLING**

AMC shall, at AMC’s sole expense, have sole authority to bill and collect, or cause the AMC Billing Entities to bill and collect, any and all fees for services provided under this Agreement. AMC and the AMC Billing Entities shall set the fee schedule and billing policies for all critical care transport services provided by the Flight Program.

AMC or the AMC Billing Entities as the licensed and billing entity shall be responsible for all patient records and documentation created on behalf of AMC and the AMC Billing Entities pursuant to this Agreement, including patient care records, billing records, and other related documents. EPFD agrees that it will retain and, subject to all applicable patient privacy rules and regulations, provide to AMC and the AMC Billing Entities or their authorized representatives all documents and records necessary for billing and collection for Flight Program services on a timely basis, or via virtual private network into EPFD’s system. Additionally, EPFD shall obtain all consents for AMC and the AMC Billing Entities which may be needed for AMC and the AMC Billing Entities to perform services under this Section including but not limited to consents to use patient information to the extent additional consent is necessary and consents necessary to contact responsible parties via cellular phone (including via an autodialer and similar equipment). AMC and the AMC Billing Entities, on the one hand, and EPFD, on the other hand, shall retain all such documents and records, and to hold them available for such

inspection until the expiration of 10 years after the patient's age of majority, regardless of the date of termination of this Agreement.

All EPFD and Flight Program employees responsible for the submission of data necessary for billing and collection purposes will be responsible for submission of such data in an accurate and timely fashion in AMC's assigned charting system. AMC shall be the sole administrator and holder of the electronic charting system account that will be used for the patient transports provided pursuant to this Agreement. Additionally, EPFD's employees shall use AMC's standard, pre-approved forms related to patient transports, including but not limited to the Physician Certification Statement and the patient Authorization and Consent Form. EPFD and its employees shall cooperate fully with AMC's and the AMC Billing Entities' billing processes, including but not limited to, AMC's and the AMC Billing Entities' documentation requirements, and relevant billing guidelines, policies and procedures, all of which shall be made available to EPFD upon request.

EPFD will assist in obtaining information from patients concerning insurance coverage when the data is available and when appropriate based upon the medical condition of the patient. EPFD clinical personnel will attempt to provide this information as part of the patient charting process.

EPFD will make staff available at reasonable times for training by AMC in methods and procedures regarding and/or required for proper billing. AMC faculty may deliver such training in person and/or via live webcast and/or distributive learning system approaches. AMC will provide all training for EPFD clinical staff at EPFD designated training facilities. AMC will provide training at least annually and at no additional cost to EPFD.

AMC shall, at EPFD's request, conduct an annual review of documentation practices and shall work with EPFD and its employees to ensure awareness of and compliance with AMC's billing and documentation standards.

## **11.0 QUALITY MANAGEMENT TOOLS**

### **11.1 Real-Time Multidisciplinary Quality Management Tool**

EPFD agrees to use the real-time multidisciplinary quality management tool AMC provides ("QM Tool") for all patient transports provided as part of this Agreement. Each of the Clinical Crew must upload all relevant professional licenses and certifications to the QM Tool before providing services under this Agreement. Additionally, EPFD shall give certain AMC management access to all patient records and information uploaded by the Clinical Crew for the purpose of quality assurance and review practices, responses to patient inquiries, and any other appropriate purpose.

EPFD will provide each employee from EPFD providing services pursuant to this Agreement with unique login and access codes to the QM Tool. EPFD and its employees will be solely responsible for maintaining the confidentiality and security of these unique access codes and logins, and EPFD shall not authorize access to the QM Tool except for those employees providing services under this Agreement. EPFD shall promptly inform AMC if an employee no longer provides services under this Agreement so that AMC may terminate that employee's access to the QM Tool.

EPFD shall not take or allow any action that attempts to defeat, disable, or circumvent any security measures that restrict or prevent unauthorized access to, use or copying of any portion of the QM Tool. EPFD's use of the QM Tool shall be subject to the Parties' business associate agreement attached hereto as Exhibit H, a business associate agreement with the third party provider of the QM Tool, and an End User License Agreement or the like, if necessary, to be separately entered into between EPFD and the third party provider of the QM Tool. EPFD's access to the QM Tool shall terminate upon the expiration or earlier termination of this Agreement or EPFD's breach of this Section 11.1.



AMC shall not be responsible for any of its third party software provider's acts and/or omissions in providing and/or supporting the QM Tool, and EPFD hereby affirmatively waives all such claims against AMC for liabilities, losses, lawsuits, claims, judgments, fines, demands, and expenses of any type or kind relating to or arising from its third party software provider's acts and/or omissions in providing and/or supporting the QM Tool.

## **12.0 PROGRAM FEES AND COSTS**

### **12.1 Program Aviation Costs**

AMC shall pay all costs associated with the operation of the Primary Helicopter, and any Backup Helicopter, which may be assigned from time to time. These costs include, but are not limited to, aircraft ownership or lease costs, insurance, operating costs, fuel, landing permits, parking fees, ground ambulance fees, hangar rental, and pilot training costs; provided, however, AMC shall not be responsible for those aviation costs associated with non-clinical or non-training flights except as set forth in Exhibit G. AMC shall be responsible for all taxes, fees, assessments, sales tax, personal property tax, license and registration fees which relate to ownership, use or operation of the Primary Helicopter and any Backup Helicopter.

### **12.2 Program Clinical Costs**

EPFD shall pay all clinical costs of the Paramedics assigned to the Flight Program. AMC shall pay to EPFD a clinical service fee and other fees as identified in Exhibit C, to be adjusted in accordance with Section 13.0. The fees set forth in Exhibit C shall be the sole and complete compensation for the provision of the Paramedics in association with the terms of this Agreement as defined herein.

### **12.3 Payment of Fees**

EPFD shall invoice AMC monthly in arrears for all amounts owed to EPFD, pursuant to Exhibit C, and the invoice should be received by AMC no later than the 15th day of the following month. The invoice shall include an itemized list of all costs and any receipts, if applicable. AMC shall make payment no later than 60 days after receipt of an undisputed invoice. EPFD shall submit all invoices to [coupaAPinvoices@airmethods.com](mailto:coupaAPinvoices@airmethods.com). Upon execution of this Agreement, EPFD shall provide AMC with a completed W-9. Any questions regarding an invoice shall be sent to [APinquiries@airmethods.com](mailto:APinquiries@airmethods.com).

## **13.0 FEES AND ADJUSTMENTS**

### **13.1 Annual Escalation**

The Parties shall adjust the applicable fees which are identified in Exhibit C on each 12-month anniversary of the Commencement Date (each an "Anniversary Date") in the manner provided below.

The basis for computing the adjustments to the fees is the Consumer Price Index for All Urban Consumers, U.S. City Average - All Items published by the United States Department of Labor, Bureau of Labor Statistics for the 12-month period prior to each Anniversary Date, not to exceed four percent (4%).

### 13.2 EPFD Subsidy

The Parties acknowledge and agree that: (a) El Paso is an underserved air medical community as there are currently no rotor wing air medical assets in the entire city, and (b) all previous rotor wing air medical bases in El Paso, including three previous AMC bases, were financially unviable and forced to close. For these reasons, the Parties agree that a subsidy structure is appropriate.

AMC's minimum annual revenue threshold for the Base Site in order to sustain financial viability for the first year of the Agreement is four million three hundred thousand dollars (\$4,300,000), which equates to a minimum monthly revenue threshold of three hundred fifty-eight thousand three hundred thirty-three dollars and thirty-three cents (\$358,333.33) (the "Monthly Revenue Threshold"). Every six months following the Commencement Date of the Agreement, the Parties will meet and review AMC's Base Site revenue results for the previous six months. If the average monthly revenue earned for the applicable six-month period is less than the Monthly Revenue Threshold, then the Parties will apply a monthly subsidy to the following six months equal to the shortfall of the Monthly Revenue Threshold, but not in any event to exceed twenty thousand dollars (\$20,000) per month. For ease of processing, EPFD will not need to make a separate payment to AMC in the event of a subsidy – any applicable monthly subsidy payment will be offset through a reduction to the Clinical Crew Fee set forth in Exhibit C. The Parties will repeat this exercise every six months throughout the Term. For clarity, when reviewing AMC's Base Site revenue results for the previous six months, the Parties will not include any subsidy received from EPFD in such analysis.

Notwithstanding the foregoing, the Parties further agree that EPFD should not be responsible for a subsidy to the extent any revenue shortfall is due to AMC's inability to meet its internal target in-service rate of ninety percent (90%) (the "ISR Target"). If AMC does not meet the ISR Target during any applicable six-month period analyzed by the Parties above, then EPFD will not owe AMC a subsidy for the following six-month period even if AMC fell short of the Monthly Revenue Threshold. For purposes of calculating AMC's in-service rate, AMC will only be deemed to be out of service if grounded for lack of pilot, lack of nurse or a maintenance event. All other reasons, including declines due to weather, refueling or transport in progress will not be factored into AMC's in-service rate for purposes of this Section.

The Monthly Revenue Threshold described above will be increased in year two and each subsequent year of the Term by the same annual escalation calculated in Section 13.1 above.

## 14.0 TRADEMARK

### 14.1 License Grant

During the Term, EPFD grants to AMC an irrevocable, exclusive (as to competitors of AMC) right, license, and privilege, with right to sublicense to AMC's Affiliates (defined below) to the extent reasonably necessary for operation of the Flight Program, to use the following EPFD trademark(s), tradename(s), and related designs and logos: "El Paso Fire", "El Paso Fire Shock-Trauma Air Rescue", and "El Paso Fire STAR" (collectively the "Licensed Marks"). AMC recognizes EPFD's ownership of its Licensed Marks as set forth in this Section and AMC acknowledges that all uses of the Licensed Marks and all goodwill resulting therefrom shall inure to the benefit of and be on behalf of EPFD. AMC shall use the Licensed Marks only as follows: (i) in connection with the Flight Program (including without limitation on any applicable helicopters, equipment, services, uniforms, systems, advertisements, promotional materials and products, and reasonable extensions related thereto); (ii) as specified by this Agreement; (iii) in a manner that does not disparage them; (iv) in compliance with any

use guidelines provided by EPFD; and (v) only during the Term of this Agreement. EPFD shall maintain any existing registrations for the Licensed Marks, pursue additional registrations where reasonably necessary to protect the Licensed Marks and their value to the Flight Program, and police against third party use of the Licensed Marks or confusingly similar marks where reasonably necessary to protect the Licensed Marks and their value to the Flight Program.

#### **14.2 Representations, and Warranties**

EPFD represents and warrants that: (i) EPFD owns all right, title, and interest in and to the Licensed Marks and has the right to use the Licensed Marks in connection with the Flight Program and to grant AMC the right to use the Licensed Marks as contemplated herein; (ii) the Licensed Marks and the use thereof as contemplated in this Agreement do not and will not infringe, misappropriate, or otherwise violate the intellectual property or other rights of any third party; and (iii) EPFD is not aware of any asserted, unasserted, or threatened claim by any third party with respect to the Licensed Marks..

#### **14.3 Branding**

The Parties shall brand the Primary Helicopter with the Licensed Marks and related designs as mutually agreed upon. Upon expiration or termination of this Agreement, AMC agrees to promptly cease its use of the Licensed Marks.

### **15.0 FAIR MARKET VALUE AND REFERRALS DISCLAIMER**

The amounts to be paid hereunder represent the fair market value of the goods and services to be provided as established by arms-length negotiations by the Parties and have not been determined in any manner that takes into account the volume or value of any potential referrals between the Parties or any of their Affiliates. The Parties agree that the benefits to each Party do not require, are not payment for, and are in no way contingent upon the admission, referral, or any other arrangement for the provision of any item or service offered by either Party in any facility, controlled, managed, or operated by any Party. Each of the Parties expressly acknowledges and agrees that it has been and continues to be its intent to comply fully with all federal, state, and local laws, rules, and regulations. It is not the purpose nor is it a requirement of this Agreement to offer or receive any remuneration or benefit of any nature or to solicit, require, induce, or encourage the referral of any patient, the payment for which may be made in whole or in part by Medicare or Medicaid. No payment made or received under this Agreement is in return for the referral of patients or in return for the purchasing, leasing, ordering, or arranging for or recommending the purchasing, leasing, or ordering of any goods, service, item, or product for which payment may be made in whole or in part under Medicare or Medicaid. No Party shall make or receive any payment that would be prohibited under state or federal law.

### **16.0 INSURANCE**

#### **16.1 AMC Aircraft Hull and Liability Insurance**

During the Term, AMC shall maintain an aircraft hull and liability insurance policy with a reputable insurance company for bodily injury, personal injury and property damage covering each Helicopter with a combined single limit of not less than \$50,000,000 per occurrence. Such aircraft hull and liability policy shall include EPFD as an additional insured. AMC shall provide evidence of this insurance upon reasonable request.

## **16.2 EPFD General Liability Insurance**

EPFD shall maintain general liability insurance, or self-insured coverage to meet this obligation, covering its obligations under this Agreement, including contractual liability set forth in this Agreement, the foregoing to have a combined single limit of not less than \$10,000,000. EPFD shall provide evidence of this insurance upon reasonable request.

## **16.3 Professional Medical Liability Insurance**

Each Party shall maintain professional liability insurance, or self-insured coverage to meet this obligation, including coverage for medical errors and omissions and contractual liability set forth in this Agreement, the foregoing to have a combined single limit of not less than \$5,000,000 each claim, with an aggregate limit of \$8,000,000. Such professional liability policy shall include the other Party as an additional insured. Each Party shall provide evidence of this insurance upon reasonable request.

## **16.4 Cyber Liability**

Each Party shall carry cyber liability insurance, or self-insured coverage to meet this obligation, including first and third party coverage, the foregoing to have a combined single limit of not less than \$1,000,000 each claim, with an aggregate limit of \$1,000,000.

## **16.5 Workers Compensation and Employers' Liability**

Each Party shall carry workers compensation and employer's liability insurance, or self-insured coverage to meet this obligation, including stop gap coverage, including all endorsements as may be necessary to insure fully such Party's obligations required by law, the foregoing to have \$1,000,000 each accident, disease, and employee. Each Party shall place this insurance with a reputable insurance company. Each Party shall provide evidence of this insurance upon reasonable request.

## **16.6 Cancellation**

Each policy carried by each Party to satisfy its contractual obligations hereunder shall provide that no cancellations or material alterations with respect to the insurance be made, unless at least 30 days' prior written notice of such cancellation is provided to the other Party, or at least 10 days' prior written notice is provided to the other Party in the event of cancellation due to non-payment.

## **16.7 Other Requirements**

All insurance required herein shall be endorsed to waive all rights of subrogation with respect to the insured Party, its agents, and employees except to the extent the other Party caused the liability giving rise to the claim. The Parties' insurance providers shall have at least an A.M. Best A- rating and Class VII financial size.

## **17.0 FORCE MAJEURE**

Neither AMC nor EPFD shall have any liability or responsibility for delay in performance or nonperformance of its obligations set forth in this Agreement resulting from any event beyond the Parties' reasonable control, included but not limited to the following: acts of God, of the public enemy, civil war, insurrections or riots, inclement weather, fires, floods, natural disasters, explosions, tornadoes, earthquakes or serious accidents, epidemics, pandemics, or quarantine restrictions; embargoes or legal or court orders affecting materials, fuel, oil



facilities, airports, and airways; any act of government, any act of the FAA, Department of Transportation, or any foreign counterpart thereof, or any foreign government, governmental priorities, airport or air traffic control, allocation regulations, embargoes, or orders affecting materials, fuel, oil, facilities, or any aircraft used by AMC hereunder, strikes, labor disputes causing cessation, slowdown or interruption of work or other like circumstances (each, a “Force Majeure”).

In the event of a Force Majeure, the Party affected by such Force Majeure shall provide prompt written notice of such Force Majeure to the other Party and shall use commercially reasonable efforts to resume work under this Agreement as soon as reasonably practicable. In the event of a Force Majeure, the performance period shall be extended for the period of time required to remove the event causing the delay.

Should a Party’s performance under this Agreement be suspended for more than 60 consecutive days due to a Force Majeure, then either Party shall be entitled to terminate this Agreement upon written notice to the other. Neither Party shall be liable for any damages caused by a Force Majeure.

## **18.0 ACCESS TO BOOKS AND RECORDS**

### **18.1 Document Retention and Inspection**

Each Party agrees to retain and make available upon the request of the other Party, the Secretary of the Department of Health and Human Services, or the Comptroller General of the United States, or any of their authorized representatives, any agreements between the Parties, and all books, documents and records necessary to verify the nature and extent of the costs and the services provided under this Agreement. The Parties agree to retain all such books, documents and records, and to hold them available for such inspection until the expiration of 4 years after the expiration or earlier termination of this Agreement.

Additionally, EPFD agrees to provide AMC any information related to EPFD or its employees providing services under this Agreement that is requested by a government agency or other payor in order to process and pay claims or enroll in Medicare and/or Medicaid.

Each Party agrees that any subcontractor to which it is, to a significant extent, associated or affiliated with, owns, or is controlled by, or has control of, will similarly be required by such Party to retain and give access to similar books, documents and records. Each Party agrees to promptly notify the other Party of any request it receives for access to its subcontractor’s records and to furnish a copy of such request. The regulations require that access be given within 20 days from the date of the request, unless written objection is made. If the other Party deems such a request to be inappropriate, then it may file an objection. Any proceeding regarding the other Party’s objections will be pursued at the other Party’s sole cost and expense; provided, however, that the Parties shall cooperate with respect to such objections.

### **18.2 HIPAA Business Associate Assurances**

As detailed in Exhibit H, EPFD and AMC hereby represent and warrant to the other that each is a “health care provider,” as that term is defined in the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated under such Act (as the Act and regulations are amended, restated and superseded from time to time, collectively, “HIPAA”), and that they are principally responsible for protecting the confidentiality of all patient-specific “protected health information” (as that term is defined in HIPAA) concerning patients transported by AMC in the Flight Program. EPFD and AMC will take such actions and adopt such policies, procedures and protocols concerning patients’ protected

health information as are necessary to comply with HIPAA.

As health care providers, EPFD and AMC may each provide protected health information to the other for purposes of treatment, payment or operations (as each such term is defined in the HIPAA Privacy Regulations), provided that EPFD and AMC each has a relationship with the individual who is the subject of the protected health information.

### **18.3 Government Requests**

If access to either Party's books and records related to this Agreement is granted to the government, it will be granted to such Party's place of business, unless such Party elects, at its option and at its expense, to furnish copies to the government. Any government requested copies will be paid for by the government or such Party.

### **18.4 Compliance with Requests**

Compliance with such requests for information under this Section 18.0 shall not provide a basis for a claim for extra compensation under this Agreement.

## **19.0 NOTICES**

All notices and other communications hereunder shall be in writing and shall be delivered personally, utilizing a next-day service by a recognized next-day courier or by registered or certified mail, return receipt requested, postage prepaid. Notices will be deemed delivered when received or rejected as shown on the tracking report or return receipt. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

#### **To AMC:**

Air Methods, LLC  
5500 South Quebec Street, Suite 300  
Greenwood Village, CO 80111  
Attn: Senior Vice President, South Central Region

#### **To EPFD:**

City of El Paso  
300 North Campbell  
El Paso, Texas 79901  
Attn: Fire Chief

with a copy (which will not constitute notice) to:

Air Methods, LLC  
5500 South Quebec Street, Suite 300  
Greenwood Village, CO 80111  
Attention: Legal Department  
Email: [contracts@airmethods.com](mailto:contracts@airmethods.com)

## **20.0 WARRANTIES AND DISCLAIMERS OF AMC**

### **20.1 Aircraft**

EPFD hereby acknowledges and agrees that AMC is not the manufacturer of the Primary Helicopter or any Backup Helicopter or the manufacturer's agent with respect to any aircraft used in connection with this Agreement.

## **20.2 Warranties and Disclaimers**

AMC MAKES NO WARRANTIES, GUARANTEES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO THE DESIGN, ORIGINAL CONSTRUCTION OR CONFIGURATION OR LATENT CONDITION OF ANY AIRCRAFT PROVIDED UNDER THIS AGREEMENT. AMC WARRANTS THAT IT WILL PERFORM ALL WORK, MAINTENANCE, AND OPERATIONAL SERVICES UNDER THIS AGREEMENT, AND AMC WILL SUPPLY AND INSTALL ALL PARTS, AND WILL MAKE SUCH MODIFICATIONS TO AIRCRAFT PARTS, COMPETENTLY, CORRECTLY AND IN ACCORDANCE WITH THE REQUIREMENTS OF THE FEDERAL AVIATION ACT, AS AMENDED, THE FARs AND ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, RULES AND REGULATIONS.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, AMC MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER OR THE AIRCRAFT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

## **21.0 LIMITATION OF LIABILITY**

In no event, whether as a result of contract, tort, strict liability or otherwise, shall either Party be liable to the other for any punitive, special, indirect, incidental or consequential damages, including without limitation loss of profits, loss of use or loss of contract.

## **22.0 NO PARTNERSHIP OR JOINT VENTURE**

Neither Party intends to create a joint venture, partnership or principal and agent relationship by this Agreement. Accordingly, neither the terms contained herein nor the Parties' actions shall be construed to imply a joint venture, partnership or principal and agent relationship between EPFD and AMC, and neither Party shall have any right, power or authority to create any obligation, express or implied, on behalf of the other.

## **23.0 NON-SOLICITATION**

For a period of 12 months following the expiration or earlier termination of this Agreement, neither Party shall directly solicit, recruit or hire any person who on the date of the termination or expiration of this Agreement is an employee of the other Party or one of its Affiliates. The foregoing, however, shall not prohibit a general solicitation to the public of general advertising or similar methods of solicitation by search firms not specifically directed at the other Party's employees.

## **24.0 NON-DISPARAGEMENT**

During the Term and for a period of 2 years following the expiration or earlier termination of this Agreement, neither Party will disparage, defame, or make any derogatory comments about the other Party. For purposes of this Section, "disparage" shall mean any negative statement, whether written, electronic or oral, about such Party, its Affiliates, and their respective officers, directors or employees, relating to the Party's business or services, including without limitation such Party's billing practices, which could reasonably be expected to

adversely affect the professional or personal reputation of such Party, its Affiliates, or their respective Representatives. Notwithstanding the foregoing, each Party may make truthful statements about the other Party and its officers, directors and employees, if compelled by court order, legal proceeding, or otherwise required by law. The Parties agree and acknowledge that this non-disparagement Section is a material term of this Agreement, the absence of which would result in the Parties refusing to enter into this Agreement.

## **25.0 CONFIDENTIALITY**

### **25.1. Acknowledgement and Agreement**

The Parties acknowledge and agree that, in connection with the performance of their obligations and exercise of their rights under this Agreement, each Party may have access to or obtain Confidential Information (defined below) of the other Party. The term “Confidential Information” shall mean the terms and conditions of this Agreement, and all business, financial, technical, and other information of a Party, including but not limited to Flight Program statistics, projections and strategies, rates, and any analyses of Flight Program performance or events prepared by either Party, that is provided to the other Party hereunder and that (i) is conspicuously marked as proprietary or confidential; or (ii) otherwise would be understood by a reasonable person to be confidential given the nature of the information and the circumstances surrounding the disclosure.

### **25.2 Handling of Confidential Information**

Each Party shall protect the Confidential Information of the other Party using the same degree of care, but not less than a reasonable degree of care, that the receiving Party uses to protect its own confidential information of like nature, to prevent the unauthorized use, dissemination, or publication of such Confidential Information. The receiving Party shall not use or make available in any form the Confidential Information of the disclosing Party or its Affiliates to any other Party other than the receiving Party’s and its Affiliates’ and its and their Representatives whose job performance requires such access, and shall take appropriate steps to ensure that any persons permitted access to such Confidential Information are legally bound to hold such Confidential Information in trust and confidence, pursuant to the restrictions set forth herein, without further disclosure to any third party. The receiving Party will diligently enforce any and all confidentiality agreements with its Representatives to protect the Confidential Information. The receiving Party shall be responsible for any breach of this Section by its Representatives, and such responsibility shall be in addition to and not by way of limitation of any right or remedy disclosing Party might have against such Representatives with respect to any such breach. Further, all Confidential Information that falls under Section 25.1(i) above and is conspicuously marked as confidential shall only be shared with the receiving Party’s Flight Program management. The receiving Party shall only use any Confidential Information for the purposes set forth in this Agreement, and the receiving Party acknowledges and agrees that the disclosing Party and/or its Affiliates may be irreparably harmed if any of the Confidential Information were to be disclosed to third parties, and further agrees that the disclosing Party shall have the right to seek injunctive relief upon any violation of this Section, in addition to all other rights and remedies available at law or in equity. For purposes hereof, “Affiliates” means, with respect to an entity, any entity controlling, controlled by, or under common control, with such entity, existing now or in the future.

### **25.3 Non-confidential Information**

Confidential Information shall not include any information that: (i) the receiving Party lawfully had knowledge of, or access to, prior to the time of disclosure by the disclosing Party or its Affiliates; (ii) the receiving Party developed independently without access to or use of the Confidential Information of



the disclosing Party and its Affiliates and without breach of this Agreement; (iii) has become generally known to the public other than by breach of this Agreement or wrongful act of the receiving Party or its Representatives; or (iv) the receiving Party obtained from a third party without an obligation to maintain confidentiality and not being in wrongful possession of such Confidential Information.

#### **25.4 Disclosure of Confidential Information**

Notwithstanding the provisions of Section 25.3 above, the receiving Party may disclose Confidential Information (i) for purposes of billing for services provided under this Agreement; (ii) pursuant to an order or judgment of any court or governmental body; or (iii) pursuant to any applicable law, rule or regulation, provided that for either (ii) or (iii), except where prohibited by applicable law, the receiving Party gives prompt notice to the disclosing Party in advance of such disclosure so that the disclosing Party and/or its Affiliates may have an opportunity to prevent such disclosure through appropriate legal means. If a protective order or other remedy is not obtained, or the disclosing Party waives compliance with the provisions hereof, the receiving Party shall disclose only that portion of Confidential Information which is legally required to be disclosed. The receiving Party shall also seek confidential treatment of such information from the entity to which the disclosure is made and shall cooperate with the disclosing Party and its Affiliates, at the expense of the disclosing Party, regarding the form, nature, content and purpose of such disclosure.

#### **25.5 Right to Confidential Information**

Each Party shall own and otherwise retain all right, title and interest in and to its Confidential Information. Disclosure of Confidential Information shall not confer on the receiving Party or its Representatives any rights or licenses to such Confidential Information other than those expressly set forth in this Agreement.

#### **25.6 Destruction of Confidential Information**

Upon the expiration or earlier termination of this Agreement, the receiving Party will destroy all documents, papers and other matter in the receiving Party's possession that contain such Confidential Information. Notwithstanding the foregoing: (i) the obligation to return or destroy the Confidential Information will not cover information that is maintained on routine computer system backup storage devices as long as such backed-up information is not used, disclosed, or otherwise recovered from such backup devices; and (ii) the receiving Party may retain a copy of any Confidential Information to the extent required to defend or maintain any litigation relating to this Agreement or the Confidential Information, or pursuant to established document retention policies, or to the extent required to comply with requirements of applicable law.

#### **25.7 Period of Obligation**

The obligations set forth in this Section will apply throughout the Term and for a period of 1 year after expiration or termination of this Agreement.

### **26.0 EXCLUSION FROM MEDICARE OR MEDICAID**

Neither Party has ever been suspended, excluded, or barred from the Medicare or Medicaid programs, or any other governmental program. Neither Party is under investigation or otherwise aware of circumstances which it reasonably believes would result in being excluded from the federal health care programs.

## **27.0 GENERAL PROVISIONS**

### **27.1 Entire Agreement, Amendment and Waiver**

This Agreement supersedes all prior agreements, oral or written, representations, statements, and/or understandings of AMC and EPFD with respect to the subject matter of this Agreement. The terms and provisions of this Agreement shall not be amended or modified without specific written provision to that effect, signed by the Parties. No oral statement of any person shall in any manner modify or otherwise affect the terms and provisions of this Agreement. The waiver of either Party of a breach of any provision of this Agreement shall not operate as or be construed as a continuing waiver or as consent to or waiver of such subsequent breach.

### **27.2 Assignment**

This Agreement shall be binding upon the Parties and their successors and permitted assigns; provided, however, that, except as expressly set forth herein, no Party may assign, transfer, delegate or subcontract its rights or duties under this Agreement without prior written consent of the other Party. Notwithstanding the immediately preceding sentence, either Party may, without the prior consent of the other Party, assign or transfer all of its rights under this Agreement to: (i) a parent, subsidiary, or Affiliate; (ii) a purchaser of all or substantially all assets related to this Agreement; or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which such Party is participating. Any permitted assignee shall assume all obligations of its assignor under this Agreement.

### **27.3 Employee Conduct**

If, in the reasonable opinion of a Party, any of the other Party's personnel directly supporting the Flight Program does not demonstrate a high degree of aptitude for the type of customer service required, including a positive mental attitude and good interpersonal relations, the Party may make a written request to the other Party to review the performance of the individual. The reviewing Party will determine the appropriate disciplinary action, if any, up to and including termination of employment. All such employment actions will be handled on a case-by-case basis in accordance with all applicable state and federal laws and equal opportunity guidelines. The reviewing Party will take action on such request with the intent to resolve all such actions within 30 days of such written request.

### **27.4 Third Party Beneficiaries**

Except as otherwise expressly set forth herein, nothing in this Agreement shall be construed as creating or granting rights or benefits hereunder to anyone other than AMC and EPFD.

### **27.5 Governing Law**

The provisions of this Agreement and all rights and obligations of this Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America, without regards to conflict of laws principles thereof.

### **27.6 Investigations**

Each Party shall promptly notify the other Party if it is sanctioned or disciplined as a result of any investigatory action related to the Flight Program by any federal, state or local agency or

affiliation/accreditation organization. Each Party shall also promptly notify the other Party if it is sued by any party if the notifying Party reasonably believes such lawsuit will adversely impact its ability to meet its obligations under this Agreement.

#### **27.7 Remedies Cumulative**

It is agreed that the rights and remedies herein provided in case of default or breach by a Party of this Agreement are cumulative and shall not affect in any manner any other remedies that a Party may have by reason of such default or breach by the defaulting Party. The exercise by the non-defaulting Party of any right or remedy provided herein shall be without prejudice to the non-defaulting Party's right to exercise any other right or remedy provided herein, at law, or in equity.

#### **27.8 Severability**

Each provision of this Agreement shall be considered separable, and if for any reason any provision of this Agreement, is determined to be invalid and/or contrary to any existing or future law, regulation, rule and/or order, such invalidity shall not impair the operations of, or affect those portions of this Agreement which are valid.

#### **27.9 Interpretation**

When a reference is made in this Agreement to a Section or Exhibit such reference shall be to a Section or Exhibit of this Agreement unless otherwise indicated. The headings contained in this Agreement or in any Exhibit are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Exhibit but not otherwise defined therein shall have the meaning as defined in this Agreement. All Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word "including" and words of similar import when used in this Agreement will mean "including, without limitation", unless otherwise specified.

#### **27.10 No Presumption Against Drafting Party**

Each of EPFD and AMC acknowledges that it has been represented by counsel in connection with this Agreement and the transactions contemplated hereby. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting Party has no application and is expressly waived.

#### **27.11 Execution**

This Agreement may be executed in multiple counterparts (including by PDF, facsimile or other electronic means), each of which may be deemed an original and will constitute one and the same instrument.

*[Signatures on Following Page]*

**CITY OF EL PASO:**

*Cary Westin*  
Cary Westin Interim  
City Manager

*Robert Cortinas*  
CFO

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

*Carlos L. Armendariz*

Carlos L. Armendariz  
Assistant City Attorney

*Jonathan Killings*

Jonathan Killings  
Fire Chief

(Acknowledgement)

STATE OF TEXAS           )  
COUNTY OF EL PASO    )

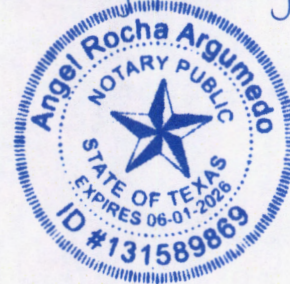
This Instrument was acknowledged before me on the 30 day of April, 2024 by Cary Westin, as Interim City Manager of the City of El Paso, a municipal corporation, on behalf of said corporation.

*Angel R. Argumedo*  
Notary Public, State of Texas

Notary's Name *Angel R. Argumedo*

My Commission Expires:

*06-01-2026*



**AIR METHODS, LLC**

Signature: *JaeLynn Williams*

Printed Name: JaeLynn Williams

Title: CEO

Date: 4/5/24



**EXHIBIT A**  
**PRIMARY HELICOPTER**

*Aircraft*

Base Site:	El Paso
Manufacturer/Model:	Eurocopter EC130T2
Status:	Used
Certification:	Single Pilot VFR with NVG compatibility
Engines:	Single Engine
Patient Capacity:	Current configuration or as mutually agreed
Aircraft Paint Design:	Paint scheme and branding as mutually agreed

AMC may replace, with 60 days' prior notice to EPFD, any of the foregoing aircraft with the type of aircraft which AMC deems appropriate to provide the emergency air transport services contemplated by this Agreement in the most prudent, efficient and cost-effective manner possible.

AMC and EPFD shall mutually agree on and approve, in writing, the built-in medical equipment and configuration.

**EXHIBIT B**  
**BASE SITE REQUIREMENTS**

- Parking for Staff
- Helipad
  - 120V power
  - Hose bib and water for aircraft washing
  - Lighting for minor maintenance
  - Storage area for mechanics equipment in close proximity to the aircraft
  - Maintenance on the helipad and related equipment
- Office Space (in close proximity to the aircraft)
  - Common Crew Area
  - Pilot Planning Area
  - Medical Crew Work Area
  - Pilot Rest Area (1 bedroom) and 2 medical crew members rest area (2 bedrooms)
  - Storage space for advanced life support equipment, medical supplies and limited storage space for light aircraft maintenance
  - Mechanic work area
- Telephone Access
  - Crew Phone
  - Pilot Phone
  - Pilot internet/WiFi access
  - Crew Fax Line
  - Mechanic phone and internet/WiFi access
- Mechanic Tool and Supply Area (close proximity to the aircraft)
- Bathroom and Shower Access
- Dirty Utility Area Access
- Computer
- Fax
- Kitchen Facilities
- Fuel Facilities

**EXHIBIT C**  
**FEES**

**AMC SHALL COMPENSATE EPFD:**

<b>CLINICAL CREW FEE</b>	<b>\$20,000.00 per month</b>
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\*The Clinical Crew Fee shall be adjusted annually on the Anniversary Date pursuant to Section 13.

\*\* The Clinical Crew fee may be reduced in accordance with Section 6.6. EPFD's monthly invoice to AMC shall include the number of shifts in which EPFD did not provide a Paramedic in the prior month and shall reduce the Clinical Crew Fee for that month accordingly pursuant to Section 6.6.

\*\*\* The Clinical Crew Fee may also be reduced in accordance with Section 13.2 in the event a subsidy is owed.

**EXHIBIT D**  
**MEDICAL EQUIPMENT LIST**

**Primary Response Bag (content list provided)**

**Monitor**

*Monitoring capabilities include:*

- 12 Lead ECG Monitoring
- Oxygen Saturation Monitoring
- Capnometry Monitoring
- Non-invasive Blood Pressure Monitoring
- (2) Invasive Pressure Monitoring Ports
- Vital Signs Trending

**Cardiac Monitor**

*Monitoring capabilities include:*

- External Pacer
- Defibrillator
- 12 Lead ECG Monitoring

**Transport Ventilator -**

*At a minimum, operating modes include:*

- Control
- Assist Control
- SIMV

**IV Pumps**

*4 pumps on-board and additional available on request*

**Transvenous Pacemaker (if available)**

**Portable and On Board Suction Units**

**Primary and Secondary Drug Bags (content list provided)**

**Pediatric Bag (content list provided)**

**EXHIBIT E**  
**CLINICAL CREW, PROGRAM MANAGER AND MEDICAL DIRECTOR QUALIFICATIONS**

**CLINICAL CREW**

**General**

The Clinical Crew shall meet the minimum qualifications and performance standards as outlined in the AMC Medical Operational Policy and Procedure manual. EPFD shall provide access to educational opportunities for the Clinical Crew consistent with those afforded to EPFD employees in EPFD's critical care areas. EPFD will be responsible for: (i) Basic Life Support; (ii) Advanced Life Support; (iii) Pediatric Advanced Life Support; and (iv) TPATC.

AMC mandatory certifications and requirements include, but are not limited to: (i) Texas and New Mexico Licensure; (ii) Advanced Trauma Life Support; (iii) Neonatal Resuscitation Provider; and (iv) CAMTS certification recommendations.

**Flight Nurses**

- The flight nurse functions as a member of the critical care transport team and is responsible for the care of the critically ill and injured patients transported by the Flight Program. The flight nurse functions in the field and hospital environments after an extensive orientation. Responsibilities include patient care that incorporates advanced assessment, stabilization and intervention skills working under standards and protocols approved by the Medical Director. Use of these protocols and standards may require independent judgment if immediate contact with the Medical Director is unavailable.
- Qualifications: Registered Nurse with at least 3 years critical care experience/ED/ICU  
Excellent communication skills and customer service skills  
Current certifications in BLS/CPR; ACLS; PALS, TPATC (BLS, ACLS and PALS must be provided by AHA or ARC)  
NRP Advanced provided by the American Academy of Pediatrics if program provides high-risk OB and/or neonatal transports  
Current Texas and New Mexico nursing certification

Clinical Requirements: Must complete annual competency tests.

**Paramedics**

- The Critical Care Transport Paramedic functions as a member of the critical care transport team and is responsible for the care of the critically ill and injured patients transported by the Flight Program. The Critical Care Transport Paramedic functions in the field and hospital environments after an extensive orientation. Responsibilities include patient care, which incorporates advanced stabilization and intervention skills working under standards and protocols approved by the Medical Director. Use of these protocols and standards may require independent judgment if immediate contact with the Medical Director is unavailable.
- Qualifications: At least 3 years of first response ALS field experience at the paramedic level  
Current certifications in BLS/CPR, and ACLS  
PALS  
TPATC  
NRP if program provides high-risk OB and/or neonatal transports  
Current Texas and New Mexico paramedic certification

Excellent communication skills and customer service skills

Clinical Requirements: Must complete annual competency tests.

### **PROGRAM DIRECTOR (EPFD)**

- The Program Director is responsible for providing a coordinated air/land patient transport system for the Flight Program. This includes monitoring all day-to-day operations including aviation, land and communications components; general administration; and personnel management of the Flight Program. Specific responsibilities include: development of employment procedures, policies, protocols, and systems of measures for achieving the best possible system performance. The Program Director is responsible for monitoring contractual performance as it relates to the Flight Program, overall leadership of the Flight Program and ensuring that the needs of AMC are met.
- EDUCATION AND TRAINING: Bachelor's Degree
- EXPERIENCE: 5 years' experience in air medical or ground medical leadership  
Qualification as a nurse or paramedic  
Previous flight or ground experiences (5 years minimum)  
Excellent communication skills  
Excellent customer service skills
- LICENSE AND CERTIFICATION: ACLS, PALS, ATLS  
Pre-hospital certification (EMT-P)

### **MEDICAL DIRECTOR**

#### **Basic Functions & Responsibilities:**

AMC is responsible for ensuring there is a Medical Director for this Flight Program. The Medical Director is responsible for the clinical quality of the patient transportation system including, without limitation, maintaining standards of patient care during transport by providing supervision, education and coordination for Clinical Crew members; reviewing, revising, and approving all medical protocols to direct patient care as defined by the Medical Standards manual; working collaboratively with the Program Director to insure quality patient care through the performance improvement program and by developing and implementation systems to monitor clinical care delivery; and working collaboratively with EPFD and AMC to insure professional working relationships are successfully established. The Medical Director will identify relevant issues and enhance the quality of care delivery.

#### **Education & Experience:**

- Board Certification in Emergency Medicine
- Transport experience including rotor and fixed wing
- 10 years of clinical experience
- 5 years of experience with air medical transport experience
- Excellent communication skills
- Participation in local, state and national committees related to air medical transport.

#### **Licenses & Certifications:**

- Licensed to practice medicine in Texas
- Certifications in ATLS and ACLS or equivalent education
- Current membership in the Air Medical Physicians Association

- Certifications in pediatric and neonatal training programs (or equivalent education or specialty physician consultant available)

#### Competencies:

Maintains competencies in advanced skills defined in the AMC Helicopter Policy & Procedure Manual to be able to instruct and test medical personnel on an annual and as-needed basis. Knowledgeable in flight physiology concepts, and incorporates same into protocols. Annual EMTALA training required.

#### Skills:

Maintains skills necessary to practice medicine within scope of practice, and maintains skills required of medical personnel to be able to instruct and test on an annual and as-needed basis. This maintenance of skills may be accomplished in the physician's own clinical practice as well as during patient contact as may be required by applicable state law or local regulations governing the Flight Program.

#### Characteristics Duties:

- Supervises quality of patient care provided by the Clinical Crew.
- Provides “off-line” medical direction and control for the Clinical Crew, as well as “on-line” medical direction during regular duty time. When he/she is not available, an alternate physician will be appointed to provide medical direction.
- Serves as a full member of the Quality Management team and acts as a liaison with health care providers from referring and receiving hospitals and health care facilities to assure continuity of care.
- Monitors and evaluates daily aviation operations through:
  - Availability to consult individually with team members on new or evolving clinical or operational issues.
  - Regular review of transport records and critiques (such oversight to include issues of team utilization, transport and response times, aviation and medical safety concerns and comments from referring and receiving facilities.)
- Participates in the interview process for hiring new medical employees.
- Participates in and supervises the training of medical personnel, including physicians, when appropriate. Approves orientation program for Clinical Crew members.
- Approves and monitors medical control plan that will include the following:
  - treatment protocols
  - triage protocols
  - communications protocols
  - transfer protocols
  - standing orders
  - continuing education plans



- Will maintain, or cause to have maintained, records of training and continuing education on each member of the Clinical Crew, and such information will be available at all times.
- As clinical consultant to the Clinical Crew, will determine criteria for patients eligible for transport and provide medical approval as to appropriateness for transport on an as-needed basis.
- Will maintain competency in patient care capabilities and limitations, infection control, stress recognition and management, altitude physiology/stressors of flight, and hazardous materials recognition and response.
- Will provide education annually on advanced trauma pathophysiology to include a skills lab for advanced procedures; including cricothyrotomy, pericardiocentesis, needle thoracostomy, intraosseous insertion, advanced airway management, and any other procedure approved by state regulatory agencies.
- This education may be accomplished during a non-patient encounter (i.e. skills lab on manikin, cadaver or animal) and/or during an actual patient encounter via direct supervision of Clinical Crew performance of skills with or without hands-on assistance by the Medical Director.
- Will maintain working knowledge of EMS and trauma regulations appropriate to the service area of the Flight Program.
- Will maintain currency in trends and developments that impact standard of care in the transport environment, and will keep the Program Director informed of these developments so that medical protocols can be revised accordingly.
- Will work collaboratively with the Program Director to enhance business relationships within the medical community.
- Other duties as assigned.



**EXHIBIT F**  
**STANDARDS OF CONDUCT**

The Standards of Conduct are fundamental and are based on the expectation that all associated with AMC and EPFD shall exceed these requirements. AMC and EPFD are committed to the highest standards of business ethics and integrity. As a minimum standard, everyone associated with AMC and EPFD will conduct their activities in compliance with applicable laws. Everyone associated with AMC and EPFD has a duty to act in a manner consistent with their core values and the following standards derived from them. The Parties agree to abide by the following Standards of Conduct in every regard with respect to its conduct at the facility or with respect to business or activities:

- Exercise good faith and honesty in all dealings and transactions.
- Create a workplace that fosters community, respects the inherent dignity of every person, promotes employee participation and ensures safety and well-being.
- Maintain a high level of knowledge and skill among all who serve in order to provide a high quality of care.
- Provide accurate and truthful information in all transactions.
- Maintain and protect the confidentiality of patient, employee and organizational information.
- Exercise responsible stewardship of both human and financial resources.
- Avoid conflicts of interest and/or the appearance of conflicts.

**EXHIBIT G**  
**JOINT BUSINESS DEVELOPMENT AND OUTREACH PROGRAM**

The Parties' marketing activities for each Base Site shall be conducted as follows:

1. EPFD shall collaborate with AMC to oversee and direct the business development and outreach activities for each Base Site. EPFD shall provide market information and direction, as appropriate.
2. The EPFD Program Director shall coordinate public relations outreach activity as determined by the Joint Business Development and Outreach Program, as determined by the EPFD and AMC designee.
3. AMC will provide reasonable flight services to designated sites for business development and outreach, as reasonably agreed upon between the Parties. As a general guidance, AMC will provide twelve (12) hours per Base Site per year of actual flight time at its sole expense to support the Joint Business Development and Outreach Program. AMC and EPFD will work together to schedule and implement any public relations flight requests that are made. All such requests and Base Site tours will be documented in accordance with the AMC public relations request form. AMC will keep on file a copy of all public relations requests, as required to maintain accreditation standards.
4. Unless otherwise agreed to by the Parties, the Base Site will remain in-service during any outreach event and available to respond to any flight requests received during such time period.
5. EPFD shall provide appropriate EPFD personnel as reasonably necessary in connection with business development and outreach activities mutually agreed upon hereunder.

**EXHIBIT H**  
**HIPAA BUSINESS ASSOCIATE AGREEMENT**

STATE OF TEXAS            )  
                                      )  
COUNTY OF EL PASO        )                   **HIPAA BUSINESS ASSOCIATE AGREEMENT**

**THIS AGREEMENT** is entered into on the last date of signature below (“Effective Date”) by and between the CITY OF EL PASO, TEXAS (“CITY”), and AIR METHODS, LLC (“AIR METHODS”) by and through their duly authorized officials, in order to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing protected health information (“PHI”) and business associates under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations hereafter collectively referred to as “HIPAA”). CITY and AIR METHODS may be referred to herein individually as a “Party” or collectively as the “Parties”.

Each Party is a health care provider as defined under HIPAA and so each is primarily a Covered Entity for purposes of HIPAA. To the extent that either Party is occasionally serving in the capacity of a “business associate” (as defined by 45 C.F.R. 160.103) during the course of the services provided under the Agreement, the Parties shall comply with the following requirements set forth below.

**RECITALS**

**WHEREAS**, CITY has entered into a contract with AIR METHODS to perform services or provide goods, or both;

**WHEREAS**, each Party is a health care provider providing clinical services under the contract and possesses individually identifiable health information that is defined in and protected under HIPAA, and is permitted to use or disclose such information only in accordance with HIPAA;

**WHEREAS**, in certain limited circumstances each Party may serve in the capacity of a BUSINESS ASSOCIATE and may receive such information from the COVERED ENTITY, or create and receive such information on behalf of the COVERED ENTITY, in order to perform certain of the services or provide certain of the goods, or both; and

**WHEREAS**, each Party wishes to ensure that BUSINESS ASSOCIATE will appropriately safeguard individually identifiable health information;

**NOW THEREFORE**, CITY and AIR METHODS agree as follows:

**A. HIPAA Terms**

1. **Definitions.** The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear, or as provided in (1)(h) to this Section.

- a. **Agreement** shall refer to this document.
  - b. **Business Associate** means whichever Party is serving in the capacity of a Business Associate, as defined by HIPAA, in a given scenario.
  - c. **Covered Entity** means whichever Party is serving in the capacity of a Covered Entity, as defined by HIPAA, in a given scenario.
  - d. **HHS Privacy Regulations** shall mean the Code of Federal Regulations (“C.F.R.”) at Title 45, Sections 160 and 164, in effect, or as amended.
  - e. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term “individual” is defined in 45 C.F.R. 164.501.
  - f. **Information** shall mean any “health information” provided and/or made available by the COVERED ENTITY to the BUSINESS ASSOCIATE, and has the same meaning as the term “health information” as defined by 45 C.F.R. 160.102.
  - f. **Parties** shall mean the CITY and AIR METHODS.
  - g. **Secretary** shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom the authority involved has been delegated.
  - h. **Catch-all definition:** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Part 160 and 164, in effect, or as amended: breach, data aggregation, designated record set, disclosure, health care operations, protected health information, required by law, subcontractor, and use.
2. **Limits on Use and Disclosure Established by Terms of Agreement.** BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by the COVERED ENTITY for any other purpose other than as expressly permitted or required by this Agreement (ref. 45 C.F.R. 164.504(e)(2)(i).)
  3. **Stated Purposes for which BUSINESS ASSOCIATE May Use or Disclose Information.** The Parties hereby agree that BUSINESS ASSOCIATE shall be permitted to use and/or disclose Information provided or made available from the COVERED ENTITY for the following stated purposes:  
 To provide public health, research, and related support services (service) to the community for the mutual benefit and general welfare of the Parties (ref. 45 C.F.R. 164.504(e)(2)(i); 65 Fed. Reg. 82505.)

4. **Use of Information for Management, Administrative and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to use Information if necessary for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE. (ref. 45 C.F.R. 164.504(e)(4)(i)(A-B)).
5. **Disclosure of Information for Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to disclose Information received from the COVERED ENTITY for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided:
  - a. The disclosure is required by law; or
  - b. The BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the BUSINESS ASSOCIATE of any instance of which it is aware in which the confidentiality of the information has been breached. (ref. 45 C.F.R. 164.504(e)(4)(ii)).
6. **Data Aggregation Services.** BUSINESS ASSOCIATE is also permitted to use or disclose Information to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of the COVERED ENTITY. (ref. 45 C.F.R. 164.504(e)(2)(i)(B)).
7. **BUSINESS ASSOCIATE OBLIGATIONS:**
  - a. **Limits on Use and Further Disclosure Established by Agreement and Law.** BUSINESS ASSOCIATE hereby agrees that the Information provided or made available by the COVERED ENTITY shall not be further used or disclosed other than as permitted or required by the Agreement or as required by federal law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).
  - b. **Appropriate Safeguards.** BUSINESS ASSOCIATE will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(B)).
  - c. **Reports of Improper Use or Disclosure.** BUSINESS ASSOCIATE hereby agrees that it shall report to the COVERED ENTITY **within two (2) days of discovery** any use or disclosure of Information not provided for or allowed by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(C)).



- d. Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that any time Information is provided or made available to any subcontractors or agents, BUSINESS ASSOCIATE must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(D)).
- (i) **45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2).** In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BUSINESS ASSOCIATE agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of BUSINESS ASSOCIATE agree in writing to the same restrictions and conditions that apply through this Agreement to BUSINESS ASSOCIATE with respect to such Information.
- e. Right of Access to Information.** BUSINESS ASSOCIATE hereby agrees to make available and provide a right of access to Information by an Individual. This right of access shall conform with and meet all of the requirements of Section 181.102 of the Texas Health and Safety Code, requiring that not later than the 15th business day after the date of the receipt of a written request from a person for the person's electronic health record, BUSINESS ASSOCIATE shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form, and with any further requirements of 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(E)).
- f. Correction of Health Information by Individuals.** BUSINESS ASSOCIATE shall, upon receipt of notice from the COVERED ENTITY, amend or correct protected health information (PHI) in its possession or under its control.
- g. Amendment and Incorporation of Amendments.** BUSINESS ASSOCIATE agrees to make Information available for amendment and to incorporate any amendments to Information in accordance with 45 C.F.R. 164.504(e)(2)(ii)(F)).
- h. Provide Accounting.** BUSINESS ASSOCIATE agrees to make Information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(G)).
- i. Access to Books and Records.** BUSINESS ASSOCIATE hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the COVERED ENTITY, available to the Secretary

or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 45 C.F.R. 164.504(e)(2)(ii)(H)).

- j. **Return or Destruction of Information.** At the termination of this Agreement, BUSINESS ASSOCIATE hereby agrees to adhere to Section B.3. of this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(I)).
  - k. **Mitigation Procedures.** BUSINESS ASSOCIATE agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to this Agreement or the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(f)).
  - l. **Sanction Procedures.** BUSINESS ASSOCIATE agrees and understands that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement of the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(e)(1)).
  - m. **Subpart E of 45 C.F.R. Part 164.** To the extent BUSINESS ASSOCIATE is to carry out one or more of the COVERED ENTITY's obligations under Subpart E of 45 C.F.R. Part 164, BUSINESS ASSOCIATE shall comply with the requirements of Subpart E that apply to the COVERED ENTITY in the performance of such obligation(s).
  - n. **Prohibition against the Sale of Protected Health Information.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.153, and any amendments of that section.
  - o. **Notice and Authorization Required for Electronic Disclosure of PHI.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.154, and any amendments of that section, regarding the requirement of providing notice to an Individual for whom the BUSINESS ASSOCIATE creates or receives protected health information if the Individual's PHI is subject to electronic disclosure.
  - p. **State Law on Medical Records Privacy.** The BUSINESS ASSOCIATE shall abide by the requirements set forth in Texas Health and Safety Code Section 181.001 et. seq., and any amendments of that chapter.
- 8. **Property Rights.** The Information shall be and remain the property of the COVERED ENTITY. BUSINESS ASSOCIATE agrees that it acquires no title or rights to the Information, including any de-identified Information, as a result of this Agreement.
  - 9. **Modifications.** The Parties agree to modify this Business Associate Agreement, in order to comply with Administrative Simplification requirements of HIPAA, as set forth

in Title 45, Parts 160 and 164, (Subparts A and E the “Privacy Rule” and Subparts A and C the “Security Rule”) of the Code of Federal Regulations.

10. **Automatic Amendment.** Upon the effective date of any amendment to the regulations promulgated by HHS with respect to PHI, this Business Associate Agreement shall automatically amend such that the obligations imposed on BUSINESS ASSOCIATE as a Business Associate remain in compliance with such regulations.

## **B. Term and Termination**

1. **Term.** The Term of this Agreement shall be effective as of May 1, 2024 and shall terminate on April 30, 2029 or on the date covered entity terminates for cause as authorized in paragraph (B.2.) of this Section, whichever is sooner.
2. **Termination for Cause.** Upon the COVERED ENTITY’s knowledge of a material breach by BUSINESS ASSOCIATE, the COVERED ENTITY shall:
  - a. Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation, and terminate if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time specified by the COVERED ENTITY.
  - b. Immediately terminate the Business Associate Agreement if BUSINESS ASSOCIATE has breached a material term of this Business Associate Agreement and cure is not possible.
  - c. Notify the Secretary of HHS if termination is not possible.
3. **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, BUSINESS ASSOCIATE, with respect to protected health information received from COVERED ENTITY, or created, maintained, or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY, shall:
  - a. Retain only that protected health information which is necessary for BUSINESS ASSOCIATE to continue its proper management and administration or to carry out its legal responsibilities;
  - b. Return to the COVERED ENTITY, or, if agreed to by the COVERED ENTITY, destroy, the remaining protected health information that the BUSINESS ASSOCIATE still maintains in any form and BUSINESS ASSOCIATE shall certify to the COVERED ENTITY that the Information has been destroyed;
  - c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in



this Section, for as long as BUSINESS ASSOCIATE retains the protected health information;

- d. Not use or disclose the protected health information retained by BUSINESS ASSOCIATE other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section 1.e and 1.f above, which applied prior to termination; and
- e. Return to the COVERED ENTITY or, if agreed to by COVERED ENTITY, destroy, the protected health information retained by BUSINESS ASSOCIATE when it is no longer needed by BUSINESS ASSOCIATE for its proper management and administration or to carry out its legal responsibilities.
- f. Survival. The obligations of BUSINESS ASSOCIATE under this Section shall survive the termination of this Agreement.

**C. Remedies.** If the COVERED ENTITY determines that BUSINESS ASSOCIATE has breached or violated a material term of this Agreement, COVERED ENTITY may, at its option, pursue any and all of the following remedies:

- 1. Exercise any of its rights of access and inspection under Section A.7.e. of this Agreement;
- 2. Take any other reasonable steps that COVERED ENTITY, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
- 3. Terminate this Agreement immediately.
- 4. Injunction. COVERED ENTITY and BUSINESS ASSOCIATE agree that any violation of the provisions of this Agreement may cause irreparable harm to COVERED ENTITY. Accordingly, in addition to any other remedies available to COVERED ENTITY at law, in equity, or under this Agreement, in the event of any violation by BUSINESS ASSOCIATE of any of the provisions of this Agreement, or any explicit threat thereof, COVERED ENTITY shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section C.4. shall survive termination of the Agreement.

**D. Miscellaneous**

- 1. **Regulatory References.** A reference in this Agreement to a HIPAA section means the section as in effect or as amended.

2. **Amendment.** CITY and AIR METHODS agree that amendment of this Agreement may be required to ensure that the Parties comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of protected health information. Either Party may terminate this Agreement upon 60 days written notice in the event that the other Party does not promptly enter into an amendment that the terminating Party, in its sole discretion, deems sufficient to ensure that it will be able to comply with such laws and regulations. This Agreement may not otherwise be amended except by written agreement between the parties and signed by duly authorized representatives of both parties.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.
4. **Notices.** Any notice or demand required under this Agreement will be in writing; will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt; and will be sent to the addresses below. Either party may change the address to which notices are sent by sending written notice of such change of address to the other party.

CITY: City of El Paso  
Attn: City Manager  
P. O. Box 1890  
El Paso, Texas 79950-1890

COPY TO: City of El Paso  
200 N. Campbell  
El Paso, TX 79901  
ATTN: Fire Chief

AIR METHODS: AIR METHODS, LLC  
ATTN: Legal Department  
5500 South Quebec Street, Suite 300  
Greenwood Village, Colorado 80111

5. **Non-Waiver.** No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

6. **Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
7. **Governing Law, Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflict of laws, with venue in El Paso County, Texas.
8. **Compliance with Laws.** Each Party agrees that its obligations pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, each Party reserves the right to notify the other Party in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.
9. **Severability.** In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.
10. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than CITY and AIR METHODS, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
11. **Entire Agreement; Counterparts.** This Agreement constitutes the entire Agreement between CITY and AIR METHODS regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document.


*(Signatures begin on Following Page)*


STATE OF TEXAS       )  
  )  
COUNTY OF EL PASO    )

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

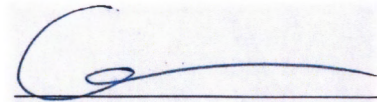
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day of April 30, 2024.

**CITY OF EL PASO:**

  
Cary Westin  
City Manager

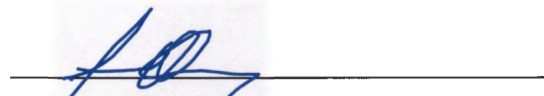
  
Robert Cortinas  
CFO

APPROVED AS TO FORM:



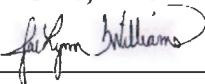
Carlos L. Armendariz  
Assistant City Attorney

APPROVED AS TO CONTENT:



Jonathan Killings  
Fire Chief

**AIR METHODS, LLC.**

Signature: 

Printed Name: JaeLynn Williams

Title: CEO

Date: 4/5/24

# DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with [Title 2, Chapter 2.92, Section 2.92.080](#)

## Introduction:

Individuals or entities benefiting by a City Council Agenda item must disclose contributions or donations made to current members of Council under the City's Ethics Code. The information on this form is being captured for transparency purposes and will be noted on the relevant City Council Agenda. **Contributions and Donations do NOT disqualify an applicant from doing business with the City.**

## Definitions:

- "Contribution" A direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit.
- "Contributor" A person making a contribution, including the contributor's spouse.
- "Donation" Cash and the value of any in-kind contributions or gifts to the council member for use by their office or in their district.
- "Donor" An individual and spouse, a business entity, or an individual who owns a business entity in whole or in part, or is operated by the individual, that is the subject of a council agenda item.
- "Benefiting" Shall include but not be limited to any contract, bid award, franchise, permit, zoning or rezoning, and other award that council will vote on.

**Instructions:** Please read and complete this form carefully. If you have made campaign contributions or donations to any current City Council member(s) totaling an aggregate of \$500 or more during their campaign(s) or term(s) of City office, you are required to disclose the information as specified below. If you have not made such contributions or donations past the limit specified in the ordinance, you are required to affirm your compliance with the municipal code. Please submit this completed form along with your application or proposal to the relevant city department. Failure to disclose campaign contributions or donations as required by the ordinance may result in a violation of the City's Ethics Code requirements, and sanctions under the Ethics Code 2.92.

## Contributor / Donor Information:

Full Name	Anthony John Raymond
Business Name	Air Methods
Agenda Item Type	Air Medical Helicopter Base with El Paso FD
Relevant Department	El Paso Fire Department

**Disclosure Affirmation:** Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.



I have **NOT** made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office, as specified in Section 2.92.080 of the El Paso Municipal Code.

OR



I have made campaign contributions or donations totaling an aggregate of \$500 or more to the following City Council member(s) during their campaign(s) or term(s) of City office:

OFFICE	CURRENT COUNCIL MEMBER NAME	AMOUNT (\$)
Mayor		
District 1		
District 2		
District 3		
District 4		
District 5		
District 6		
District 7		
District 8		

**Declaration:** I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, **I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.**

Signature: Anthony John Raymond

Digitally signed by Anthony John Raymond  
Date: 2024.04.12 15:40:28 -06'00'

Date: 4/12/2024



Legislation Text

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File #: 24-770, Version: 1

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**CITY OF EL PASO, TEXAS**  
**LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.  
No Title's, No emails. Please use ARIAL 10 Font.*

**Districts 2, 3, 4, 5, 7, 8**

Environmental Services Department, Nicholas Ybarra, (915) 212-6000

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

That the Solid Waste liens on the attachment posted with this agenda be approved (See Attachment A).



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

**AGENDA DATE:** June 11, 2024

**PUBLIC HEARING DATE:** N/A

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Nicholas Ybarra, (915) 212-6000

**DISTRICT(S) AFFECTED:** 2, 3, 4, 5, 7, 8

**STRATEGIC GOAL:** Goal 3 – Promote the Visual Image of El Paso

**SUBGOAL:**

**SUBJECT:**

That the Solid Waste liens on the attachment posted with this agenda be approved (See Attachment A).

**BACKGROUND / DISCUSSION:**

N/A

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?** ☒ YES ☐ NO

**PRIMARY DEPARTMENT:** Environmental Services Department

**SECONDARY DEPARTMENT:**

---

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

**DEPARTMENT HEAD:**



---

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



# ATTACHMENT A

## SOLID WASTE LIENS

June 11, 2024

Address	Owner of Record	Amount	District
4815 EDNA AVE	RAMIREZ, MERCEDES & SANTANA LORENZO JR	\$358.00	2
147 EDITH DR	TORRIJOS, IRMA I	\$590.00	3
3116 FLAX ST	LOPEZ, CECIL A	\$468.50	3
2816 CATNIP ST	ANCHONDO ANA M E (LE) & ESCOBAR ESTEBAN E M	\$373.00	3
1212 MEADOWVIEW DR	DIAZ, HILDA	\$841.00	3
5660 MICKEY MANTLE AVE	YANEZ, MERCEDES	\$309.00	4
7137 RED MAN DR	LADWIG STEVEN J & DANIELLE E	\$347.50	4
11124 LOMA DE COLOR DR	SIMONDS, ROY & GUADALUPE	\$361.50	4
10928 GOLDEN POND DR	CAMPOS SAMANTHA & MUNOZ ALBERT III	\$344.50	4
4641 GEORGE PATTON LN	GOFF, WALTRAUD	\$347.50	4
3135 RED CREEK DR	MARCEAU, GENEVIEVE M & JOSEPH D	\$336.00	5
7940 SUNNYFIELDS AVE	GARCIA, SONIA Y & RIOS DAINE M	\$358.00	7
313 SAN PABLO PL	SANCHEZ, DEREK & SILVIA	\$685.50	7
1000 BURGESS DR	GANDARILLA, RAMON	\$366.00	7
409 S COTTON ST	LOPEZ, ROSEMARY	\$1,372.00	8
136 MARDI GRAS DR	FLORES, MICHAEL J & STELLA P	\$1,713.00	8

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, RAMIREZ, MERCEDES & SANTANA LORENZO JR, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

4815 Edna Ave, more particularly described as Lot 34, Block 13,  
Val Verde Replat Subdivision, City of El Paso, El Paso County,  
Texas, PID #V088-999-0130-7900

to be \$358.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 5<sup>th</sup> day of April, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED FIFTY EIGHT AND 00/100 DOLLARS (\$358.00) to be a lien on the above described property, said amount being due and payable within

ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF EL PASO:


\_\_\_\_\_  
Oscar Leaser  
Mayor

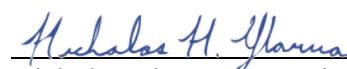
ATTEST:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Leslie B. Jean-Pierre  
Assistant City Attorney

  
\_\_\_\_\_  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, TORRIJOS, IRMA I, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

147 Edith Dr, more particularly described as Lot 7, Block 10,  
MILLERS LAKESIDE Subdivision, City of El Paso, El Paso  
County, Texas, PID #M452-999-0100-1300

to be \$590.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 19<sup>th</sup> day of April, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount FIVE HUNDRED NINETY AND 00/100 DOLLARS (\$590.00) to be a lien on the above described property, said amount being due and payable within ten (10) days

from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.


CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leoser  
Mayor


ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
  
Leslie B. Jean-Pierre  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, LOPEZ, CECIL A, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

3116 Flax St, more particularly described as Lot 1(10321.33 SQ FT), Block 172, EASTWOOD HEIGHTS #C Subdivision, City of El Paso, El Paso County, Texas, PID #E222-999-1720-0100

to be \$468.50, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 5<sup>th</sup> day of April, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount FOUR HUNDRED SIXTY EIGHT AND 50/100 DOLLARS (\$468.50) to be a lien on the above described property, said amount being due and payable within



ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.


CITY OF EL PASO:

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

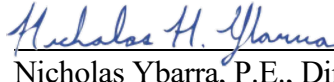
ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Leslie B. Jean-Pierre  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, ANCHONDO ANA M E (LE) & ESCOBAR ESTEBAN E M, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

2816 Catnip St, more particularly described as Lot 19(8336.40 SQ FT), Block 5, Montclair Subdivision, City of El Paso, El Paso County, Texas, PID #M638-999-0050-3700

to be \$373.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 24th day of March, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED SEVENTY THREE AND 00/100 DOLLARS (\$373.00) to be a lien on the above described property, said amount being due and payable within

ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF EL PASO:


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

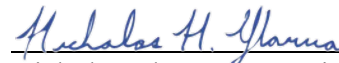
ATTEST:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
  
Leslie B. Jean-Pierre  
Assistant City Attorney

\_\_\_\_\_  
  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, DIAZ, HILDA, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

1212 Meadowview Dr, more particularly described as Lot 7(12497 SQ FT), Block 23, CIELO VISTA PARK Subdivision, City of El Paso, El Paso County, Texas, PID #C518-999-0230-1300

to be \$841.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 13<sup>th</sup> day of April, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount EIGHT HUNDRED FORTY ONE AND 00/100 DOLLARS (\$841.00) to be a lien on the above described property, said amount being due and payable within

ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF EL PASO

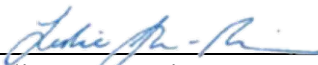
\_\_\_\_\_  
Oscar Leaser  
Mayor


ATTEST:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
  
Leslie B. Jean-Pierre  
Assistant City Attorney

\_\_\_\_\_  
  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000



## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, YANEZ, MERCEDES, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

5660 Mickey Mantle Ave, more particularly described as Lot 16(4781.35 SQ FT), Block 7, COPPERSTOWN Subdivision, City of El Paso, El Paso County, Texas, PID #C762-999-0070-1600

to be \$309.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 30<sup>th</sup> day of March, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED NINE AND 00/100 DOLLARS (\$309.00) to be a lien on the above described property, said amount being due and payable within ten (10) days

from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leaser  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
*Leslie B. Jean-Pierre*  
Leslie B. Jean-Pierre  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
*Nicholas H. Ybarra*  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, LADWIG STEVEN J & DANIELLE E, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

7137 Red Man Dr, more particularly described as Lot 11, Block 41,  
MESQUITE HILLS #7 Subdivision, City of El Paso, El Paso  
County, Texas, PID #M395-999-0410-1100

to be \$347.50, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 30<sup>th</sup> day of March, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED FORTY SEVEN AND 50/100 DOLLARS (\$347.50) to be a lien on the above described property, said amount being due and payable within

ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.


CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leoser  
Mayor

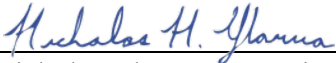
ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
  
Leslie B. Jean-Pierre  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leeser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, SIMONDS, ROY & GUADALUPE, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

11124 Loma De Color Dr, more particularly described as Lot 3(5720.00 SQ FT), Block 27, NORTH HILLS #10 Subdivision, City of El Paso, El Paso County, Texas, PID #N425-999-0270-0300

to be \$361.50, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 9<sup>th</sup> day of March, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED SIXTY ONE AND 50/100 DOLLARS (\$361.50) to be a lien on the above described property, said amount being due and payable within

ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF EL PASO:


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

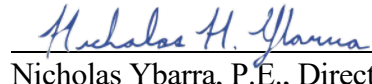
ATTEST:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Leslie B. Jean-Pierre  
Assistant City Attorney

  
\_\_\_\_\_  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)



ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, CAMPOS SAMANTHA & MUNOZ ALBERT III, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

10928 Golden Pond Dr, more particularly described as Lot  
8(5312.13 SQ FT), Block 14, NORTHTOWNE VILLAGE #2  
Subdivision, City of El Paso, El Paso County, Texas, PID #N490-  
999-0140-0800

to be \$344.50, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 21<sup>st</sup> day of March, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED FORTY FOUR AND 50/100 DOLLARS (\$344.50) to be a lien on the above described property, said amount being due and payable within

ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF EL PASO:


\_\_\_\_\_  
Oscar Leaser  
Mayor

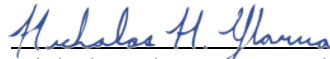
ATTEST:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
  
Leslie B. Jean-Pierre  
Assistant City Attorney

\_\_\_\_\_  
  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, GOFF, WALTRAUD, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

4641 George Patton Ln, more particularly described as Lot 12,  
Block 8, CASTNER HEIGHTS Subdivision, City of El Paso, El  
Paso County, Texas, PID #C231-999-0080-2300

to be \$347.50, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 1<sup>st</sup> day of February, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED FORTY SEVEN AND 50/100 DOLLARS (\$347.50) to be a lien on the above described property, said amount being due and payable within

ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leeson  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Leslie B. Jean-Pierre  
Assistant City Attorney

\_\_\_\_\_  
Nicholas H. Ybarra  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, MARCEAU, GENEVIEVE M & JOSEPH D, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

3135 Red Creek Dr, more particularly described as Lot 36, Block  
46, VENTANAS #7 Subdivision, City of El Paso, El Paso County,  
Texas, PID #V639-999-0460-3600

to be \$336.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 16<sup>th</sup> day of March, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED THIRTY SIX AND 00/100 DOLLARS (\$336.00) to be a lien on the above described property, said amount being due and payable within



ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF EL PASO:


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

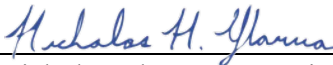
ATTEST:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Leslie B. Jean-Pierre  
Assistant City Attorney

  
\_\_\_\_\_  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, GARCIA, SONIA Y & RIOS DAINE M, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

7940 Sunnyfields Ave, more particularly described as Lot  
4(6000.96 SQ FT), Block 1, SUNNYVIEW PLACE Subdivision,  
City of El Paso, El Paso County, Texas, PID  
#S905-999-0010-0400

to be \$358.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 11<sup>th</sup> day of April, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED FIFTY EIGHT AND 00/100 DOLLARS (\$358.00) to be a lien on the above described property, said amount being due and payable within

ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF EL PASO:

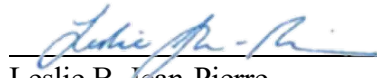
\_\_\_\_\_  
Oscar Leeser  
Mayor

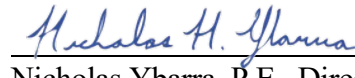
ATTEST:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
  
Leslie B. Jean-Pierre  
Assistant City Attorney

\_\_\_\_\_  
  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leeser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, SANCHEZ, DEREK & SILVIA, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

313 San Pablo Pl, more particularly described as Lot 24, Block 31,  
THOMAS MANOR Subdivision, City of El Paso, El Paso County,  
Texas, PID #T240-999-0310-4700

to be \$685.50, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 3<sup>rd</sup> day of September, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount SIX HUNDRED EIGHTY FIVE AND 50/100 DOLLARS (\$685.50) to be a lien on the above described property, said amount being due and payable within

ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF EL PASO:

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Leslie B. Jean-Pierre  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000



## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, GANDARILLA, RAMON, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

1000 Burgess Dr, more particularly described as TR 523(7000 SQ FT), LOMA TERRACE #4-C Subdivision, City of El Paso, El Paso County, Texas, PID #L536-999-001B-2700

to be \$366.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 31<sup>st</sup> day of January, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED SIXTY SIX AND 00/100 DOLLARS (\$366.00) to be a lien on the above described property, said amount being due and payable within

ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leeson  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
*Leslie B. Jean-Pierre*  
Leslie B. Jean-Pierre  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
*Nicholas H. Ybarra*  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, LOPEZ, ROSEMARY, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

409 S Cotton St, more particularly described as Lot 6 & S 1/2 OF  
7(4875 SQ FT), Block 63, Magoffin Subdivision, City of El Paso,  
El Paso County, Texas, PID #M028-999-0630-2900

to be \$1,372.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 14<sup>th</sup> day of April, 2023, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount ONE THOUSAND THREE HUNDRED SEVENTY TWO AND 00/100 DOLLARS (\$1,372.00) to be a lien on the above described property, said amount being due

and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF EL PASO:


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

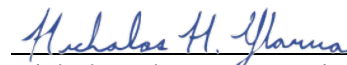
ATTEST:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Leslie B. Jean-Pierre  
Assistant City Attorney

  
\_\_\_\_\_  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

## **RESOLUTION**

**WHEREAS**, in accordance with Chapter 9.04 of the El Paso City Code, FLORES, MICHAEL J & STELLA P, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

**WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

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

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

136 Mardi Gras Dr, more particularly described as Lot 9, Block 6,  
FIESTA HILLS REPLAT Subdivision, City of El Paso, El Paso  
County, Texas, PID #F315-999-0060-5700

to be \$1,713.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 8<sup>th</sup> day of September, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount ONE THOUSAND SEVEN HUNDRED THIRTEEN AND 00/100 DOLLARS (\$1,713.00) to be a lien on the above described property, said amount being due and

payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF EL PASO:


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

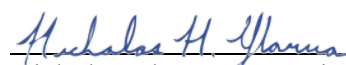
ATTEST:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
  
Leslie B. Jean-Pierre  
Assistant City Attorney

\_\_\_\_\_  
  
Nicholas Ybarra, P.E., Director  
Environmental Services Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)



ACKNOWLEDGEMENT

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2024,  
by Oscar Leaser, as Mayor, of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**PREPARED IN THE OFFICE OF:**

Office of the City Attorney  
P.O Box 1890  
El Paso, Texas 79950-1890

**FOR PAY-OFF INFORMATION PLEASE CONTACT:**

Environmental Services Department  
7968 San Paulo  
El Paso, Texas 79907  
(915) 212-6000

# ATTACHMENT A

## SOLID WASTE LIENS

June 11, 2024

Address	Owner of Record	Amount	District
4815 EDNA AVE	RAMIREZ, MERCEDES & SANTANA LORENZO JR	\$358.00	2
147 EDITH DR	TORRIJOS, IRMA I	\$590.00	3
3116 FLAX ST	LOPEZ, CECIL A	\$468.50	3
2816 CATNIP ST	ANCHONDO ANA M E (LE) & ESCOBAR ESTEBAN E M	\$373.00	3
1212 MEADOWVIEW DR	DIAZ, HILDA	\$841.00	3
5660 MICKEY MANTLE AVE	YANEZ, MERCEDES	\$309.00	4
7137 RED MAN DR	LADWIG STEVEN J & DANIELLE E	\$347.50	4
11124 LOMA DE COLOR DR	SIMONDS, ROY & GUADALUPE	\$361.50	4
10928 GOLDEN POND DR	CAMPOS SAMANTHA & MUNOZ ALBERT III	\$344.50	4
4641 GEORGE PATTON LN	GOFF, WALTRAUD	\$347.50	4
3135 RED CREEK DR	MARCEAU, GENEVIEVE M & JOSEPH D	\$336.00	5
7940 SUNNYFIELDS AVE	GARCIA, SONIA Y & RIOS DAINE M	\$358.00	7
313 SAN PABLO PL	SANCHEZ, DEREK & SILVIA	\$685.50	7
1000 BURGESS DR	GANDARILLA, RAMON	\$366.00	7
409 S COTTON ST	LOPEZ, ROSEMARY	\$1,372.00	8
136 MARDI GRAS DR	FLORES, MICHAEL J & STELLA P	\$1,713.00	8



Legislation Text

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File #: 24-805, Version: 2

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**CITY OF EL PASO, TEXAS**  
**LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Capital Improvement Department, Joaquin Rodriguez, (915) 212-0065

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

That the City Manager, or designee, be authorized to sign a two-year On-Call Agreement for Professional Services to perform appraisal services on a task order basis between the City of El Paso and each of the following three consultants:

1. CBRE, Inc.
2. Gayle-Reid Appraisal Services, Inc.
3. Lowery Property Advisors, LLC

Each On-Call Agreement will be for an amount not to exceed One Hundred Thousand and No/00 Dollars (\$100,000.00). In addition, the City Manager is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement. Further, that the City Manager, or designee, is authorized to execute any amendments to the agreements provided such amendments do not increase the contract amounts. Further, that the City Manager, or designee, is authorized to exercise an option to extend the contracts for one year each, such option increasing each contract amount by an additional \$50,000.00 for a total contract amount, including options, not to exceed \$150,000.00.

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

**AGENDA DATE:** June 11, 2024

**CONTACT PERSON(S) NAME AND PHONE NUMBER** Joaquin Rodriguez, Director of Grant Funded Programs  
(915) 212-0065

**DISTRICT(S) AFFECTED:** All Districts

**STRATEGIC GOAL:** 6. Set the Standard for Sound Governance and Fiscal Management

**SUBGOAL:** 6.5. Deliver Services Timely and Effectively with Focus on Continual Improvement

**SUBJECT:**

That the City Manager, or designee, be authorized to sign a two-year On-Call Agreement for Professional Services to perform appraisal services on a task order basis between the City of El Paso and each of the following three consultants:

1. CBRE, Inc.
2. Gayle-Reid Appraisal Services
3. Lowery Property Advisors

Each On-Call Agreement will be for an amount not to exceed One Hundred Thousand and No/00 Dollars (\$100,000.00). In addition, the City Manager is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement. Further, that the City Manager, or designee, is authorized to execute any amendments to the agreements provided such amendments do not increase the contract amounts. Further, that the City Manager, or designee, is authorized to exercise an option to extend the contracts for one year each, such option increasing each contract amount by an additional \$50,000.00 for a total contract amount, including options, not to exceed \$150,000.00.

**BACKGROUND / DISCUSSION:**

This item's purpose is to establish on call agreements with appraisals services companies to improve efficiencies in procuring appraisals.

**PRIOR COUNCIL ACTION:**

NA

**AMOUNT AND SOURCE OF FUNDING:**

\$100,000 Per Agreement – MPO MATCH

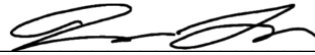
**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?**   X   YES      NO

**PRIMARY DEPARTMENT:** Capital Improvement Department

**SECONDARY DEPARTMENT:** N/A

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

**DEPARTMENT HEAD:**



---

Joaquin Rodriguez, AICP, Director of Grant Funded Programs

## RESOLUTION

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

That the City Manager, or designee, be authorized to sign a two-year On-Call Agreement for Professional Services to perform appraisal services on a task order basis between the City of El Paso and each of the following three consultants:

1. CBRE, Inc.
2. Gayle-Reid Appraisal Services
3. Lowery Property Advisors

Each On-Call Agreement will be for an amount not to exceed One Hundred Thousand and No/00 Dollars (\$100,000.00). In addition, the City Manager is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement. Further, that the City Manager, or designee, is authorized to execute any amendments to the agreements provided such amendments do not increase the contract amounts. Further, that the City Manager, or designee, is authorized to exercise an option to extend the contracts for one year each, such option increasing each contract amount by an additional \$50,000.00 for a total contract amount, including options, not to exceed \$150,000.00.

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2024.

CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leoser  
Mayor

ATTEST:

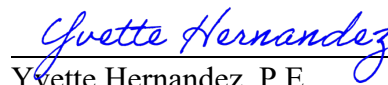
\_\_\_\_\_  
Laura D. Prine  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
Roberta Brito  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Yvette Hernandez, P.E.  
City Engineer



CITY OF EL PASO  
CAPITAL IMPROVEMENT DEPARTMENT  
218 N. CAMPBELL, 2ND FLOOR  
EL PASO, TEXAS 79901

EVALUATION COMMITTEE SCORESHEET SUMMARY					
SOLICITATION #2024-0482R					
ON-CALL REAL ESTATE APPRAISAL SERVICES					
CONSULTANT	CBRE	GAYLE-REID	GRAGG RISK MANAGEMENT	LOWERY PROPERTY ADVISORS	RALPH SELLERS & ASSOCIATES
Rater 1	73	72	30	64	51
Rater 2	68	71	72	61	70
Rater 3	80	79	70	81	69
Total Rater Scores	221	222	172	206	190
References	3.3	10	0	0	3.3
Overall Score:	224.3	232	172	206	193.3

Rankings	Consultant
1	GAYLE-REID
2	CBRE
3	LOWERY PROPERTY ADVISORS

Rankings	Consultant
4	RALPH SELLERS & ASSOCIATES
5	GRAGG RISK MANAGEMENT

## **ON-CALL AGREEMENT FOR PROFESSIONAL SERVICES (APPRAISAL SERVICES)**

This On-Call Agreement for Professional Services Appraisal Services (“**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (“**Effective Date**”), and is between the **CITY OF EL PASO, TEXAS** (the “**City**”) and **Gayle-Reid Appraisal Services, Inc., a Texas Corporation**, (the “**Appraiser**”). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

**WHEREAS**, the Appraiser was selected on the basis of demonstrated competence and qualifications to perform the services described in this Agreement;

**WHEREAS**, the City intends to engage the Appraiser to perform appraisal services on a task order basis through the use of task orders referencing this Agreement, the scope of which is described in this Agreement;

**WHEREAS**, the services to be provided under this Agreement are necessary to comply with local, state and federal policies, regulations and procedures.

The parties agree as follows:

### **SECTION 1. TERM.**

- A. The term of this Agreement is for a period not to exceed two years from the Effective Date. The services called for by each task order begin upon the issuance of a notice to proceed from the City Engineer and shall continue through the completion of the project as described in the task order. The Appraiser agrees that the City Manager or designee, for the City may extend the term of this Agreement by exercising up to one option of one year each option.

### **SECTION 2. SUBJECT PROPERTY TO BE APPRAISED.**

- A. The Appraiser shall appraise the property identified in each task order pursuant to this Agreement.

### **SECTION 3. PAYMENT**

- A. The City will pay the Appraiser an amount not to exceed \$100,000.00. No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement. The Appraiser will invoice the City following the



completion of each task order in accordance to the fee schedule attached to this Agreement as **Attachment “A”**. If the City exercises an option to extend the term as described in this Agreement above, then the maximum payment amount under this contract will be increased by \$50,000 for each option exercised by the City. The parties agree that the exercise of an option only increases the maximum contract amount and does not constitute a request for services from the Appraiser unless accompanied by a Task Order. The Appraiser will abide by the fees listed in Attachment “A” to this Agreement during any option periods exercised by the City.

#### **SECTION 4. SCOPE OF APPRAISER’S SERVICES.**

- A. The Appraiser will perform the services as provided by each Task Order issued by the City (“**Task Order**”). The Appraiser will perform the services for the fees stipulated on the fee schedule attached to this Agreement as Attachment “A”. The Appraiser will not perform any services until the Appraiser has received a Task Order from the City. Notwithstanding anything to the contrary, the City will not owe the Appraiser any payments for any work that is performed without a Task Order.
- B. Unless otherwise provided in the Task Order, the Appraiser will perform the following services for all Task Order’s issued by the City:
  - 1. **APPRAISAL.** The Appraiser shall appraise the property identified in the task order and prepare and deliver one (1) draft appraisal report for on or before the date specified in the Task Order to the City Representative. For purposes of this Agreement, the “**City Representative**” is the City Engineer or designee. The City Representative will review the draft appraisal report in a timely manner. Within seven (7) City business days after the Appraiser receives the City Representative’s written comments, the Appraiser will deliver three (3) hard copies and an electronic file (a pdf and tiff file on one CD) of the appraisal report to the City. The City Representative may waive the requirement for hard copies and/or CD.
  - 2. **PROPERTY INSPECTION.** The Appraiser shall personally inspect the property identified in the Task Order, to include any buildings, structure improvements, fixtures and appurtenances, thereon or belonging thereto. If the Appraiser’s inspection or investigation discloses a sale of a portion of a property by an unrecorded contract of sale or otherwise, the Appraiser shall notify the City.
  - 3. **VALUATION DATA.** The Appraiser shall make such investigations, studies and property inspections as are appropriate to enable the Appraiser to derive sound conclusions and to prepare the appraisal report to be furnished under this Agreement,

including but not limited to, the three (3) most recent comparable sales which precede the appraisal, if any.

4. **PURPOSE AND SIGNIFICANCE OF APPRAISAL.** The appraisal to be furnished under each Task Order under this Agreement is required by the City for its guidance in setting fair and impartial determinations of market value. The Appraiser agrees to provide the City appraisal services that meet the definition of an appraisal as required by applicable federal, state and local laws, regulations, policies and procedures. The Appraiser shall be guided by those objectives when estimating values and when making investigations and studies and analyzing the property identified in the Task Order and the evidences of its value. Accordingly, the text of each appraisal report must cover all matters germane to the required valuation findings and must provide a full explanation of the Appraiser's reasoning and analyses of the evidences of value, so that a reviewer will be able to follow the Appraiser's analyses and understand how the Appraiser reached the valuation conclusions. If required, the City will contract separately for a review appraisal with another appraiser. The appraisal to be furnished under this Agreement is required by the City for its guidance in making an impartial determination of the market value of the Property. Because Federal funds are often involved in the City project for which the property is being appraised, unless instructed to the contrary in writing by the City, the Appraiser and the appraisal must meet the specific requirements under the URA and 24 CFR 24.103 in Title 49, unless the appraisal is a review appraisal in which event the appraiser must meet the specific requirements of 24 CFR 24.104.
5. **DATE OF VALUATION.** The Appraiser's valuation date shall be mutually agreed upon and identified in the Task Order issued by the City Representative.
6. **APPRAISER CERTIFICATION.** The Appraiser represents that the appraiser appraising the Property for the Appraiser, is state-certified as a "Certified General Appraiser" by the State of Texas, and will remain certified during the term of this Agreement and shall provide the City with proof of current certification. The Appraiser represents that it is a member of the Appraisal Institute and that the Appraiser currently employs a qualified expert witness. Further, the Appraiser represents and warrants that the Appraiser is familiar with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs at 42 USC Sec. 4601-4655 (the URA) as well as the Code of Federal Regulations (CFR) applying to the URA sections.
7. Appraiser will provide the services in two parts. First Appraiser will provide a Restricted Report & second a Full Report in accordance to the timelines set in the Task Order.

8. EXPERT WITNESS. If specifically requested by a Task Order, the Appraiser will provide expert witnesses services in any Eminent Domain proceeding or other judicial proceedings as directed by the Task Order.

## **SECTION 5. CONTENTS OF APPRAISAL REPORT.**

- A. The appraisal report to be furnished by the Appraiser under each Task Order in accordance with this Agreement shall contain the Appraiser's conclusions and opinions, together with the data and analyses by which they are derived, as set forth below. The appraisal report on the property described in each Task Order shall include a summary, legal and title matters affecting value, highest and best use analysis, and property valuation and appraisal analyses as more particularly described in this Section below followed by a report furnishing the Appraiser's opinions and conclusions on the data and analyses.
- B. APPRAISAL SUMMARY. Each appraisal under a Task Order shall include a summary sheet titled "Appraisal Report for the City of El Paso and its Agents," which may be a printed form, completed to provide the following:
  1. The Property Address.
  2. Date of report.
  3. Legal description of the Property.
  4. Date or dates of the Appraiser's inspection(s) of the Property.
  5. The Appraiser's estimate of the market value of the property identified in the Task Order based on the highest and best use. The Appraiser will estimate the market value of the property identified in the Task Order for the real estate interest specifically listed in the Task Order.
  6. The certifications of the Appraiser that: (i) it personally made a thorough inspection of the property identified in the Task Order; (ii) to the best of its knowledge and belief, everything contained in the report is true and no relevant or important fact has been omitted; (iii) neither its employment nor compensation is contingent on the valuation reported; and (iv) it has no past, present or prospective interest (including that of real estate agent or broker) in the property identified in the task order, the parties involved, or any other interest that would conflict in any way with the services performed or the making of an impartial appraisal report;

7. A certification that, in the Appraiser's opinion, the market value of the property identified in the Task Order is an amount to be stated as of the date of valuation determined in accordance with the Task Order; and

8. The signature of the Appraiser.

C. **LEGAL AND TITLE MATTERS AFFECTING VALUE.** The appraisal report shall include a report of any official citations or personal observations by the Appraiser of any condition or occupancy of the Property in violation of law, and any other legal or title matters that the Appraiser is aware of affecting the available lawful uses or the value of the Property.

D. **HIGHEST AND BEST USE.** The appraisal report shall include the Appraiser's opinion as to the highest and best use for the property identified in the task order.

E. **PROPERTY VALUATION AND APPRAISAL ANALYSES.** The appraisal report shall utilize basic appraisal principles and standards of professional practice to set forth the market value of the property identified in the Task Order. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching a conclusion as to value and all data and analyses needed to explain and support the valuation, including:

1. Such maps, plans, photographs or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser; and
2. The Appraiser's evaluation of the indications of value deduced from its separate analyses of the various evidences of value and an explanation of how it reached its final conclusion as to the market value of the property identified in the task order.

## **SECTION 6. ITEMS TO BE PROVIDED BY CITY.**

A. The City agrees to furnish the Appraiser with the following:

1. **PROPERTY MAP.** Each Task Order will have a map or plat, based on official records, of the Property showing the boundaries and dimensions of the property to be appraised.
2. **OWNERSHIP DATA.** The name and, if known or shown of record, the address of the ostensible owner as it appears of record and the legal description of the property in the Task Order as shown by the conveyance or conveyances or other instrument by which the record owner acquired title.

3. **LEGAL ADVICE.** Advice, upon request of the Appraiser, on legal matters affecting the appraisal of the owner's interest in the property described in the Task Order.

## **SECTION 7. REPRESENTATIONS AND AGREEMENTS OF APPRAISER.**

- A. As an inducement to the execution of the Agreement by the City and in consideration of the agreements to be performed by the City, the Appraiser represents and agrees that:

1. **SOLICITATION OR PROCUREMENT OF AGREEMENT.** The Appraiser has not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or other compensation in connection with the procurement of this Agreement.
2. **INTEREST OF APPRAISER AND APPRAISER'S EMPLOYEES.** The Appraiser does not have any interest, including that of real estate agent or broker, direct or indirect, present or prospective, in the properties described in each Task Order or in the sale thereof, or any other interest, whether or not in connection with said property, which would conflict in any manner or degree with the performance of the services and the submission of any reports, and has not employed and will not employ, in connection with the services to be furnished hereunder, any person having any such interest; and, until such property identified in a Task Order is acquired by the City or excluded from its project by a determination of its governing body, the Appraiser and any employees of the Appraiser, so long as they are employed by the Appraiser, will not acquire any such interests and will not, for their own account or for other than the City, negotiate for any of said property, perform services in connection with said property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to such property.
3. **SERVICES TO BE CONFIDENTIAL.** All services, including reports, opinions and information to be furnished under this Agreement, are confidential and the Appraiser shall not divulge, in whole or in part, to any person other than to the duly authorized representatives of the City without the prior written approval of the City, except by testimony under oath in a judicial proceeding or as otherwise required by law. The Appraiser shall take all necessary steps to ensure that no member of its staff or organization divulges any information concerning such appraisal or services except as provided above. The Appraiser agrees, that the City may, at the City's discretion, release to the public any appraisals provided by the Appraiser without the Appraiser's consent.

4. **FACILITIES AND PERSONNEL.** The Appraiser has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed hereunder. If the Appraiser proposes to employ any person or persons to make any appraisals of machinery and equipment or other specialized elements or attributes of the property identified in the Task Order, the employment of such person or persons for such purpose shall not place the City under any obligation to such employee, nor relieve the Appraiser of full responsibility for the faithful performance of the services to be furnished hereunder.

- B. The representations and warranties made by the Appraiser under this Section will extend to the work done under each Task Order issued by the City under this Agreement.

## **SECTION 8. INTEREST OF OFFICIALS OF CITY.**

No official of the City shall participate in any decision relative to this Agreement affecting, directly or indirectly, any personal interests. No such officer, agent or employee of the City having any responsibility or function in connection with this Agreement shall have any private interest, direct or indirect, in this Agreement or the proceeds thereof.

## **SECTION 9. CHANGES.**

The City, at any time, by written notice to the Appraiser, may modify the scope or quantity of the services to be furnished under each Task Order issued under this Agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Appraiser or in the time required for its performance, equitable adjustment shall be made in the provisions of the Task Order (and this Agreement if necessary) for payments to the Appraiser, in accordance to the Attached Fee Schedule or for the time for performance of the services, or for both.

## **SECTION 10. TERMINATION.**

- A. **TERMINATION FOR FAILURE TO FULFILL.** If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner all obligations under this Agreement or a Task Order, or if the Appraiser shall violate any of the covenants or agreements thereof, the City may, upon written notice to the Appraiser, terminate the right of the Appraiser to proceed under this Agreement or with such part or parts thereof as to which there has been default, and may hold the Appraiser liable for any damage caused to the City by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this Agreement shall, at the option of the City, become its property and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Appraiser, however, shall not thereby be relieved of liability to the City for damages sustained by the City by reason of any breach

of the Agreement by the Appraiser, and the City may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the City from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Section solely for reasons of delay if the delay is due to causes beyond the control and without the fault or negligence of the Appraiser, but this shall not prevent the City from terminating this Agreement because of such delay.

- B. **TERMINATION BY EITHER PARTY.** It is mutually understood and agreed by the City and the Appraiser that either party may terminate this Agreement or any issued Task Order, in whole or in part for any or no reason, upon **5 consecutive calendar days'** written notice. It is also understood and agreed that upon such notice of termination, the Appraiser shall cease the performance of services under this Agreement. Upon such termination, the Appraiser shall provide one final invoice for all services completed prior to the notice of termination. The City shall compensate the Appraiser in accordance with this Agreement; however, the City may withhold any payment to the Appraiser that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Appraiser from the City is determined. Nothing contained herein, or elsewhere in this Agreement shall require the City to pay for any services that are not in compliance with the terms of this Agreement and its attachments. The City will be entitled to exercise ownership over any documents or services for which the City paid the Appraiser.

## **SECTION 11. INSURANCE.**

- A. Appraiser will obtain and maintain for the term of this Agreement the following insurance policies as provided below:
1. Worker's Compensation Insurance as may be required by law.
  2. Commercial Liability Insurance to cover the work performed under this Agreement from claims for damages to personal injury, including accidental death, as well as from claims for property damages, whether such operations be by the Appraiser or by anyone directly or indirectly employed by the Appraiser. The minimum amounts for liability coverages must be as follows:
    - a. **COMMERCIAL GENERAL LIABILITY**
      - \$1,000,000.00 Per Occurrence
      - \$2,000,000.00 General Aggregate
      - \$2,000,000.00 Products/Completed Operations Aggregate
      - \$1,000,000.00 Personal and Advertising Injury

**Personal Injury or Death & Property Damage**

\$1,000,000.00 per occurrence combined single limit for bodily injury and property damage.

b. **AUTOMOBILE LIABILITY**

**Combined Single Limit**

\$1,000,000.00 per accident

3. Professional Liability Insurance in the minimum amount of \$1,000,000 on a claims made basis.
4. Additional Insured. The Appraiser will add the City to all insurance policies (except Worker's Compensation and Professional Liability Insurance) as an additional insured.
5. The Appraiser will furnish the City with certificates of insurance and endorsements showing the types of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing insurance coverages, and name of agent/broker. If requested by the City's Risk Manager, the Appraiser will provide copies of the insurance policy in order to allow the City to verify that the insurance policies provide coverage as required under this Agreement.
6. All policies will provide an endorsement that provides that the insurance policy cannot be canceled or the amount of coverage changed without thirty calendar days prior written notice to the City or ten calendar days prior written notice for non-payment of insurance policy premiums.

**SECTION 12. INDEMNIFICATION.**

- A. TO THE EXTENT ALLOWED BY LAW, THE APPRAISER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S OFFICERS AND EMPLOYEES AGAINST ANY CLAIMS, COSTS, LOSSES, AND DAMAGES OF PROPERTY DAMAGE, INJURY, OR DEATH ARISING OUT OF ANY SERVICES PERFORMED BY THE APPRAISER UNDER THIS AGREEMENT, PROVIDED THAT THE APPRAISER WILL NOT BE RESPONSIBLE FOR ANY ACTS OR OMISSIONS OF THE CITY OR THE CITY'S EMPLOYEES.**

**SECTION 13. GENERAL PROVISIONS.**

- A. NON-EXCLUSIVE AGREEMENT.** This Agreement is non-exclusive. The City is entitled to enter into appraisal services agreements at any time with other appraisers in addition to the Appraiser who is the party to this Agreement. The City has the sole discretion as to whether it makes an assignment of an appraisal under this Agreement



or the agreement of another appraiser. The selection shall be based upon the experience of the respective appraisers and the nature of the work to be performed.

- B. NO WAIVER. Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- C. INDEPENDENT CONTRACTOR RELATIONSHIP. This Agreement does not create an employee-employer relationship between the Appraiser and the City. As such, the City is not subject to the liabilities or obligations the Appraiser obtains under the performance of this Agreement.
- D. TIME IS OF THE ESSENCE. The times and dates specified in this contract are material to this Agreement. For the purpose of this Agreement "**business days**" means Monday through Friday excluding City of El Paso holidays and "**calendar days**" means Monday through Sunday excluding City of El Paso holidays.
- E. NOTICES. The parties will send all notices required by this Agreement in writing, postmarked, and delivered by certified mail. All notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the City:	The City of El Paso Attn: City Manager P. O. Box 1890 El Paso, Texas 79950-1890
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With a Copy to:	Capital Improvement Depart Real Estate Division 218 N. Campbell St. El Paso, TX 79901 realestate@elpasotexas.gov
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To the Appraiser:	GAYLE-REID APPRAISAL SERVICES, INC. Attn: Martha Gayle Reid Lynch 725 Woodfield Drive El Paso, Texas 79932
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- F. **CONFIDENTIALITY.** The Appraiser acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- G. **GOVERNING LAW.** This Agreement is governed by Texas law.
- H. **VENUE.** The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- I. **SEVERABILITY.** A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- J. **HEADINGS.** The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- K. **GOVERNMENTAL FUNCTIONS.** The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- L. **COMPLIANCE WITH THE LAWS.** The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement. If applicable, then the Appraiser will procure all licenses and pay all fees or other charges as required to complete the Work under this agreement.
- M. **AUDITING RECORDS FOR THE SPECIFIC PROJECT.** The Appraiser will allow the City to inspect and copy all records pertaining to the Work provided in this Agreement.
- N. **RECORDS.** The Appraiser will maintain records of all details with respect to the services to be performed hereunder, including one complete copy of each report, for three (3) years after delivering such report, or until the Property is conveyed, or its conveyance is abandoned by the City, whichever is later.
- O. **FORCE MAJEURE.** There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party

must resume performing its obligations in this Agreement after the reason for the delay is resolved.

- P. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the City and the Appraiser, and the Appraiser's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- Q. **THIRD-PARTY BENEFICIARIES.** There are no third party beneficiaries for this Agreement.
- R. **PROVISIONS SURVIVING THIS AGREEMENT.** Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- S. **REPRESENTATIONS AND WARRANTIES.** The Appraiser warrants to the City that the Appraiser has all required licenses, permits, and expertise to perform the Work of this Agreement. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- T. **TEXAS GOVERNMENT CODE.** In accordance with Chapter 2274 of the Texas Government Code, as amended from time to time, the Appraiser represents and warrants to the City the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- U. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties.
- V. **NON-DISCRIMINATION COVENANT.** The Appraiser, for itself, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:
1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the preparation of this appraisal report.
  2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

3. That the Appraiser shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. The Appraiser shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
4. That, in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

W. **AFFIRMATIVE ACTION.** The Appraiser assures that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments, or otherwise applicable to persons leasing premises from the City of El Paso. The Appraiser assures that it will require that its covered sub-organizations provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations to the same effect.

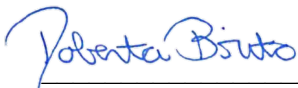
**IN WITNESS WHEREOF**, the City and the Appraiser have approved of this Agreement to be effective as of the date first written above.

**CITY OF EL PASO**

---

Cary Westin, City Manager

**APPROVED AS TO CONTENT:**



---

Roberta Brito  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**



---

Yvette Hernandez, P.E.  
City Engineer

**APPRAISER:**

**Gayle-Reid Appraisal Services, Inc.**



**Name: Martha Gayle Reid Lynch**

**Title: President / Appraiser**

**Attachment “A”  
Fee Schedule**

**Attachment “A”**  
**Fee Schedule**

**GAYLE-REID APPRAISAL SERVICES**

Appraisal Fee:           \$1,500 - \$6,500

Consultant Fee:         \$275

Trial Preparation:       \$275

Expert Testimony Fee: \$275

## **ON-CALL AGREEMENT FOR PROFESSIONAL SERVICES (APPRAISAL SERVICES)**

This On-Call Agreement for Professional Services Appraisal Services (“**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (“**Effective Date**”), and is between the **CITY OF EL PASO, TEXAS** (the “**City**”) and **CBRE, Inc., a Delaware for profit corporation authorized to transact business in Texas** (the “**Appraiser**”). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

**WHEREAS**, the Appraiser was selected on the basis of demonstrated competence and qualifications to perform the services described in this Agreement;

**WHEREAS**, the City intends to engage the Appraiser to perform appraisal services on a task order basis through the use of task orders referencing this Agreement, the scope of which is described in this Agreement;

**WHEREAS**, the services to be provided under this Agreement are necessary to comply with local, state and federal polices, regulations and procedures.

The parties agree as follows:

### **SECTION 1. TERM.**

- A. The term of this Agreement is for a period not to exceed two years from the Effective Date. The services called for by each task order begin upon the issuance of a notice to proceed from the City Engineer and shall continue through the completion of the project as described in the task order. The Appraiser agrees that the City Manager or designee, for the City may extend the term of this Agreement by exercising up to one option of one year each option.

### **SECTION 2. SUBJECT PROPERTY TO BE APPRAISED.**

- A. The Appraiser shall appraise the property identified in each task order pursuant to this Agreement.

### **SECTION 3. PAYMENT**

- A. The City will pay the Appraiser an amount not to exceed \$100,000.00. No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement. The Appraiser will invoice the City following the



completion of each task order in accordance to the fee schedule attached to this Agreement as **Attachment “A”**. If the City exercises an option to extend the term as described in this Agreement above, then the maximum payment amount under this contract will be increased by \$50,000 for each option exercised by the City. The parties agree that the exercise of an option only increases the maximum contract amount and does not constitute a request for services from the Appraiser unless accompanied by a Task Order. The Appraiser will abide by the fees listed in Attachment “A” to this Agreement during any option periods exercised by the City.

#### **SECTION 4. SCOPE OF APPRAISER’S SERVICES.**

- A. The Appraiser will perform the services as provided by each Task Order issued by the City (“**Task Order**”). The Appraiser will perform the services for the fees stipulated on the fee schedule attached to this Agreement as Attachment “A”. The Appraiser will not perform any services until the Appraiser has received a Task Order from the City. Notwithstanding anything to the contrary, the City will not owe the Appraiser any payments for any work that is performed without a Task Order.
- B. Unless otherwise provided in the Task Order, the Appraiser will perform the following services for all Task Order’s issued by the City:
  - 1. **APPRAISAL.** The Appraiser shall appraise the property identified in the task order and prepare and deliver one (1) draft appraisal report for on or before the date specified in the Task Order to the City Representative. For purposes of this Agreement, the “**City Representative**” is the City Engineer or designee. The City Representative will review the draft appraisal report in a timely manner. Within seven (7) City business days after the Appraiser receives the City Representative’s written comments, the Appraiser will deliver three (3) hard copies and an electronic file (a pdf and tiff file on one CD) of the appraisal report to the City. The City Representative may waive the requirement for hard copies and/or CD.
  - 2. **PROPERTY INSPECTION.** The Appraiser shall personally inspect the property identified in the Task Order, to include any buildings, structure improvements, fixtures and appurtenances, thereon or belonging thereto. If the Appraiser’s inspection or investigation discloses a sale of a portion of a property by an unrecorded contract of sale or otherwise, the Appraiser shall notify the City.
  - 3. **VALUATION DATA.** The Appraiser shall make such investigations, studies and property inspections as are appropriate to enable the Appraiser to derive sound conclusions and to prepare the appraisal report to be furnished under this Agreement,

including but not limited to, the three (3) most recent comparable sales which precede the appraisal, if any.

4. **PURPOSE AND SIGNIFICANCE OF APPRAISAL.** The appraisal to be furnished under each Task Order under this Agreement is required by the City for its guidance in setting fair and impartial determinations of market value. The Appraiser agrees to provide the City appraisal services that meet the definition of an appraisal as required by applicable federal, state and local laws, regulations, policies and procedures. The Appraiser shall be guided by those objectives when estimating values and when making investigations and studies and analyzing the property identified in the Task Order and the evidences of its value. Accordingly, the text of each appraisal report must cover all matters germane to the required valuation findings and must provide a full explanation of the Appraiser's reasoning and analyses of the evidences of value, so that a reviewer will be able to follow the Appraiser's analyses and understand how the Appraiser reached the valuation conclusions. If required, the City will contract separately for a review appraisal with another appraiser. The appraisal to be furnished under this Agreement is required by the City for its guidance in making an impartial determination of the market value of the Property. Because Federal funds are often involved in the City project for which the property is being appraised, unless instructed to the contrary in writing by the City, the Appraiser and the appraisal must meet the specific requirements under the URA and 24 CFR 24.103 in Title 49, unless the appraisal is a review appraisal in which event the appraiser must meet the specific requirements of 24 CFR 24.104.
5. **DATE OF VALUATION.** The Appraiser's valuation date shall be mutually agreed upon and identified in the Task Order issued by the City Representative.
6. **APPRAISER CERTIFICATION.** The Appraiser represents that the appraiser appraising the Property for the Appraiser, is state-certified as a "Certified General Appraiser" by the State of Texas, and will remain certified during the term of this Agreement and shall provide the City with proof of current certification. The Appraiser represents that it is a member of the Appraisal Institute and that the Appraiser currently employs a qualified expert witness. Further, the Appraiser represents and warrants that the Appraiser is familiar with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs at 42 USC Sec. 4601-4655 (the URA) as well as the Code of Federal Regulations (CFR) applying to the URA sections.
7. Appraiser will provide the services in two parts. First Appraiser will provide a Restricted Report & second a Full Report in accordance to the timelines set in the Task Order.

8. EXPERT WITNESS. If specifically requested by a Task Order, the Appraiser will provide expert witnesses services in any Eminent Domain proceeding or other judicial proceedings as directed by the Task Order.

## **SECTION 5. CONTENTS OF APPRAISAL REPORT.**

- A. The appraisal report to be furnished by the Appraiser under each Task Order in accordance with this Agreement shall contain the Appraiser's conclusions and opinions, together with the data and analyses by which they are derived, as set forth below. The appraisal report on the property described in each Task Order shall include a summary, legal and title matters affecting value, highest and best use analysis, and property valuation and appraisal analyses as more particularly described in this Section below followed by a report furnishing the Appraiser's opinions and conclusions on the data and analyses.
- B. APPRAISAL SUMMARY. Each appraisal under a Task Order shall include a summary sheet titled "Appraisal Report for the City of El Paso and its Agents," which may be a printed form, completed to provide the following:
  1. The Property Address.
  2. Date of report.
  3. Legal description of the Property.
  4. Date or dates of the Appraiser's inspection(s) of the Property.
  5. The Appraiser's estimate of the market value of the property identified in the Task Order based on the highest and best use. The Appraiser will estimate the market value of the property identified in the Task Order for the real estate interest specifically listed in the Task Order.
  6. The certifications of the Appraiser that: (i) it personally made a thorough inspection of the property identified in the Task Order; (ii) to the best of its knowledge and belief, everything contained in the report is true and no relevant or important fact has been omitted; (iii) neither its employment nor compensation is contingent on the valuation reported; and (iv) it has no past, present or prospective interest (including that of real estate agent or broker) in the property identified in the task order, the parties involved, or any other interest that would conflict in any way with the services performed or the making of an impartial appraisal report;

7. A certification that, in the Appraiser's opinion, the market value of the property identified in the Task Order is an amount to be stated as of the date of valuation determined in accordance with the Task Order; and

8. The signature of the Appraiser.

C. **LEGAL AND TITLE MATTERS AFFECTING VALUE.** The appraisal report shall include a report of any official citations or personal observations by the Appraiser of any condition or occupancy of the Property in violation of law, and any other legal or title matters that the Appraiser is aware of affecting the available lawful uses or the value of the Property.

D. **HIGHEST AND BEST USE.** The appraisal report shall include the Appraiser's opinion as to the highest and best use for the property identified in the task order.

E. **PROPERTY VALUATION AND APPRAISAL ANALYSES.** The appraisal report shall utilize basic appraisal principles and standards of professional practice to set forth the market value of the property identified in the Task Order. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching a conclusion as to value and all data and analyses needed to explain and support the valuation, including:

1. Such maps, plans, photographs or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser; and
2. The Appraiser's evaluation of the indications of value deduced from its separate analyses of the various evidences of value and an explanation of how it reached its final conclusion as to the market value of the property identified in the task order.

## **SECTION 6. ITEMS TO BE PROVIDED BY CITY.**

A. The City agrees to furnish the Appraiser with the following:

1. **PROPERTY MAP.** Each Task Order will have a map or plat, based on official records, of the Property showing the boundaries and dimensions of the property to be appraised.
2. **OWNERSHIP DATA.** The name and, if known or shown of record, the address of the ostensible owner as it appears of record and the legal description of the property in the Task Order as shown by the conveyance or conveyances or other instrument by which the record owner acquired title.

3. **LEGAL ADVICE.** Advice, upon request of the Appraiser, on legal matters affecting the appraisal of the owner's interest in the property described in the Task Order.

## **SECTION 7. REPRESENTATIONS AND AGREEMENTS OF APPRAISER.**

- A. As an inducement to the execution of the Agreement by the City and in consideration of the agreements to be performed by the City, the Appraiser represents and agrees that:

1. **SOLICITATION OR PROCUREMENT OF AGREEMENT.** The Appraiser has not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or other compensation in connection with the procurement of this Agreement.
2. **INTEREST OF APPRAISER AND APPRAISER'S EMPLOYEES.** The Appraiser does not have any interest, including that of real estate agent or broker, direct or indirect, present or prospective, in the properties described in each Task Order or in the sale thereof, or any other interest, whether or not in connection with said property, which would conflict in any manner or degree with the performance of the services and the submission of any reports, and has not employed and will not employ, in connection with the services to be furnished hereunder, any person having any such interest; and, until such property identified in a Task Order is acquired by the City or excluded from its project by a determination of its governing body, the Appraiser and any employees of the Appraiser, so long as they are employed by the Appraiser, will not acquire any such interests and will not, for their own account or for other than the City, negotiate for any of said property, perform services in connection with said property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to such property.
3. **SERVICES TO BE CONFIDENTIAL.** All services, including reports, opinions and information to be furnished under this Agreement, are confidential and the Appraiser shall not divulge, in whole or in part, to any person other than to the duly authorized representatives of the City without the prior written approval of the City, except by testimony under oath in a judicial proceeding or as otherwise required by law. The Appraiser shall take all necessary steps to ensure that no member of its staff or organization divulges any information concerning such appraisal or services except as provided above. The Appraiser agrees, that the City may, at the City's discretion, release to the public any appraisals provided by the Appraiser without the Appraiser's consent.

4. **FACILITIES AND PERSONNEL.** The Appraiser has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed hereunder. If the Appraiser proposes to employ any person or persons to make any appraisals of machinery and equipment or other specialized elements or attributes of the property identified in the Task Order, the employment of such person or persons for such purpose shall not place the City under any obligation to such employee, nor relieve the Appraiser of full responsibility for the faithful performance of the services to be furnished hereunder.

B. The representations and warranties made by the Appraiser under this Section will extend to the work done under each Task Order issued by the City under this Agreement.

## **SECTION 8. INTEREST OF OFFICIALS OF CITY.**

No official of the City shall participate in any decision relative to this Agreement affecting, directly or indirectly, any personal interests. No such officer, agent or employee of the City having any responsibility or function in connection with this Agreement shall have any private interest, direct or indirect, in this Agreement or the proceeds thereof.

## **SECTION 9. CHANGES.**

The City, at any time, by written notice to the Appraiser, may modify the scope or quantity of the services to be furnished under each Task Order issued under this Agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Appraiser or in the time required for its performance, equitable adjustment shall be made in the provisions of the Task Order (and this Agreement if necessary) for payments to the Appraiser, in accordance to the Attached Fee Schedule or for the time for performance of the services, or for both.

## **SECTION 10. TERMINATION.**

A. **TERMINATION FOR FAILURE TO FULFILL.** If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner all obligations under this Agreement or a Task Order, or if the Appraiser shall violate any of the covenants or agreements thereof, the City may, upon written notice to the Appraiser, terminate the right of the Appraiser to proceed under this Agreement or with such part or parts thereof as to which there has been default, and may hold the Appraiser liable for any damage caused to the City by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this Agreement shall, at the option of the City, become its property and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Appraiser, however, shall not thereby be relieved of liability to the City for damages sustained by the City by reason of any breach

of the Agreement by the Appraiser, and the City may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the City from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Section solely for reasons of delay if the delay is due to causes beyond the control and without the fault or negligence of the Appraiser, but this shall not prevent the City from terminating this Agreement because of such delay.

- B. **TERMINATION BY EITHER PARTY.** It is mutually understood and agreed by the City and the Appraiser that either party may terminate this Agreement or any issued Task Order, in whole or in part for any or no reason, upon **5 consecutive calendar days'** written notice. It is also understood and agreed that upon such notice of termination, the Appraiser shall cease the performance of services under this Agreement. Upon such termination, the Appraiser shall provide one final invoice for all services completed prior to the notice of termination. The City shall compensate the Appraiser in accordance with this Agreement; however, the City may withhold any payment to the Appraiser that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Appraiser from the City is determined. Nothing contained herein, or elsewhere in this Agreement shall require the City to pay for any services that are not in compliance with the terms of this Agreement and its attachments. The City will be entitled to exercise ownership over any documents or services for which the City paid the Appraiser.

## **SECTION 11. INSURANCE.**

- A. Appraiser will obtain and maintain for the term of this Agreement the following insurance policies as provided below:
1. Worker's Compensation Insurance as may be required by law.
  2. Commercial Liability Insurance to cover the work performed under this Agreement from claims for damages to personal injury, including accidental death, as well as from claims for property damages, whether such operations be by the Appraiser or by anyone directly or indirectly employed by the Appraiser. The minimum amounts for liability coverages must be as follows:

a. **COMMERCIAL GENERAL LIABILITY**

\$1,000,000.00 Per Occurrence  
\$2,000,000.00 General Aggregate  
\$2,000,000.00 Products/Completed Operations Aggregate  
\$1,000,000.00 Personal and Advertising Injury

**Personal Injury or Death & Property Damage**

\$1,000,000.00 per occurrence combined single limit for bodily injury and property damage.

b. **AUTOMOBILE LIABILITY**

**Combined Single Limit**

\$1,000,000.00 per accident

3. Professional Liability Insurance in the minimum amount of \$1,000,000 on a claims made basis.
4. Additional Insured. The Appraiser will add the City to all insurance policies (except Worker's Compensation and Professional Liability Insurance) as an additional insured.
5. The Appraiser will furnish the City with certificates of insurance and endorsements showing the types of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing insurance coverages, and name of agent/broker. If requested by the City's Risk Manager, the Appraiser will provide copies of the insurance policy in order to allow the City to verify that the insurance policies provide coverage as required under this Agreement.
6. All policies will provide an endorsement that provides that the insurance policy cannot be canceled or the amount of coverage changed without thirty calendar days prior written notice to the City or ten calendar days prior written notice for non-payment of insurance policy premiums.

**SECTION 12. INDEMNIFICATION.**

- A. TO THE EXTENT ALLOWED BY LAW, THE APPRAISER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S OFFICERS AND EMPLOYEES AGAINST ANY CLAIMS, COSTS, LOSSES, AND DAMAGES OF PROPERTY DAMAGE, INJURY, OR DEATH ARISING OUT OF ANY SERVICES PERFORMED BY THE APPRAISER UNDER THIS AGREEMENT, PROVIDED THAT THE APPRAISER WILL NOT BE RESPONSIBLE FOR ANY ACTS OR OMISSIONS OF THE CITY OR THE CITY'S EMPLOYEES.**

**SECTION 13. GENERAL PROVISIONS.**

- A. NON-EXCLUSIVE AGREEMENT.** This Agreement is non-exclusive. The City is entitled to enter into appraisal services agreements at any time with other appraisers in addition to the Appraiser who is the party to this Agreement. The City has the sole discretion as to whether it makes an assignment of an appraisal under this Agreement



or the agreement of another appraiser. The selection shall be based upon the experience of the respective appraisers and the nature of the work to be performed.

- B. NO WAIVER. Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- C. INDEPENDENT CONTRACTOR RELATIONSHIP. This Agreement does not create an employee-employer relationship between the Appraiser and the City. As such, the City is not subject to the liabilities or obligations the Appraiser obtains under the performance of this Agreement.
- D. TIME IS OF THE ESSENCE. The times and dates specified in this contract are material to this Agreement. For the purpose of this Agreement "**business days**" means Monday through Friday excluding City of El Paso holidays and "**calendar days**" means Monday through Sunday excluding City of El Paso holidays.
- E. NOTICES. The parties will send all notices required by this Agreement in writing, postmarked, and delivered by certified mail. All notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the City:	The City of El Paso Attn: City Manager P. O. Box 1890 El Paso, Texas 79950-1890
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With a Copy to:	Capital Improvement Depart Real Estate Division 218 N. Campbell St. El Paso, TX 79901 realestate@elpasotexas.gov
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To the Appraiser:	CBRE, INC. Attn: Preston Chastine 221 North Kansas Street, Suite 2100 El Paso, Texas 79901
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- F. **CONFIDENTIALITY.** The Appraiser acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- G. **GOVERNING LAW.** This Agreement is governed by Texas law.
- H. **VENUE.** The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- I. **SEVERABILITY.** A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- J. **HEADINGS.** The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- K. **GOVERNMENTAL FUNCTIONS.** The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- L. **COMPLIANCE WITH THE LAWS.** The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement. If applicable, then the Appraiser will procure all licenses and pay all fees or other charges as required to complete the Work under this agreement.
- M. **AUDITING RECORDS FOR THE SPECIFIC PROJECT.** The Appraiser will allow the City to inspect and copy all records pertaining to the Work provided in this Agreement.
- N. **RECORDS.** The Appraiser will maintain records of all details with respect to the services to be performed hereunder, including one complete copy of each report, for three (3) years after delivering such report, or until the Property is conveyed, or its conveyance is abandoned by the City, whichever is later.
- O. **FORCE MAJEURE.** There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party

must resume performing its obligations in this Agreement after the reason for the delay is resolved.

- P. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the City and the Appraiser, and the Appraiser's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- Q. **THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries for this Agreement.
- R. **PROVISIONS SURVIVING THIS AGREEMENT.** Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- S. **REPRESENTATIONS AND WARRANTIES.** The Appraiser warrants to the City that the Appraiser has all required licenses, permits, and expertise to perform the Work of this Agreement. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- T. **TEXAS GOVERNMENT CODE.** In accordance with Chapter 2274 of the Texas Government Code, as amended from time to time, the Appraiser represents and warrants to the City the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- U. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties.
- V. **NON-DISCRIMINATION COVENANT.** The Appraiser, for itself, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:
1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the preparation of this appraisal report.
  2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

3. That the Appraiser shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. The Appraiser shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
4. That, in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

W. **AFFIRMATIVE ACTION.** The Appraiser assures that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments, or otherwise applicable to persons leasing premises from the City of El Paso. The Appraiser assures that it will require that its covered sub-organizations provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations to the same effect.

**IN WITNESS WHEREOF**, the City and the Appraiser have approved of this Agreement to be effective as of the date first written above.

**CITY OF EL PASO**

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Cary Westin, City Manager

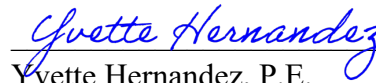
**APPROVED AS TO CONTENT:**



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Roberta Brito  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**



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Yvette Hernandez, P.E.  
City Engineer

**APPRAISER:**

**CBRE, Inc.**

A handwritten signature in black ink, appearing to read 'P. Chastine', is written over a horizontal line.

**Name: Preston Chastine**

**Title: First Vice President**

**Attachment “A”  
Fee Schedule**

**Attachment “A”**  
**Fee Schedule**

**CBRE, INC.**

Appraisal Fee:           \$1,750 - \$10,500

Consultant Fee:         \$270

Trial Preparation:       \$270

Expert Testimony Fee: \$270

## **ON-CALL AGREEMENT FOR PROFESSIONAL SERVICES (APPRAISAL SERVICES)**

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**WHEREAS**, the Appraiser was selected on the basis of demonstrated competence and qualifications to perform the services described in this Agreement;

**WHEREAS**, the City intends to engage the Appraiser to perform appraisal services on a task order basis through the use of task orders referencing this Agreement, the scope of which is described in this Agreement;

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The parties agree as follows:

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- A. The term of this Agreement is for a period not to exceed two years from the Effective Date. The services called for by each task order begin upon the issuance of a notice to proceed from the City Engineer and shall continue through the completion of the project as described in the task order. The Appraiser agrees that the City Manager or designee, for the City may extend the term of this Agreement by exercising up to one option of one year each option.

### **SECTION 2. SUBJECT PROPERTY TO BE APPRAISED.**

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### **SECTION 3. PAYMENT**

- A. The City will pay the Appraiser an amount not to exceed \$100,000.00. No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement. The Appraiser will invoice the City following the



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#### **SECTION 4. SCOPE OF APPRAISER’S SERVICES.**

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- B. Unless otherwise provided in the Task Order, the Appraiser will perform the following services for all Task Order’s issued by the City:
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  - 3. **VALUATION DATA.** The Appraiser shall make such investigations, studies and property inspections as are appropriate to enable the Appraiser to derive sound conclusions and to prepare the appraisal report to be furnished under this Agreement,

including but not limited to, the three (3) most recent comparable sales which precede the appraisal, if any.

4. **PURPOSE AND SIGNIFICANCE OF APPRAISAL.** The appraisal to be furnished under each Task Order under this Agreement is required by the City for its guidance in setting fair and impartial determinations of market value. The Appraiser agrees to provide the City appraisal services that meet the definition of an appraisal as required by applicable federal, state and local laws, regulations, policies and procedures. The Appraiser shall be guided by those objectives when estimating values and when making investigations and studies and analyzing the property identified in the Task Order and the evidences of its value. Accordingly, the text of each appraisal report must cover all matters germane to the required valuation findings and must provide a full explanation of the Appraiser's reasoning and analyses of the evidences of value, so that a reviewer will be able to follow the Appraiser's analyses and understand how the Appraiser reached the valuation conclusions. If required, the City will contract separately for a review appraisal with another appraiser. The appraisal to be furnished under this Agreement is required by the City for its guidance in making an impartial determination of the market value of the Property. Because Federal funds are often involved in the City project for which the property is being appraised, unless instructed to the contrary in writing by the City, the Appraiser and the appraisal must meet the specific requirements under the URA and 24 CFR 24.103 in Title 49, unless the appraisal is a review appraisal in which event the appraiser must meet the specific requirements of 24 CFR 24.104.
5. **DATE OF VALUATION.** The Appraiser's valuation date shall be mutually agreed upon and identified in the Task Order issued by the City Representative.
6. **APPRAISER CERTIFICATION.** The Appraiser represents that the appraiser appraising the Property for the Appraiser, is state-certified as a "Certified General Appraiser" by the State of Texas, and will remain certified during the term of this Agreement and shall provide the City with proof of current certification. The Appraiser represents that it is a member of the Appraisal Institute and that the Appraiser currently employs a qualified expert witness. Further, the Appraiser represents and warrants that the Appraiser is familiar with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs at 42 USC Sec. 4601-4655 (the URA) as well as the Code of Federal Regulations (CFR) applying to the URA sections.
7. Appraiser will provide the services in two parts. First Appraiser will provide a Restricted Report & second a Full Report in accordance to the timelines set in the Task Order.

8. **EXPERT WITNESS.** If specifically requested by a Task Order, the Appraiser will provide expert witnesses services in any Eminent Domain proceeding or other judicial proceedings as directed by the Task Order.

## **SECTION 5. CONTENTS OF APPRAISAL REPORT.**

- A. The appraisal report to be furnished by the Appraiser under each Task Order in accordance with this Agreement shall contain the Appraiser's conclusions and opinions, together with the data and analyses by which they are derived, as set forth below. The appraisal report on the property described in each Task Order shall include a summary, legal and title matters affecting value, highest and best use analysis, and property valuation and appraisal analyses as more particularly described in this Section below followed by a report furnishing the Appraiser's opinions and conclusions on the date and analyses.
- B. **APPRAISAL SUMMARY.** Each appraisal under a Task Order shall include a summary sheet titled "Appraisal Report for the City of El Paso and its Agents," which may be a printed form, completed to provide the following:
  1. The Property Address.
  2. Date of report.
  3. Legal description of the Property.
  4. Date or dates of the Appraiser's inspection(s) of the Property.
  5. The Appraiser's estimate of the market value of the property identified in the Task Order based on the highest and best use. The Appraiser will estimate the market value of the property identified in the Task Order for the real estate interest specifically listed in the Task Order.
  6. The certifications of the Appraiser that: (i) it personally made a thorough inspection of the property identified in the Task Order; (ii) to the best of its knowledge and belief, everything contained in the report is true and no relevant or important fact has been omitted; (iii) neither its employment nor compensation is contingent on the valuation reported; and (iv) it has no past, present or prospective interest (including that of real estate agent or broker) in the property identified in the task order, the parties involved, or any other interest that would conflict in any way with the services performed or the making of an impartial appraisal report;

7. A certification that, in the Appraiser's opinion, the market value of the property identified in the Task Order is an amount to be stated as of the date of valuation determined in accordance with the Task Order; and

8. The signature of the Appraiser.

C. **LEGAL AND TITLE MATTERS AFFECTING VALUE.** The appraisal report shall include a report of any official citations or personal observations by the Appraiser of any condition or occupancy of the Property in violation of law, and any other legal or title matters that the Appraiser is aware of affecting the available lawful uses or the value of the Property.

D. **HIGHEST AND BEST USE.** The appraisal report shall include the Appraiser's opinion as to the highest and best use for the property identified in the task order.

E. **PROPERTY VALUATION AND APPRAISAL ANALYSES.** The appraisal report shall utilize basic appraisal principles and standards of professional practice to set forth the market value of the property identified in the Task Order. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching a conclusion as to value and all data and analyses needed to explain and support the valuation, including:

1. Such maps, plans, photographs or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser; and
2. The Appraiser's evaluation of the indications of value deduced from its separate analyses of the various evidences of value and an explanation of how it reached its final conclusion as to the market value of the property identified in the task order.

## **SECTION 6. ITEMS TO BE PROVIDED BY CITY.**

A. The City agrees to furnish the Appraiser with the following:

1. **PROPERTY MAP.** Each Task Order will have a map or plat, based on official records, of the Property showing the boundaries and dimensions of the property to be appraised.
2. **OWNERSHIP DATA.** The name and, if known or shown of record, the address of the ostensible owner as it appears of record and the legal description of the property in the Task Order as shown by the conveyance or conveyances or other instrument by which the record owner acquired title.

3. **LEGAL ADVICE.** Advice, upon request of the Appraiser, on legal matters affecting the appraisal of the owner's interest in the property described in the Task Order.

## **SECTION 7. REPRESENTATIONS AND AGREEMENTS OF APPRAISER.**

- A. As an inducement to the execution of the Agreement by the City and in consideration of the agreements to be performed by the City, the Appraiser represents and agrees that:

1. **SOLICITATION OR PROCUREMENT OF AGREEMENT.** The Appraiser has not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or other compensation in connection with the procurement of this Agreement.
2. **INTEREST OF APPRAISER AND APPRAISER'S EMPLOYEES.** The Appraiser does not have any interest, including that of real estate agent or broker, direct or indirect, present or prospective, in the properties described in each Task Order or in the sale thereof, or any other interest, whether or not in connection with said property, which would conflict in any manner or degree with the performance of the services and the submission of any reports, and has not employed and will not employ, in connection with the services to be furnished hereunder, any person having any such interest; and, until such property identified in a Task Order is acquired by the City or excluded from its project by a determination of its governing body, the Appraiser and any employees of the Appraiser, so long as they are employed by the Appraiser, will not acquire any such interests and will not, for their own account or for other than the City, negotiate for any of said property, perform services in connection with said property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to such property.
3. **SERVICES TO BE CONFIDENTIAL.** All services, including reports, opinions and information to be furnished under this Agreement, are confidential and the Appraiser shall not divulge, in whole or in part, to any person other than to the duly authorized representatives of the City without the prior written approval of the City, except by testimony under oath in a judicial proceeding or as otherwise required by law. The Appraiser shall take all necessary steps to ensure that no member of its staff or organization divulges any information concerning such appraisal or services except as provided above. The Appraiser agrees, that the City may, at the City's discretion, release to the public any appraisals provided by the Appraiser without the Appraiser's consent.

4. **FACILITIES AND PERSONNEL.** The Appraiser has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed hereunder. If the Appraiser proposes to employ any person or persons to make any appraisals of machinery and equipment or other specialized elements or attributes of the property identified in the Task Order, the employment of such person or persons for such purpose shall not place the City under any obligation to such employee, nor relieve the Appraiser of full responsibility for the faithful performance of the services to be furnished hereunder.

- B. The representations and warranties made by the Appraiser under this Section will extend to the work done under each Task Order issued by the City under this Agreement.

## **SECTION 8. INTEREST OF OFFICIALS OF CITY.**

No official of the City shall participate in any decision relative to this Agreement affecting, directly or indirectly, any personal interests. No such officer, agent or employee of the City having any responsibility or function in connection with this Agreement shall have any private interest, direct or indirect, in this Agreement or the proceeds thereof.

## **SECTION 9. CHANGES.**

The City, at any time, by written notice to the Appraiser, may modify the scope or quantity of the services to be furnished under each Task Order issued under this Agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Appraiser or in the time required for its performance, equitable adjustment shall be made in the provisions of the Task Order (and this Agreement if necessary) for payments to the Appraiser, in accordance to the Attached Fee Schedule or for the time for performance of the services, or for both.

## **SECTION 10. TERMINATION.**

- A. **TERMINATION FOR FAILURE TO FULFILL.** If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner all obligations under this Agreement or a Task Order, or if the Appraiser shall violate any of the covenants or agreements thereof, the City may, upon written notice to the Appraiser, terminate the right of the Appraiser to proceed under this Agreement or with such part or parts thereof as to which there has been default, and may hold the Appraiser liable for any damage caused to the City by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this Agreement shall, at the option of the City, become its property and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Appraiser, however, shall not thereby be relieved of liability to the City for damages sustained by the City by reason of any breach

of the Agreement by the Appraiser, and the City may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the City from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Section solely for reasons of delay if the delay is due to causes beyond the control and without the fault or negligence of the Appraiser, but this shall not prevent the City from terminating this Agreement because of such delay.

- B. **TERMINATION BY EITHER PARTY.** It is mutually understood and agreed by the City and the Appraiser that either party may terminate this Agreement or any issued Task Order, in whole or in part for any or no reason, upon **5 consecutive calendar days'** written notice. It is also understood and agreed that upon such notice of termination, the Appraiser shall cease the performance of services under this Agreement. Upon such termination, the Appraiser shall provide one final invoice for all services completed prior to the notice of termination. The City shall compensate the Appraiser in accordance with this Agreement; however, the City may withhold any payment to the Appraiser that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Appraiser from the City is determined. Nothing contained herein, or elsewhere in this Agreement shall require the City to pay for any services that are not in compliance with the terms of this Agreement and its attachments. The City will be entitled to exercise ownership over any documents or services for which the City paid the Appraiser.

## **SECTION 11. INSURANCE.**

- A. Appraiser will obtain and maintain for the term of this Agreement the following insurance policies as provided below:
1. Worker's Compensation Insurance as may be required by law.
  2. Commercial Liability Insurance to cover the work performed under this Agreement from claims for damages to personal injury, including accidental death, as well as from claims for property damages, whether such operations be by the Appraiser or by anyone directly or indirectly employed by the Appraiser. The minimum amounts for liability coverages must be as follows:

a. **COMMERCIAL GENERAL LIABILITY**

\$1,000,000.00 Per Occurrence  
\$2,000,000.00 General Aggregate  
\$2,000,000.00 Products/Completed Operations Aggregate  
\$1,000,000.00 Personal and Advertising Injury

**Personal Injury or Death & Property Damage**

\$1,000,000.00 per occurrence combined single limit for bodily injury and property damage.

b. **AUTOMOBILE LIABILITY**

**Combined Single Limit**

\$1,000,000.00 per accident

3. Professional Liability Insurance in the minimum amount of \$1,000,000 on a claims made basis.
4. Additional Insured. The Appraiser will add the City to all insurance policies (except Worker's Compensation and Professional Liability Insurance) as an additional insured.
5. The Appraiser will furnish the City with certificates of insurance and endorsements showing the types of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing insurance coverages, and name of agent/broker. If requested by the City's Risk Manager, the Appraiser will provide copies of the insurance policy in order to allow the City to verify that the insurance policies provide coverage as required under this Agreement.
6. All policies will provide an endorsement that provides that the insurance policy cannot be canceled or the amount of coverage changed without thirty calendar days prior written notice to the City or ten calendar days prior written notice for non-payment of insurance policy premiums.

**SECTION 12. INDEMNIFICATION.**

- A. TO THE EXTENT ALLOWED BY LAW, THE APPRAISER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S OFFICERS AND EMPLOYEES AGAINST ANY CLAIMS, COSTS, LOSSES, AND DAMAGES OF PROPERTY DAMAGE, INJURY, OR DEATH ARISING OUT OF ANY SERVICES PERFORMED BY THE APPRAISER UNDER THIS AGREEMENT, PROVIDED THAT THE APPRAISER WILL NOT BE RESPONSIBLE FOR ANY ACTS OR OMISSIONS OF THE CITY OR THE CITY'S EMPLOYEES.**

**SECTION 13. GENERAL PROVISIONS.**

- A. NON-EXCLUSIVE AGREEMENT.** This Agreement is non-exclusive. The City is entitled to enter into appraisal services agreements at any time with other appraisers in addition to the Appraiser who is the party to this Agreement. The City has the sole discretion as to whether it makes an assignment of an appraisal under this Agreement



or the agreement of another appraiser. The selection shall be based upon the experience of the respective appraisers and the nature of the work to be performed.

- B. NO WAIVER. Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- C. INDEPENDENT CONTRACTOR RELATIONSHIP. This Agreement does not create an employee-employer relationship between the Appraiser and the City. As such, the City is not subject to the liabilities or obligations the Appraiser obtains under the performance of this Agreement.
- D. TIME IS OF THE ESSENCE. The times and dates specified in this contract are material to this Agreement. For the purpose of this Agreement "**business days**" means Monday through Friday excluding City of El Paso holidays and "**calendar days**" means Monday through Sunday excluding City of El Paso holidays.
- E. NOTICES. The parties will send all notices required by this Agreement in writing, postmarked, and delivered by certified mail. All notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the City:	The City of El Paso Attn: City Manager P. O. Box 1890 El Paso, Texas 79950-1890
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With a Copy to:	Capital Improvement Depart Real Estate Division 218 N. Campbell St. El Paso, TX 79901 realestate@elpasotexas.gov
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To the Appraiser:	LOWERY PROPERTY ADVISORS, LLC. Attn: Mark Lowery 105 Decker Court, Suite 1000 Irving, Texas 75062
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- F. **CONFIDENTIALITY.** The Appraiser acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- G. **GOVERNING LAW.** This Agreement is governed by Texas law.
- H. **VENUE.** The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- I. **SEVERABILITY.** A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- J. **HEADINGS.** The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- K. **GOVERNMENTAL FUNCTIONS.** The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- L. **COMPLIANCE WITH THE LAWS.** The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement. If applicable, then the Appraiser will procure all licenses and pay all fees or other charges as required to complete the Work under this agreement.
- M. **AUDITING RECORDS FOR THE SPECIFIC PROJECT.** The Appraiser will allow the City to inspect and copy all records pertaining to the Work provided in this Agreement.
- N. **RECORDS.** The Appraiser will maintain records of all details with respect to the services to be performed hereunder, including one complete copy of each report, for three (3) years after delivering such report, or until the Property is conveyed, or its conveyance is abandoned by the City, whichever is later.
- O. **FORCE MAJEURE.** There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party

must resume performing its obligations in this Agreement after the reason for the delay is resolved.

- P. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the City and the Appraiser, and the Appraiser's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- Q. **THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries for this Agreement.
- R. **PROVISIONS SURVIVING THIS AGREEMENT.** Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- S. **REPRESENTATIONS AND WARRANTIES.** The Appraiser warrants to the City that the Appraiser has all required licenses, permits, and expertise to perform the Work of this Agreement. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- T. **TEXAS GOVERNMENT CODE.** In accordance with Chapter 2274 of the Texas Government Code, as amended from time to time, the Appraiser represents and warrants to the City the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- U. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties.
- V. **NON-DISCRIMINATION COVENANT.** The Appraiser, for itself, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:
1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the preparation of this appraisal report.
  2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

3. That the Appraiser shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. The Appraiser shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
4. That, in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

W. **AFFIRMATIVE ACTION.** The Appraiser assures that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments, or otherwise applicable to persons leasing premises from the City of El Paso. The Appraiser assures that it will require that its covered sub-organizations provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations to the same effect.

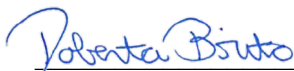
**IN WITNESS WHEREOF**, the City and the Appraiser have approved of this Agreement to be effective as of the date first written above.

**CITY OF EL PASO**

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Cary Westin, City Manager

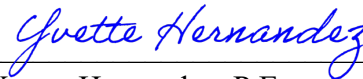
**APPROVED AS TO CONTENT:**



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Roberta Brito  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

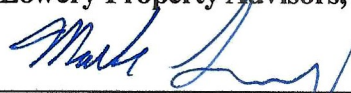


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Yvette Hernandez, P.E.  
City Engineer

**APPRAISER:**

**Lowery Property Advisors, LLC**



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**Name: Mark Lowery**

**Title: Chief Executive Officer**

**Attachment “A”**  
**Fee Schedule**

**Attachment “A”**

**Fee Schedule**

**LOWERY PROPERTY ADVISORS, LLC**

Appraisal Fee: \$2,000 - \$8,500

Consultant Fee: \$225

Trial Preparation: \$250

Expert Testimony Fee: \$250



El Paso, TX

300 N. Campbell  
El Paso, TX

## Legislation Text

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**File #: 24-766, Version: 2**

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### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

##### **All Districts**

Public Health, Hector I. Ocaranza, (915) 212-6502

#### **AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

A Resolution that the City Council authorizes the Mayor to sign the Amended Interlocal Agreement between the City of El Paso and the Department of State Health Services for the laboratory analysis of milk.



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

**DEPARTMENT:** Public Health

**AGENDA DATE:** 6/11/24

**PUBLIC HEARING DATE:**

**CONTACT PERSON NAME AND PHONE NUMBER:** Hector I. Ocaranza, MD, 915-212-6502

**DISTRICT(S) AFFECTED:** ALL DISTRICTS

**STRATEGIC GOAL:** #8 NURTURE AND PROMOTE A HEALTHY AND SUSTAINABLE COMMUNITY

**SUBGOAL:** 8.1 DELIVER PREVENTION, INTERVENTION AND MOBILIZATION SERVICES TO PROMOTE A HEALTHY, PRODUCTIVE AND SAFE COMMUNITY

**SUBJECT:**

**APPROVE** a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? **Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

A resolution that the City Council ratifies and authorizes the Mayor to sign the Amended Interlocal Agreement between the City of El Paso and the Department of State Health Services.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?** Continuing the agreement between the City of El Paso (City) and the Department of State Health Services (DSHS) for the City to provide laboratory analysis of milk samples in exchange for a fee to be paid by DSHS.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

This is an amendment to an agreement that is renewed annually.

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? \_X\_ YES \_\_\_ NO**

**PRIMARY DEPARTMENT:** Public Health

**SECONDARY DEPARTMENT:**

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

**DEPARTMENT HEAD:** Hector I. Ocaranza, MD



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

## RESOLUTION

**WHEREAS**, on September 1, 2023, the Texas Department of State Health Services (“DSHS”) and the City of El Paso (“City”) entered into an Interlocal Agreement (“Interlocal”) pursuant to Chapter 791 of the Texas Government Code; and

**WHEREAS**, pursuant to the Interlocal, City provides DSHS with laboratory analyses of milk samples in exchange for a fee paid by DPHS; and

**WHEREAS**, the parties desire to exercise their option to renew the Interlocal and to extend its expiration date to August 31, 2025; and

**WHEREAS**, the parties desire to amend the Interlocal to add \$34,750.00 for State Fiscal Year 2025, and accordingly increase total not-to-exceed amount to be paid to the City to \$69,500.00; and

**WHEREAS**, the parties agree to revise the DSHS “Contract Affirmations” to include two additional sections concerning the prohibited use of money.

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

**THAT** the Mayor is authorized to sign the Amended Interlocal Agreement between the City of El Paso and DSHS.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

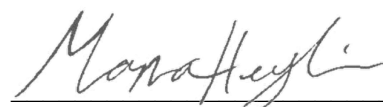
**THE CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leaser  
Mayor


**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Mona M. Heydarian  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Dr. Hector I. Ocaranza, Director  
Department of Public Health

**DEPARTMENT OF STATE HEALTH SERVICES  
CONTRACT NO. HHS001317900001**

**AMENDMENT NO. 2**

The **DEPARTMENT OF STATE HEALTH SERVICES** (“**SYSTEM AGENCY**” or “**DSHS**”) and **CITY OF EL PASO** (“**PERFORMING AGENCY**” or “**CONTRACTOR**”), each a “Party” and collectively the “Parties,” to that certain contract for laboratory analysis of milk sampling services, effective September 1, 2023 and denominated as DSHS Contract No. HHS001317900001 (the “Contract”), as amended, now desire to further amend the Contract.

**WHEREAS**, the Parties desire to exercise their option to renew the Contract; add funds to the Contract; and revise the Contract Statement of Work and Contract Affirmations.

**NOW, THEREFORE**, the Parties hereby amend the Contract as follows:

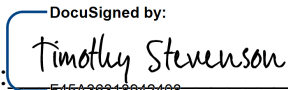
1. **SECTION III, CONTRACT PERIOD AND RENEWAL**, of the Contract Signature Document is amended to reflect a revised expiration date of **August 31, 2025**.
2. **ATTACHMENT A-1, REVISED STATEMENT OF WORK**, is hereby deleted and replaced with **ATTACHMENT A-2, REVISED STATEMENT OF WORK**, which is attached to this Amendment and incorporated by reference and made part of the Contract for all purposes.
3. **SECTION V, CONTRACT AMOUNT AND PAYMENT FOR SERVICES**, of the Contract Signature Document is hereby amended by adding funding in the amount of **\$34,750.00** for State Fiscal Year 2025. Accordingly, the total not-to-exceed amount of the Contract is increased to **\$69,500.00**. All expenditures under the Contract shall be in accordance with **ATTACHMENT A-2, REVISED STATEMENT OF WORK**.
4. **ATTACHMENT B, HHS CONTRACT AFFIRMATIONS (VERSION 2.2)**, is hereby deleted and replaced with **ATTACHMENT B-1, HHS CONTRACT AFFIRMATIONS (VERSION 2.3)**, which is attached to this Amendment and incorporated by reference and made part of the Contract for all purposes.
5. This Amendment shall be effective on **September 1, 2024**.
6. Except as amended by this Amendment, all terms and conditions of the Contract, as amended, shall remain in full force and effect.
7. Any further revisions to the Contract shall be by written agreement of the Parties.
8. Each Party represents and warrants that the person executing this Amendment on its behalf has full power and authority to enter into this Amendment.

**SIGNATURE PAGE FOLLOWS**

SIGNATURE PAGE FOR AMENDMENT NO. 2  
DEPARTMENT OF STATE HEALTH SERVICES  
CONTRACT NO. HHS001317900001

DEPARTMENT OF STATE HEALTH SERVICES

CITY OF EL PASO

By:  F45A36316942406...

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

Printed Name: Timothy Stevenson

Printed Name: \_\_\_\_\_

Title: Associate Commissioner

Title: \_\_\_\_\_

Date of Signature: May 15, 2024

Date of Signature: \_\_\_\_\_

## **ATTACHMENT A-2**

### **REVISED STATEMENT OF WORK**

#### **I. DSHS RESPONSIBILITY**

DSHS will submit milk samples to Performing Agency.

#### **II. PERFORMING AGENCY RESPONSIBILITIES**

##### **A. Performing Agency shall:**

1. Provide accurate laboratory analyses of the milk samples and submit the analysis results to DSHS;
2. The analyses of the milk samples shall:
  - a. Meet laboratory proficiency standards as established by the National Conference of Interstate Milk Shipments and the current U.S. Public Health Service Grade "A" Pasteurized Milk Ordinance;
  - b. Comply with *Texas Health and Safety Code* Chapters 435 and 440; and
  - c. Comply with Title 25 *Texas Administrative Code* Chapter 217;

##### **B. Immediately notify DSHS staff in the event a milk sample is in violation of applicable law, regulation, or ordinance regarding milk and dairy safety standards; and**

##### **C. Send final milk testing results to System Agency's Contract Representative and the following address within 24 hours of System Agency's submittal of a milk sample to Performing Agency:**

Department of State Health Services  
Food & Drug Section  
Milk Operations Branch  
PO Box 149347, MC 1987  
Austin, Texas 78714-9347

#### **III. PERFORMANCE MEASURES**

System Agency will actively monitor Performing Agency's performance under the Contract including, but not limited to, the requirements set forth in this **ATTACHMENT A-2, REVISED STATEMENT OF WORK** to the Contract. All Work under the Contract shall be provided at a quality level acceptable to System Agency, as determined by System Agency in its sole discretion, and in a manner consistent with acceptable industry standard, custom, and practice.

#### **IV. INVOICE AND PAYMENT**

##### **A. Performing Agency shall request monthly payments using the State of Texas Purchase Voucher (Form B-13) at <http://www.SystemAgency.state.tx.us/grants/forms/b13form.doc>. The State of Texas Purchase Voucher and any supporting documentation shall be mailed or submitted by fax or electronic mail to the number/address below:**

Contract No. HHS001317900001

Page 1 of 2

## ATTACHMENT A-2

### REVISED STATEMENT OF WORK

Department of State Health Services  
 Claims Processing Unit, MC 1911  
 1100 West 49<sup>th</sup> Street  
 P.O. Box 149347  
 Austin, TX 78714-9347  
 FAX: (512) 458-7442  
 EMAIL: [invoices@dshs.state.tx.us](mailto:invoices@dshs.state.tx.us)

- B.** Final Billing Submission: Unless otherwise provided by the System Agency, Performing Agency shall submit a reimbursement or payment request as a final close-out invoice not later than thirty (30) calendar days following the end of the term of the Contract. Reimbursement or payment requests received after the deadline may not be paid.
- C.** All invoices must reference the Purchase Order dispatched for the current State Fiscal Year.
- D.** Performing Agency shall be paid on a Fee-for-Service/Unit Rate basis and in accordance with the following rate schedule:

<b>Analysis</b>	<b>Test or Method</b>	<b>Max. Price</b>
Standard Plate Count	SPC/PCA	16.87
Direct Microscopic Somatic Cell Count	DMSCC	22.50
Electronic Somatic Cell Count	ESCC	22.50
Added Water	Cryoscope	5.62
Antibiotics Inhibitor (Disk Assay)	Disc/Inhibitor (Delvo)	12.64
Antibiotics Confirmation Rapid Test	Charm I, II, SNAP, etc.	67.50
Aflatoxin	Aflatoxin	67.50
Phosphatase	Fluorophos	21.07
Coliform	Coli	15.46
Water Supply	Water	42.18
Cooling Water	Glycol-Sweet Water	42.18

## ATTACHMENT B-1

### HEALTH AND HUMAN SERVICES CONTRACT AFFIRMATIONS

For purposes of these Contract Affirmations, HHS includes both the Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS). System Agency refers to HHSC, DSHS, or both, that will be a party to this Contract. These Contract Affirmations apply to all Contractors and Grantees (referred to as "Contractor") regardless of their business form (e.g., individual, partnership, corporation).

By entering into this Contract, Contractor affirms, without exception, understands, and agrees to comply with the following items through the life of the Contract:

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.

2. **Complete and Accurate Information**

Contractor represents and warrants that all statements and information provided to HHS are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.

3. **Public Information Act**

Contractor understands that HHS will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

4. **Contracting Information Requirements**

Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

**5. Assignment**

- A. Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from System Agency. Any attempted assignment in violation of this provision is void and without effect.
- B. Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. Upon receipt of System Agency's notice of assignment, pledge, or transfer, Contractor shall cooperate with System Agency in giving effect to such assignment, pledge, or transfer, at no cost to System Agency or to the recipient entity.

**6. Terms and Conditions**

Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, as well as terms and conditions advanced by Contractor that differ in any manner from HHS' terms and conditions, if any, are rejected unless expressly accepted by System Agency in writing.

**7. HHS Right to Use**

Contractor agrees that HHS has the right to use, produce, and distribute copies of and to disclose to HHS employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as HHS deems necessary to complete the procurement process or comply with state or federal laws.

**8. Release from Liability**

Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of System Agency.

**9. Dealings with Public Servants**

Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.

**10. Financial Participation Prohibited**

Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**11. Prior Disaster Relief Contract Violation**

Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract



and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**12. Child Support Obligation**

Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate. If the certification is shown to be false, Contractor may be liable for additional costs and damages set out in 231.006(f).

**13. Suspension and Debarment**

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

**14. Excluded Parties**

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.'

**15. Foreign Terrorist Organizations**

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

**16. Executive Head of a State Agency**

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.

**17. Human Trafficking Prohibition**

Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**18. Franchise Tax Status**

Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

**19. Debts and Delinquencies**

Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

**20. Lobbying Prohibition**

Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

**21. Buy Texas**

Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.

**22. Disaster Recovery Plan**

Contractor agrees that upon request of System Agency, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

**23. Computer Equipment Recycling Program**

If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

**24. Television Equipment Recycling Program**

If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

**25. Cybersecurity Training**

- A. Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
- B. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

**26. Restricted Employment for Certain State Personnel**

Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

**27. No Conflicts of Interest**

- A. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to System Agency under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- B. Contractor agrees that, if after execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to System Agency. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by System Agency as a potential conflict. System Agency reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by System Agency's decision.

**28. Fraud, Waste, and Abuse**

Contractor understands that HHS does not tolerate any type of fraud, waste, or abuse. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Pursuant to Texas Government Code, Section 321.022, if the administrative head of a department or entity that is subject to audit by the state auditor has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the Texas State Auditor's Office (SAO). All employees or contractors who have reasonable cause to believe that fraud, waste, or abuse has occurred (including misconduct by any HHS employee, Grantee officer, agent, employee, or subcontractor that would constitute fraud, waste, or abuse) are required to immediately report the questioned activity to the Health and Human Services Commission's Office of Inspector General. Contractor agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud, waste, and abuse including, but not limited to, HHS Circular C-027.

A report to the SAO must be made through one of the following avenues:

- SAO Toll Free Hotline: 1-800-TX-AUDIT
- SAO website: <http://sao.fraud.state.tx.us/>

All reports made to the OIG must be made through one of the following avenues:

- OIG Toll Free Hotline 1-800-436-6184
- OIG Website: ReportTexasFraud.com
- Internal Affairs Email: InternalAffairsReferral@hhsc.state.tx.us
- OIG Hotline Email: OIGFraudHotline@hhsc.state.tx.us.
- OIG Mailing Address: Office of Inspector General  
Attn: Fraud Hotline  
MC 1300  
P.O. Box 85200  
Austin, Texas 78708-5200

## **29. Antitrust**

The undersigned affirms under penalty of perjury of the laws of the State of Texas that:

- A. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- B. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and
- C. neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

## **30. Legal and Regulatory Actions**

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to System Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.

**31. No Felony Criminal Convictions**

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised System Agency in writing of the facts and circumstances surrounding the convictions.

**32. Unfair Business Practices**

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

**33. Entities that Boycott Israel**

Contractor represents and warrants that (1) it does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

**34. E-Verify**

Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:

1. all persons employed by Contractor to perform duties within Texas; and
2. all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.

**35. Former Agency Employees – Certain Contracts**

If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, in accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that neither Contractor nor any of Contractor's employees including, but not limited to, those authorized to provide services under the Contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the Contract.

**36. Disclosure of Prior State Employment – Consulting Services**

If this Contract is for consulting services,

- A. In accordance with Section 2254.033 of the Texas Government Code, a Contractor providing consulting services who has been employed by, or employs an individual who has been employed by, System Agency or another State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services must disclose the following information in its offer to provide services. Contractor hereby certifies that this information was provided and remains true, correct, and complete:
1. Name of individual(s) (Contractor or employee(s));
  2. Status;
  3. The nature of the previous employment with HHSC or the other State of Texas agency;
  4. The date the employment was terminated and the reason for the termination; and
  5. The annual rate of compensation for the employment at the time of its termination.
- B. If no information was provided in response to Section A above, Contractor certifies that neither Contractor nor any individual employed by Contractor was employed by System Agency or any other State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services.

**37. Abortion Funding Limitation**

Contractor understands, acknowledges, and agrees that, pursuant to Article IX of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act:

1. performs an abortion procedure that is not reimbursable under the state's Medicaid program;
2. is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or
3. is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program.

The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX.

**38. Funding Eligibility**

Contractor understands, acknowledges, and agrees that, pursuant to Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code.

**39. Gender Transitioning and Gender Reassignment Procedures and Treatments for Certain Children – Prohibited Use of Public Money; Prohibited State Health Plan Reimbursement.**

Contractor understands, acknowledges, and agrees that, pursuant to Section 161.704 of the Texas Health and Safety Code (eff. Sept. 1, 2023), public money may not directly or indirectly be used, granted, paid, or distributed to any health care provider, medical school, hospital, physician, or any other entity, organization, or individual that provides or facilitates the provision of a procedure or treatment to a child that is prohibited under Section 161.702 of the Texas Health and Safety Code. Contractor also understands, acknowledges, and agrees that, pursuant to Section 161.705 of the Texas Health and Safety Code (eff. Sept. 1, 2023), HHSC may not provide Medicaid reimbursement and the child health plan program established under Chapter 62 may not provide reimbursement to a physician or health care provider for provision of a procedure or treatment to a child that is prohibited under Section 161.702 of the Texas Health and Safety Code. Contractor certifies that it is not ineligible to contract with System Agency under the terms of Chapter 161, Subchapter X, of the Texas Health and Safety Code.

**40. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216)**

Contractor certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified Contract or funding pursuant to 2 CFR 200.216.

**41. COVID-19 Vaccine Passports**

Pursuant to Texas Health and Safety Code, Section 161.0085(c), Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.

**42. COVID-19 Vaccinations**

Contractor understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, none of the General Revenue Funds appropriated to the Department of State Health Services (DSHS) may be used for the purpose of promoting or advertising COVID-19 vaccinations in the 2024-25 biennium. It is also the intent of the legislature that to the extent allowed by federal law, any federal funds allocated to DSHS shall be expended for activities other than promoting or advertising COVID-19 vaccinations. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article II.

**43. Entities that Boycott Energy Companies**

In accordance with Senate Bill 13, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 (eff. Sept. 1, 2023, Section 2276.002, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) of the Texas Government Code (relating to prohibition on contracts with companies boycotting certain energy companies), Contractor represents and warrants that: (1) it does not, and will not for the duration of the Contract, boycott energy companies or (2) the verification required by Section 2274.002 (eff. Sept. 1, 2023, Section 2276.002, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

**44. Entities that Discriminate Against Firearm and Ammunition Industries**

In accordance with Senate Bill 19, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies that discriminate against firearm and ammunition industries), Contractor verifies that: (1) it does not, and will not for the duration of the Contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

**45. Security Controls for State Agency Data**

In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.138, Contractor understands, acknowledges, and agrees that if, pursuant to this Contract, Contractor is or will be authorized to access, transmit, use, or store data for System Agency, Contractor is required to meet the security controls the System Agency determines are proportionate with System Agency's risk under the Contract based on the sensitivity of System Agency's data and that Contractor must periodically provide to System Agency evidence that Contractor meets the security controls required under the Contract.

**46. Cloud Computing State Risk and Authorization Management Program (TX-RAMP)**

In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.0593, Contractor acknowledges and agrees that, if providing cloud computing services for System Agency, Contractor must comply with the requirements of the state risk and authorization management program and that System Agency may not enter or renew a contract with Contractor to purchase cloud computing services for the agency that are subject to the state risk and authorization management program unless Contractor demonstrates compliance with program requirements. If providing cloud computing services for System Agency that are subject to the state risk and authorization management program, Contractor certifies it will maintain program compliance and certification throughout the term of the Contract.



**47. Office of Inspector General Investigative Findings Expert Review**

In accordance with Senate Bill 799, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 531.102(m-1)(2) (eff. Apr. 1, 2025, Section 544.0106, pursuant to House Bill 4611, Acts 2023, 88th Leg., R.S.) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

**48. Contract for Professional Services of Physicians, Optometrists, and Registered Nurses**

In accordance with Senate Bill 799, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2254.008(a)(2) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

**49. Foreign-Owned Companies in Connection with Critical Infrastructure**

If Texas Government Code, Section 2274.0102(a)(1) (eff. Sept. 1, 2023, Section 2275.0102(a)(1), pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) (relating to prohibition on contracts with certain foreign-owned companies in connection with critical infrastructure) is applicable to this Contract, pursuant to Government Code Section 2274.0102 (eff. Sept. 1, 2023, Section 2275.0102, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.), Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103 (eff. Sept. 1, 2023, Section 2275.0103, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.), or (2) headquartered in any of those countries.

**50. Critical Infrastructure Subcontracts**

For purposes of this Paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of the Business and Commerce Code, Contractor shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Contractor will notify the System Agency before entering into any subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.

**51. Enforcement of Certain Federal Firearms Laws Prohibited**

In accordance with House Bill 957, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2.101 is applicable to Contractor, Contractor certifies that it is not ineligible to receive state grant funds pursuant to Texas Government Code, Section 2.103.

**52. Prohibition on Abortions**

Contractor understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, (1) no funds shall be used to pay the direct or indirect costs (including marketing, overhead, rent, phones, and utilities) of abortion procedures provided by contractors of HHSC; and (2) no funds appropriated for Medicaid Family Planning, Healthy Texas Women Program, or the Family Planning Program shall be distributed to individuals or entities that perform elective abortion procedures or that contract with or provide funds to individuals or entities for the performance of elective abortion procedures. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article II.

**53. False Representation**

Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

**54. False Statements**

Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

**55. Permits and License**

Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.

**56. Equal Employment Opportunity**

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

**57. Federal Occupational Safety and Health Law**

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

**58. Signature Authority**

Contractor represents and warrants that the individual signing this Contract Affirmations document is authorized to sign on behalf of Contractor and to bind the Contractor.

**Signature Page Follows**

Authorized representative on behalf of Contractor must complete and sign the following:

CITY OF EL PASO

Legal Name of Contractor

CITY OF EL PASO

Assumed Business Name of Contractor, if applicable (d/b/a or 'doing business as')

CITY OF EL PASO

Texas County(s) for Assumed Business Name (d/b/a or 'doing business as')

Attach Assumed Name Certificate(s) filed with the Texas Secretary of State and Assumed Name Certificate(s), if any, for each Texas County Where Assumed Name Certificate(s) has been filed.

Signature of Authorized Representative

OSCAR LEESER

Date Signed

MAYOR

Printed Name of Authorized Representative  
First, Middle Name or Initial, and Last Name

JOHN CAMPBELL

Title of Authorized Representative

EL PASO, TX 79901-1402

Physical Street Address

City, State, Zip Code

Mailing Address, if different

City, State, Zip Code

Phone Number

Fax Number

58873019

Email Address

DUNS Number

746000749

17460007499

Federal Employer Identification Number

Texas Identification Number (TIN)

17460007499

17460007499000

Texas Franchise Tax Number

Texas Secretary of State Filing Number

KLZGKXNFVTL4

SAM.gov Unique Entity Identifier (UEI)

**Certificate Of Completion**

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Jonah Wilczynski

**Completed**

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jonah.wilczynski@dshs.texas.gov

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Unit Director

Signed: 5/15/2024 10:32:37 AM

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PATTY MELCHIOR

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Patty.Melchior@dshs.texas.gov

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Patricia Melchior, Director, DSHS CMS

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Timothy Stevenson

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Timothy.Stevenson@dshs.texas.gov

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Associate Commissioner

Signed: 5/15/2024 4:00:37 PM

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Signature Adoption: Pre-selected Style

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Carbon Copy Events	Status	Timestamp
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Semone Ben-Bani Ben-BaniSM@elpasotexas.gov SMB Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 3/20/2024 11:09:54 AM Viewed: 4/15/2024 2:38:04 PM
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Ebony White ebony.white@dshs.texas.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 5/15/2024 4:00:40 PM Viewed: 5/15/2024 4:03:27 PM
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Certified Delivered	Security Checked	5/15/2024 3:59:54 PM
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Completed	Security Checked	5/15/2024 4:00:40 PM
Payment Events	Status	Timestamps



Legislation Text

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File #: 24-777, Version: 1

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**CITY OF EL PASO, TEXAS**  
**LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Community and Human Development, Nicole Ferrini, (915) 212-1659

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Approve a Resolution to adopt the 2024-2025 Annual Action Plan including attached budgets, for projects to be funded under the Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), Housing Opportunities for Persons with Aids (HOPWA), and Emergency Solutions Grant (ESG) Programs.

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

**AGENDA DATE:** 6/11/2024  
**PUBLIC HEARING DATE:** N/A

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Nicole Ferrini, 915-212-1659

**DISTRICT(S) AFFECTED:** All Districts

**STRATEGIC GOAL:** Goal 8 – Nurture and promote a healthy, sustainable community

**SUBGOAL:** 8.2 – Stabilize neighborhoods through community, housing, and ADA improvements

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

Approve a resolution to adopt the 2024-2025 Annual Action Plan including attached budgets, for projects to be funded under the Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), Housing Opportunities for Persons with Aids (HOPWA), and Emergency Solutions Grant (ESG) programs.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

Following a final 30-day public comment period, the Department of Community and Human Development (DCHD) presents to City Council and the El Paso community, the final 2024-2025 Annual Action Plan and 3-Year Community Vulnerabilities public facilities projects for the following four entitlement grant programs: the Community Development Block Grant (CDBG); Emergency Solutions Grant (ESG); Housing Opportunities for Persons With AIDS (HOPWA); and HOME Investment Partnership Program (HOME).

Attached are summaries of the budget recommendations listing the programs and projects proposed for funding.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

May 7, 2024, the commencement of a 30-day public comment period on the draft 2024-2025 Annual Action Plan began.

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

2024-2025 HUD Entitlement Grants Allocations:

CDBG Allocation:	\$6,315,722
ESG Allocation:	\$577,351
HOPWA Allocation:	\$1,138,193
HOME Allocation:	\$2,268,109



HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Department of Community + Human Development  
SECONDARY DEPARTMENT: N/A

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

DEPARTMENT HEAD:



Abraham Gutierrez for Nicole Ferrini

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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, be authorized to sign and submit to the Department of Housing and Urban Development (HUD) the 2024-2025 Annual Action Plan, Form SF-424 and Form SF 424 D, all certifications and assurances contained therein, and any documents necessary to comply with HUD requirements; and

That the City Manager, or designee, be authorized to sign Grant Agreements with HUD for the four entitlement grants covered by the Annual Action Plan: the Community Development Block Grant, the Emergency Solutions Grant, the HOME Investment Partnerships Program, and the Housing Opportunities for Persons with AIDS Program; and

That the City Manager, or designee, be authorized to sign all Letters of Support, Certifications of Local Government Approval, Release of Liens, Assurances, and Certifications of Consistency with the Consolidated Plan required by HUD or the State of Texas for grant applications or applications for Low Income Housing Tax Credits for programs covered by the Consolidated Plan or related Community Development programs; and

That the City Manager, or designee, subject to completion of environmental review, be authorized to sign all contracts and documents with subrecipients related to the implementation and performance of the activities contained in the 2024-2025 Annual Action Plan and corresponding programs. The City Manager, or designee, is authorized herein to sign amendments to such contracts which add to or reduce funding, including but not limited to the de-obligation of funds by mutual termination, and extensions to the contract period; and

That the City Manager, or designee, be authorized to sign all Environmental Assessments, Requests for Release of Funds, Certifications, and Performance Reports required by the U.S. Department of Housing and Urban Development for activities covered by the 2024-2025 Annual Action Plan and related Community Development programs; and

That the City Manager, or designee, be authorized to sign agreements to secure matching funds which add to amounts allocated under the regular budget; and to sign amendments to matching fund agreements, including extensions to the contract period; and

That the City Manager, or designee, be authorized to sign all amendments, subordination agreements, loan modification agreements, release of liens, assumption agreements, and other similar documents related to transactions performed under all previous Action Plans and previous entitlement grants provided such documents are approved by the City Attorney's office as to form and comply with department policies and procedures; and

That the City Manager be authorized to execute letters of support, certifications, and other similar documents, that allow third parties to secure funding from state, federal, and local agencies which further the goals of the City's Annual Action Plan.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF EL PASO:**

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

*Russell Abeln*  
\_\_\_\_\_  
Russell T. Abeln  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:** Abraham  
Gutierrez  
\_\_\_\_\_  
for Nicole Ferrini  
Nicole M. Ferrini  
Climate and Sustainability Officer

## 50th Year | 2024-2025 CDBG Public Services Recommended Budget

CDBG Public Services						
Agency Name	Program Name/Address	Program Description	Rep. District	Current Budget (2023-2024)	Draft AAP 50th Year Recommendation	Final AAP 50th Year Recommendation
CASA of El Paso	Court Appointed Special Advocates 221 N. Kansas St., Suite 1501, El Paso, Texas 79901	This project will address <i>mental health and resident empowerment</i> by providing court advocacy for 325 children ages newborn to 18 who have been removed from their home due to abuse/neglect, with the goal of placing them in a stable home.	Citywide	\$ 80,000.00	\$ 100,000.00	\$ 100,000.00
Candlelighters of El Paso	Living Everyday Program 1400 Hardaway, Ste 206 El Paso, Texas 79903	This project will address <i>resident empowerment, food security, housing and homelessness, and mental health</i> by providing immediate needs assistance to 200 children and youth in treatment for cancer and the families that care for them.	Citywide	N/A	\$ 100,000.00	\$ 100,000.00
El Paso Human Services	Youth Homeless Shelter 1001 Montana Ave., El Paso, Texas 79902	This project will address <i>housing and homelessness, resident empowerment, and mental health</i> by providing 80 homeless youth ages 18-24 with emergency housing, case management, and essential services.	Citywide	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00
Opportunity Center for the Homeless	Resource Center & Emergency Shelter 1208 Myrtle Ave., El Paso, Texas 79901	This project will address <i>housing and homelessness, food security, and mental health</i> by providing an emergency shelter and necessities, including case management to 3,000 adult men and women.	Citywide	\$ 455,120.00	\$ 485,359.85	\$ 457,358.30
Amistad	Money Management Program 3210 Dyer St., El Paso, Texas 79930	This project will address <i>resident empowerment, food security, housing and homelessness, and mental health</i> by assisting 70 elderly persons and/or adults with disabilities with money management services.	Citywide	\$ 175,000.00	\$ 200,000.00	\$ 190,000.00
			TOTAL	\$ 810,120.00		\$ 947,358.30

## 3-Year CIP CDBG Public Facilities Final Approved Recommended Budget

CDBG Public Facilities				
Agency Name	Program Name/Address	Scope of Work	Rep. District	Total Project Budget
Housing Opportunity Management Enterprises (HOME)	Salazar Apartments, 311 South Eucalyptus St. El Paso, TX 79905	This project will address <i>housing and homelessness, and resident empowerment</i> by creating 286 new affordable housing units.	District 8	\$6,637,576.65
Paso del Norte Children's Development Center (PdN Children's)	Inclusive Learning Center East Campus, 1410 Bob Hope Dr., El Paso, TX 79936	This project will address <i>resident empowerment and mental health</i> by providing high quality education and childcare to 71 children yearly.	District 6	\$1,000,000.00
Centro San Vicente	Medical Space Renovation, 8061 Alameda Ave., El Paso, TX 79915	This project will address <i>mental health and resident empowerment</i> by providing affordable, comprehensive primary care services, behavioral health services, or substance use care to 2,000 individuals yearly.	District 7	\$1,432,884.00
Opportunity Center for the Homeless	1208 Myrtle Emergency Shelter Renovations, 1208 Myrtle Ave., El Paso, TX 79901	This project will address <i>housing and homelessness, mental health, food security and resident empowerment</i> by providing shelter and supportive services to 2,000 individuals yearly.	District 8	\$3,141,650.00
<i>City Council has previously approved the total project budgets for the above 3-year projects. 50th year's allocation is \$4,070,703.55.</i>			TOTAL	\$12,212,110.65

CDBG VOLUNTEER HOUSING REHABILITATION						
Agency Name	Program Name/Address	Scope of Work	Rep. District	Current Budget (2023-2024)		Recommended 50th Year Budget
Rebuilding Together El Paso Inc	Home Repairs 2023-2024, 6400 Airport Rd., Bldg A, Ste G, El Paso, TX 79925	This project will address <i>housing and homelessness, and resident empowerment</i> by creating healthy, safe and decent living conditions, enabling 50 elderly and/or disabled homeowners to extend their life in their own living environment.	Citywide	\$ 200,000.00		\$ 200,000.00
			TOTAL	\$ 200,000.00		\$ 200,000.00
TOTAL CDBG PROJECT FUNDING						

DCHD ADMINISTRATION & PLANNING (Maximum 20% of Entitlement)						
Agency Name	Program Name	Scope of Work				CDBG Amount
Community + Human Development City 3, 801 Texas Avenue, 3rd Floor El Paso, Texas 79901	Community + Human Development	Program Management and Coordination to include: *Community Development *City Attorney *Dashboard * homeless services providers. Data will be broken down by, among other things, service type and demographics.				\$ 893,314.87
Community + Human Development City 3, 801 Texas Avenue, 3rd Floor El Paso, Texas 79901	Community + Human Development	Indirect Costs (24.67% of salaries) associated with Program Management and Coordination to include: *Community Development *City Attorney				\$ 204,345.28
ADMINISTRATION & PLANNING TOTAL			\$			1,097,660.15

## 50th Year | 2024-2025 Emergency Solutions Grant (ESG) Recommended Budget

Applicant	Address	Project Description	Component	Rep. District	Current Budget (2023-2024)	Recommended 50th Year Budget
Emergence Health Network	1600 Montana Ave. El Paso, TX 79902	This project will address housing and homelessness, and mental health by providing street outreach to 102 individuals experiencing homelessness.	Street Outreach	Citywide	\$ 107,900.00	\$ 107,900.00
El Paso Human Services, Inc.	1001 Montana Ave. El Paso, TX 79902	This project will address housing and homelessness by providing rapid rehousing for 22 homeless youth ages 18-24.	Rapid Rehousing	Citywide	\$ 145,650.00	\$ 130,101.00
La Posada Home, Inc	1020 N. Campbell St. El Paso, Texas 79902	At least 150 clients will receive access to a suitable living environment through the availability of decent transitional housing, including nutritious meals, clothing, access to educational opportunities, job training, self-help classes, legal aid, parenting classes, and other services as well as assistance locating and obtaining suitable affordable housing.	Emergency Shelter	Citywide	\$ 136,478.00	\$ 136,478.00
Amistad	El Camino a Casa 3210 Dyer St El Paso, Texas 79930	This project will address housing and homelessness by providing homeless prevention and Rapid Rehousing to individuals.	Homeless Prevention & Rapid Rehousing	Citywide	N/A	\$ 162,457.43
Community + Human Development - ESG City Administrative Fees	City 3, 801 Texas Ave, 3rd Floor El Paso, Texas, 79901	Grantee may use not more than 7.5% of the grant amount for its own administrative costs.	N/A	N/A	\$ 38,130.00	\$ 40,414.57
<b>50th YEAR ESG BUDGET TOTAL</b>					<b>\$ 428,158.00</b>	<b>\$ 577,351.00</b>

## 50th Year | 2024-2025 Housing Opportunities for Persons with AIDS (HOPWA) Recommended Budget

Applicant/Address	Project Name	Project Description	Rep. District	49th Year Funding (2022-2023)	Recommended 49th Year Budget
City of El Paso Health Department 701 Montana Ave El Paso, Texas 79902  5115 El Paso Dr El Paso, Texas 79905	El Paso County - Tenant-Based Rental Assistance (TBRA)	Provision of long-term TBRA to clients living with HIV/AIDS in the City of El Paso and El Paso County.	Citywide and Balance of El Paso County	\$746,133.00	\$796,735.10
	El Paso County HOPWA Program - Supportive Services	Provision of supportive services that include case management, counseling, job development, housing information and resource identification.	Citywide and Balance of El Paso County	\$252,000.00	
	HOPWA Project Sponsor Administrative Fees	Project sponsor is limited to 7% of awarded funds for administration costs.	N/A	\$68,539.00	
Amistad 3210 Dyer St Paso, Texas 79930	El Camino a Casa HOPWA Program	Project proposes to serve participants diagnosed with HIV/AIDS and experiencing homelessness in accessing affordable housing through rental assistance that will place participants into appropriate and affordable permanent housing units.	Citywide and Balance of El Paso County	N/A	\$341,457.90
Community + Human Development City 3, 801 Texas Ave, 3rd Floor El Paso, Texas 79901	HOPWA City Administrative Fees	Grantee may not use more than 3% of the grant amount for its own administrative costs.		\$32,900.00	\$0.00
HOPWA Budget TOTAL				\$1,099,572.00	\$1,138,193.00

## 2024-2025 HOME Investment Partnerships Program (HOME) Recommended Budget

Applicant/Address	Description	Projected Units Assisted	Rep. District	Current Budget (2023-2024)	Recommended 50th Year Budget
Department of Community + Human Development 801 Texas Ave, 3rd flr El Paso, TX 79901	Administrative Expenses	N/A	Citywide	\$ 546,214.00	\$ 492,811.00
Department of Community + Human Development 801 Texas Ave, 3rd flr El Paso, TX 79901	New construction/rehabilitation of multi-family affordable rental housing by Community Housing Development Organizations (CHDOs)	4	Citywide	\$ 474,322.00	\$ 394,216.00
Department of Community + Human Development 801 Texas Ave, 3rd flr El Paso, TX 79901	New construction/rehabilitation of multi-family affordable rental housing by investors	72	Citywide	\$ 2,491,607.00	\$ 3,191,082.00
Department of Community + Human Development 801 Texas Ave, 3rd flr El Paso, TX 79901	Single-Family Owner-Occupied (SFOO) repair, rehabilitation, renovation and reconstruction	7	Citywide	\$ 1,352,903.00	\$ 350,000.00
<b>*Total amount includes HUD 50th year allocation (\$\$2,328,109) + estimated Program Income</b>			<b>Housing Programs Budget TOTAL</b>	<b>\$ 4,865,046.00</b>	<b>\$ 4,428,109.00</b>



Legislation Text

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File #: 24-780, Version: 1

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Community and Human Development, Nicole Ferrini, (915) 212-1659

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Approve a Resolution authorizing the City Manager to sign all contract, contract amendments, and related documents between the City of El Paso and the State of Texas to receive an allocated \$493,834 in 2024-2025 Homeless Housing and Services Program (HHSP) funds from the Texas Department of Housing and Community Affairs (TDHCA); and authorizing the Director of the Department of Community and Human Development (DCHD) to sign all contracts, amendments and related documents between the City of El Paso and agencies receiving sub-awards of 2024-2025 HHSP funds from the City, as well as all certifications, performance reports, and other related documents.



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

**AGENDA DATE:** 6/11/2023

**PUBLIC HEARING DATE:** N/A

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Nicole Ferrini, 915-212-1659

**DISTRICT(S) AFFECTED:** All Districts

**STRATEGIC GOAL:** Goal 8 – Nurture and promote a healthy, sustainable community

**SUBGOAL:** 8.1 – Deliver prevention, intervention and mobilization services to promote a healthy, productive and safe community

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

Action on a resolution authorizing the City Manager to sign all contracts, contract amendments, and related documents between the City of El Paso and the State of Texas to receive an allocated \$ \$493,834 in 2024-2025 Homeless Housing and Services Program (HHSP) funds from the Texas Department of Housing & Community Affairs (TDHCA); and authorizing the Director of the Department of Community and Human Development (DCHD) to sign all contracts, amendments and related documents between the City of El Paso and agencies receiving sub-awards of 2024-2025 HHSP funds from the City, as well as all certifications, performance reports, and other related documents.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

In 2009, funding for the Homeless Housing and Services Program (HHSP), a program administered by the Texas Department of Housing & Community Affairs (TDHCA), was established by the Texas State Legislature to address the needs of persons and families experiencing homelessness, or at risk of becoming homeless. The 2024-2025 formula allocation for El Paso in general HHSP will be sub-awarded to non-profit agencies providing homeless prevention, homeless assistance, and case management services. The City of El Paso is also expected to receive a supplemental set aside of \$138,010 specifically to support efforts to address youth homelessness. Those activities include homeless assistance and case management for youth ages 24 and below.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

Allocated funding of \$493,834 in HHSP funds from TDHCA

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO**

**PRIMARY DEPARTMENT:** Department of Community + Human Development

**SECONDARY DEPARTMENT:** N/A

Revised 04/09/2021

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

**DEPARTMENT HEAD:**



Abraham Gutierrez for Nicole Ferrini

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

## RESOLUTION

**WHEREAS**, in 2009, funding for the Homeless Housing and Services Program (HHSP), a program administered by the Texas Department of Housing & Community Affairs (TDHCA), was established by the Texas State Legislature to address the needs of persons and families experiencing homelessness, or at risk of becoming homeless; and

**WHEREAS**, The City of El Paso has been allocated by TDHCA General Revenue Funds in the amount of \$493,834 to award to the Department of Community and Human Development (DCHD) under 2024-2025 HHSP funding to be executed under two contracts; one contract for general HHSP funds totaling \$355,824 for homelessness prevention, homeless assistance and case management activities; the other for youth set-aside funds totaling \$138,010 for homeless assistance and case management. The period of both contracts to run through August 31<sup>st</sup>, 2025.

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

1. That the City Manager be authorized to sign all contracts, contract amendments and related documents between the City of El Paso and the State of Texas and/or TDHCA for 2024-2025 HHSP funds.
2. That the Director of DCHD be authorized to sign all contracts, amendments and related documents between the City of El Paso and agencies receiving sub-awards from the City (Sub-Grantee Agencies) for 2024-2025 HHSP funds, as well as all certifications, performance reports, and related documents for TDHCA and Sub-Grantee Agencies.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leoser  
Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

*Russell Abeln*  
\_\_\_\_\_  
Russell T. Abeln  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

*S*  
\_\_\_\_\_  
Nicole M. Ferrini  
Climate and Sustainability Officer

Abraham  
Gutierrez  
for Nicole Ferrini

## 2024-2025 Homeless Housing and Services Program (HHSP) Recommended Budget

Applicant	Address	Project Description	Component	Rep. District	Current Budget	Recommended 50th Year Budget
El Paso Center for Children Youth	Transitional Living Program 2200 N. Stevens, Bldg C El Paso, Texas 79930	This program intends to serve 12 youth ages 16-17 who are emancipated and 18-24 year olds who are homeless, have been trafficked or are victims of crime or other trauma, have been forced to leave home or have left home without permission, have aged out of foster care, or male and female/LGBTQ+ youth with no family supports and no place to live.	Homeless Assistance	Citywide	N/A	\$ 131,984.00
El Paso Human Services - EPHSI General	EPHSI Housing Program 1001 Montana Ave. El Paso Texas 79902	This program will serve 38 homeless youth and young adults in locating and obtaining suitable housing and will assist individuals and families at-risk of homelessness with rental arrears payment and services.	Homeless Assistance Case Management	Citywide	\$ 110,550.00	\$ 100,000.00
La Posada Home - La Posada HHSP	1020 N. Campbell St. El Paso, TX 79902	At least 90 HHSP eligible clients will receive access to job training, self-help classes, parenting classes, and other services, which will empower clients to move into rental housing and maintain permanent housing for at least 6 months.	Homeless Assistance Case Management	Citywide	\$ 84,866.00	\$ 111,934.00
Amistad	El Camino a Casa 210 Dyer St. El Paso, Texas 79930	This program projects to serve 50 eligible individuals experiencing or at-risk of homelessness through the provision of rental assistance, wrap-around services, intensive case management.	Homeless Assistance Homeless Prevention Case Management		N/A	\$ 143,890.00
Community + Human Development - HHSP City Administrative Fees	City 3, 801 Texas Ave, 3rd Floor El Paso, Texas, 79901	Grantee will use approximately 6% for administrative cost. (taken from Youth Set aside)	N/A	N/A	\$ 29,154.00	\$ 6,026.00
HHSP BUDGET TOTAL					\$ 224,570.00	\$ 493,834.00



El Paso, TX

300 N. Campbell  
El Paso, TX

## Legislation Text

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**File #: 24-832, Version: 1**

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### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

Members of the City Council, Representative Josh Acevedo, (915) 212-0002

#### **AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Cynthia Renteria to the Historic Landmark Commission by Representative Josh Acevedo, District 2.



## Board Appointment Form

City Clerk's Office

Appointing Office	Representative Josh Acevedo, District 2
Agenda Placement	Consent
Date of Council Meeting	06/11/24
Name of Board	Historic Landmark Commission
Agenda Posting Language	
Appointment of Cynthia Renteria to the Historic Landmark Commission by Representative Josh Acevedo, District 2	
Appointment Type	Regular
Member Qualifications	
Dr. Renteria is a resident of the City of El Paso and holds vast experience in the cultural, social, and economic history of El Paso. She holds a Doctor of Philosophy and Master of Arts in history and has held positions that have supported historic assets and has worked alongside historic preservation organizations. She holds experience in implementing and evaluating programs, policies and procedures relating to historic preservation and heritage tourism.	
Nominee Name	Cynthia Renteria
Nominee Email Address	
Nominee Residential Address	
Nominee Primary Phone Number	
Residing District	District 2
City Employed Relatives	N/A
Board Membership	
N/A	
Real estate owned in El Paso County	
Previous Appointee	Victor Hurtado
Reason for Vacancy	Term Expired
Date of Appointment	06/11/24
Term Begins On	06/11/24
Term Expires On	06/10/26
Term	First Term

## Education

- Ph.D. History, University of Texas at El Paso, 2022  
Specialization: Borderlands History  
Dissertation Title: *Reimagining Paso del Norte: Historical Memory in the Borderlands, 1980-2015*
- M.A. History, New Mexico State University, 2011  
Specialization: Public History
- B.A. History, University of Texas at El Paso, 2007

## Professional Experience

- Heritage Tourism Coordinator, El Paso County Jan. 2024- present
- Develops, recommends, implements and evaluates county programs, policies, and procedures related to historic preservation; and heritage tourism
  - Oversees the Hotel Occupancy Tax funds and agreements for both maintenance and operations of county historic assets; to include the Concordia Cemetery and Mission Trail
  - Assists with economic development of the county through its promotion of historic sites and heritage tourism
  - Serves as the main point of contact and support for the operations and maintenance of the historic assets
  - Provides professional judgment in interpreting proposed alterations to historic buildings and apply guidelines that pertain to historic buildings and other historic properties with specific reference to practical application of the Secretary of Interior's Standards for the Treatment of Historic Properties
  - Translates the goals, objectives and policy of the Commissioners Court into programs, projects and activities
  - Monitors and makes recommendations on threats to historic landmarks
  - Works collaboratively with other City, State, County and national historical commissions and other historic preservation organizations
- Senior Policy Advisor, Office of County Commissioner David Stout Dec. 2022 – Dec. 2023
- Specialized in policy areas related to immigration, public health, binational affairs, heritage tourism, historic preservation, veteran affairs, quality of life, and investment in the workforce
  - Led and facilitates project team meetings to identify and resolve issues impacting project success
  - Provides strategic vision and tactical direction for the effective development, implementation, and attainment of the goals and operations of the precinct 2 office
  - In collaboration with the County Economic Development Department coordinated the heritage program Corazón, Historia, Raíces focused on highlighting hidden histories within precinct 2 and includes a series of guided history tours, pop-up exhibit, and a mural
  - As directed participated in place of the Commissioner as a representative or liaison of the precinct 2 office
  - Developed and sustains relationships with community partners for potential funding opportunities and/or collaborative policy work
  - Drafted and reviewed newsletters, public service announcements, press statements, and scripts for the Commissioner

Public Policy Analyst, Office of County Commissioner David Stout

Dec. 2021 – Dec. 2022

- Researched and gather materials regarding policy development and analysis
- Drafted correspondence and any technical reports, briefs, news releases, white papers
- Attended and participated in professional group meetings as assigned and stays abreast of current trends and innovations specific to policy area specialization and other priorities as identified by the Commissioner
- Assisted with monitoring and ensuring compliance of policies and procedures, maintains office budget, and performs administrative tasks to support daily office operations
- Communicated with constituents and provided exceptional customer service and maintained administrative files, references, and follow up files

Director of Community Development and Cultural Inclusion, El Calvario IAC

Aug. 2021 – Dec. 2021

- Drove the creation of new community development initiatives and recommendations to El Calvario IAC Executive director, board, and leadership team
- Built and maintained community partnerships in order to increase and execute programming
- Identified funding sources and assisted with relevant grant writing and reporting
- Ensured economic development plans promoted cultural competency and inclusion via programming based on history, development of community dialogues, workshops, and art projects
- Documented the El Calvario story, including its connection to the Mesquite Historic District
- Developed El Calvario's social and economic voice and policies as a cultural/historical/economic site with exhibits and displays
- Developed a strategic plan for legal services for immigrants or mixed status families in Southern New Mexico

## **Language Skills**

Fluent in Spanish

## **Honors and Awards**

Frances G. Harper Dissertation Research Award, 2021

Tom Lea Research Fellowship, 2015

New Mexico State University, Hispanic Caucus, Diversity and Leadership Award, 2011

New Mexico State University Hull Scholar, 2009-2010

## **Select Public History Projects**

Public Historian Consultant, La Mujer Obrera

Sept. 2022 – present

- Principal Investigator for the community-based archives from the Mellon Foundation
- Working with the organization to introduce and implement best practices of archival principles
- Collections care, including the acquisition of new materials, physical and digital storage fees, and access and preservation efforts
- Develop a records management and archiving policy
- Provide oral history workshops and technology workshops
- Wrote the grant proposal narrative, budget, cover letter, and continue grant reporting

Bracero Exhibit, UTEP, Centennial Museum

Sept. 2017

- Liaison for the Border Farmworker Center to the Centennial Museum
- Facilitated a temporary loan of the artifacts and documents
- Wrote and contributed two exhibit text panels about the current condition of farmworkers and a call to action that visitors could take to support the farmworker community.
- Ensured the safe return of all artifacts and historic documents to the Border Farmworker Center



Brown v. Board of Education to Ferguson:

Fostering Dialogue on Education, Incarceration and Civil Rights

Oct. 2015 – Oct. 2016

- Funded by the International Coalition of Sites of Conscience (ICSC) with support by U.S. Institute of Museum and Library Services
- Assisted with the development of a new dialogue model on behalf of La Mujer Obrera (LMO), community partner of the UTEP Borderlands Public History Lab
- Facilitated intergenerational community dialogues focused on education equity and the Mexican schools of South El Paso
- Trained youth leaders from the LMO youth group to develop and facilitate dialogues

The Vision and The Legacy of La Mujer Obrera, Museo Maychen

May 2015 – Dec. 2015

- Co-curated an exhibit that focused on bridging the history of the organization from its founding to the present mission post-NAFTA.
- Identified historical photos, documents, wrote exhibit text
- Collaborated with the museum team on exhibit design, and installation
- Developed programming for the exhibit that highlighted the philosophy and practice of the organization
- Networked with outside organizations on dialogue projects and archive projects
- Helped coordinate, plan, and participated in fundraisers and cultural events

National Dialogues on Immigration

Aug. 2013 – Dec. 2014

- Assisted with the development of a dialogue format for the National Immigration Dialogues, funded by the International Coalition of Sites of Conscience (ICSC) through funding from the National Endowment for the Humanities and the Institute for Museum and Library Sciences.
- Facilitated dialogues about historical and contemporary topics related to immigration and border culture at community location and at The University of Texas at El Paso
- Set up exhibits that complimented the dialogue topic
- Arranged receptions, catering and/or refreshments

Writing Ourselves into History, Wise Latina International Summit

June 2014

- Co-curated the exhibit *Writing Ourselves into History*, featuring the contributions of Chicana/Latina writers and historians
- Wrote the introduction and text panels
- Designed the exhibit set up for a temporary installation
- Consulted on exhibit installation and design

Chicano Power: The Legacy of the Chicano Movement in El Paso

Jan. 2010- May 2010

- *Chicano Power: The Legacy of the Chicano Movement in El Paso* was a community oral history project and exhibit created in collaboration with community members and La Mujer Obrera
- Conducted Oral Histories, audio and video
- Transcribed oral histories
- Assisted with the exhibit installation
- Added an additional section and developed an exhibit guide in July and August 2012

## **Publications**

“Three Views of a Revolution,” Review of Mario Garcia, *The Chicano Generation: Testimonios of the Movement*, El Paso Times, April 12, 2016

Accessible at <http://www.elpasotimes.com/story/entertainment/books/2016/04/12/book-review-3-views-revolution/82937208/>

“Hardball History: Choosing Sides,” History@Work, National Council on Public History. Accesible at <http://publichistorycommons.org/hardball-history-renteria/> (2015)

Co-author, *Unidos sin fronteras: The Living History of the Border Farmworker Center*, A Museo Urbano Project, 2013

Co-author, *El Segundo Barrio: Una Historia Viviente*. Department of History UTEP: Translating Borders Public History Project, 2006

## **Service**

Board Member, Justice for Our Neighbors (JFON) El Paso, 2022 – 2023

Commissioner, City of El Paso Districting Commission, 2021 – 2022

Board Member, Washington-Delta Neighborhood Association, 2020 – present

Co-chair and member, Heritage Tourism Advisory Committee, Texas State Senator Jose Rodriguez, District 29, 2017-2020

Co-Founder, Association of Applied Border History (AABH), UTEP Student Organization, 2015

Board Member, La Mujer Obrera, 2015

## **Select Conference Presentations**

### **Organized**

Western History Association, virtual, 2021

Panel: “Anti-Mexican Violence, Terrorism, and Attempted Community Destruction”

National Council on Public History, April 2018, Las Vegas, Nevada

Community Viewpoint: “Between Memory and Forgetting: The Bracero Archives of the Border Farmworker Center”

### **Invited**

Western History Association, October 2019, Las Vegas, Nevada

Panel: “Public History of the Borderlands: A Showcase of Recent Projects”

The Labor and Working-Class History Association, June 2017, Seattle Washington

Panel: “Gender Politics and Labor Activism in Mexican American History”

Society for Applied Anthropology, March 2017, Santa Fe, New Mexico

Panel: “Cultural Heritage Tourism in the El Paso del Norte Border Region”

National Council on Public History, April 2016, Baltimore, Maryland

Panel: “Painting Dangerous Memories on Historic Landscapes”

National Council on Public History 2015, Nashville, Tennessee

Panel: “Hardball History: Public Historians on the Edge of Politics, Advocacy, and Activism”

National Council on Public History 2013, Ottawa, Ontario Province

Panel: “The Contestation, Appropriation, and Production of Historical Memory in the Borderlands”



El Paso, TX

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Legislation Text

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**File #: 24-819, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

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*No Title's, No emails. Please use ARIAL 10 Font.*

Members of the City Council, Representative Art Fierro, (915) 212-0006

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Bernie Olivas to the Greater El Paso Civic, Convention and Tourism Advisory Board by Representative Art Fierro, District 6.



## Board Appointment Form

City Clerk's Office

Appointing Office	Representative Brian Kennedy, District 1
Agenda Placement	Consent
Date of Council Meeting	06/11/24
Name of Board	City Accessibility Advisory Committee
Agenda Posting Language	
Appointment of Benjamin Cohen to the City Accessibility Advisory Committee by Representative Brian Kennedy, District 1.	
Appointment Type	Regular
Member Qualifications	
Mr. Cohen currently works in the digital accessibility industry. He has family members who are legally blind and was born with heart defects.	
Nominee Name	Benjamin Cohen
Nominee Email Address	
Nominee Residential Address	
Nominee Primary Phone Number	
Residing District	District 5
City Employed Relatives	N/A
Board Membership	
N/A	
Real estate owned in El Paso County	
Previous Appointee	Marc Salazar
Reason for Vacancy	Term Expired
Date of Appointment	05/11/24
Term Begins On	03/17/24
Term Expires On	03/16/26
Term	First Term

## Experience

### **Level Access | Remote | September 2022 – Present**

#### **Account Manager**

Work with customers to evaluate and remediate their digital properties to improve their digital accessibility. Guide customers through ADA litigation and help organizations integrate digital accessibility into their design processes, product launches, and company culture.

- Proficient and knowledgeable in ADA standards and best practices
- Currently studying for Certified Professional in Accessibility Core Competencies (CPACC) certification from the International Association of Accessibility Professionals (IAAP)
- Able to guide B2B and B2C businesses through the process of establishing a culture of accessibility, both internally and within their customer facing products

### **United Site Services | Colorado Springs, CO | December 2020 – July 2022**

#### **Account Manager – Southern Colorado**

Responsible for all sales, billing, and customer management activities in Southern Colorado, spanning seventy-six zip codes, for customers spending over \$25,000 per year and projects in excess of \$5,000,000.

### **Air Force Academy Athletic Corporation (AFAAC) | Colorado Springs, CO | May 2019 – August 2020**

#### **Account Executive – Ticket Sales**

Sell Air Force Athletics ticket packages and game day assets to businesses and individual consumers via aggressive telemarketing, face-to-face presentation, community engagement, networking events and email. Responsible for executing game day assets and group outings to the highest degree possible, giving groups and fans an experience to remember.

### **Verizon Communications Inc. | Lubbock, TX | November 2016 – May 2019**

#### **Solutions/Business Specialist**

Initiate and close sales for a leading provider of telecommunications solutions. Sell service renewals and activate new service agreements to expand our customer base within the Lubbock, TX territory. Build relationships with key decision makers at local businesses and provide the best solutions for their needs.

## Education

**Texas Tech University | Lubbock, TX | January 2013 – May 2016 | Bachelor of Arts In Advertising |  
Minor in Sports Management**

**University of Texas at El Paso | August 2012 – December 2012 | General Studies**



El Paso, TX

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Legislation Text

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**File #: 24-822, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

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Members of the City Council, Representative Art Fierro, (915) 212-0006

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Timothy Haddox to the Parks and Recreation Advisory Board by Representative Art Fierro, District 6.



## Board Appointment Form

City Clerk's Office

Appointing Office	Representative Art Fierro, District 6
Agenda Placement	Consent
Date of Council Meeting	06/11/24
Name of Board	Parks and Recreation Advisory Board
Agenda Posting Language	
Appointment of Timothy Haddox to the Parks and Recreation Advisory Board by Representative Art Fierro, District 6.	
Appointment Type	Regular
Member Qualifications	
Graduated from the University of Texas - El Paso — B.A. Political Science Teacher of the Year Valle Verde ECHS 2023-2024 Golden Spear Award for outstanding STAAR EOC English II scores 2021-2022	
Nominee Name	Timothy Haddox
Nominee Email Address	
Nominee Residential Address	
Nominee Primary Phone Number	
Residing District	District 3
City Employed Relatives	N/A
Board Membership	
N/A	
Real estate owned in El Paso County	
N/A	
Previous Appointee	Fernando Delgado
Reason for Vacancy	Resigned
Date of Appointment	06/11/24
Term Begins On	10/15/21
Term Expires On	10/14/25
Term	Unexpired Term

# Timothy Haddox

Experienced Educator with Proven Leadership Skills Seeking to Drive Educational Excellence and Empower Student Success.

## EXPERIENCE

### **Valle Verde Early College High School, YISD, El Paso, TX — Pre-AP English Teacher**

AUGUST 2016 - PRESENT

As an accomplished Pre-AP English teacher, I received recognition as the 2023-2024 campus Teacher of the Year and consistently achieve the best STAAR EOC English II scores in my district. My leadership roles as club sponsor, committee member, and campus leader demonstrate my commitment to student success and faculty collaboration. As a tech-savvy educator, I integrate cutting-edge instructional technology to enhance learning outcomes and meet Texas Education Standards. As an Apple Teacher I have experience integrating Apple technology into the learning environment via Clips, Keynote, Pages, iMovie, etc. to create engaging lessons. I design innovative curricula that prioritize inclusivity and differentiation, ensuring learning experiences that meet diverse learning needs (special education and emergent bilingual populations included). I possess strong data analysis skills that allow me to assess progress and drive student success. My expertise in classroom management and communication ensures a safe and productive learning environment for all students. I also have experience co-writing the district curriculum guide, integrating College Board material and state standards into our district pacing guides.

### **EPISD/TISD/SEISD, El Paso, TX — Substitute Teacher**

JANUARY 2016 - AUGUST 2016

As a sub, I bring adaptable teaching methods, strong classroom management skills, and the ability to quickly build positive relationships with students/faculty to provide an effective learning environment.

### **State Farm & HUB International, El Paso, TX — Insurance Agent**

FEBRUARY 2012 - JANUARY 2016

As an insurance agent, I specialized in evaluating and minimizing risks, a skill that seamlessly aligned with an educator's ability to identify and overcome potential challenges, ensuring the smooth and secure integration of innovative learning solutions.

## EDUCATION (Continued on next page.)

## CERTIFICATION

TEA English Language Arts & Reading Grades 7 - 12

TEA English as a Second Language (ESL) Grades 7 - 12

Apple Teacher at an Apple Distinguished School

## AWARDS

Teacher of the Year Valle Verde ECHS 2023-2024

Golden Spear Award for outstanding STAAR EOC English II scores 2021-2022

## COMMITTEES

TEA STAAR English II Reading Item Review

Campus Educational Improvement (CEIC)

District Educational Improvement (DEIC)

Language Proficiency Assessment Committee

CollegeBoard Pre-AP District Task Force

## SKILLS

Classroom management, instruction, assessment.

Curriculum development,



## EDUCATION

**University of Texas - El Paso** — *B.A. Political Science*

GRADUATED 2012

**University of Notre Dame**

ATTENDED 2001 - 2005

## PROJECTS

**Raise Your Hand Texas**, Austin, TX — *Teacher Advocate*

**Apple Distinguished School Academy 2019**, Chicago, IL —  
*Apple Teacher*

**Apple Continuing Research Practices Workshop**, Sunnyvale,  
CA — *Apple Teacher*

assessment, and evaluation.

Communication.

Technology integration.

Leadership.

Flexibility.

Cultural competence, equity,  
and inclusivity.



El Paso, TX

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Legislation Text

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**File #: 24-807, Version: 2**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

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*No Title's, No emails. Please use ARIAL 10 Font.*

Members of the City Council, Representative Brian Kennedy, (915) 212-0001

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Benjamin Cohen to the City Accessibility Advisory Committee by Representative Brian Kennedy, District 1.



## Board Appointment Form

City Clerk's Office

Appointing Office	Representative Brian Kennedy, District 1
Agenda Placement	Consent
Date of Council Meeting	06/11/24
Name of Board	City Accessibility Advisory Committee
Agenda Posting Language	
Appointment of Benjamin Cohen to the City Accessibility Advisory Committee by Representative Brian Kennedy, District 1.	
Appointment Type	Regular
Member Qualifications	
Mr. Cohen currently works in the digital accessibility industry. He has family members who are legally blind and was born with heart defects.	
Nominee Name	Benjamin Cohen
Nominee Email Address	
Nominee Residential Address	
Nominee Primary Phone Number	
Residing District	District 5
City Employed Relatives	N/A
Board Membership	
N/A	
Real estate owned in El Paso County	
Previous Appointee	Marc Salazar
Reason for Vacancy	Term Expired
Date of Appointment	05/11/24
Term Begins On	03/17/24
Term Expires On	03/16/26
Term	First Term

## Experience

### Level Access | Remote | September 2022 – Present

#### **Account Manager**

Work with customers to evaluate and remediate their digital properties to improve their digital accessibility. Guide customers through ADA litigation and help organizations integrate digital accessibility into their design processes, product launches, and company culture.

- Proficient and knowledgeable in ADA standards and best practices
- Currently studying for Certified Professional in Accessibility Core Competencies (CPACC) certification from the International Association of Accessibility Professionals (IAAP)
- Able to guide B2B and B2C businesses through the process of establishing a culture of accessibility, both internally and within their customer facing products

### United Site Services | Colorado Springs, CO | December 2020 – July 2022

#### **Account Manager – Southern Colorado**

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### Air Force Academy Athletic Corporation (AFAAC) | Colorado Springs, CO | May 2019 – August 2020

#### **Account Executive – Ticket Sales**

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### Verizon Communications Inc. | Lubbock, TX | November 2016 – May 2019

#### **Solutions/Business Specialist**

Initiate and close sales for a leading provider of telecommunications solutions. Sell service renewals and activate new service agreements to expand our customer base within the Lubbock, TX territory. Build relationships with key decision makers at local businesses and provide the best solutions for their needs.

## Education

**Texas Tech University | Lubbock, TX | January 2013 – May 2016 | Bachelor of Arts In Advertising |  
Minor in Sports Management**

**University of Texas at El Paso | August 2012 – December 2012 | General Studies**



El Paso, TX

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Legislation Text

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**File #: 24-821, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

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Members of the City Council, Representative Josh Acevedo, (915) 212-0002

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Silvia Serna to the Fair Housing Task Force by Representative Josh Acevedo, District 2.



## Board Appointment Form

City Clerk's Office

Appointing Office	Representative Josh Acevedo, District 2
Agenda Placement	Consent
Date of Council Meeting	06/11/24
Name of Board	Fair Housing Task Force
Agenda Posting Language	
Appointment of Silvia Serna to the Fair Housing Task Force by Representative Josh Acevedo, District 2	
Appointment Type	Regular
Member Qualifications	
Ms. Serna is a resident of El Paso and an active member in the community. She has experience in the law enforcement/judicial system and obtains interest in matters relating to fair housing and non-profit housing.	
Nominee Name	Silvia Serna
Nominee Email Address	
Nominee Residential Address	
Nominee Primary Phone Number	
Residing District	District 2
City Employed Relatives	N/A
Board Membership	
N/A	
Real estate owned in El Paso County	
N/A	
Previous Appointee	Andi Tiscareno
Reason for Vacancy	Resigned
Date of Appointment	06/11/24
Term Begins On	06/11/24
Term Expires On	04/30/25
Term	Unexpired Term

Performance-driven, forward-thinking Management Professional offering 25 years of comprehensive experience in fast-paced, customer-driven public service. Possess an effective hands-on leadership style that inspires trust and confidence amongst superiors, peers and subordinates. Highly adept at breaking down barriers to progress and implement the change necessary to achieve an organization's long-term strategic imperatives.

**CORE COMPETENCIES:**

- |                                    |                                    |                        |
|------------------------------------|------------------------------------|------------------------|
| • Strategic Planning               | Operations & Facilities Management | Budget Management      |
| • Program Development              | Cross-Functional Leadership        | Staff Development      |
| • Multi-Site Operations Management | Employee Rewards/Incentives        | Safety/Risk Management |
| • Customer Service                 | Grant Writing Experience           | Regulatory Compliance  |

*Bilingual: Fluent in English and Spanish*

**PROFESSIONAL EXPERIENCE**

**34<sup>th</sup> Judicial District Attorney's Office, El Paso, Texas**

**Grant Analyst**

**5/2021-Present**

- Write and manage all grants for the District Attorney's Office to include creating very complex reports submitted to the granting agencies such as the Governor's Office of Texas, TxDOT, and Bureau of Justice
- Manage the budgets for the grants to include over a couple of three million dollar budgets
- Create and manage all the budget adjustments for the grants
- Work in conjunction with other County offices such as Purchasing, County Auditors, County Attorneys and County Administration for the acceptance of grants and vetting processes.

**346<sup>th</sup> District Court – El Paso Veterans Treatment Court Program, El Paso, Texas**

**Veteran Program Director**

**7/2012 – 12/2020**

- Developed and implemented policy for the El Paso Veterans Treatment Court Program.
- Make presentations to the community to include the many veteran organizations and provide education regarding the statutory requirements for eligibility placement.
- Perform all the case management duties to include preparing files for docket, staffing cases with the Team and follow-up with attorneys.
- Prepare and maintain solicitation of grants for Veterans Treatment Court.
- Provide supervision of staff to include compliance officers, counselor and interns.
- Developed, designed & maintain the county-wide web page for the Veterans Court.

**West Texas Community Supervision & Corrections Department (WTCSCD), El Paso, Texas**

**Officer-in- Charge/Supervisor**

**2005 to 2012**

Directly responsible for the day-to-day operations of a 24/7, 90 bed Male/Female Residential Facility. Supervise 30+ employees and direct all residential services for three separate shifts.

- Oversee all of the Residential Services that covers Transportation, Counseling, Housing, Dining Facility, Correctional Control Area and Administration.
- Assist and conduct monthly Team Meetings regarding admission, discharge and transfers of Residents from the Facility.

- Direct all incoming placements to the Residential Facility to appropriate staff or outside services.
- Oversee the performance counseling/evaluation of all department employees and manage their training.
- Oversee the implementation of Resident's case files be kept in accordance with operational procedures and the Criminal Justice Assistance Division (CJAD).
- Manage the Probation Officers, Counselors, and Employment Special, ensuring the Facility's success is met by visiting with Resident's and their families on a weekly basis, conducting and overseeing Resident's meetings and maintaining high employment ratios.
- Manage all court related duties in conjunction with the District & County Courts, CPS, Drug Court, INS, APS and other governmental entities.
- Oversee the safety and security of the Residential Facility as mandated by CJAD, to include the residential living quarters, residents, customers and staff.

**Key Achievements**

- Implemented training on the specialization of services to the DA's office, Executive Staff and the Probation Department.
- Set up infrastructure for the Residential Facility that ensured the Facility was able to meet the expectation of CJAD requirements.
- Implemented safety policy and procedures for the Facility, i.e., fire drills, evacuation and hazardous chemical spills.
- Implemented transportation policy and procedure to insure timeliness of Resident's pickup/dropoff.
- Implemented risk procedures to include accident investigation, work related injury/illness and safety of staff.

**WTCSCD, El Paso, Texas****2001 to 2005****Senior Probation Officer, Texas Satellite, El Paso, Texas**

- Managed the entire Probation Office Satellite of 13 Officers, 2 Secretaries and Interns.
- Planned, organized and supervised court appearances and duties for Probation Officers.
- Oversee all probation functions and services be in accordance with CJAD standards.
- Met regulatory standards set by CJAD, County and Texas Department of Health.
- Conducted performance counseling/evaluation of all satellite employees.

**WTCSCD, El Paso, Texas****1998 to 2001****Deputy Probation Officer, Court Services, El Paso, Texas**

- Engaged in professional duties related to serving the district needs of the District & County Courts.
- Served as liaison Officer for the Courts.
- Conducted Internal Affairs investigations for the Department.
- Conducted criminal backgrounds on defendants.
- Met regulatory standards set by CJAD.

**WTCSCD, El Paso, Texas****1996 to 1998****Deputy Probation Officer, Texas Satellite, El Paso, Texas**

- Supervised caseloads of up to 200+ Probationers.
- Conducted monthly statistical reports.
- Performed tasks as court ordered for the needs of the Probationers.
- Met regulatory standards set by CJAD.



**INTERMEDIATE SANCTION FACILITY, El Paso, Texas****1995 to 1996****Case Manager II**

- Conducted classroom curriculum to include Anger Management, Life Skills and Substance Abuse Education to Probationers.
- Compiled monthly progress reports.
- Oversee the implementation and development of classroom curriculum.
- Managed caseload.
- Acting Director of Programs

**R.E. THOMASON GENERAL HOSPITAL, El Paso, Texas****1989 to 1993****Employee Assistance Program Coordinator, Human Resources**

- Developed the EAP from concept.
- Provided assessment services, evaluation and referral services to employees.
- Developed extensive network of community support agencies.

**DISTRICT ATTORNEY'S OFFICE, El Paso, Texas****1988-1989**

- Victim Services Coordinator
- Paralegal

**CENTRAL APPRAISAL DISTRICT, El Paso, Texas****1984-1988**

- Secretary for the Appraisal Review Board

**LULAC PROJECT AMISTAD, El Paso, Texas****1980-1984**

- Clerk
- Secretary

**EDUCATION****Master of Arts, Organizational Management****2001**

University of Phoenix, Santa Teresa, New Mexico

**Bachelor of Science, Criminal Justice****1994**

University of Texas at El Paso, El Paso, Texas

**NOTABLE ACHIEVEMENTS****Congressional Recognition, Congressman Beto O'Rourke,****2015**

for support of the Veterans in the community as Veterans Program Director of the El Paso Veterans Treatment Court Program

**Recognition for outstanding support for Veterans from the El Paso Veterans and Riders Association****2015****Recognition by the Paratroopers of the Benavidez-Patterson 82<sup>nd</sup>****2013**

Airborne Division for support of the active duty and veteran military Community

**Leadership of El Paso, Class 28****2006**





El Paso, TX

300 N. Campbell  
El Paso, TX

## Legislation Text

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**File #: 24-782, Version: 1**

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### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

##### **All Districts**

Tax Office, Maria O. Pasillas, (915) 212-1737

#### **AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

A refund to CoreLogic/Dovenmuehle Mtg, in the amount of \$21,909.32 for an overpayment made on December 18, 2023 of 2023 taxes, Geo. # S373-999-0020-2050. This action would allow us to comply with state law which requires approval by the legislative body of refunds of tax overpayments greater than \$2,500.00.

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

**AGENDA DATE:** June 11, 2024

**PUBLIC HEARING DATE:** N/A

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Maria O. Pasillas, (915) 212-1737

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** Goal 6 – Set the Standard for Sound Governance and Fiscal Management

**SUBGOAL:** 6.11 Provide efficient and effective services to taxpayers

**SUBJECT:**

A refund to CoreLogic/Dovenmuehle Mtg, in the amount of \$21,909.32 for an overpayment made on December 18, 2023 of 2023 taxes, Geo. # S373-999-0020-2050. This action would allow us to comply with state law which requires approval by the legislative body of refunds of tax overpayments greater than \$2,500.00.

**BACKGROUND / DISCUSSION:**

Approve property tax overpayment refunds greater than \$2,500.00, per the Texas Property Tax Code, Sec. 31.11 – Refunds of Overpayments or Erroneous Payments.

**PRIOR COUNCIL ACTION:**

Council has considered this previously on a routine basis.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?** ☒ YES ☐ NO

**PRIMARY DEPARTMENT:** Tax Office

**SECONDARY DEPARTMENT:** N/A

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

**DEPARTMENT HEAD:**



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

THE CITY OF EL PASO CONSOLIDATED TAX OFFICE

221 N. Kansas, Suite 300

El Paso, Texas 79901

Phone (915) 212-0106, Fax (915) 212-0108, Email: taxforms@elpasotexas.gov

CITY TAX OFFICE

MAY 24 2024

APPLICATION FOR TAX REFUND

The Consolidated Tax Office collects property taxes for all eligible property taxing entities within El Paso County.

APPLICANT MUST PROVIDE THE FOLLOWING INFORMATION:

5373-999-0020-2050

Refund To:  CoreLogic/Dovenmuehle Mtg		Phone: HOME:  WORK: 877-442-2797		Property ID# (One application per account)  704855	
Address (mail refund to :)  PO Box 9205 Coppel, TX 75019		Property Address: And/or Legal Description: 6315 Escondido Dr, El Paso, TX 79912			
Tax year requested:	Date payment made:	Check No. & Date, if known:		Amount of taxes paid:	Amount of refund requested:
1. 2023	12/27/2023	00082193 12/18/2023		21,909.32	21,909.32
2.					
3.					
TOTAL AMOUNT (sum of the above amounts)				21,909.32	

(City Council approval required if over \$2,500)

**REQUIRED:** Copy of original receipt, front & back of negotiated check, OR  
bank statement showing item cleared (both the bank & taxpayer name must appear)

**REASON FOR OVERPAYMENT:** Funds were disbursed in error on parcel #S37399900202050 - Prop ID #704855  
CoreLogic pays taxes for many lenders including Dovenmuehle Mtg. CoreLogic paid these taxes in error as we do not have  
interest in this property and taxes due on this parcel should be paid by the borrower on file. CoreLogic would like to recover  
funds in the amount of \$21,909.32 from your office.

"I certify that information given to obtain this refund is true and correct."

Darlene Smith

Date: 05/24/2024

Requestor signature:

Darlene Smith

Sr. Associate Operations

Printed name:

Title:

Any person knowingly submitting false entries is subject to: (1) Imprisonment of 2 to 10 years, or \$5,000 fine, or both.

(2) Imprisonment up to one year, or fine not over \$2,000, or both. (Sec 37.10 Penal Code) An application for a refund must be made within 3 years after  
the date of the payment or the taxpayer waives the right to the refund (Sec 31.11 (c)).

TAX OFFICE Entry: ( ) REFUND APPROVED

Tax Office Approval: Maria O. Pasillas Date: 5/24/24  
JMC 5/28/24 Date: \_\_\_\_\_  
(Placed on City Council Agenda over \$2,500)

- ( ) DISAPPROVED ( ) Returned to sender ( ) See below/attached  
( ) Required documentation (Tax receipt, Canceled Check, Bank Statement, or Other) not submitted.  
( ) Record of overpayment not found on this property.  
( ) Property not found as identified, resubmit after correction.  
( ) Other: \_\_\_\_\_



Legislation Text

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File #: 24-772, Version: 1

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**CITY OF EL PASO, TEXAS**  
**LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Purchasing and Strategic Sourcing, K. Nicole Cote, (915) 212-1092

Streets and Maintenance, Richard J. Bristol, (915) 212-7000

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

The linkage to the Strategic Plan is subsection 7.2 - Improve competitiveness through infrastructure improvements impacting the quality of life.

**Award Summary:**

The request that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue a Purchase Order to Pavement Marking LLC dba PMI Pavement Marking LLC, referencing Contract 2021-1263 Thermoplastic Striping. This will be a change order to increase the award by \$79,750.00 for a total amount not to exceed \$743,750.00.

Department:	Streets & Maintenance
Award to:	Pavement Marking LLC dba PMI
	Pavement Marking LLC
City & State:	El Paso, Texas
Current Contract Estimated Amount:	\$664,000.00
Change Order Amount:	\$ 79,750.00
Total estimated Amount not to Exceed:	\$743,750.00
Account(s):	532-1000-32020-522270-P3254
Funding Source(s):	General Fund
District(s):	All

This was a Low Bid Award - Unit Price Contract.

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

**AGENDA DATE:** June 11, 2024  
**PUBLIC HEARING DATE:** Not Applicable

**CONTACT PERSON(S) NAME AND PHONE NUMBER:**

Richard J. Bristol, Streets and Maintenance Director, (915) 212-7000  
K. Nicole Cote, Managing Director (915) 212-1092

**DISTRICT(S) AFFECTED:** All

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

**SUBGOAL:** 7.2 - Improve competitiveness through infrastructure improvements impacting the quality of life

**SUBJECT:**

Request that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue a Purchase Order to Pavement Marking, LLC dba PMI Pavement Marking LLC, referencing Contract 2021-1263 Thermoplastic Striping. This will be a change order to increase the award by \$79,750.00 for a total amount not to exceed \$743,750.00.

**BACKGROUND / DISCUSSION:**

This change order will add capacity to the current contract to allow on demand application of thermoplastic striping and markings on City owned right-of-way, in accordance with TXDoT Manual of Uniform Traffic Control Devices, as needed or required for special projects and/or maintenance activities.

**SELECTION SUMMARY:**

N/A

**CONTRACT VARIANCE:**

N/A

**PROTEST**

N/A

**PRIOR COUNCIL ACTION:**

On August 31, 2021 City Council approved the award of contract 2021-1263 Thermoplastic Striping to Pavement Marking, LLC dba PMI Pavement Marking LLC for a period of seven hundred fifty (750) consecutive calendar days and additional seven hundred fifty (750) consecutive calendar days option to extend for a total amount of \$664,000.00.

**AMOUNT AND SOURCE OF FUNDING:**

Amount: \$79,750.00  
Funding Source: General Fund  
Account: 532-1000-32020-522270-P3254

**TITLE 2, CHAPTER 2.92, Section 2.92-080 DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS**

Purchasing & Strategic Sourcing has provided the opportunity to disclose campaign contributions and donations.

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☐ YES ☐ NO

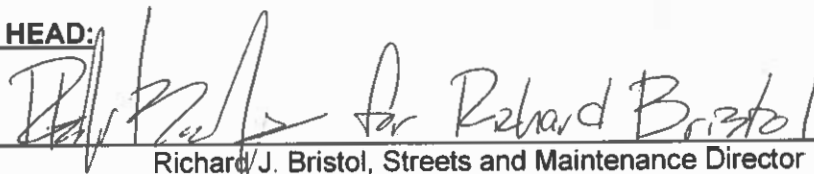
PRIMARY DEPARTMENT: Streets and Maintenance Department

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

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

DEPARTMENT HEAD:

A handwritten signature in black ink, appearing to read "Richard J. Bristol", is written over a horizontal line.

Richard J. Bristol, Streets and Maintenance Director



Project Form  
(Change Order)

\*\*\*\*\*

Please place the following item on the **Consent Agenda** for the City Council of **June 11, 2024.**

**Strategic Goal 7 - Enhance and Sustain El Paso's Infrastructure Network**

The linkage to the Strategic Plan is subsection 7.2 - Improve competitiveness through infrastructure improvements impacting the quality of life

**Award Summary:**

The request that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue a Purchase Order to Pavement Marking LLC dba PMI Pavement Marking LLC, referencing Contract 2021-1263 Thermoplastic Striping. This will be a change order to increase the award by \$79,750.00 for a total amount not to exceed \$743,750.00.

Department:	Streets & Maintenance
Award to:	Pavement Marking LLC dba PMI Pavement Marking LLC
City & State:	El Paso, Texas
Current Contract Estimated Amount:	\$664,000.00
Change Order Amount:	\$ 79,750.00
Total estimated Amount not to Exceed:	\$743,750.00
Account(s):	532-1000-32020-522270-P3254
Funding Source(s):	General Fund
District(s):	All

This was a Low Bid Award - Unit Price Contract.



Legislation Text

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**File #: 24-833, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Members of the City Council, Representative Art Fierro, (915) 212-0006

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Discussion and action to approve a Resolution declaring that the expenditure of District 6 discretionary funds, in an amount not to exceed \$2,000, to help sponsor the coffee breaks at this year's Mexico-USA Business Summit taking place June 26th-29th, 2024 in El Paso, Texas. This serves the municipal purpose of fostering local and international business growth by promoting the City of El Paso as an investment destination and presenting information to potential investors on economic incentives provided by the city for economic development.



Legislation Text

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**File #: 24-823, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**District 2**

Members of the City Council, Representative Josh Acevedo, (915) 212-0002

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Discussion and action to direct the Interim City Manager and City Attorney to identify appropriate cross-cutting solutions to longstanding hazards related to environmental conditions in the Chamizal Neighborhood, with specific emphasis on addressing the public health concerns of residents. Further, to collaborate with affected property owners and return to Council within 30 days with proposed recommendations for remediation.

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
AGENDA SUMMARY FORM**

**DEPARTMENT:** Mayor and Council

**AGENDA DATE:** June 11, 2024

**CONTACT PERSON NAME AND PHONE NUMBER:** City Representative Josh Acevedo (915)-212-0006

**DISTRICT(S) AFFECTED:** District 2

**STRATEGIC GOAL:** Goal 2 Set the Standard for A Safe & Secure City

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

Discussion and action to direct the Interim City Manager and City Attorney to identify appropriate cross-cutting solutions to longstanding hazards related to environmental conditions in the Chamizal Neighborhood, with specific emphasis on addressing the public health concerns of residents. Further, to collaborate with affected property owners and return to council within 30 days with proposed recommendations for remediation.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

N/A

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

N/A

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



Legislation Text

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File #: 24-797, Version: 1

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.  
No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Members of the City Council, Mayor Oscar Leeser, (915) 212-0021

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Discussion and action on a Resolution to appoint a member to the El Paso Water Utilities Public Service Board of Trustees in the area of expertise of Environmental or Health, as recommended by the El Paso Water Utilities Public Service Board Selection Committee:

Ranked 1st: Dr. Hector Ocaranza

Ranked 2nd: Dr. Aldo Maspons

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

**DEPARTMENT:** Office of the Mayor

**AGENDA DATE:** June 11, 2024

**CONTACT PERSON NAME/PHONE NUMBER:** Mayor Oscar Leeser (915) 212-0021

**DISTRICT(S) AFFECTED:** All Districts

**SUBJECT: Approve the following Resolution**

Discussion and action on a Resolution to appoint a member to the El Paso Water Utilities Public Service Board of Trustees in the area of expertise of Environmental or Health, as recommended by the El Paso Water Utilities Public Service Board Selection Committee:

Ranked 1<sup>st</sup>: Dr. Hector Ocaranza

Ranked 1<sup>st</sup>: Dr. Andrea Tawney

Ranked 2<sup>nd</sup>: Dr. Aldo Maspons

**BACKGROUND / DISCUSSION:**

The second term of the Public Service Board member serving in the area of expertise of Environmental or Health, Dr. Ivonne Santiago, expires on July 1, 2024. Dr. Santiago is not eligible to be appointed for another term since board members are eligible to serve a maximum of two terms.

On May 22, 2024, as required by Ordinance Number 017167, the El Paso Water Utilities Public Service Board Selection Committee (hereinafter "Selection Committee") met and reviewed the applications submitted by the qualified applicants. Mayor Leeser served as Chairperson of the Selection Committee. The Selection Committee's membership consists of the Public Service Board members and eight persons appointed by City Council. The Selection Committee now forwards a slate of three qualified candidates in order of their ranking to the City Council for consideration and appointment.

Advertisements for applicants interested in this position were placed in the El Paso, Inc., and on the City of El Paso and El Paso Water websites.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

Yes. The City Council approved a Resolution on February 13, 2024, appointing Dr. Anna Gitter to fill a vacancy of the El Paso Water Utilities Public Service Board of Trustees in the area of expertise of Communications, Public Administration or Education.

**AMOUNT AND SOURCE OF FUNDING:**

The El Paso Water Utilities Public Service Board budget.

**BOARD/COMMISSION ACTION:**

On May 22, 2024, the Selection Committee approved a Resolution selecting and ranking the qualified the top three qualified applicants in the area of expertise of Environmental or Health. The Committee's Resolution is attached.

## **RESOLUTION**

**WHEREAS**, a vacancy in the El Paso Water Utilities Public Service Board will occur on July 1, 2023 with the expiration of the second term of Dr. Santiago, who filled the position which required expertise in the area of Environmental or Health; and

**WHEREAS**, the City of El Paso adopted Ordinance Number 017167 which requires that any vacancy in the membership of the El Paso Water Utilities Public Service Board be filled by the City Council; and

**WHEREAS**, the City of El Paso by Resolution established the El Paso Water Utilities Public Service Board Selection Committee, to be comprised of the members of the Public Service Board and such additional members as appointed by the City Council to assist City Council in selecting eligible candidates to fill the vacancy; and

**WHEREAS**, under the Resolution, the El Paso Water Utilities Public Service Board Selection Committee reviews resumes submitted by persons interested in filling the vacant position and submits to the City Council the names and the ranking of three eligible candidates; and

**WHEREAS**, a quorum of the El Paso Water Utilities Public Service Board Selection Committee met on May 22, 2024, pursuant to the Texas Open Meetings Act and approved the selection and ranking of the top three eligible candidates for consideration and appointment by City Council.

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

**THAT**, a quorum of the El Paso Water Utilities Public Service Board Selection Committee met on May 22, 2024 pursuant to the Texas Open Meetings Act and approved the selection and ranking the following eligible candidates for consideration and appointment by the City Council to fill a vacancy on the El Paso Water Utilities Public Service Board in the area of Environmental or Health:

Ranked 1<sup>st</sup>: Dr. Hector Ocaranza

Ranked 1<sup>st</sup>: Dr. Andrea Tawney

Ranked 2<sup>nd</sup>: Dr. Aldo Maspons

**THAT**, the El Paso City Council hereby appoints \_\_\_\_\_ to fill the vacancy on the El Paso Water Utilities Public Service Board in the area of Environmental or Health. The term of appointment shall commence on July 10, 2024, and shall be for a four (4) year term.

PASSED, APPROVED and ADOPTED this \_\_\_\_\_ day of June, 2024.


THE CITY OF EL PASO

\_\_\_\_\_  
Oscar Leoser  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

 (for)  
\_\_\_\_\_  
Karla M. Nieman  
City Attorney



## RESOLUTION

**WHEREAS**, a vacancy in the El Paso Water Utilities Public Service Board will occur on July 1, 2024 with the expiration of the second term of Dr. Ivonne Santiago, who filled the position, which required expertise in the area of Environmental or Health;

**WHEREAS**, the City of El Paso adopted Ordinance Number 017167 which requires that any vacancy in the membership of the El Paso Water Utilities Public Service Board be filled by the City Council; and

**WHEREAS**, the City of El Paso by Resolution established the El Paso Water Utilities Public Service Board Selection Committee, to be comprised of the members of the Public Service Board and such additional members as appointed by the City Council to assist City Council in selecting eligible candidates to fill the vacancy; and

**WHEREAS**, under the Resolution, the El Paso Water Utilities Public Service Board Selection Committee reviews resumes submitted by qualified persons interested in filling the vacant position and submits to the City Council the names and the ranking of the eligible candidates.

**NOW THEREFORE, BE IT RESOLVED BY THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD SELECTION COMMITTEE OF THE CITY OF EL PASO, TEXAS:**

**THAT**, a quorum of the El Paso Water Utilities Public Service Board Selection Committee met on May 22, 2024, pursuant to the Texas Open Meetings Act and approved the nomination and recommendation to the City Council of the following candidates to fill a vacancy on the El Paso Water Utilities Public Service Board:

Ranked 1<sup>st</sup> (tie) Dr. Hector Ocaranza

Ranked 1<sup>st</sup> (tie) Dr. Andrea Tawney

Ranked 2<sup>nd</sup> Dr. Aldo Maspons

**THAT**, the Chair of the Committee forward the recommendations to the El Paso City Council for their consideration for filling the vacancy on the El Paso Water Utilities Public Service Board.

**PASSED and APPROVED** this 22<sup>nd</sup> day of May, 2024

El Paso Water Utilities Public Service Board Selection Committee:

  
\_\_\_\_\_  
Mayor Oscar Leeser, Chair


Approved As To Form:

  
\_\_\_\_\_  
Daniel Ortiz, General Counsel

**PSB Selection Committee**  
**Wednesday, May 22, 2024**  
**Environmental or Health**

**SCORING OF CANDIDATES**

CANDIDATES	NUMBER OF POINTS:	RANK
Dr. Hector Ocaranza	18	1
Dr. Andrea Tawney	18	1
Dr. Aldo Maspons	12	2

  
\_\_\_\_\_  
Committee Chairman  
Date 5/29/2024

  
\_\_\_\_\_  
General Counsel  
Date May 22, 2024

## **PSB AREAS OF EXPERTISE, EDUCATION AND EXPERIENCE**

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### **Environmental or Health:**

Professional knowledge and experience in one or more of the following areas of expertise: safe drinking water; reclaimed water; toxic chemical exposure; liquid waste disposal, including wastewater treatment plants and disaster preparedness and its effect on health.

Knowledge in environmental factors such as biological, physical and chemical factors that affect the health of a community; and/or the environmental media (air, water and land) and various community exposure concerns. Knowledge of the principles and practices of modern medicine; knowledge of applicable federal, state and local law, regulations, rules and ordinances; knowledge of communicable, chronic, infectious and disease control and surveillance; knowledge of epidemiological methods and techniques and disaster response; knowledge of medical record keeping and reporting practices, community health resources availability, and community health investigations; epidemiology, biological science.

Work experience: a public or private healthcare practitioner, public healthcare administrator.

Bachelor's degree preferable. A minimum of four years experience in environmental, sanitary, chemical or civil engineering, environmental science, natural or physical science, health science, biological science, health education, public health, environmental health or related field; community involvement experience that accents demonstrated leadership; no conflicts of interest; abide by a specified code of ethics; and no current political office held. Experience could be public and/or private, such as a health worker, teacher, or practicing nurse/doctor, or engineer.

**HECTOR I. OCARANZA, MD, MPH, FAAP**



May 1<sup>st</sup>, 2024

El Paso Water  
PSB Selection Committee  
1154 Hawkins Blvd.  
El Paso, TX 79925

Dear PSB Selection Committee:

My Name is Hector I. Ocaranza, MD and I am writing this letter to apply for the vacant Health Public Service Board position. I am a board-certified pediatrician with over 25 years of experience in general pediatrics caring for underserved children of our community, as young as newborns and up to 21 years of age. Also, I am a passionate Public Health professional with a master's in public health and over 16 years of experience. I have served my community as the Health Authority and have successfully led our community through different public health threats and challenges such as the H1N1 pandemic, Tuberculosis exposure of infants, and most recently the COVID-19 pandemic.

The knowledge and experience I have as a practicing pediatrician and public health professional gives me the expertise and necessary perspective into our community's health and its needs. On one side, as a pediatrician I screen, diagnose, and treat a myriad of illnesses affecting children and families alike, from infectious diseases to environmental exposures and mental health conditions. On the other side, as a public health professional, I have a leading role identifying priority health needs, planning, executing, and evaluating programs aimed at preventing diseases and its complications, with the goal of improving the health and well-being of my community.

I appreciate your time and consideration. I look forward to being able to serve my community as part of the public service board, bringing expertise and innovative solutions to health-related issues and concerns that may be brought up to El Paso Water and its public service board. I see a brighter future for El Paso Water following their mission and vision.

Respectfully,

A handwritten signature in black ink, appearing to be 'H. Ocaranza'.

Hector I. Ocaranza, MD, MPH, FAAP

## **Hector Ignacio Ocaranza, M D, MPH, FAAP**

**Address:** **Office:** St. Anthony Pediatrics **Mailing:** P.O. Box 4530  
1265 Anthony Dr. Anthony, TX 79821  
Anthony, NM 88021

**Home:** [REDACTED]  
[REDACTED]

**Telephones:** [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

**Licenses:** New Mexico State License No. 98-357  
Texas State License No. K8807

---

### **LEADERSHIP POSITIONS:**

**Interim Director** **2022 to Present**  
Leading one of the 35 largest Public Health Departments in the nation. Serving the El Paso City/County community with a population of about 870,000 people providing preventive services on Communicable Diseases, Food-borne pathogens, HIV/DIS, Laboratory services, etc.

**Medical Director** **2019 to Present**  
Responsible for guidance and supervision of clinical services and operations.  
City of El Paso Dept. of Public Health

**Medical Director** **2016 to Present**  
Responsible for guidance and supervision at Sexually Transmitted Disease clinic.  
City of El Paso Dept. of Public Health

**St. Anthony Pediatrics** **2000 to Present**  
Responsible for patient care and administration of a busy general pediatrics clinic located in a rural and underserved area of Dona Ana County, New Mexico.  
Providing acute, chronic and Preventive services. Guidance and supervision of several clinical providers.

---

### **EDUCATION:**

**Master in Public Health** Aug 2010 - Dec 2014  
University of Texas HSC-Houston, School of Public Health

**Pediatric Residency Program** Jul 1996 - Jul 1999  
Texas Tech University Health Sciences Center, El Paso, Texas

**Medical Doctor Degree** Sep 1988 - Jun 1993  
Universidad Autónoma de Cd. Juárez School of Medicine

**Undergraduate Rotating Internship**  
Instituto Mexicano del Seguro Social, Mexico

Jul 1993 - Jun 1994

**Social Service**  
Medical Director and Administrator  
IMSS-Solidaridad Rural Clinic, Chihuahua, México

Aug 1994 - Aug 1995

---

## **PROFESSIONAL ASSOCIATIONS**

**American Academy of Pediatrics**

Fellow and Active Member

- TX and NM Chapter member

**Texas Medical Association**

Active Member

- Council on Science and Public Health

**New Mexico Medical Society**

Active Member

**El Paso County Medical Society**

Active Member

**Texas Pediatric Society**

Active Member

- Infectious Diseases Committee

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## **CERTIFICATIONS / TRAINING**

**Family Planning**

Sep 2019

Nexplanon Insertion and Removal  
Gender and Sexuality

**American Board of Pediatrics**

Oct 1999- Present

Recertification 2006-2013  
Recertification 2013-2018  
Recertification 2018-Present

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## **APPOINTMENTS**

Local Health Authority  
City-County of El Paso, TX

Apr-2007 - Present

Alternate Health Authority  
City-County of El Paso, TX

2003 - 2006

Clinical Instructor  
Texas Tech University H.S.C. El Paso, TX

Apr 2003 - Present

Clinical Instructor  
University of New Mexico

2007 - Present

Chair Pediatrics Department  
Las Palmas Medical Center

2002 - 2006

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**LANGUAGES:**

**Spanish:** Native Language

**English:** Fluent, written and spoken

May 17, 2024

El Paso Water: Public Service Board

My name is **Aldo Maspóns, MD**. I am an El Pasoan, born and raised, and a practicing pediatric gastroenterologist in private practice. I am also CEO of a health tech start company with the aim of improving medical outcomes in medically underserved communities. I want to be a member of the public water board because I want to be a part of this forward thinking board that wants El Paso to thrive now and in the future.

### **My vision and objectives:**

1. Promote water consumption. Sugary beverages lead to several diseases which can be eliminated if water, instead of sugary drinks were consumed.
2. Enteric pathogen detection
  - Work with UTEP/Texas Tech/UMC/ El Paso County to create a surveillance system of enteric pathogens (disease causing pathogens that can lead to diarrhea, vomiting, etc), putting our community at risk of increased and often avoidable emergency room visits/hospitalizations.
3. Antibiotic resistance surveillance.
  - As the amount of antibiotic use rises, so does the resistance of bacteria to those antibiotics. Understanding the presence of antibiotic resistance can help clinicians and health systems, prepare and treat their patients more appropriately. <sup>1</sup>
4. Understand our tap water's role in shaping our region's microbiome. An unhealthy microbiome can lead to cardiovascular disease, cancer, intestinal disease, etc. Working with area researchers can help us understand our region's microbiome, help with its surveillance, and understand impact on our health. <sup>1,2</sup>
5. Work with Juarez. We share a water supply. Collaborating with Juarez to protect and grow our water resource is vital to our region's future.
6. Desalinating water: I would like to explore desalinating water for other counties, Texas, and Cd. Juarez as a method of revenue for El Paso Water. This includes understanding the potential for setting up desalinating plants for other counties, states, countries.
7. Evaluating methods of in-home recycling water.
8. Evaluating method of residential rain water capture.
9. Understanding responsible water usage for businesses that the city is attempting to attract to El Paso. Some industries are bigger water consumers than others.
10. Responsible urban/suburban growth and water's role in such growth.

### **Professional Experience**

1. Pediatric Gastroenterologist at Maspóns Pediatric Gastro  
100 E Schuster, AVE, El Paso, TX 79902
  - Owner and physician
    - I have a large patient panel that I tend to in the office setting, hospital setting, and procedure setting.
    - I work with multiple sub-specialists, general practitioners, mostly pediatricians, hospitals, insurances, and health systems.
    - Strategic planning, regulatory compliance, financial management
    - Years at Maspons Pediatric Gastro: 7, Years as a Pediatric Gastroenterologist: 13



2. VeMiDoc, Inc: a local health tech start up company. VeMiDoc is an in-between office visit patient engagement and health management app whose goal is to improve medical outcomes and lower the barriers to health equity. VeMiDoc is a physician lead company that uses disease know-how, combined with cultural competency, patient engagement and data sets/data analytics to help manage and prevent disease.
  - CEO/Cofounder, Years: 7
  - As the CEO/Co-Founder, my job is to set the vision for the company and execute the plan. I frequently meet with health executives and their team. In addition, I have raised funds by pitching to several angel investors, VC funds. VeMiDoc has participated in internationally/nationally/Regionally acclaimed accelerators: Mass Challenge, Capital Factory, Health Ignitor, MCA: Medical Center of the Americas, LBAN (Latino Business Action Network: Stanford University.

## **Education**

Santa Clara University, Santa Clara, California: 09/1997-06/2001; B.S. Biology, B.A. Studio Art

UTSouthwestern Medical School at Dallas, Dallas, Texas: 08/2002-06/2006; Medical Doctorate

## **Training**

Pediatric Internship: University of New Mexico, Albuquerque, New Mexico 6/2006-6/2007

Pediatric Residency: University of New Mexico, Albuquerque, New Mexico 6/2007-6/2009

Fellowship Training: Texas Children's Hospital/Baylor College of Medicine, Houston, Texas Pediatric Gastroenterology: 7/2009-7/2012

## **Conclusion**

I believe the El Paso Water Public Service board is the city's desert bloom: understands the times, protects resources, prepares for the future, and flourishes when the time is right. As a native El Pasoan and practicing pediatric gastroenterologist, I help care the city's most vulnerable population and its most precious resource: children. I work to help them stamp out their disease to better ready them for their future. Please consider me to be a part of this board, a part of forward thinking doers of El Paso.

## **References**

1. Lugli GA, et al Tap water as a natural vehicle for microorganisms shaping the human gut microbiome. Environ Microbiol. 2022 Sep;24(9):3912-3923.
2. Ogunrinola GA, et al. The Human Microbiome and Its Impacts on Health. Int J Microbiol. 2020 Jun 12;2020:8045646.
3. Liguori K, et al. Antimicrobial Resistance Monitoring of Water Environments: A Framework for Standardized Methods and Quality Control. Environ Sci Technol. 2022 Jul 5;56(13):9149-9160.



Legislation Text

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File #: 24-761, Version: 2

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**District 6**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553

Planning and Inspections, Saul J. G. Pina, (915) 212-1612

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

An Ordinance vacating a ten-foot Public Utility Easement (0.010 Acres of Land) located within Lot 9, Block 12, Stanton Heights Unit Three, City of El Paso, El Paso County, Texas.

Subject Property: 3312 Martina Pl.

Applicant: Elizabeth Morales, SUET24-00001

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

**AGENDA DATE:** June 11, 2024  
**PUBLIC HEARING DATE:** July 2, 2024

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Philip F. Etiwe, (915) 212-1553  
Saul J. G. Pina, (915) 212-1612

**DISTRICT(S) AFFECTED:** District 6

**STRATEGIC GOAL:** #3 Promote the Visual Image of El Paso

**SUBGOAL:** 3.2 Set one standard for infrastructure across the city

**SUBJECT:**

An Ordinance vacating a ten-foot public utility easement (0.010 acres of land) located within Lot 9, Block 12, Stanton Heights Unit Three, City of El Paso, El Paso County, Texas.

Subject Property: 3312 Martina Pl.  
Applicant: Elizabeth Morales, SUET24-00001

**BACKGROUND / DISCUSSION:**

The applicant is requesting to vacate a ten (10) foot utility easement located on the front of Lot 9, Block 12, Stanton Heights Unit Three, 3312 Martina. The vacation would address an encroachment of an existing 395.65 square foot carport situated at the front of the property. No appraisal is required for vacation of a public easement, in all cases the market value of the city interest in a public easement is the equivalent value of twenty-five dollars. The City Plan Commission recommended 7-1 to approve the proposed vacation request on April 4, 2024. As of April 23, 2024, the Planning Division has not received any communication in support or opposition to the vacation request. See attached staff report for additional information.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?** ☒ YES ☐ NO

**PRIMARY DEPARTMENT:** Planning & Inspections, Planning Division

**SECONDARY DEPARTMENT:** N/A

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

**DEPARTMENT HEAD:**

---

*Philip Etiwe*

---

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

**AN ORDINANCE VACATING A TEN-FOOT PUBLIC UTILITY EASEMENT (0.010 ACRES OF LAND) LOCATED WITHIN LOT 9, BLOCK 12, STANTON HEIGHTS UNIT THREE, CITY OF EL PASO, EL PASO COUNTY, TEXAS.**

**WHEREAS**, the property owner has requested vacation of a ten-foot public utility easement located within Lot 9, Block 12, Stanton Heights Unit Three, City of El Paso, El Paso County, Texas; and,

**WHEREAS**, after public hearing the City Plan Commission on April 4, 2024 has recommended a vacation of a ten-foot public utility easement located within Lot 9, Block 12, Stanton Heights Unit Three, City of El Paso, El Paso County, Texas; and

**WHEREAS** the El Paso City Council finds that said easement is not needed for public use and should be vacated as recommended.

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

That, in consideration of the receipt by the City of El Paso of TWENTY-FIVE DOLLARS (\$25.00) and other good and valuable consideration, the sufficiency of which is acknowledged, a ten-foot public utility easement located within Lot 9, Block 12, Stanton Heights, Unit Three, City of El Paso, El Paso County, Texas, as further described in the attached metes and bounds description identified as Exhibit "A" and in the attached survey identified as Exhibit "B" made a part hereof by reference, be and is hereby vacated, closed and abandoned.

In addition, the City Manager is authorized to sign an instrument quitclaiming all of the City's right, title and interest in and to such vacated easement to **Elizabeth Morales**.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**THE CITY OF EL PASO**

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

**ATTEST:**

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

*\*\*Additional signatures on following page\*\**

**APPROVED AS TO CONTENT:**

*Philip Etiwe*

---

Philip F. Etiwe, Director  
Planning and Inspections Department

**APPROVED AS TO FORM:**

*Russell Abeln*

---

Russell T. Abeln  
Senior Assistant City Attorney

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY 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.**

**THE STATE OF TEXAS**

**COUNTY OF EL PASO**

}  
}  
}

**QUITCLAIM DEED**

That, in consideration of the receipt by the City of TWENTY-FIVE AND NO/100THS DOLLARS (\$25.00) and other good and valuable consideration, the sufficiency of which is acknowledged, THE CITY OF EL PASO has released and quitclaimed and by these presents does release and quitclaim unto **ELIZABETH MORALES** all of its right, title, interest, claim and demand in and to the property which was vacated, closed and abandoned by **Ordinance No. \_\_\_\_\_**, passed and approved by the City Council of the city of El Paso and described as located within **LOT 9, BLOCK 12, STANTON HEIGHTS UNIT THREE** to the City of El Paso, El Paso County, Texas, more fully described in the attached metes and bounds description, identified as Exhibit "A" and in the attached survey identified as Exhibit "B" and incorporated herein for any and all purposed.

**WITNESS** the following signatures and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

**THE CITY OF EL PASO**

\_\_\_\_\_  
Cary Westin, Interim City Manager

ATTEST:

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

APPROVED AS TO FORM:

*Russell Abeln*

\_\_\_\_\_  
Russell T. Abeln  
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

*Philip F. Etiwe*

\_\_\_\_\_  
Philip F. Etiwe, Director  
Planning & Inspections Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

HQ24-2570|Trans#515934|P&I  
EASEMENT VACATION SUE24-00001  
ORDINANCE NO. \_\_\_\_\_  
RTA

**Acknowledgement**

**THE STATE OF TEXAS        )**  
  )  
**COUNTY OF TEXAS         )**

          This instrument is acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, **2024** by  
Cary Westin as Interim City Manager of THE CITY OF EL PASO, a municipal corporation.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name

**AFTER FILING RETURN TO:**  
**ELIZABETH MORALES**

**EXHIBIT "A"**

**10 ft Utility Easement  
3312 Martina Place, EP, TX  
METES AND BOUNDS**

Description of a parcel of land being a portion of lot 9, block 12, Stanton Heights Unit Three, City of El Paso, El Paso County, Texas; recorded in volume 73, page 56, El Paso County records and being more particularly described by metes and bounds as follows: BEGINNING at the Southwest corner of said lot 9, said point being on the North ROW line of Martina Place;

THENCE due East along said North ROW line of Martina Place, distance of 44.18 feet to a point that marks the Southeast corner of lot 9;

THENCE, due North along the boundary line of lot 9 and lot 10, a distance of 10.00 feet to a point;

THENCE, due West a distance of 44.18 ft. to a point on the West boundary line of lot 9;

THENCE, along the boundary line of said lot 9 and lot 8, block 12, Stanton Heights Unit Three due South a distance of 10.00 feet to the POINT OF BEGINNING OF THIS DESCRIPTION, Said parcel of land contains 441.80 square feet or 0.0101 acres plus or minus.



REY ENGINEERING INC.  
9434 VISCOUNT STE. 148  
EL PASO TEXAS, 79925  
(915) 633-8070  
R.P.L.S. TX 3505  
TX FIRM REG # F-3368



El Paso, Texas Friday, December 8, 2023



## EXHIBIT "B"



I HEREBY CERTIFY THAT THE FOREGOING BOUNDARY AND IMPROVEMENT SURVEY WAS MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

D.M.	OCTOBER , 2023
JOB NO. 2023-	ARMANDO ROJAS

**REY ENGINEERING INC.**  
CONSULTING ENGINEERING-SURVEYING-LAND PLANNING  
9434 VISCOUNT DR. SUITE 148 EL PASO TEXAS, 79925  
PH. (915)309-1889 FAX (915) 633-8060  
TEXAS FIRM REGISTRATION F-3368



# 3312 Martina Easement Vacation

City Plan Commission — April 4, 2024 **(Revised)**



<b>CASE NUMBER/TYPE:</b>	<b>SUET24-00001 – Easement Vacation</b>
<b>CASE MANAGER:</b>	Saul J. G. Pina, (915) 212-1612, <a href="mailto:PinaSJ@elpasotexas.gov">PinaSJ@elpasotexas.gov</a>
<b>PROPERTY OWNER:</b>	Elizabeth Morales
<b>REPRESENTATIVE:</b>	Elizabeth Morales
<b>LOCATION:</b>	South of Edgemere Blvd. and East of Lee Blvd. (District 6)
<b>PROPERTY AREA:</b>	0.11 acres
<b>ZONING DISTRICT(S):</b>	R-3A/sp (Residential/special permit)
<b>RELATED APPLICATIONS:</b>	PZBA22-00088 – Zoning Board of Adjustment

**SUMMARY OF RECOMMENDATION:** Staff recommends **APPROVAL** of the 3312 Martina Easement Vacation.



Figure A: Portion of easement to be vacated

**DESCRIPTION OF REQUEST:** The applicant is requesting to vacate a ten (10) foot utility easement located on the front of Lot 9, Block 12, Stanton Heights Unit Three, 3312 Martina. The vacation would address an encroachment of an existing 395.65 square foot carport situated at the front of the property.

**CASE HISTORY/RELATED APPLICATIONS:** This subdivision case is related to the Zoning Board of Adjustment case PZBA22-00088, which involved the review and approval of a carport encroachment. The Zoning Board of Adjustment granted approval of the case on May 1, 2023.

**NEIGHBORHOOD CHARACTER:** Surrounding neighborhood characteristics are identified in the following table.

Surrounding Zoning and Use	
North	R-3A/sp (Residential/special permit), R-3 (Residential) / Single-family dwellings
South	R-3A/sp (Residential/special permit) / Single-family dwellings
East	R-3A/sp (Residential/special permit) / Single-family dwellings
West	R-3A/sp (Residential/special permit) / Single-family dwellings
Nearest Public Facility and Distance	
Park	Stanton Heights Park (0.2 miles)
School	Bill Sybert School (0.5 miles)
Plan El Paso Designation	
G-3, Post-War	
Impact Fee Service Area	
N/A	

**CITY PLAN COMMISSION OPTIONS:**

The City Plan Commission has the authority to advise City Council on easement vacation requests. When a request is brought forward to the CPC for review, the Commission may take any of the following actions:

1. **Recommend Approval:** The CPC finds that the proposed vacation request is in conformance with all applicable requirements of Title 19 of the El Paso City Code. **(Staff Recommendation)**
2. **Recommend Approval with Conditions:** The CPC may recommend that City Council impose additional conditions on approval of the request that bring the request into conformance with all applicable requirements of Title 19 of the El Paso City Code.
3. **Recommend Denial:** The CPC finds that the proposed request is not in conformance with all applicable requirements of Title 19 of the El Paso City Code.

**ATTACHMENTS:**

1. Aerial Map
2. Survey
3. Metes and Bounds Description
4. Application
5. Department Comments

# ATTACHMENT 1

3312 Martina Easement Vacation



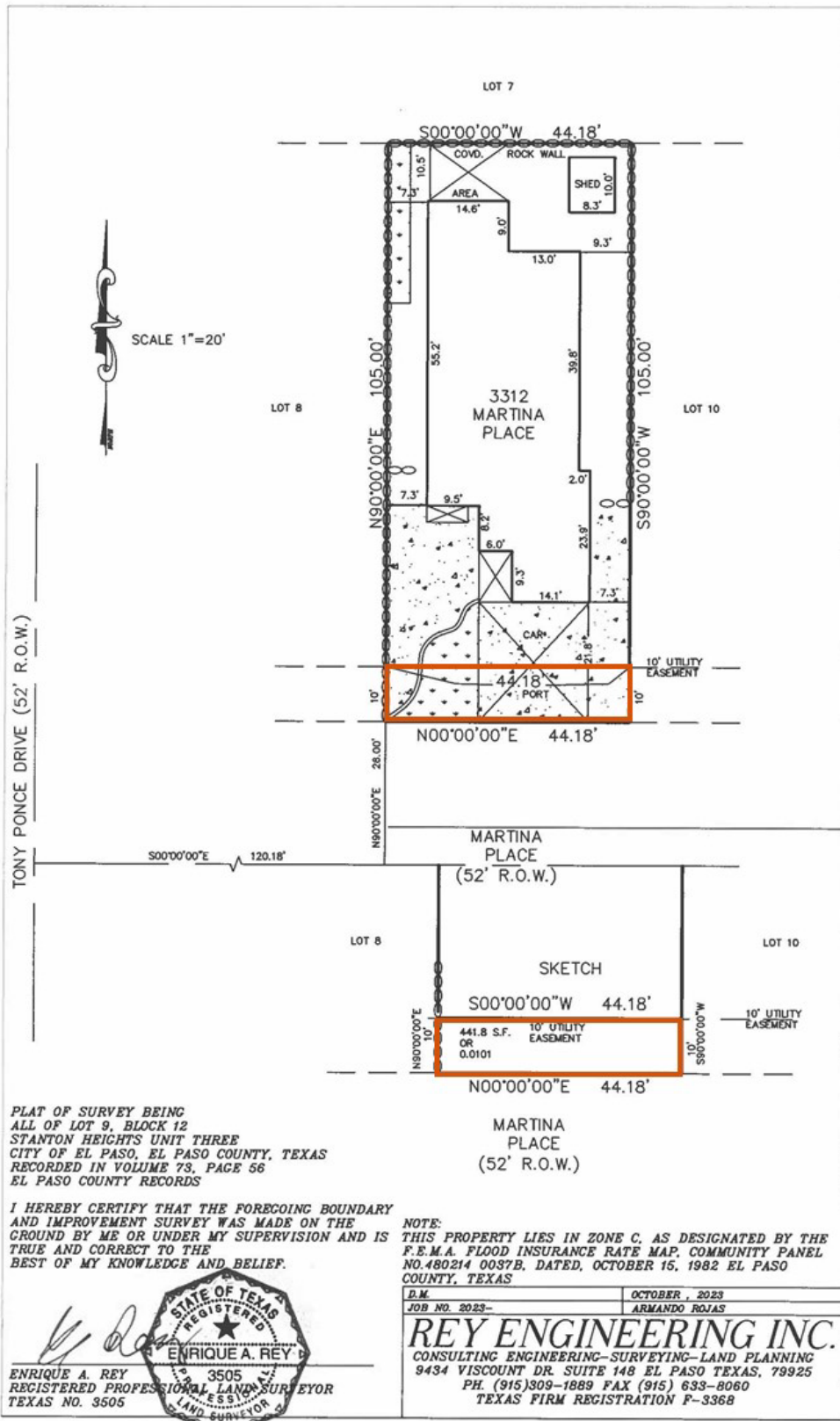
0 50 100 200 300 400 Feet



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



## **ATTACHMENT 2**



## **ATTACHMENT 3**

**10 ft Utility Easement  
3312 Martina Place, EP, TX  
METES AND BOUNDS**


Description of a parcel of land being a portion of lot 9, block 12, Stanton Heights Unit Three, City of El Paso, El Paso County, Texas; recorded in volume 73, page 56, El Paso County records and being more particularly described by metes and bounds as follows: BEGINNING at the Southwest corner of said lot 9, said point being on the North ROW line of Martina Place;

THENCE due East along said North ROW line of Martina Place, distance of 44.18 feet to a point that marks the Southeast corner of lot 9;

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THENCE, due West a distance of 44.18 ft. to a point on the West boundary line of lot 9;

THENCE, along the boundary line of said lot 9 and lot 8, block 12, Stanton Heights Unit Three due South a distance of 10.00 feet to the POINT OF BEGINNING OF THIS DESCRIPTION, Said parcel of land contains 441.80 square feet or 0.0101 acres plus or minus.

  
REY ENGINEERING INC.  
9434 VISCOUNT STE. 148  
EL PASO TEXAS, 79925  
(915) 633-8070  
R.P.L.S. TX 3505  
TX FIRM REG # F-3368



El Paso, Texas Friday, December 8, 2023

# ATTACHMENT 4



## VACATION PUBLIC EASEMENTS AND RIGHTS-OF-WAY APPLICATION

Date: \_\_\_\_\_ File No. \_\_\_\_\_

1. APPLICANTS NAME Elizabeth Morales  
ADDRESS 3312 Martina Pl. ZIP CODE 79936 TELEPHONE (915) 356-8470

2. Request is hereby made to vacate the following: (check one)

Street ☐ Alley ☐ Easement ☒ Other ☐

Street Name(s) \_\_\_\_\_ Subdivision Name \_\_\_\_\_

Abutting Blocks \_\_\_\_\_ Abutting Lots \_\_\_\_\_

3. Reason for vacation request: \_\_\_\_\_

4. Surface Improvements located in subject property to be vacated:

None ☒ Paving ☐ Curb & Gutter ☐ Power Lines/Poles ☐ Fences/Walls ☐ Structures ☐ Other ☐

5. Underground Improvements located in the existing rights-of-way:

None ☐ Telephone ☐ Electric ☐ Gas ☐ Water ☒ Sewer ☐ Storm Drain ☐ Other ☐

6. Future use of the vacated right-of-way:

Yards ☐ Parking ☒ Expand Building Area ☐ Replat with abutting Land ☐ Other ☐

7. Related Applications which are pending (give name or file number):

Zoning ☐ Board of Adjustment ☐ Subdivision ☐ Building Permits ☒ Other ☐

8. Signatures: All owners of properties which abut the property to be vacated must appear below with an adequate legal description of the properties they own (use additional paper if necessary).

Signature	Legal Description	Telephone
_____	_____	_____
_____	_____	_____
_____	_____	_____

The undersigned Owner/Applicant/Agent understands that the processing of this Application will be handled in accordance with the procedure for Requesting Vacations and that no action on processing will be taken without payment of the non-refundable processing fee. It is further understood that acceptance of this application and fee in no way obligates the City to grant the Vacation. I/we further understand that the fee, if the Vacation is granted will be determined by the City of El Paso and a Certified or Cashier's Check must be presented before the request will be recommended for Council action.

The undersigned acknowledges that he or she is authorized to do so, and upon the City's request will provide evidence satisfactory to the City confirming these representations.

The granting of a vacation request shall not be construed to be a waiver of or an approval of any violation of any of the provisions of any applicable City ordinances.

OWNER SIGNATURE: \_\_\_\_\_ REPRESENTATIVE SIGNATURE: \_\_\_\_\_

REPRESENTATIVE (PHONE): \_\_\_\_\_

REPRESENTATIVE (E-MAIL): \_\_\_\_\_

**NOTE: SUBMITTAL OF AN APPLICATION DOES NOT CONSTITUTE ACCEPTANCE FOR PROCESSING UNTIL THE PLANNING DEPARTMENT REVIEWS THE APPLICATION FOR ACCURACY AND COMPLETENESS.**

Planning & Inspections Department  
811 Texas | P.O. Box 1890 | El Paso, Texas 79950-1890 | (915) 212-0085

litzym47@yahoo.com.

# **ATTACHMENT 5**

## **Planning and Inspections Department- Planning Division**

Staff recommends approval of the 3312 Martina Easement Vacation.

## **Planning and Inspections Department- Land Development Division**

We have reviewed subject plats and recommend ***approval***.

The Developer/Engineer shall address the following comments:

- No objections to proposed vacation of easement.

## **Parks and Recreation Department**

We have reviewed **3312 Martina Pl – Easement Vacation**, and on behalf of Parks & Recreation Department we offer “No” objections to this proposed easement vacation request.

## **El Paso Water**

EPWater does not object to this request.

EPWater records does not show existing water and sewer mains within the 10-feet utility easement.

### **Water:**

There is an existing 8-inch diameter water main that extends along Martina Place. This water main is available for service.

Previous water pressure from fire hydrant #7806 located at the intersection of Edward James Ave. and Martina Pl. has yielded a static pressure of 50 psi, a residual pressure of 42 psi, and a discharge of 822 gallons per minute.

### **Sanitary Sewer:**

There is an existing 8-inch diameter sanitary sewer main along Martina Place. This main is available for service.

### **General:**

An application for additional water and sanitary sewer services should be made 6 to 8 weeks prior to construction to ensure water for construction work. New service applications are available at 1154 Hawkins, 3<sup>rd</sup> floor. A site plan, utility plan, grading and drainage plans, landscaping plan, the legal description of the property and a certificate-of-compliance are required at the time of application. Service will be provided in accordance with the current EPWater-PSB Rules and Regulations. The applicant is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

## **Texas Gas**

Texas Gas Service has an existing service line at 3312 Martina Pl. **The gas lines are located outside the easement being vacated.** If you need to do work in this area please reach out to [opsrim@onegas.com](mailto:opsrim@onegas.com).

## **El Paso County Water Improvement District #1**

The proposed easement vacation is not within the boundaries of EPCWID1.

## **Fire Department**

Recommend approval. No adverse comments.

## **Streets and Maintenance Department**

Streets and Maintenance traffic engineering has no objections.



**El Paso Electric**

No comments received.

**Spectrum**

No comments received.



# DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with Title 2, Chapter 2.92, Section 2.92.080

## Introduction:

Individuals or entities benefiting by a City Council Agenda item must disclose contributions or donations made to current members of Council under the City's Ethics Code. The information on this form is being captured for transparency purposes and will be noted on the relevant City Council Agenda. **Contributions and Donations do NOT disqualify an applicant from doing business with the City.**

## Definitions:

- "Contribution" A direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit.
- "Contributor" A person making a contribution, including the contributor's spouse.
- "Donation" Cash and the value of any in-kind contributions or gifts to the council member for use by their office or in their district.
- "Donor" An individual and spouse, a business entity, or an individual who owns a business entity in whole or in part, or is operated by the individual, that is the subject of a council agenda item.
- "Benefiting" Shall include but not be limited to any contract, bid award, franchise, permit, zoning or rezoning, and other award that council will vote on.

**Instructions:** Please read and complete this form carefully. If you have made campaign contributions or donations to any current City Council member(s) totaling an aggregate of \$500 or more during their campaign(s) or term(s) of City office, you are required to disclose the information as specified below. If you have not made such contributions or donations past the limit specified in the ordinance, you are required to affirm your compliance with the municipal code. Please submit this completed form along with your application or proposal to the relevant city department. Failure to disclose campaign contributions or donations as required by the ordinance may result in a violation of the City's Ethics Code requirements, and sanctions under the Ethics Code 2.92.

## Contributor / Donor Information:

Full Name

Elizabeth Morales

Business Name

Agenda Item Type

Relevant Department



**Disclosure Affirmation:** Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.

☒ I have **NOT** made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office, as specified in Section 2.92.080 of the El Paso Municipal Code.

OR

☐ I have made campaign contributions or donations totaling an aggregate of \$500 or more to the following City Council member(s) during their campaign(s) or term(s) of City office:

OFFICE	CURRENT COUNCIL MEMBER NAME	AMOUNT (\$)
Mayor		
District 1		
District 2		
District 3		
District 4		
District 5		
District 6		
District 7		
District 8		

**Declaration:** I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.

Signature: [Signature] Date: 05-13-24





Legislation Text

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File #: 24-795, Version: 1

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**CITY OF EL PASO, TEXAS**  
**LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**District 5**

El Paso Water, Rocio Alvarado, (915) 594-5696

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

An Ordinance authorizing the City Manager to sign a deed and any other documents necessary to convey approximately 0.0061 acres of land legally described as a portion of Section 35, Block 79, Township 2, T&P R.R. Co. Survey, Abstract No. 2139, City of El Paso, El Paso County, Texas.

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

**DEPARTMENT:**       **The El Paso Water Utilities Public Service Board (EPWater)**

**AGENDA DATE:**     **Introduction - \_\_\_\_\_.**  
                          **Public Hearing - \_\_\_\_\_.**

**CONTACT PERSON/PHONE:** **Rocio Alvarado, Real Estate Manager (915) 594-5496.**

**DISTRICT(S) AFFECTED:** **5**

**SUBJECT:** **APPROVE the following Ordinance**

Authorizing the City Manager to sign a Deed and any other documents necessary to convey to the State of Texas acting by and through the Texas Transportation Commission, approximately 0.0061 acres of land legally described as a portion of Section 35, Block 79, Township 2, T&P R.R. Co. Survey, Abstract No. 2139, City of El Paso, El Paso County, Texas.

(District 5) EPWater, Rocio P. Alvarado, Real Estate Manager (915) 594-5496.

**BACKGROUND / DISCUSSION:**

The parcel of land is owned by the El Paso Water Utilities Public Service Board (“EPWater”), for and on behalf of the City of El Paso, a Texas municipal corporation, as part of its water, wastewater and stormwater systems (the “System”). On February 14, 2024, the Public Service Board declared the property inexpedient to the system and authorized the President/CEO of EPWater to proceed with the sale.

**PRIOR COUNCIL ACTION:**

Yes, the City Council approved a closely item related to this one.

On August 15, 2023, the City Council approved the sale of 37.9194 acres of land to the State of Texas acting by and through the Texas Transportation Commission for \$2,535,688.98, as part of the Highway Spur 320.

**AMOUNT AND SOURCE OF FUNDING:** **N/A**

**BOARD / COMMISSION ACTION:**

On February 14, 2024, the El Paso Water Utilities Public Service Board declared the property inexpedient to the system and authorized the President/CEO to sell the property in accordance with state law.

**AFTER EXECUTION OF ALL DOCUMENTS, PLEASE CONTACT  
ROCIO P. ALVARADO TO PICK UP THE DOCUMENTS @ 915.594.5496.  
THANK YOU.**

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

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A DEED AND ANY OTHER DOCUMENTS NECESSARY TO CONVEY APPROXIMATELY 0.0061 ACRES OF LAND LEGALLY DESCRIBED AS A PORTION OF SECTION 35, BLOCK 79, TOWNSHIP 2, T&P R.R. CO. SURVEY, ABSTRACT NO. 2139, CITY OF EL PASO, EL PASO COUNTY, TEXAS.**

**WHEREAS**, the El Paso Water Utilities Public Service Board ("**EPWater**"), for and on behalf of the City of El Paso, a Texas municipal corporation, holds certain real properties in its land inventory as part of its water, wastewater and stormwater systems (collectively the "**System**"); and,

**WHEREAS**, at its regular meeting on February 14, 2024 the Public Service Board determined approximately 0.0061 acres of land legally described as a portion of Section 35, Block 79, Township 2, T&P R.R. Co. Survey, Abstract No. 2139, City of El Paso, El Paso County, Texas (the "**Property**"), to be inexpedient to the system and that the Property should be sold in accordance with state law; and,

**WHEREAS**, the State of Texas acting by and through the Texas Transportation Commission, has agreed to purchase the Property for the amount of \$1,690.00; and,

**WHEREAS**, Section 272.001(b)(5) of the Texas Local Government Code Provides that a political subdivision of the state may convey real property to a governmental entity that has the power of eminent domain without giving notice and requesting sealed bids; and,

**WHEREAS**, the State of Texas acting by and through the Texas Transportation Commission, is a governmental entity that has the power of eminent domain; and,

**WHEREAS**, the El Paso City Council finds that it is in the public interest to convey the Property to the State of Texas; and

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

That the City Manager is authorized to sign a Deed and any other necessary documents, in a form approved by the City Attorney's Office, for the sale of the following identified real property:

Approximately 0.0061 acres of land legally described as portion of Section 35, Block 79, Township 2, T&P R.R. Co. Survey, Abstract No. 2139, City of El Paso, El Paso County, Texas.

**(Signatures begin on following page)**

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.


CITY OF EL PASO

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

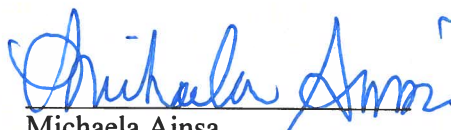
ATTEST:

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

APPROVED AS TO FORM:

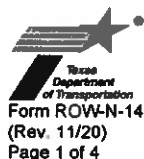
  
\_\_\_\_\_  
Roberta Brito  
Senior Assistant City Attorney

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michaela Ainsa  
Senior Assistant General Counsel

ORDINANCE NUMBER \_\_\_\_\_  
Sale of Land – 0.0061 Acres - TxDOT

**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.**



## **DEED**

**TxDOT ROW CSJ:** 0374-02-104

**TxDOT Parcel ID:** P000540019.001

**Grantor(s), whether one or more:**

EL PASO WATER UTILITIES PUBLIC SERVICE BOARD, a component unit of the CITY OF EL PASO, a Texas municipal corporation

**Grantor's Mailing Address (including county):**

1154 Hawkins  
El Paso, El Paso County, TX 79925

**Grantee:**

The State of Texas, acting by and through the Texas Transportation Commission

**Grantee's Authority:**

The Texas Transportation Commission is authorized under the Texas Transportation Code to purchase land and such other property rights (including requesting that counties and municipalities acquire highway right of way) deemed necessary or convenient to a state highway or turnpike project to be constructed, reconstructed, maintained, widened, straightened, or extended, or to accomplish any purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a state highway or turnpike project.

The Texas Transportation Commission is also authorized under the Texas Transportation Code, Chapter 203 to acquire or request to be acquired such other property rights deemed necessary or convenient for the purposes of operating a state highway or turnpike project, with control of access as necessary to facilitate the flow of traffic and promote the public safety and welfare on both non-controlled facilities and designated controlled access highways and turnpike projects.

**Grantee's Mailing Address (including county):**

Texas Department of Transportation  
125 E. 11th Street  
Austin, Travis County, Texas 78701



**Consideration:**

The sum of ONE THOUSAND SIX HUNDRED NINETY and 00/100 Dollars (\$1,690.00) to Grantor in hand paid by Grantee, receipt of which is hereby acknowledged, and for which no lien is retained, either expressed or implied.

**Property:**

All of that certain tract or parcel of land in El Paso County, Texas, being more particularly described in the attached Exhibit A (the "**Property**").

**Reservations from and Exceptions to Conveyance and Warranty:**

This conveyance is made by Grantor and accepted by Grantee subject to the following:

1. Visible and apparent easements not appearing of record.
2. Any discrepancies, conflicts, or shortages in area or boundary lines or any encroachments or any overlapping of improvements which a current survey would show.
3. Easements, restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and encumbrances for taxes and assessments (other than liens and conveyances) presently of record in the Official Public Records of El Paso County, Texas, that affect the property, but only to the extent that said items are still valid and in force and effect at this time.

Grantor reserves all of the oil, gas, and sulfur in and under the Property but waives all rights of ingress and egress to the surface thereof for the purpose of exploring, developing, mining or drilling for same; however, nothing in this reservation shall affect the title and rights of the Grantee, its successors and assigns, to take and use all other minerals and materials thereon, therein, and thereunder.

Grantor is retaining title to the following improvements ("**Retained Improvements**") located on the Property, to wit: None.

Grantor covenants and agrees to remove the Retained Improvements from the Property by N/A day of N/A 20N/A, subject to such extensions of time as may be granted by Grantee in writing. In the event Grantor fails, for any reason, to remove the Retained Improvements within the time prescribed, then, without further consideration, title to all or part of such Retained Improvements not so removed shall pass to and vest in Grantee, its successors and assigns, forever.

Access on and off Grantor's remaining property to and from the State highway facility shall be permitted except to the extent that such access is expressly prohibited by the provisions set out in Exhibit "A". Grantor acknowledges that such access on and off the State highway facility is subject to regulation as may be determined by the Texas Department of Transportation to be necessary in the interest of public safety or by applicable local municipal or county zoning, platting, or permitting requirements.

**GRANTOR**, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, 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 Conveyance and the Exceptions to Conveyance and Warranty.

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

EXECUTED on the date(s) of acknowledgment indicated below.

**GRANTORS: EL PASO WATER UTILITIES PUBLIC SERVICE BOARD, a component unit of the CITY OF EL PASO, a Texas municipal corporation**

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

Printed Name: John E. Ballieu

Title: President / CEO

**THE CITY OF EL PASO**

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

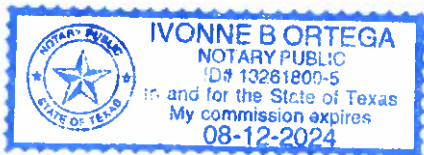
Corporate Acknowledgment

State of Texas  
County of El Paso

This instrument was acknowledged before me on May 29, 2024  
by John E. Ballieu, as President / CEO  
of EL PASO WATER UTILITIES PUBLIC SERVICE BOARD, a component unit of the CITY OF EL PASO, a  
Texas municipal corporation, on behalf of said entity. The acknowledging person personally appeared by:

☒ physically appearing before me.

☐ appearing by an interactive two-way audio and video communication that meets the requirements for online  
notarization under Texas Government Code, Chapter 406, Subchapter C.



[Signature]

Notary Public's Signature

Corporate Acknowledgment

State of Texas  
County of El Paso

This instrument was acknowledged before me on \_\_\_\_\_, 2024  
by Cary Westin, as Interim City Manager of CITY OF EL PASO. The acknowledging person personally appeared  
by:

☐ physically appearing before me.

☐ appearing by an interactive two-way audio and video communication that meets the requirements for online  
notarization under Texas Government Code, Chapter 406, Subchapter C.

\_\_\_\_\_  
Notary Public's Signature

AFTER RECORDING, RETURN TO:  
Stewart Title Company  
415 North Mesa Street  
El Paso, TX 79901



**EXHIBIT A**

- 2) **THENCE**, North 02 degrees 28 minutes 15 seconds East, along the west line of said 0.7744 of one acre City of El Paso tract and the north line of said 34.824 acre River Oaks Properties tract, a distance of 9.33 feet to a point at the northwest corner of said 0.7744 of one acre City of El Paso tract, being at an angle point in the north line of said 34.824 acre River Oaks Properties tract, and being in the south line of that tract described as 11.795 acres (Parcel 45) conveyed to the State of Texas by deed, as recorded in Volume 1170, Page 151, Deed Records, El Paso County, Texas, and the existing south right-of-way line of U.S. 62/180 (Montana Avenue, 200 foot width);
- 3) **THENCE**, North 84 degrees 19 minutes 51 seconds East, along the north line of said 0.7744 of one acre City of El Paso tract, the south line of said 11.795 acre State of Texas tract, and the existing south right-of-way line of U.S. 62/180, a distance of 30.31 feet to a point at the northeast corner of said 0.7744 of one acre City of El Paso tract, being an angle point in the north line of said 34.824 acre River Oaks Properties tract;
- 4) **THENCE**, South 02 degrees 28 minutes 15 seconds West, along the east line of said 0.7744 of one acre City of El Paso tract and the north line of said 34.824 acre River Oaks Properties tract, a distance of 8.39 feet to the **POINT OF BEGINNING** and containing 266 square feet (0.0061 of one acre) of land, more or less.

The bearings and coordinates are based on the Texas Coordinate System, Central Zone (4203), North American Datum of 1983, 2014 Adjustment EPOCH 2010.00. All distances and coordinates shown are surface and may be converted to grid by dividing by a combined adjustment factor of 1.000231.

Access is permitted to the highway facility from the remainder of the abutting property.

**EXHIBIT A**

A parcel plat of even date was prepared in conjunction with this property description.

**STATE OF TEXAS       §**  
**§**  
**COUNTY OF TRAVIS   §**

**KNOW ALL MEN BY THESE PRESENTS:**

That I, Chris Conrad, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this the 8th day of September, 2020 A.D.

SURVEYED BY:

**McGRAY & McGRAY LAND SURVEYORS, INC.**

3301 Hancock Dr., Ste. 6 Austin, TX 78731 (512) 451-8591

TBPELS Survey Firm# 10095500



Chris Conrad, Reg. Professional Land Surveyor No. 5623

M:/TxDOT El Paso~US 62-Tierra Este to FM 659/Descriptions/Parcel 76

Issued 09/08/2020

MONTANA AVE./U.S. 62/180  
(200' R.O.W.)

EXISTING R.O.W.

76

0.0061 AC.  
266 SQ. FT.

PROPOSED  
R.O.W.

P.O.B.  
PARCEL 76

N02°28'15"E 389.04'

CITY OF EL PASO  
NOVEMBER 29, 1996  
VOL. 3157, PG. 2297  
O.P.R.P.E.P.C.T.  
(0.7744 ACRES)

P.O.C.  
PARCEL 76

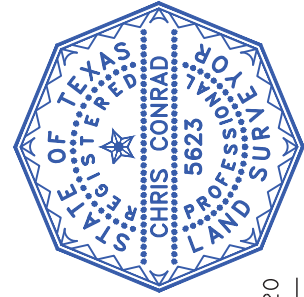
PROPERTY INSET  
NOT TO SCALE

I HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT TO  
THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT THE  
PROPERTY SHOWN HEREIN WAS DETERMINED BY A SURVEY MADE  
ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

*Chris Conrad*

9/8/2020

CHRIS CONRAD, REG. PROF. LAND SURVEYOR NO. 5623 DATE



NOTES:

1. ALL BEARINGS AND COORDINATES ARE BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983, 2011 ADJUSTMENT EPOCH 2010.00. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY A COMBINED ADJUSTMENT FACTOR OF 1.000231.
2. ABSTRACTING WAS PERFORMED FROM FEBRUARY 2019 THROUGH MAY 2020.
3. FIELD SURVEYING WAS PERFORMED FROM FEBRUARY 2019 THROUGH JUNE 2020.
4. RIGHT-OF-WAY MAPS COMPLETED IN JUNE 2020.
5. THIS MAP IS AN INTERNAL TxDOT DOCUMENT. ITS CONTENTS SHALL NOT BE USED FOR ANY OTHER PURPOSE. INACCURACIES SHALL BE REPORTED TO THE DISTRICT AND RIGHT-OF-WAY PROJECT DELIVERY SECTION FOR CORRECTIONS.

REVISIONS

DEED	ACQUISITION	REMAINING RT
0.7744 AC. 33,733 SQ. FT.	0.0061 AC. 266 SQ. FT.	0.7683 AC. 33,467 SQ. FT.



PARCEL PLAT SHOWING  
PARCEL 76  
U.S. 62/180 (MONTANA AVENUE)  
EL PASO COUNTY, TEXAS  
R.C.S. J.: 0374-02-104

EL PASO COUNTY, TEXAS  
SEPTEMBER 18, 1928  
VOL. 501 PG. 148  
D.R.E.P.C.T.  
(5.71 AC.)

COUNTY OF EL PASO, TEXAS  
OCTOBER 5, 1928  
VOL. 497 PG. 636  
D.R.E.P.C.T.  
(12.27 AC.)

SEC. 25, BLK. 79, TSP. 2  
T&P R.R. CO. SURVEY, A-2134

700+00 ENGINEER'S BASELINE

703+00

SEC. 26, BLK. 79, TSP. 2  
T&P R.R. CO. SURVEY,  
A-7874 (W.I. NEWTON)

MONTANA AVE./U.S. 62/180  
(225' R.O.W.)

STATE OF TEXAS  
APRIL 29, 1954  
VOL. 1170 PG. 151  
D.R.E.P.C.T.  
(PARCEL 47 3.227 AC.)

STATE OF TEXAS  
JANUARY 30, 1958  
VOL. 1388 PG. 349  
D.R.E.P.C.T.  
PARCEL 46  
(0.52 AC.)

STATE-STATE OF TEXAS  
MARCH 27, 1954  
VOL. 1164 PG. 413  
D.R.E.P.C.T.  
PARCEL 46A  
(0.146 AC.)

LINE TABLE

LINE	BEARING	DISTANCE
L1	N02°28'15"E	9.33'
L2	N84°19'51"E	30.31'
L3	S02°28'15"W	8.39'

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	TANGENT	BEARING	CHORD
C1	30.45'	6,875.00'	01°15'14"	15.23'	S82°34'33"W	30.45'

EXISTING R.O.W.

APPROXIMATE SURVEY LINE

APPROXIMATE SURVEY LINE

SEC. 35, BLK. 79, TSP. 2  
T&P R.R. CO. SURVEY, A-2139

P.O.B. PARCEL 76  
N=10,673,877.63  
E=469,819.91  
STA. 701+20.17  
119.30' RT

RIVER OAKS PROPERTIES, LTD  
JANUARY 3, 2006  
DOC. NO. 2006001936  
O.P.R.P.E.P.C.T.  
(17.086 AC.)

A-2134  
A-7877

RIVER OAKS PROPERTIES, LTD  
JULY 20, 2005  
DOC. NO. 20050065295  
O.P.R.P.E.P.C.T.  
(34.824 ACRES)

P.O.C. PARCEL 76  
N=10,673,877.63  
E=469,819.91  
STA. 701+20.17  
119.30' RT

SEC. 36, BLK. 79, TSP. 2  
T&P R.R. CO. SURVEY, A-7877  
(W.I. NEWTON)

APPROXIMATE SURVEY LINE

FOUND TXDOT TYPE I MONUMENT

FOUND TXDOT TYPE II MONUMENT

FOUND IRON ROD WITH CAP 1/2" UNLESS NOTED

FOUND IRON ROD 1/2" UNLESS NOTED

FOUND IRON PIPE 1/2" I.D. UNLESS NOTED

FOUND CHISEL MARK

FOUND MAG NAIL (UNLESS NOTED)

CALCULATED POINT, NOT SET

IRON ROD SET W/ TXDOT ALUMINUM CAP

MAG NAIL SET (UNLESS NOTED)

CHISEL MARK SET

(XXX)

PROPERTY LINE (OWNERSHIP DIVISION)

DEED LINE (OWNERSHIP IN COMMON)

DISTANCE NOT TO SCALE

RIGHT-OF-WAY

NOT TO SCALE

PUBLIC UTILITY EASEMENT

PLAT RECORDS EL PASO COUNTY, TEXAS

DEED RECORDS EL PASO COUNTY, TEXAS

OFFICIAL PUBLIC RECORDS OF REAL

PROPERTY, EL PASO COUNTY, TEXAS

O.P.R.P.E.P.C.T.

RECORD INFORMATION

PROPERTY LINE (OWNERSHIP DIVISION)

DEED LINE (OWNERSHIP IN COMMON)

DISTANCE NOT TO SCALE

RIGHT-OF-WAY

NOT TO SCALE

PUBLIC UTILITY EASEMENT

PLAT RECORDS EL PASO COUNTY, TEXAS

DEED RECORDS EL PASO COUNTY, TEXAS

OFFICIAL PUBLIC RECORDS OF REAL

PROPERTY, EL PASO COUNTY, TEXAS

O.P.R.P.E.P.C.T.



Texas Department of Transportation



McGRAY & McGRAY  
LAND SURVEYORS, INC.  
TBPELS SURVEY FIRM # 10095500  
3301 HANCOCK DRIVE #6  
AUSTIN, TEXAS 78731  
(512) 451-8591  
www.mcgray.com

PARCEL PLAT SHOWING

PARCEL 76

U.S. 62/180 (MONTANA AVENUE)

EL PASO COUNTY, TEXAS

R.C.S.J.: 0374-02-104

DATE: SEPTEMBER 2020

SCALE: 1" = 50'

PAGE 5 OF 5





August 23, 2023

File No.: 2118572

Title Insurance Commitment and Title Data, Inc.

Dear Customer:

The attached title insurance commitment contains information which has been obtained or derived from records and information owned by Title Data, Inc. or one of its subsidiaries (collectively "Title Data"). Title Data owns and maintains land title plants for various Texas counties. Title Data created its title plants through the investment of extensive time, labor, skill and money. **The information contained in the title plants is protected by federal copyright law and Texas common law on trade secrets and contract.**

Title Data has granted our company a license to use one or more of its title plants. Our company's right to access and use Title Data's title plants is governed by our contract with Title Data. Our contract with Title Data restricts who can receive and/or use a title insurance commitment which is based, in whole or in part, upon Title Data's records and information.

Under the terms of our contract with Title Data, we are permitted to provide you with the attached title insurance commitment **for limited use and distribution only**. Specifically, you are sublicensed to deliver, exhibit, or furnish the attached title insurance commitment (or any copies thereof) **ONLY** to your bona fide employees and a third party who is playing a bona fide role in this proposed real estate transaction, including a lawyer, a lender, a surveyor, a real estate broker or agent, and the parties to this proposed transaction.

For purposes of our agreement with Title Data, "deliver, exhibit, or furnish" includes, without limitation, copying this title insurance commitment (whether such copying be by means of a photocopier, facsimile machine, another electronic scanning device, or any other method of reproduction) and providing such copy to any third party.

Your furnishing of the attached title insurance commitment to anyone not specifically enumerated above is not permitted by our contract with Title Data and constitutes a breach of our sublicense to you. Your furnishing of the attached title insurance commitment to anyone not specifically enumerated above is also a violation of federal copyright law and Texas common law.

Therefore, as an express condition of us providing you with the attached title insurance commitment, you specifically agree to limit its uses to those set forth herein, and to provide a copy of this letter to any party to whom you deliver, exhibit, or furnish the attached title insurance commitment (or any copies thereof).

In the event you are unable or unwilling to comply with these conditions, immediately return the attached title insurance commitment to our company, without reviewing, copying or otherwise utilizing in any way the information contained therein.

**A COPY OF THIS LETTER MUST ACCOMPANY THE ATTACHED TITLE INSURANCE COMMITMENT AT ALL TIMES. ALL DOWNSTREAM RECIPIENTS MUST PROVIDE A COPY OF THIS LETTER TO ANY OTHER AUTHORIZED USERS OF THE ATTACHED TITLE INSURANCE COMMITMENT.**

Thank you for your business.

Sincerely,  
Stewart Title Company

Ron Rush

**Stewart Title Company**  
415 North Mesa Street  
El Paso, TX 79901  
(915) 225-8200 main (915) 225-8290 fax  
Ron.Rush@stewart.com



## COMMITMENT FOR TITLE INSURANCE

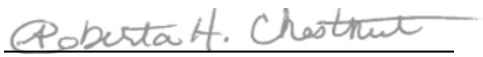
ISSUED BY  
STEWART TITLE GUARANTY COMPANY

**THE FOLLOWING COMMITMENT FOR TITLE INSURANCE IS NOT VALID UNLESS YOUR NAME AND THE POLICY AMOUNT ARE SHOWN IN SCHEDULE A, AND OUR AUTHORIZED REPRESENTATIVE HAS COUNTERSIGNED BELOW.**

We, STEWART TITLE GUARANTY COMPANY, will issue our title insurance policy or policies (the Policy) to You (the proposed insured) upon payment of the premium and other charges due, and compliance with the requirements in Schedule C. Our Policy will be in the form approved by the Texas Department of Insurance at the date of issuance, and will insure your interest in the land described in Schedule A. The estimated premium for our Policy and applicable endorsements is shown on Schedule D. There may be additional charges such as recording fees, and expedited delivery expenses.


This Commitment ends ninety (90) days from the effective date, unless the Policy is issued sooner, or failure to issue the Policy is our fault. Our liability and obligations to you are under the express terms of this Commitment and end when this Commitment expires.

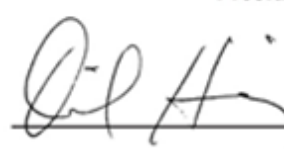
In Witness Whereof, the Company has caused this commitment to be signed and sealed as of the effective date of commitment as shown in Schedule A, the commitment to become valid and binding only when countersigned by an authorized signatory.

  
Authorized Countersignature

Stewart Title Company  
415 North Mesa Street  
El Paso, TX 79901



  
Frederick H. Eppinger  
President and CEO

  
David Hisey  
Secretary

## CONDITIONS AND STIPULATIONS

1. If you have actual knowledge of any matter which may affect the title or mortgage covered by this Commitment, that is not shown in Schedule B, you must notify us in writing,. If you do not notify us in writing, our liability to you is ended or reduced to the extent that your failure to notify us affects our liability. If you do notify us, or we learn of such matter, we may amend Schedule B, but we will not be relieved of liability already incurred.
2. Our liability is only to you, and others who are included in the definition of Insured in the Policy to be issued. Our liability is only for actual loss incurred in your reliance on this Commitment to comply with its requirements or to acquire the interest in the land. Our liability is limited to the amount shown in Schedule A of this Commitment and will be subject to the following terms of the Policy: Insuring Provisions, Conditions and Stipulations, and Exclusions.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Texas 77252-2029.

**STEWART TITLE GUARANTY COMPANY**

**IMPORTANT INFORMATION**

FOR INFORMATION, OR  
TO MAKE A COMPLAINT  
CALL OUR TOLL-FREE TELE-  
PHONE NUMBER

1-800-729-1902

ALSO  
YOU MAY CONTACT  
THE TEXAS DEPARTMENT  
OF INSURANCE AT

1-800-252-3439

to obtain information on:

1. filing a complaint against an insurance company or agent,
2. whether an insurance company or agent is licensed,
3. complaints received against an insurance company or agent.
4. policyholder rights, and
5. a list of consumer publications and services available through the Department.

YOU MAY ALSO WRITE TO  
THE TEXAS DEPARTMENT OF  
INSURANCE

P.O. Box 12030  
Austin, TX 78711-2030  
FAX NO. (512) 490-1007

**AVISO IMPORTANTE**

PARA INFORMACION, O  
PARA SOMETER UNA QUEJA  
LLAME AL NUMERO GRATIS

1-800-729-1902

TAMBIEN  
PUEDE COMUNICARSE CON  
EL DEPARTAMENTO DE SEGUROS  
DE TEXAS AL

1-800-252-3439

para obtener informacion sobre:

1. como someter una queja en contra de una compania de seguros o agente de seguros,
2. si una compania de seguros o agente de seguros tiene licencia,
3. quejas recibidas en contra de una compania de seguros o agente de seguros,
4. los derechos del asegurado, y
5. una lista de publicaciones y servicios para consumidores disponibles a traves del Departamento.

TAMBIEN PUEDE ESCRIBIR AL  
DEPARTAMENTO DE SEGUROS DE  
TEXAS

P.O. Box 12030  
Austin, TX 78711-2030  
FAX NO. (512) 490-1007

## TEXAS TITLE INSURANCE INFORMATION

Title insurance insures you against loss resulting from certain risks to your title.

The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.

El seguro de titulo le asegura en relacion a perdidas resultantes de ciertos riesgos que pueden afectar el titulo de su propiedad.

El Compromiso para Seguro de Titulo es la promesa de la compania aseguradora de titulos de emitir la poliza de seguro de titulo. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y entenderlo completamente antes de la fecha para finalizar su transaccion.

Your commitment for Title Insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the title insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

MINERALS AND MINERAL RIGHTS may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your Policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

- EXCEPTIONS are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.
- EXCLUSIONS are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.
- CONDITIONS are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at 1-800-729-1902 or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the Policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.
- Allow the Company to add an exception to "rights of parties in possession". If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

# COMMITMENT FOR TITLE INSURANCE

## SCHEDULE A

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

File No.: 2118572	Effective Date: April 28, 2024 at 8:00AM
CLOSER: Ron Rush	Issued: May 7, 2024 5:10PM

1. The policy or policies to be issued are:

- a. OWNER'S POLICY OF TITLE INSURANCE (Form T-1)  
(Not applicable for improved one-to-four family residential real estate)  
Policy Amount:  
PROPOSED INSURED: State of Texas, acting by and through the Texas Transportation Commission
- b. TEXAS RESIDENTIAL OWNER'S POLICY OF TITLE INSURANCE  
-ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)  
Policy Amount: \$  
PROPOSED INSURED:
- c. LOAN POLICY OF TITLE INSURANCE (Form T-2)  
Policy Amount: \$  
PROPOSED INSURED:  
Proposed Borrower:
- d. TEXAS SHORT FORM RESIDENTIAL LOAN POLICY OF TITLE INSURANCE (Form T-2R)  
Policy Amount: \$  
PROPOSED INSURED:  
Proposed Borrower:
- e. LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)  
Binder Amount: \$  
PROPOSED INSURED:  
Proposed Borrower:
- f. OTHER:  
Policy Amount: \$  
PROPOSED INSURED:

2. The interest in the land covered by this Commitment is:

FEE SIMPLE

3. Record title to the land on the Effective Date appears to be vested in:

City of El Paso

4. Legal description of land:

See Exhibit "A" Attached Hereto

**COMMITMENT FOR TITLE INSURANCE**  
**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

**File No.:** 2118572

Being a 266 square foot (0.0061 of one acre) parcel of land situated in the T&P R. R. Co. Survey, Abstract No. 2139, Section 35, Block 79, Township 2, El Paso County, Texas; said 266 square foot (0.0061 of one acre) tract being more particularly described by metes and bounds on attached Exhibit "A".

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES.

NOTE: The Company is prohibited from insuring the area or quantity of the land described herein. Any statement in the above legal description of the area or quantity of land is not a representation that such area or quantity is correct, but is made only for informational and/or identification purposes and does not override Item 2 of Schedule B hereof.





**COMMITMENT FOR TITLE INSURANCE  
EXHIBIT "A"  
LEGAL DESCRIPTION**

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

September 2020  
Parcel 76  
Page 2 of 5

**EXHIBIT A**

- 2) **THENCE**, North 02 degrees 28 minutes 15 seconds East, along the west line of said 0.7744 of one acre City of El Paso tract and the north line of said 34.824 acre River Oaks Properties tract, a distance of 9.33 feet to a point at the northwest corner of said 0.7744 of one acre City of El Paso tract, being at an angle point in the north line of said 34.824 acre River Oaks Properties tract, and being in the south line of that tract described as 11.795 acres (Parcel 45) conveyed to the State of Texas by deed, as recorded in Volume 1170, Page 151, Deed Records, El Paso County, Texas, and the existing south right-of-way line of U.S. 62/180 (Montana Avenue, 200 foot width);
- 3) **THENCE**, North 84 degrees 19 minutes 51 seconds East, along the north line of said 0.7744 of one acre City of El Paso tract, the south line of said 11.795 acre State of Texas tract, and the existing south right-of-way line of U.S. 62/180, a distance of 30.31 feet to a point at the northeast corner of said 0.7744 of one acre City of El Paso tract, being an angle point in the north line of said 34.824 acre River Oaks Properties tract;
- 4) **THENCE**, South 02 degrees 28 minutes 15 seconds West, along the east line of said 0.7744 of one acre City of El Paso tract and the north line of said 34.824 acre River Oaks Properties tract, a distance of 8.39 feet to the **POINT OF BEGINNING** and containing 266 square feet (0.0061 of one acre) of land, more or less.

The bearings and coordinates are based on the Texas Coordinate System, Central Zone (4203), North American Datum of 1983, 2014 Adjustment EPOCH 2010.00. All distances and coordinates shown are surface and may be converted to grid by dividing by a combined adjustment factor of 1.000231.

Access is permitted to the highway facility from the remainder of the abutting property.

**COMMITMENT FOR TITLE INSURANCE  
EXHIBIT "A"  
LEGAL DESCRIPTION**

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

September 2020  
Parcel 76  
Page 3 of 5

**EXHIBIT A**

A parcel plat of even date was prepared in conjunction with this property description.

STATE OF TEXAS       §  
                                  §       **KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF TRAVIS   §

That I, Chris Conrad, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this the 8th day of September, 2020 A.D.

SURVEYED BY:

**McGRAY & McGRAY LAND SURVEYORS, INC.**  
3301 Hancock Dr., Ste. 6 Austin, TX 78731 (512) 451-8591  
TBPELS Survey Firm# 10095500



Chris Conrad, Reg. Professional Land Surveyor No. 5623  
M:/TxDOT El Paso-US 62-Tierra Este to FM 659/Descriptions/Parcel 76  
Issued 09/08/2020

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

File No.: 2118572  
Form T-7 Commitment for Title Insurance Rev. 1-3-14  
Page 6 of 14

ISSUED BY  
STEWART TITLE GUARANTY COMPANY



**COMMITMENT FOR TITLE INSURANCE  
EXHIBIT "A"  
LEGAL DESCRIPTION**

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

**Calculation Sheet  
Parcel 76 (266 Square Feet)  
County: El Paso  
Highway: U.S. 62/180 (Montana Avenue)  
From Tierra Este to F.M. 659  
ROW CSJ: 0374-02-104  
September 2020**

**Parcel 76**

**Point of Commencement**

Northing: 10673488.9517'  
Easting: 469803.1382'  
Direction: N02°28'15"E Distance: 389.0400'

**Point of Beginning**

Northing: 10673877.6300'  
Easting: 469819.9100'

**Side 1: Curve**

Curve direction: Clockwise  
Radius: 6875.0000'  
Arc length: 30.4500'  
Delta angle: 0°15'14"  
Chord direction: S82°34'33"W Chord distance: 30.4500'  
Northing: 10673873.6954'  
Easting: 469789.7153'

**Side 2: Line**

Direction: N02°28'15"E Distance: 9.3300'  
Northing: 10673883.0168'  
Easting: 469790.1175'

**Side 3: Line**

Direction: N84°19'51"E Distance: 30.3100'  
Northing: 10673886.0109'  
Easting: 469820.2792'

**Side 4: Line**

Direction: S02°28'15"W Distance: 8.3900'  
Northing: 10673877.6287'  
Easting: 469819.9175'

**Closure Summary**

Precision, 1 part in: 10255.0628'  
Error distance: 0.0077'  
Error direction: S80°19'53.94"E  
Area: 0.0061 Ac.  
Square area: 266.14915  
Perimeter: 78.4800'

# COMMITMENT FOR TITLE INSURANCE

## SCHEDULE B

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

### EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your policy will not cover loss, costs, attorney's fees and expenses resulting from:

- ~~1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception.):~~
2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements. Upon receipt of an approved survey, Schedule B, Item 2 may be modified to read in its entirety, "Shortages in area" (Loan Policy only or Owner's Title Policy with prescribed premium.)
3. Homestead or community property or survivorship rights, if any, of any spouse of any insured. (Applies to the Owner's Policy only.)
4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
  - a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs, or oceans, or
  - b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
  - c. to filled-in lands, or artificial islands, or
  - d. to statutory water rights, including riparian rights, or
  - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.  
(Applies to the Owner's Policy only.)
5. Standby fees, taxes and assessments by any taxing authority for the year 2023 and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy of Title Insurance (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year 2023 and subsequent years.")
6. The terms and conditions of the documents creating your interest in the land.
7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a binder is issued.)
8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Loan Policy T-2 only.)
9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance (T-2R) only.) Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance. (T-2R)

## COMMITMENT FOR TITLE INSURANCE SCHEDULE B

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

10. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):

- a) Rights of parties in possession. (Owner Title Policy only)
- b) Any and all leases, recorded and unrecorded, and rights of parties therein.
- c) Easement dated May 18, 1946, executed by Spencer Treharne to American Telephone and Telegraph Company, of record in [Volume 830, Page 473](#), Deed Records of El Paso County, Texas.
- d) Pole Line Easement dated September 24, 1953, executed by George C. Fraser, et al to El Paso Electric Company and Mountain States Telephone and Telegraph Company, of record in [Volume 1138, Page 493](#); with Mountain States interest being transferred to Bell Telephone by instrument of record in [Volume 1231, Page 646](#), both Deed Records of El Paso County, Texas.
- e) Easement dated November 23, 1992, executed by Michael Shearn and Sol West III to El Paso Electric Company, of record in Volume [2597, Page 1881](#), Official Records of El Paso County, Texas.
- f) Permanent Easement dated November 29, 1996, executed by Sol West III and Michael Sheran to the City of El Paso, of record in [Volume 3157, Page 2306](#), Official Records of El Paso County, Texas.
- g) Oil, Gas and Mineral Reservation dated June 10, 1985, executed by Texas Pacific Land Trust to Michael Sheran and Sol West III, recorded in [Volume 1564, Page 517](#), Deed Records, El Paso County, Texas. (Title to the aforesaid estate has not been investigated subsequent to date of said instrument.)
- h) Mineral Deed dated January 25, 1955, executed by Texas Pacific Land Trust to TXL Oil Company, of record in [Volume 1212, Page 143](#), Official Records of El Paso County, Texas; said interest transferred to Texaco, Inc. by instrument of record in [Volume 1667, Page 21](#), Official Records of El Paso County, Texas.
- i) All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interests that are not listed.
- j) All leases, grants, exceptions or reservations of the geothermal energy and associated resources below the surface of the land, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of the geothermal energy and associated resources below the surface of the land that are not listed.



## COMMITMENT FOR TITLE INSURANCE SCHEDULE C

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

Your Policy will not cover loss, costs, attorneys' fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
  - no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
  - all standby fees, taxes, assessments and charges against the property have been paid,
  - all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialman's liens have attached to the property,
  - there is legal right of access to and from the land,
  - (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
5. Note: Procedural Rule P-27 as provided for in Section 2561.202, Texas Insurance Code requires that "Good Funds" be received and deposited before a Title Agent may disburse from its Trust Fund Account. Procedural Rule P-27 provides a list of the types of financial documents and instruments which satisfy this requirement. Please be advised that we reserve the right to determine on a case-by-case basis what form of good funds is acceptable.
6. FOR INFORMATION ONLY: The vesting on Schedule A is by virtue of deed recorded in [Volume 3157, Page 2297](#), Official Records of El Paso County, Texas.
7. Note: An Affidavit was styled "Notice of Claim to the Ysleta Grant and Aboriginal Title Areas" and was filed in [Volume 2553, Page 1958](#), Real Property Records, El Paso County, Texas. The memorandum attached to this Affidavit states that "the claim is one for return of possession from third parties of all lands contained within the Ysleta, Senecu, Socorro and Ascarate Grants in El Paso County, Texas (based on aboriginal title and specific Spanish and Mexican Grants); as well as the balance of El Paso County and all of Hudspeth, Culberson, Jeff Davis, Brewster and Presidio Counties, Texas (based on aboriginal title only); and for damages for trespass and unlawful occupation and use." Upon request to the company, you may receive a copy of the Affidavit and memorandum. THE POLICY TO BE ISSUED TO YOU WILL NOT EXCEPT TO THE AFFIDAVIT OR CLAIMS REFLECTED BY THE AFFIDAVIT. THIS NOTE IS FOR INFORMATIONAL PURPOSES ONLY.
8. Company requires for its review satisfactory documentation from the City of El Paso authorizing this transaction and naming the party(ies) authorized to sign on its behalf. At the time the Company is furnished these items, the Company may make additional requirements and/or exceptions.
9. NOTE TO CLOSER: No outstanding liens of record, please inquire,
10. File to be updated prior to closing.



## COMMITMENT FOR TITLE INSURANCE SCHEDULE D

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

Policy Commitment No.: 2118572

The information contained in this Schedule (D) does not affect title to or the lien upon the land described in Schedule A hereof, to be insured in any policy(ies) of title insurance to be issued in accordance with this Commitment.

As to **Stewart Title Guaranty Company**, the Underwriter herein, the following disclosures are made as of **January 1, 2022**:

A-1. Shareholders owning or controlling, or holding, directly or indirectly, ten percent (10%) or more of the shares of **Stewart Title Guaranty Company** as of the last day of the year preceding the date hereinabove set forth are as follows:

Stewart Information Services Corporation -100%

A-2. The members of the Board of Directors of **Stewart Title Guaranty Company** as of the last day of the year preceding the date hereinabove set forth are as follows: Frederick H. Eppinger, David C. Hisey, John L. Killea, Steven M. Lessack, Tara S. Smith, Brian K. Glaze, Pamela B. O'Brien and Mary P. Thomas.

A-3. The designated officers of **Stewart Title Guaranty Company** as of the last day of the year preceding the date hereinabove set forth are as follows: Frederick H. Eppinger, Chief Executive Officer & President; David C. Hisey, Chief Financial Officer - Secretary & Assistant Treasurer; Brad Rable, Chief Information Officer; Genady Vishnevetsky, Chief Information Security Officer; Emily Kain, Chief Human Resources Officer; Steven M. Lessack, Group President; Tara S. Smith, Group President - Agency Services; John L. Killea, General Counsel & Chief Compliance Officer; Charles M. Craig, Senior Vice President - Associate General Counsel & Senior Underwriting Counsel; James L. Gosdin, Senior Vice President - Chief Underwriting Counsel & Associate General Counsel; John Rothermel, Senior Vice President - Senior Underwriting Counsel; Heidi Junge, Senior Vice President - Regional Underwriting Counsel.

As to **Stewart Title Company** (Title Insurance Agent), the following disclosures are made:

B-1 Shareholders, owners, partners or other persons having, owning or controlling one percent (1%) or more of Title Insurance Agent are as follows: Stewart Title Guaranty Company – 100%

B-2 Shareholders, owners, partners, or other persons having, owning or controlling ten percent (10%) or more of an entity that has, owns or controls one percent (1%) or more of Title Insurance Agent are as follows:  
Stewart Information Services Corporation - 100%

B-3 If Title Insurance Agent is a corporation, the following is a list of the members of the Board of Directors:

Frederick H. Eppinger, David C. Hisey, John L. Killea

B-4 If Title Insurance Agent is a corporation, the following is a list of its officers:

Frederick H. Eppinger	Chairman, Chief Executive Officer and President
David C. Hisey	Chief Financial Officer, Assistant Secretary-Treasurer
John L. Killea	Executive Vice President, Chief Legal Officer
Julie Warnock	Secretary, Assistant Treasurer
Scott Gray	Treasurer, Assistant Secretary

C-1. You are entitled to receive advance disclosure of settlement charges in connection with the proposed transaction to which this commitment relates. Upon your request, such disclosure will be made to you. Additionally, the name of any person, firm or corporation receiving a portion of the premium from the settlement of this transaction will be disclosed on the closing or settlement statement.

You are further advised that the estimated title premium\* is:

Owner's Policy	TBD
Loan Policy	
Endorsement Charges	\$0.00
Other	
Total	TBD

Of this total amount 15% will be paid to Stewart Title Guaranty Company; 85% will be retained by the issuing Title Insurance Agent; and the remainder of the estimated premium will be paid to other parties as follows:

Amount			To Whom	For Service
\$	(or	%)		
\$	(or	%)		
\$	(or	%)		

"The estimated premium is based upon information furnished to us as of the date of this Commitment for Title Insurance. Final determination of the amount of the premium will be made at closing in accordance with the Rules and Regulations adopted by the Commissioner of Insurance."

T-7 Commitment Schedule D Revised 1/1/2022



## **DISCLOSURE REGARDING FUNDS FOR CLOSING**

**(to be provided with or within the Commitment for Title Insurance)**

As Escrow Agent for the Real Estate transaction Stewart Title Company, ("Escrow Agent") has received and/or will receive the buyer's/borrower's funds and/or funds from the buyer's/borrower's lender for disbursement at closing of the transaction.

The seller and the buyer (or the borrower in a refinancing transaction) may request that escrow funds be invested in an interest-bearing account subject to a reasonable administrative fee charged by Escrow Agent and any account terms and conditions negotiated with the financial institution offering the interest bearing account. Otherwise, Escrow Agent shall deposit the earnest money in a demand deposit account that is federally insured to the maximum extent permitted by law. Demand deposit accounts offer immediately available funds for withdrawal after a check has cleared.

Escrow Agent may receive other benefits from the financial institution where the funds are deposited. Based upon the deposit of escrow funds in demand deposit accounts and other relationships with the financial institution, Escrow Agent is eligible to participate in a program whereby it may (i) receive favorable loan terms and earn income from the investment of loan proceeds and (ii) receive other benefits offered by the financial institution.

**County:** El Paso **TxDOTCONNECT Parcel No. P00054019.001**  
**Highway:** U.S. 62/180  
**Limits:** Tierra Este to F.M. 659  
**RCSJ:** 0374-02-104  
**CCSJ:** 0374-02-100

**EXHIBIT A**

- 2) **THENCE**, North 02 degrees 28 minutes 15 seconds East, along the west line of said 0.7744 of one acre City of El Paso tract and the north line of said 34.824 acre River Oaks Properties tract, a distance of 9.33 feet to a point at the northwest corner of said 0.7744 of one acre City of El Paso tract, being at an angle point in the north line of said 34.824 acre River Oaks Properties tract, and being in the south line of that tract described as 11.795 acres (Parcel 45) conveyed to the State of Texas by deed, as recorded in Volume 1170, Page 151, Deed Records, El Paso County, Texas, and the existing south right-of-way line of U.S. 62/180 (Montana Avenue, 200 foot width);
- 3) **THENCE**, North 84 degrees 19 minutes 51 seconds East, along the north line of said 0.7744 of one acre City of El Paso tract, the south line of said 11.795 acre State of Texas tract, and the existing south right-of-way line of U.S. 62/180, a distance of 30.31 feet to a point at the northeast corner of said 0.7744 of one acre City of El Paso tract, being an angle point in the north line of said 34.824 acre River Oaks Properties tract;
- 4) **THENCE**, South 02 degrees 28 minutes 15 seconds West, along the east line of said 0.7744 of one acre City of El Paso tract and the north line of said 34.824 acre River Oaks Properties tract, a distance of 8.39 feet to the **POINT OF BEGINNING** and containing 266 square feet (0.0061 of one acre) of land, more or less.

The bearings and coordinates are based on the Texas Coordinate System, Central Zone (4203), North American Datum of 1983, 2014 Adjustment EPOCH 2010.00. All distances and coordinates shown are surface and may be converted to grid by dividing by a combined adjustment factor of 1.000231.

Access is permitted to the highway facility from the remainder of the abutting property.

**EXHIBIT A**

A parcel plat of even date was prepared in conjunction with this property description.

**STATE OF TEXAS       §**  
**§**  
**COUNTY OF TRAVIS   §**

**KNOW ALL MEN BY THESE PRESENTS:**

That I, Chris Conrad, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this the 8th day of September, 2020 A.D.

SURVEYED BY:

**McGRAY & McGRAY LAND SURVEYORS, INC.**

3301 Hancock Dr., Ste. 6 Austin, TX 78731 (512) 451-8591

TBPELS Survey Firm# 10095500



Chris Conrad, Reg. Professional Land Surveyor No. 5623

M:/TxDOT El Paso~US 62-Tierra Este to FM 659/Descriptions/Parcel 76

Issued 09/08/2020

MONTANA AVE./U.S. 62/180  
(200' R.O.W.)

EXISTING R.O.W.

76

0.0061 AC.  
266 SQ. FT.

PROPOSED  
R.O.W.

P.O.B.  
PARCEL 76

N02°28'15"E 389.04'

CITY OF EL PASO  
NOVEMBER 29, 1996  
VOL. 3157, PG. 2297  
O.P.R.P.E.P.C.T.  
(0.7744 ACRES)

P.O.C.  
PARCEL 76

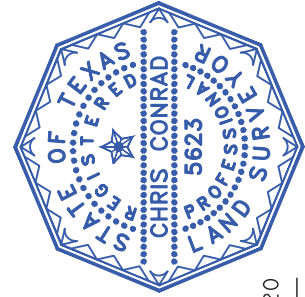
PROPERTY INSET  
NOT TO SCALE

I HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT TO  
THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT THE  
PROPERTY SHOWN HEREIN WAS DETERMINED BY A SURVEY MADE  
ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

*Chris Conrad*

9/8/2020

CHRIS CONRAD, REG. PROF. LAND SURVEYOR NO. 5623 DATE



NOTES:

1. ALL BEARINGS AND COORDINATES ARE BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983, 2011 ADJUSTMENT EPOCH 2010.00. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY A COMBINED ADJUSTMENT FACTOR OF 1.000231.
2. ABSTRACTING WAS PERFORMED FROM FEBRUARY 2019 THROUGH MAY 2020.
3. FIELD SURVEYING WAS PERFORMED FROM FEBRUARY 2019 THROUGH JUNE 2020.
4. RIGHT-OF-WAY MAPS COMPLETED IN JUNE 2020.
5. THIS MAP IS AN INTERNAL TxDOT DOCUMENT. ITS CONTENTS SHALL NOT BE USED FOR ANY OTHER PURPOSE. INACCURACIES SHALL BE REPORTED TO THE DISTRICT AND RIGHT-OF-WAY PROJECT DELIVERY SECTION FOR CORRECTIONS.

REVISIONS

DEED	ACQUISITION	REMAINING RT
0.7744 AC. 33,733 SQ. FT.	0.0061 AC. 266 SQ. FT.	0.7683 AC. 33,467 SQ. FT.



McGRAY & McGRAY  
LAND SURVEYORS, INC.  
TBPELS SURVEY FIRM # 10095500  
3301 HANCOCK DRIVE #6  
AUSTIN, TEXAS 78731  
(512) 451-8591  
www.mcgray.com

PARCEL PLAT SHOWING  
PARCEL 76  
U.S. 62/180 (MONTANA AVENUE)  
EL PASO COUNTY, TEXAS  
R.C.S. J.: 0374-02-104

EL PASO COUNTY, TEXAS  
SEPTEMBER 18, 1928  
VOL. 501 PG. 148  
D.R.E.P.C.T.  
(5.71 AC.)

COUNTY OF EL PASO, TEXAS  
OCTOBER 5, 1928  
VOL. 497 PG. 636  
D.R.E.P.C.T.  
(12.27 AC.)

SEC. 25, BLK. 79, TSP. 2  
T&P R.R. CO. SURVEY, A-2134

700+00 ENGINEER'S BASELINE

703+00

SEC. 26, BLK. 79, TSP. 2  
T&P R.R. CO. SURVEY,  
A-7874 (W.I. NEWTON)

MONTANA AVE./U.S. 62/180  
(225' R.O.W.)

STATE OF TEXAS  
APRIL 29, 1954  
VOL. 1170 PG. 151  
D.R.E.P.C.T.  
(PARCEL 47 3.227 AC.)

STATE OF TEXAS  
JANUARY 30, 1958  
VOL. 1388 PG. 349  
D.R.E.P.C.T.  
PARCEL 46  
(0.52 AC.)

STATE-STATE OF TEXAS  
MARCH 27, 1954  
VOL. 1164 PG. 413  
D.R.E.P.C.T.  
PARCEL 46A  
(0.146 AC.)

LINE TABLE

LINE	BEARING	DISTANCE
L1	N02°28'15"E	9.33'
L2	N84°19'51"E	30.31'
L3	S02°28'15"W	8.39'

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	TANGENT	BEARING	CHORD
C1	30.45'	6,875.00'	01°15'14"	15.23'	S82°34'33"W	30.45'

EXISTING R.O.W.

APPROXIMATE SURVEY LINE

APPROXIMATE SURVEY LINE

SEC. 35, BLK. 79, TSP. 2  
T&P R.R. CO. SURVEY,  
A-2139

P.O.B. PARCEL 76  
N=10,673,877.63  
E=469,819.91  
STA. 701+20.17  
119.30' RT

RIVER OAKS PROPERTIES, LTD  
JANUARY 3, 2006  
DOC. NO. 2006001936  
O.P.R.P.E.P.C.T.  
(17.086 AC.)

A-2134  
A-7877

RIVER OAKS PROPERTIES, LTD  
JULY 20, 2005  
DOC. NO. 20050065295  
O.P.R.P.E.P.C.T.  
(34.824 ACRES)

P.O.C. PARCEL 76  
N=10,673,877.63  
E=469,819.91  
STA. 701+20.17  
119.30' RT

SEC. 36, BLK. 79, TSP. 2  
T&P R.R. CO. SURVEY, A-7877  
(W.I. NEWTON)

APPROXIMATE SURVEY LINE

FOUND TXDOT TYPE I MONUMENT

FOUND TXDOT TYPE II MONUMENT

FOUND IRON ROD WITH CAP 1/2" UNLESS NOTED

FOUND IRON ROD 1/2" UNLESS NOTED

FOUND IRON PIPE 1/2" I.D. UNLESS NOTED

FOUND CHISEL MARK

FOUND MAG NAIL (UNLESS NOTED)

CALCULATED POINT, NOT SET

IRON ROD SET W/ TXDOT ALUMINUM CAP

MAG NAIL SET (UNLESS NOTED)

CHISEL MARK SET

(XXX)

PROPERTY LINE (OWNERSHIP DIVISION)

DEED LINE (OWNERSHIP IN COMMON)

DISTANCE NOT TO SCALE

RIGHT-OF-WAY

NOT TO SCALE

PUBLIC UTILITY EASEMENT

P.R.E.P.C.T.

D.R.E.P.C.T.

O.P.R.P.E.P.C.T.

RECORD INFORMATION

PROPERTY LINE (OWNERSHIP DIVISION)

DEED LINE (OWNERSHIP IN COMMON)

DISTANCE NOT TO SCALE

RIGHT-OF-WAY

NOT TO SCALE

PUBLIC UTILITY EASEMENT

PLAT RECORDS EL PASO COUNTY, TEXAS

DEED RECORDS EL PASO COUNTY, TEXAS

OFFICIAL PUBLIC RECORDS OF REAL

PROPERTY, EL PASO COUNTY, TEXAS



Texas Department of Transportation



McGRAY & McGRAY  
LAND SURVEYORS, INC.  
TBPELS SURVEY FIRM # 10095500  
3301 HANCOCK DRIVE #6  
AUSTIN, TEXAS 78731  
(512) 451-8591  
www.mcgray.com

PARCEL PLAT SHOWING

PARCEL 76

U.S. 62/180 (MONTANA AVENUE)

EL PASO COUNTY, TEXAS

R.C.S.J.: 0374-02-104

DATE: SEPTEMBER 2020

SCALE: 1" = 50'

PAGE 5 OF 5



# STEWART TITLE GUARANTY COMPANY

## DELETION OF ARBITRATION PROVISION

(Not applicable to the Texas Residential Owner's Policy)

ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Insurance Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

**Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is \$2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.**

The arbitration provision in the Policy is as follows:

"Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from an Entity). All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction."

---

SIGNATURE

---

DATE

## **STEWART TITLE GUARANTY COMPANY PRIVACY NOTICE**

This Stewart Title Guaranty Company Privacy Notice ("Notice") explains how Stewart Title Guaranty Company and its subsidiary title insurance companies (collectively, "Stewart") collect, use, and protect personal information, when and to whom we disclose such information, and the choices you have about the use and disclosure of your information. Pursuant to Title V of the Gramm-Leach Bliley Act ("GLBA") and other Federal and state laws and regulations applicable to financial institutions, consumers have the right to limit some, but not all sharing of their personal information. Please read this Notice carefully to understand how Stewart uses your personal information.

The types of personal information Stewart collects, and shares depends on the product or service you have requested.

### **Stewart may collect the following categories of personal and financial information from you throughout your transaction:**

1. Identifiers: Real name, alias, online IP address if accessing company websites, email address, account name, unique online identifier, social security number, driver's license number, passport number, or other similar identifiers;
2. Demographic Information: Marital status, gender, date of birth.
3. Personal Information and Personal Financial Information: Name, signature, social security number, physical characteristics or description, address, telephone number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, credit reports, or any other information necessary to complete the transaction.

### **Stewart may collect personal information about you from:**

1. Publicly available information from government records.
2. Information we receive directly from you or your agent(s), such as your lender or real estate broker;
3. Information about your transactions with Stewart, our affiliates, or others; and
4. Information we receive from consumer reporting agencies and/or governmental entities, either directly from these entities or through others.

### **Stewart may use your personal information for the following purposes:**

1. To provide products and services to you or in connection with a transaction.
2. To improve our products and services.
3. To communicate with you about our, our affiliates', and others' products and services, jointly or independently.

### **Stewart may use or disclose the personal information we collect for one or more of the following purposes:**

- To fulfill or meet the reason for which the information is provided.
- To provide, support, personalize, and develop our website, products, and services.
- To create, maintain, customize, and secure your account with Stewart.
- To process your requests, purchases, transactions, and payments and prevent transactional fraud.
- To prevent and/or process claims.
- To assist third party vendors/service providers who complete transactions or perform services on Stewart's behalf pursuant to valid service provider agreements.
- As necessary or appropriate to protect the rights, property or safety of Stewart, our customers or others.
- To provide you with support and to respond to your inquiries, including to investigate and address your concerns and monitor and improve our responses.
- To help maintain the safety, security, and integrity of our website, products and services, databases and other technology-based assets, and business.
- To respond to law enforcement or regulator requests as required by applicable law, court order, or governmental regulations.
- Auditing for compliance with federal and state laws, rules and regulations.

- Performing services including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments.
- To evaluate or conduct a merger, divestiture, restructuring, reorganization, dissolution, or other sale or transfer of some or all of our assets, whether as a going concern or as part of bankruptcy, liquidation, or similar proceeding, in which personal information held by us is among the assets transferred.

Stewart will not collect additional categories of personal information or use the personal information we collected for materially different, unrelated, or incompatible purposes without providing you notice.

### **Disclosure of Personal Information to Affiliated Companies and Nonaffiliated Third Parties**

Stewart does not sell your personal information to nonaffiliated third parties. Stewart may share your information with those you have designated as your agent throughout the course of your transaction (for example, a realtor, broker, or a lender). Stewart may disclose your personal information to a non-affiliated third party for a business purpose. Typically, when we disclose personal information for a business purpose, we enter in a contract that describes the purpose and requires the recipient to both keep that personal information confidential and not use it for any purpose except performing the contract.

We share your personal information with the following categories of third parties:

- Non-affiliated service providers and vendors we contract with to render specific services (For example, search companies, mobile notaries, and companies providing credit/debit card processing, billing, shipping, repair, customer service, auditing, marketing, etc.)
- To enable Stewart to prevent criminal activity, fraud, material misrepresentation, or nondisclosure.
- Stewart's affiliated and subsidiary companies.
- Non-affiliated third-party service providers with whom we perform joint marketing, pursuant to an agreement with them to jointly market financial products or services to you.
- Parties involved in litigation and attorneys, as required by law.
- Financial rating organizations, rating bureaus and trade associations.
- Federal and State Regulators, law enforcement and other government entities to law enforcement or authorities in connection with an investigation, or in response to a subpoena or court order.

The law does not require your prior authorization or consent and does not allow you to restrict the disclosures described above. Additionally, we may disclose your information to third parties for whom you have given us authorization or consent to make such disclosure. We do not otherwise share your Personal Information or Browsing Information with non-affiliated third parties, except as required or permitted by law.

### **Right to Limit Use of Your Personal Information**

You have the right to opt-out of sharing of your personal information among our affiliates to directly market to you. To opt-out of sharing to our affiliates for direct marketing, you may send an "opt out" request to [Privacyrequest@stewart.com](mailto:Privacyrequest@stewart.com), or contact us through other available methods provided under "Contact Information" in this Notice. We do not share your Personal Information with nonaffiliates for their use to direct market to you without your consent.

### **How Stewart Protects Your Personal Information**

Stewart maintains physical, technical and administrative safeguards and policies to protect your personal information.

### **Contact Information**

If you have questions or comments about this Notice, the ways in which Stewart collects and uses your information described herein, your choices and rights regarding such use, or wish to exercise your rights under law, please do not hesitate to contact us at:

**Phone:** Toll Free at 1-866-571-9270

**Email:** [Privacyrequest@stewart.com](mailto:Privacyrequest@stewart.com)

**Postal Address:** Stewart Information Services Corporation  
Attn: Mary Thomas, Chief Compliance and Regulatory Officer  
1360 Post Oak Blvd., Ste. 100, MC #14-1  
Houston, TX 77056

### Privacy Notice at Collection for California Residents

Pursuant to the California Consumer Privacy Act of 2018 ("CCPA") and the California Privacy Rights Act of 2020, effective January 1, 2023 ("CPRA"), Stewart Information Services Corporation and its subsidiary companies (collectively, "Stewart") are providing this **Privacy Notice at Collection for California Residents** ("CCPA & CPRA Notice"). This CCPA & CPRA Notice supplements the information contained in Stewart's existing privacy notice and applies solely to all visitors, users, and consumers and others who reside in the State of California or are considered California Residents as defined in the CCPA & CPRA ("consumers" or "you"). All terms defined in the CCPA & CPRA have the same meaning when used in this Notice.

#### **Personal and Sensitive Personal Information Stewart Collects**

- Publicly available information from government records.
- Deidentified or aggregated consumer information.
- Certain personal information protected by other sector-specific federal or California laws, including but not limited to the Fair Credit Reporting Act (FCRA), Gramm Leach Bliley Act (GLBA) and California Financial Information Privacy Act (FIPA).

Specifically, Stewart has collected the following categories of **personal and sensitive personal information** from consumers within the last twelve (12) months:

Category	Examples	Collected
A. Identifiers.	A real name, alias, postal address, unique personal identifier, online identifier, Internet Protocol address, email address, account name, Social Security number, driver's license number, passport number, or other similar identifiers.	YES
B. Personal information categories listed in the California Customer Records statute (Cal. Civ. Code § 1798.80(e)).	A name, signature, Social Security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information. Some personal information included in this category may overlap with other categories.	YES
C. Protected classification characteristics under California or federal law.	Age (40 years or older), race, color, ancestry, national origin, citizenship, religion or creed, marital status, medical condition, physical or mental disability, sex (including gender, gender identity, gender expression, pregnancy or childbirth and related medical conditions), sexual orientation, veteran or military status, genetic information (including familial genetic information).	YES
D. Commercial information.	Records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.	YES
E. Biometric information.	Genetic, physiological, behavioral, and biological characteristics, or activity patterns used to extract a template or other identifier or identifying information, such as, fingerprints, faceprints, and voiceprints, iris or retina scans, keystroke, gait, or other physical patterns, and sleep, health, or exercise data.	YES
F. Internet or other similar network activity.	Browsing history, search history, information on a consumer's interaction with a website, application, or advertisement.	YES
G. Geolocation data.	Physical location or movements.	YES

H. Sensory data.	Audio, electronic, visual, thermal, olfactory, or similar information.	YES
I. Professional or employment-related information.	Current or past job history or performance evaluations.	YES
J. Non-public education information (per the Family Educational Rights and Privacy Act (20 U.S.C. Section 1232g, 34 C.F.R. Part 99)).	Education records directly related to a student maintained by an educational institution or party acting on its behalf, such as grades, transcripts, class lists, student schedules, student identification codes, student financial information, or student disciplinary records.	YES
K. Inferences drawn from other personal information.	Profile reflecting a person's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.	YES

Stewart obtains the categories of personal and sensitive information listed above from the following categories of sources:

- Directly and indirectly from customers, their designees, or their agents (For example, realtors, lenders, attorneys, brokers, etc.)
- Directly and indirectly from activity on Stewart's website or other applications.
- From third-parties that interact with Stewart in connection with the services we provide.

#### **Use of Personal and Sensitive Personal Information**

Stewart may use or disclose the personal or sensitive information we collect for one or more of the following purposes:

- To fulfill or meet the reason for which the information is provided.
- To provide, support, personalize, and develop our website, products, and services.
- To create, maintain, customize, and secure your account with Stewart.
- To process your requests, purchases, transactions, and payments and prevent transactional fraud.
- To prevent and/or process claims.
- To assist third party vendors/service providers who complete transactions or perform services on Stewart's behalf pursuant to valid service provider agreements.
- As necessary or appropriate to protect the rights, property or safety of Stewart, our customers or others.
- To provide you with support and to respond to your inquiries, including to investigate and address your concerns and monitor and improve our responses.
- To personalize your website experience and to deliver content and product and service offerings relevant to your interests, including targeted offers and ads through our website, third-party sites, and via email or text message (with your consent, where required by law).
- To help maintain the safety, security, and integrity of our website, products and services, databases and other technology-based assets, and business.
- To respond to law enforcement or regulator requests as required by applicable law, court order, or governmental regulations.
- Auditing for compliance with federal and state laws, rules and regulations.
- Performing services including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing advertising or marketing services or other similar services.
- To evaluate or conduct a merger, divestiture, restructuring, reorganization, dissolution, or other sale or transfer of some or all of our assets, whether as a going concern or as part of bankruptcy, liquidation, or similar proceeding, in which personal information held by us is among the assets transferred.

Stewart will not collect additional categories of personal or sensitive information or use the personal or sensitive information we collected for materially different, unrelated, or incompatible purposes without providing you notice.

#### **Disclosure of Personal Information to Affiliated Companies and Nonaffiliated Third Parties**

Stewart does not sell your personal information to nonaffiliated third parties. Stewart may share your information with those you have designated as your agent throughout the course of your transaction (for example, a realtor, broker, or a lender). Stewart may disclose your personal information to a third party for a business purpose.

Typically, when we disclose personal information for a business purpose, we enter into a contract that describes the purpose and requires the recipient to both keep that personal information confidential and not use it for any purpose except performing the contract.

We share your personal information with the following categories of third parties:

- a. Service providers and vendors we contract with to render specific services (For example, search companies, mobile notaries, and companies providing credit/debit card processing, billing, shipping, repair, customer service, auditing, marketing, etc.)
- b. Affiliated Companies.
- c. Parties involved in litigation and attorneys, as required by law.
- d. Financial rating organizations, rating bureaus and trade associations.
- e. Federal and State Regulators, law enforcement and other government entities

In the preceding twelve (12) months, Stewart has disclosed the following categories of personal information for a business purpose:

Category A: Identifiers

Category B: California Customer Records personal information categories

Category C: Protected classification characteristics under California or federal law

Category D: Commercial Information

Category E: Biometric Information

Category F: Internet or other similar network activity

Category G: Geolocation data

Category H: Sensory data

Category I: Professional or employment-related information

Category J: Non-public education information

Category K: Inferences

## **Your Consumer Rights and Choices Under CCPA and CPRA**

### **Your Rights Under CCPA**

The CCPA provides consumers (California residents as defined in the CCPA) with specific rights regarding their personal information. This section describes your CCPA rights and explains how to exercise those rights.

### **Access to Specific Information and Data Portability Rights**

You have the right to request that Stewart disclose certain information to you about our collection and use of your personal information over the past 12 months. Once we receive and confirm your verifiable consumer request, Stewart will disclose to you:

- The categories of personal information Stewart collected about you.
- The categories of sources for the personal information Stewart collected about you.
- Stewart's business or commercial purpose for collecting that personal information.
- The categories of third parties with whom Stewart shares that personal information.
- The specific pieces of personal information Stewart collected about you (also called a data portability request).
- If Stewart disclosed your personal data for a business purpose, a listing identifying the personal information categories that each category of recipient obtained.

### **Deletion Request Rights**

You have the right to request that Stewart delete any of your personal information we collected from you and retained, subject to certain exceptions. Once we receive and confirm your verifiable consumer request, Stewart will delete (and direct our service providers to delete) your personal information from our records, unless an exception applies.

Stewart may deny your deletion request if retaining the information is necessary for us or our service providers to:

1. Complete the transaction for which we collected the personal information, provide a good or service that you requested, take actions reasonably anticipated within the context of our ongoing business relationship with you, or otherwise perform our contract with you.
2. Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity, or prosecute those responsible for such activities.
3. Debug products to identify and repair errors that impair existing intended functionality.
4. Exercise free speech, ensure the right of another consumer to exercise their free speech rights, or exercise another right provided for by law.
5. Comply with the California Electronic Communications Privacy Act (Cal. Penal Code § 1546 *seq.*).
6. Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws, when the information's deletion may likely render impossible or seriously impair the research's achievement, if you previously provided informed consent.
7. Enable solely internal uses that are reasonably aligned with consumer expectations based on your relationship with us.
8. Comply with a legal obligation.
9. Make other internal and lawful uses of that information that are compatible with the context in which you provided it.

### **Your Rights Under CPRA**

CPRA expands upon your consumer rights and protections offered by the CCPA. This section describes your CPRA rights and explains how to exercise those rights.

### **Opt-Out of Information Sharing and Selling**

Stewart does not share or sell information to third parties, as the terms are defined under the CCPA and CPRA. Stewart only shares your personal information as commercially necessary and in accordance with this CCPA & CPRA Notice.

### **Correction of Inaccurate Information**

You have the right to request that Stewart correct any inaccurate information maintained about.

### **Limit the Use of Sensitive Personal Information**

You have the right to limit how your sensitive personal information, as defined in the CCPA and CPRA is disclosed or shared with third parties.

### **Exercising Your Rights Under CCPA and CPRA**

To exercise the access, data portability, deletion, opt-out, correction, or limitation rights described above, please submit a verifiable consumer request to us by the available means provided below:

1. Calling us Toll Free at 1-866-571-9270; or
2. Emailing us at [Privacyrequest@stewart.com](mailto:Privacyrequest@stewart.com); or
3. Visiting <http://stewart.com/ccpa>.

Only you, or someone legally authorized to act on your behalf, may make a verifiable consumer request related to your personal information. You may also make a verifiable consumer request on behalf of your minor child, if applicable.

To designate an authorized agent, please contact Stewart through one of the methods mentioned above.

You may only make a verifiable consumer request for access or data portability twice within a 12-month period. The verifiable consumer request must:

- Provide sufficient information that allows us to reasonably verify you are the person about whom we collected personal information or an authorized representative.
- Describe your request with sufficient detail that allows us to properly understand, evaluate, and respond to it.

Stewart cannot respond to your request or provide you with personal information if we cannot verify your identity or authority to make the request and confirm the personal information relates to you.

Making a verifiable consumer request does not require you to create an account with Stewart.

### **Response Timing and Format**

We endeavor to respond to a verifiable consumer request within forty-five (45) days of its receipt. If we require more time (up to an additional 45 days), we will inform you of the reason and extension period in writing.

A written response will be delivered by mail or electronically, at your option.

Any disclosures we provide will only cover the 12-month period preceding the verifiable consumer request's receipt. The response we provide will also explain the reasons we cannot comply with a request, if applicable. For data portability requests, we will select a format to provide your personal information that is readily useable and should allow you to transmit the information from one entity to another entity without hindrance.

Stewart does not charge a fee to process or respond to your verifiable consumer request unless it is excessive, repetitive, or manifestly unfounded. If we determine that the request warrants a fee, we will tell you why we made that decision and provide you with a cost estimate before completing your request.

### **Non-Discrimination**

Stewart will not discriminate against you for exercising any of your CCPA and CPRA rights. Unless permitted by the CCPA or CPRA, we will not:

- Deny you goods or services.
- Charge you a different prices or rates for goods or services, including through granting discounts or other benefits, or imposing penalties.
- Provide you a different level or quality of goods or services.
- Suggest that you may receive a different price or rate for goods or services or a different level or quality of goods or services.

### **Record Retention**

Your personal information will not be kept for longer than is necessary for the business purpose for which it is collected and processed. We will retain your personal information and records based on established record retention policies pursuant to California law and in compliance with all federal and state retention obligations. Additionally, we will retain your personal information to comply with applicable laws, regulations, and legal processes (such as responding to subpoenas or court orders), and to respond to legal claims, resolve disputes, and comply with legal or regulatory recordkeeping requirements

### **Changes to This CCPRA & CPRA Notice**

Stewart reserves the right to amend this CCPA & CPRA Notice at our discretion and at any time. When we make changes to this CCPA & CPRA Notice, we will post the updated Notice on Stewart's website and update the Notice's effective date.

### **Link to Privacy Notice**

Stewarts Privacy Notice can be found on our website at <https://www.stewart.com/en/privacy.html>.

### **Contact Information**

If you have questions or comments about this notice, the ways in which Stewart collects and uses your information described herein, your choices and rights regarding such use, or wish to exercise your rights under California law, please do not hesitate to contact us at:

**Phone:** Toll Free at 1-866-571-9270

**Website:** <http://stewart.com/ccpa>

**Email:** [Privacyrequest@stewart.com](mailto:Privacyrequest@stewart.com)

**Postal Address:** Stewart Information Services Corporation  
Attn: Mary Thomas, Chief Compliance and Regulatory Officer  
1360 Post Oak Blvd., Ste. 100, MC #14-1  
Houston, TX 77056



February 14, 2024 PSB Meeting: Executive Session Item a.

- a. The Board will deliberate regarding whether the following property can be declared inexpedient to the water, wastewater and stormwater system, the property is legally described as portion of land situated in the T&P R. R. Co. Survey. Abstract No. 2139, Section 35, Block 79, Township 2, in El Paso County, consisting of approximately 0.0061 acre. (551.071) (551.072)

**MOTION**

**“FOR EXECUTIVE SESSION ITEM A, I MOVE that that the property be declared inexpedient to the water, wastewater and stormwater systems, and the President/CEO be authorized to proceed with the sale of the property under the terms and conditions specified and sign any and all documents necessary, and that any portions of the property reserved or excepted from the sale shall remain a part of the System.”**

Motion made by: \_\_\_\_\_Lisa Saenz\_\_\_\_\_ and seconded by: \_\_\_\_\_Bryan Morris\_\_\_\_\_

AYES:\_\_\_\_\_2\_\_\_\_\_

NAYS:\_\_\_\_\_



El Paso, TX

300 N. Campbell  
El Paso, TX

## Legislation Text

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**File #: 24-796, Version: 1**

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### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

#### **Outside City Limits**

El Paso Water, Rocio Alvarado, (915) 594-5493

#### **AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

An Ordinance authorizing the City Manager to sign a purchase and sale agreement, a deed and any other documents necessary to convey approximately 16.2097 acres of land, legally described as portion of Section 9, Township 27, South Range 3 East, New Mexico Principle Meridian, Dona Ana County, New Mexico.

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

**DEPARTMENT:** El Paso Water Utilities Public Service Board (EPWater)

**AGENDA DATE:** Introduction - \_\_\_\_\_.  
Public Hearing - \_\_\_\_\_.

**CONTACT PERSON/PHONE:** Rocio P. Alvarado, Real Estate Manager, 915.594.5493

**DISTRICT(S) AFFECTED:** NA

**SUBJECT:** APPROVE the following Ordinance

Authorizing the City Manager to sign a Purchase and Sale Agreement, a Deed and any other documents necessary to convey to Tyson and Megan Strain, approximately 16.2097 acres of land, legally described as portion of Section 9, Township 27, South Range 3 East, New Mexico Principle Meridian, Doña Ana County, New Mexico

EPWater, Rocio P. Alvarado, Real Estate Manager, 915.594.5493.

**BACKGROUND / DISCUSSION:**

The parcel of land is owned by the El Paso Water Utilities Public Service Board ("*EPWater*"), for and on behalf of the City of El Paso, a Texas municipal corporation, as part of its water system (*the "System"*). On December 9, 2020, the Public Service Board declared the property inexpedient to the system and authorized the President/CEO of EPWater to obtain an appraisal of the property.

On April 13, 2022, the Public Service Board approved the sale of land that has been declared inexpedient to the System through a real estate broker, in accordance with Texas Local Government Code Ann.§253.014(a)-(e), as added and amended; and,

On November 8, 2023, the Public Service Board approved the sale of the above-mentioned land.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

Yes, the City Council approved a closely item related to this one.

On May 23, 2023, the City Council approved the sale of 49.156 acres of New Mexico land to Terry Taylor and Susan K. Taylor through the real estate broker.

**AMOUNT AND SOURCE OF FUNDING:** N/A

**BOARD / COMMISSION ACTION:**

On November 8, 2023, the Public Service Board approved the sale of the land through the real estate broker.

**AFTER EXECUTION OF ALL DOCUMENTS, PLEASE CONTACT ROCIO P. ALVARADO TO PICK UP THE DOCUMENTS @ 594.5493. THANK YOU.**

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

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A PURCHASE AND SALE AGREEMENT, A DEED AND ANY OTHER DOCUMENTS NECESSARY TO CONVEY APPROXIMATELY 16.2097 ACRES OF LAND, LEGALLY DESCRIBED AS PORTION OF SECTION 9, TOWNSHIP 27, SOUTH RANGE 3 EAST, NEW MEXICO PRINCIPLE MERIDIAN, DOÑA ANA COUNTY, NEW MEXICO**

**WHEREAS**, the El Paso Water Utilities Public Service Board ("*EPWater*"), for and on behalf of the City of El Paso, a Texas municipal corporation, holds certain real properties in its land inventory as part of its water utility systems (collectively the "*System*"); and,

**WHEREAS**, at its regular meeting on December 9, 2020, the Public Service Board determined approximately 16.2097 acres of land legally described as a portion of Section 9, Township 27, South Range 3 East, New Mexico Principle Meridian, Doña Ana County, New Mexico (the "*Property*"), to be inexpedient to the water system and that the Property should be sold in accordance with state law; and,

**WHEREAS**, on April 13, 2022, the Public Service Board approved the sale of land that has been declared inexpedient to the System through a real estate broker, in accordance with Texas Local Government Code Ann.§253.014(a)-(e), as added and amended; and,

**WHEREAS**, on November 8, 2023, the Public Service Board approved and authorized the sale of the Property to Tyson and Megan Strain, for the sales price of \$360,000.00 and adopted a Resolution making the finding as set forth hereinabove and requesting the El Paso City Council pass an Ordinance authorizing the City Manager to sign a Purchase and Sale Agreement, a Deed and any and all necessary documents to complete the conveyance of the Property; and,

**WHEREAS**, the Property being was appraised at its fair market value and the purchaser has agreed to pay above the appraised value;

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

That the City Manager is authorized to sign a Purchase and Sale Agreement, a Deed and any other necessary documents, in a form approved by the City Attorney's Office, for the sale of the following identified real property:

16.2097 acres of land, legally described as portion of Section 9,  
Township 27, South Range 3 East, New Mexico Principle Meridian, Doña  
Ana County, New Mexico

**(Signatures begin on following page)**

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_.


CITY OF EL PASO

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

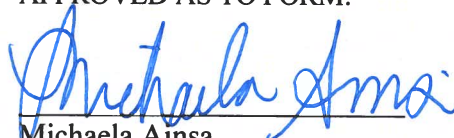
ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Roberta Brito  
Senior Assistant City Attorney

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michaela Ainsa  
Senior Assistant General Counsel

ORDINANCE NUMBER \_\_\_\_\_  
Sale of NM Land - 16.2097 Acres – Strain

### **SPECIAL WARRANTY DEED**

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

**Effective Date:** \_\_\_\_\_.

**Grantor:**           **EL PASO WATER UTILITIES PUBLIC SERVICE BOARD, for and behalf of the CITY OF EL PASO, TEXAS, a Texas municipal corporation**  
1154 Hawkins  
El Paso, Texas 79925

**Grantee:**           Tyson and Megan Strain  
345 Heavenly Lane  
Anthony, NM 88021  
Attn: Tyson Strain  
Phone: (575)313-6290

**Consideration:** TEN AND NO/100THS DOLLARS (\$10.00), and other good and valuable consideration to the undersigned paid by Grantee, the receipt of which is hereby acknowledged.

**Property (including any improvements):**

A parcel of land consisting of approximately 16.2097 acres of land legally described as a portion of Section 9, Township 27, South Range 3 East, New Mexico Principle Meridian, Doña Ana County, New Mexico, such portion being legally described by metes and bounds in **Exhibit A**, attached hereto.

All permitted water rights under permit LRG-4936 for irrigation, domestic use, livestock use, industrial use, and any other purpose of use recognized by the New Mexico Office of the State Engineer and the Courts of New Mexico, and otherwise appurtenant to or in any manner associated with the Land and its use, including but not limited to all vested or unvested surface and groundwater rights, either declared, licensed, permitted, adjudicated or undeclared with the New Mexico Office of the State Engineer (the "Water Rights") (collectively, the "Property")

**GRANTOR AND GRANTEE AGREE THAT GRANTEE IS ACCEPTING THE PROPERTY FROM GRANTOR IN ITS "AS IS, WHERE IS, AND WITH ALL FAULTS" CONDITION AND THAT THERE ARE NO REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT THE SPECIAL WARRANTY OF TITLE CONTAINED IN THIS DEED. GRANTEE HAS NOT RELIED ON ANY INFORMATION OTHER THAN GRANTEE'S INSPECTION OF THE PROPERTY.**

## **INSPECTION OF THE PROPERTY**

Grantor, 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 the Property unto Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors and assigns to warrant and forever defend all and singular the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through or under Grantor.

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

*(Signature page and exhibits follow.)*

**EXECUTED** to be effective as of the date first stated above.

**GRANTOR:**

**THE CITY OF EL PASO,  
a Texas municipal corporation**

By: \_\_\_\_\_  
Name: Cary Westin  
Title: City Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF EL PASO         §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2024  
by Cary Westin, Interim City Manager of the City of El Paso.

\_\_\_\_\_  
**NOTARY PUBLIC**, State of Texas



## EXHIBIT A



ROMAN BUSTILLOS, P.E.  
President  
RANDY P. BROCK, P.E.  
Executive Vice President  
SERGIO J. ADAME, P.E.  
Vice President - Engineering  
AARON ALVARADO, R.P.L.S.  
Vice President - Surveying  
TBPE Reg. No. F-737  
TBPLS Reg. No. 101314-00

### METES AND BOUNDS DESCRIPTION

*A 16.2097 acres parcel situate northeast of La Union, Doña Ana County, New Mexico as a portion of Section 9, Township 27 South, Range 3 East, N.M.P.M., and being more particularly described by metes and bounds as follows.*

**COMMENCING** at a Texas-New Mexico State Line Monument No. 9, concrete monument brass disk found; **THENCE**, following the Texas-New Mexico State Line, South 52°40'31" East, a distance of 561.58 feet to a 1/2 inch rebar with survey cap No. "NM 21400" set on the south right-of-way line of Doña Ana County Road A-49 (50 feet wide) for the northeasterly corner and the **POINT OF BEGINNING** of the parcel herein described, identical to the northwesterly corner of Tract 1, Block 20, Upper Valley Grant Surveys as described in Book 2093, Page 691, El Paso County Deed Records;

**THENCE**, leaving the south right-of-way line of said Doña Ana County Road A-49 and continuing along the Texas-New Mexico State Line, South 52°40'31" East (South 52°50'02" East-record), a distance of 49.21 feet to a Texas-New Mexico State Line Monument No. 10, broken concrete monument found for an angle point of the parcel herein described;

**THENCE**, continuing along the Texas-New Mexico State Line, South 46°44'35" East (South 46°56'20" East-record), a distance of 1,070.23 feet (1,069.80 feet-record) to an 8 inch diameter concrete monument stamped "1963" found for the southeasterly corner of the parcel herein described, identical to the southwesterly corner of said Tract 1;

**THENCE**, leaving the Texas-New Mexico State Line, South 68°16'51" West (South 68°06'00" West-record), a distance of 529.58 feet (524.65 feet-record) to an 8 inch diameter concrete monument stamped "1963" found for the southwesterly corner of the parcel herein described, identical to the southeasterly corner of a 8.186 acres parcel as described in Instrument No. 1707880, Doña Ana County Deed Records;

**THENCE**, North 45°40'27" West (North 46°07'00" West-record), a distance of 881.42 feet (882.68 feet-record) to an old 5/8 inch rebar found for an angle point of the parcel herein described, identical to the northeasterly corner of said 8.186 acres parcel;

**THENCE**, South 82°58'38" West (South 82°48'00" West-record), a distance of 380.10 feet (380.17 feet-record) to an old 5/8 inch rebar found on the westerly right-of-way line of the La Union Main Canal for an angle point of the parcel herein described, identical to the northwesterly corner of said 8.186 acres parcel;

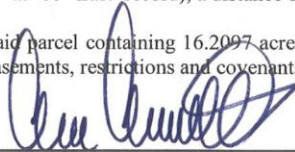
**THENCE**, following the easterly right-of-way line of said La Union Main Canal, North 19°34'50" West (North 19°51'03" West-record), a distance of 455.34 feet to a 1/2 inch rebar with survey cap

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No. "NM 21400" set on the southerly right-of-way line of said Doña Ana County Road A-49 for the northwesterly corner of the parcel herein described;

**THENCE**, leaving the easterly right-of-way line of said La Union Main Canal and following the southerly right-of-way line of said Doña Ana County Road A-49, South 87°18'29" East (South 87°29'00" East~record), a distance of 834.74 feet to the **POINT OF BEGINNING**.

Said parcel containing 16.2097 acres (706,093.4 square feet), more or less, and being subject to all easements, restrictions and covenants of record.



Aaron Alvarado, NM P.S. No. 21400

Date: July 27, 2021

05896-137-16.2097 AC-DESC





## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "**Agreement**") is entered into by and between THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD, for and on behalf of the CITY OF EL PASO, a Texas municipal corporation (the "**Seller**" or "**EPWater**") and Tyson and Megan Strain, as husband & wife (together, the "**Buyer**"). The Seller and the Buyer may be referred to individually herein as a "**Party**" and collectively as the "**Parties**".

### **RECITALS**

**WHEREAS**, the Seller owns the property described below; and

**WHEREAS**, the Buyer desires to purchase the property from the Seller in its "as-is, where-is and with all faults" condition; and

**WHEREAS**, the Seller desires to sell the property to the Buyer in its "as-is, where-is and with all faults" condition, subject to the terms and conditions contained in this Agreement; and

**WHEREAS**, the property is being sold pursuant to the broker listing procedure outlined in Texas Local Government Code Chapter 253; and

**NOW THEREFORE**, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **AGREEMENT**

1. **Description of Property.** The Seller hereby agrees to sell and convey, and the Buyer hereby agrees to purchase, subject to the terms and conditions contained in this Agreement, the following described real property located in Dona Ana County, New Mexico:

- i) An approximately 16.2097 acres of land, legally described as portion of Section 9, Township 27, South Range 3 East, New Mexico Principal Meridian, Doña Ana County, New Mexico, such portion being legally described by metes and bounds in **Exhibit A**, attached hereto and incorporated herein for all purposes; together with any interest in (i) all improvements and fixtures, and (ii) all right, title and interest in and to all easements, appurtenances, and rights-of-way, and all interests in, on or to, any land, highway or street, in, on, across, in front of, abutting, or adjoining any such real property, all of such property (collectively, the "**Property**").
- ii) All permitted water rights under LRG-4936 for irrigation, domestic use, livestock use, industrial use, and any other purpose of use recognized by the New Mexico Office of the State Engineer and the Courts of New Mexico, and otherwise appurtenant to or in any manner associated with the Land and its use, including but not limited to all vested or unvested surface and groundwater rights, either declared, licensed, permitted, adjudicated or undeclared with the New Mexico Office of the State Engineer (collectively, the "**Water Rights**")

1.1 **Seller's Reservations & Disclosures.** The Property will be conveyed to the Buyer at Closing subject to certain exceptions, if any, by the Seller, as more particularly identified on

Exhibit B, attached hereto and incorporated fully herein (the “*Seller’s Reservations and Disclosures*”) provided that Buyer shall retain reasonable rights to use the Rights of Way for access, utilities and other uses that do not unreasonably restrict Seller’s use of the Property.

In addition, the Property will be conveyed to the Buyer at Closing subject to known disclosures, if any, as more particularly identified on Exhibit B, attached hereto and incorporated fully herein.

1.2 **Reliance on the Buyer's Own Diligence.** It is acknowledged and agreed that the Buyer has conducted and is relying solely on its own due diligence concerning the Property, including, without limitation, performing any archeological or environmental reports, studies, or surveys of the Property it, in its sole discretion, has desired to perform, and has determined that the Property is suitable for its intended purposes. Mitigation of any conditions on the Property, including archeological sites or, without limitation, any environmental conditions, shall be at the sole cost and expense of the Buyer who shall take the Property at Closing (as defined below) subject to all conditions existing on the date of the Buyer's signature to this Agreement. By its signature hereto, the Buyer accepts responsibility for its own determination of the nature and extent of any archeological sites, or without limitation, any environmental conditions, relating to the Property.

1.3 **Easements.** The Property shall be conveyed to the Buyer subject to all easements, whether of record or not, affecting the Property. Buyer shall be solely responsible for the cost and acquisition of any additional easements it may require for the Property, including, without limitation, easements for the purposes of ingress and egress.

1.4 **[Intentionally Deleted]**

1.5 **Utility Connections and Modifications.** Buyer shall be solely responsible for the costs of all on-site and off-site extensions, relocations, easements, replacements, or adjustments of water, sanitary sewer, and appurtenances, and for all utility connections including without limitation public sanitary and storm sewers, natural gas, telephone, public water facilities, electrical facilities and all other utility facilities and services necessitated by and attributable to the proposed subdivision improvement plans, or to otherwise provide service lines to the Property.

2. **Purchase Price.** The purchase price for the Property shall be Three Hundred Sixty Thousand U.S. Dollars and Zero Cents, (\$360,000.00) (the “*Purchase Price*”).

2.1 **Payable at Closing.** The full Purchase Price shall be tendered to Seller at Closing.

2.2 **Earnest Money.** Buyer shall pay Seller in the amount of Ten Thousand U.S. Dollars and Zero Cents, (\$10,000.00) (the “*Earnest Money*”) with Darlene Bernal of Las Cruces Abstract & Title Company (the “*Escrow Agent*”) no more than five (5) business days after the Effective Date as a guarantee that the terms and conditions of this Agreement shall be fulfilled. The Earnest Money shall be credited towards the Purchase Price if and when Closing occurs.

2.3 **Earnest Money Deposit.** The Parties agree that the Earnest Money shall be deposited by Escrow Agent in an interest-bearing account at an institution acceptable to Seller and Buyer.

2.4 **Independent Consideration.** Five Thousand U.S. Dollars and Zero Cents (\$5,000.00) of the Earnest Money shall constitute independent consideration (“*Independent Consideration*”) for Purchaser’s Inspection Period (as hereinafter defined).

**3. Inspection Period.** For period of ten(10) days, beginning on the Effective Date (the “*Inspection Period*”), the Buyer may inspect the Property and conduct due diligence in, on or in relation to the Property including, but not limited to review of conditions (physical and financial), all information, contracts and agreements, and perform such other inspections and studies as Buyer desires in its sole discretion; provided that Seller’s prior written consent must first be obtained before the commencement of any invasive studies (including Phase II environmental studies) on the Property.

**3.1 Access.** Beginning on the Effective Date and thereafter until Closing or termination of this Agreement, Buyer and Buyer’s employees and agents will have the right to enter the Property to perform, at Buyer’s expense, such economic, surveying, engineering, topographic, environmental, marketing and other tests, studies and investigations in accordance with the provisions in Section 3 above; provided that, Buyer must coordinate with Seller at least seventy-two (72) hours in advance before to entering onto the Property at any time prior to Closing.

**3.2 Termination During Inspection Period.** Buyer may terminate this Agreement by providing Seller written notice of termination prior to the expiration of the Inspection Period. Upon receipt of the notice of termination by the Seller during the Inspection Period, this Agreement shall be deemed terminated and the Earnest Money Deposit, less the Independent Consideration, shall be refunded to Buyer and the Parties shall have no further rights or obligations under this Agreement, except the Surviving Obligations. If Buyer fails to timely deliver a notice of termination, upon expiration of the Inspection Period, Buyer is deemed to have approved the Property and waived its right to terminate this Agreement under this Section 3.2. Upon expiration of the Inspection Period the Earnest Money shall become non-refundable, except in the event of a default by Seller under this Agreement or as otherwise specifically set forth in this Agreement. At Closing, the Earnest Money Deposit will be credited against the Purchase Price or returned to Seller, at the election of Seller in its sole discretion.

**4. Survey.** If Seller has an existing survey of the Property in its possession, Seller will furnish Buyer a copy of the existing survey of the Property within twenty (20) business days after the Effective Date. Buyer may obtain a new survey at its cost. If Buyer obtains a new survey, the metes and bounds description of the Property contained in the new survey will be used for purposes of describing the Property in the Deed at Closing.

**5. Title Binder.** Within twenty (20) business days after the Effective Date, Seller will, at Buyer’s expense, deliver or cause to be delivered to Buyer a title commitment covering the Property from Las Cruces Abstract & Title Company (the “*Title Company*”), binding the Title Company to issue an Owner’s Policy of Title Insurance (“*Owner’s Policy*”) with respect to the Property in the full amount of the Purchase Price at the Closing (the “*Title Binder*”). The Title Binder shall include legible copies of all exceptions listed on Schedule B and Schedule C of the Title Binder. The Seller will provide copies of the Title Binder and all recorded documents affecting the Property to Buyer no later than three (3) days after the Seller’s receipt of the same.

**5.1 Buyer’s Approval of Title.** Buyer shall have until the expiration of the Inspection Period

to deliver in writing to Seller objections Buyer may have to anything contained in the Title Binder or survey. In the event that Buyer delivers objections to Seller, Seller may, in Seller’s sole discretion, undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of Buyer (“*Non-Permitted Encumbrances*”). In the event Buyer does not terminate this Agreement during the Inspection Period pursuant to the terms of Section 3.2 herein, Buyer will be deemed to have approved exceptions contained in the Title Binder that have not been cured (the “*Permitted Exceptions*”). Notwithstanding the foregoing, Seller shall at its expense

cure, remove or satisfy the Non-Permitted Encumbrances at or before the Closing. The Non-Permitted Encumbrances will never be included as Permitted Exceptions. In addition to the above, Buyer may object to and will not be deemed to approve any additional exceptions shown in an updated Title Binder or Survey delivered to Buyer after the expiration of the Inspection Period and such matters will not be considered Permitted Exceptions unless expressly approved by Buyer.

**5.2 Compliance.** In accordance with the requirements of the Property Code, Title 2, Chapter 5, Subchapter D, Buyer is hereby advised that it should obtain a title abstract or title commitment covering the Property and have it examined by an attorney of its own selection and purchase owner's policy of title insurance covering the Property.

**6. Representations of the Seller.** The Seller hereby represents, to the extent allowed by law, to the Buyer, that, to its actual knowledge, the following are true in all material respects:

**6.1 Parties in Possession.** At the time of Closing, other than the Buyer, there are no parties in possession of any portion of the Property as lessees or tenants at sufferance.

**6.2 Mechanic's Lien.** (i) No liens arising from the Seller's actions or otherwise, exist for the benefit of mechanics or materialmen in regard to the Property; and (ii) except as expressly disclosed in the documents relating to this transaction, the Seller has not entered into any contracts or agreements relating to the use or ownership of the Property or by which any person or entity agreed to provide labor, services or materials in regard to the Property or the business of the Seller.

**6.3 Litigation.** There is no pending litigation before or by any court of law pertaining to the Property or which involve incidents occurring on the Property including, but not limited to, claims of damage to persons or Property.

**6.4 Bills Paid.** At Closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property as a result of the Seller's ownership.

**6.5 Taxes.** The taxes for the year 2023 and/or pro-rata 2024 will be paid by Seller. Any taxes, fees, and assessments imposed after the date of Closing shall be the responsibility of Buyer.

**7. Representations of the Buyer.** The Buyer hereby represents, to the extent allowed by law, to the Seller, that to the best of its knowledge, that the following are true:

**7.1 Authority.** The Buyer has full power and authority to execute and deliver this Agreement and to perform and carry out all covenants and obligations to be performed and carried out by the Buyer herein.

**7.2 Non-Contravention.** The execution and delivery of this Agreement by the Buyer and the consummation by the Buyer of the transactions contemplated hereby will not materially violate any judgment, order, injunction, decree, regulation or ruling of any court or any governmental or quasi-governmental bodies or agencies having jurisdiction over the Buyer, or conflict with, result in a breach of, or constitute a default under the organizational documents of the Buyer, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which the Buyer is a party or by which it is bound.



7.3 **Consents.** No consent, waiver, approval or authorization is required from any person or entity that has not already been obtained as of the Effective Date or, if appropriate, which will be obtained prior to Closing, in connection with the execution and delivery of this Agreement by the Buyer or the performance by the Buyer of the transactions contemplated hereby, except for those the failure of which to be obtained would not be reasonably expected to cause a material adverse effect to the Buyer.

7.4 **Bankruptcy.** The Buyer has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy statute or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, or solicited or caused to be solicited petitioning creditors for any involuntary petition against it, or filed an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding to hold, administer and/or liquidate all or substantially all of its property, (iii) filed or had filed against it a petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief, (iv) under the provisions of any other law for the relief or aid of debtors, had an action taken by any court of competent jurisdiction that allows such court to assume custody or control of it or of the whole or any substantial part of its property or assets, or (v) made an assignment for the benefit of creditors, or admitted, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

7.5 **Litigation.** There is no pending action, suit, arbitration, unsatisfied order or judgment, litigation, government investigation or proceeding against or affecting the Buyer that would materially detrimentally affect the Buyer's ability to perform hereunder.

8. **Closing.** The closing of the sale and delivery of the closing documents, as applicable, and release of the Purchase Price to the Seller (the "**Closing**") shall take place at the offices of the Title Company within thirty (30) days from the date the City Manager of the City of El Paso executes the signature block herein below upon the adoption by the City Council of the City of El Paso of an ordinance authorizing the sale of the Property by the Seller to the Buyer (the "**Approval Date**").

8.1 **Amount of Payment of Purchase Price.** The full amount of the Purchase Price shall be tendered to Seller at the Closing.

8.2 **Closing Costs.** Costs required to consummate the Closing shall be paid by the Parties as follows:

- (a) The Buyer shall pay all costs required to consummate the Closing, including without limitation:
  - (i) Any and all recording fees arising from the recordation of documents necessary to show good title to the Property in the Buyer;
  - (ii) Any and all premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property; and
  - (iii) Any and all escrow fees.
- (b) Buyer shall pay any and all real estate appraisal costs and surveys fees.
- (c) All other costs and expenses incurred in connection with this Agreement that are not expressly recited herein to be the obligation of Seller or Buyer shall be allocated among the



Buyer and the Seller as is customary in real estate transactions closing in Dona Ana County, New Mexico.

**8.3 Conditions to the Seller's Obligation to Close.** The obligation of the Seller hereunder to consummate the Closing is subject to the satisfaction of the following conditions: (i) the occurrence of the conditions required to establish the Approval Date; (ii) the performance of all of the Buyer's obligations under this Agreement; and (iii) the Seller is satisfied that all of the Buyer's representations and warranties herein made are true and correct. In the event any of these conditions are not satisfied on or before the Closing, or within one (1) year of the Effective Date, subject to applicable law, the Seller may, in its sole discretion, waive one or more of said conditions and proceed to Closing, or terminate this Agreement.

**8.4 Seller's Obligations.** At the Closing, Seller shall deliver to Escrow Agent in accordance with this Agreement, duly executed and, where applicable, acknowledged:

- (a) The deed to the Property, in the form attached hereto as **Exhibit C** (the "**Deed**"), (subject to the Permitted Exceptions and to such changes that are required by applicable law, local recording requirements and/or customary real estate practices in the jurisdiction(s) in which the Property is located, provided, the substantive terms and provisions of the Deed attached hereto are not modified as a result of any such changes);
- (b) Such agreements, affidavits or other documents as may be required by the Title Company to issue the Owner's Policy to Buyer at Closing, subject only to the Permitted Exceptions and to eliminate such standard exceptions and to issue such endorsements thereto which may be eliminated and issued under applicable State law, and which are customarily required by institutional investors purchasing property comparable to the Property;
- (c) All original warranties and guaranties, if any, in Seller's possession or reasonably available to Seller;
- (d) The metes and bounds survey of the Seller's Reservations, if applicable; and
- (e) Any other document or instrument reasonably necessary or required to consummate the transactions contemplated by this Agreement.

**8.5 Buyer's Obligations.** At the Closing, the Buyer shall:

- (a) Pay the Purchase Price;
- (b) Deliver any other document or instrument reasonably necessary or required to consummate the transactions contemplated by this Agreement, duly executed and acknowledged, where applicable; and
- (c) Execute a final closing statement reflecting the Purchase Price, including any adjustments and prorations.

**8.6 Possession.** Possession of the Property will be transferred to the Buyer at Closing.

**8.7 Broker's Fees.** To the extent permitted by law, each Party agrees to release, protect, indemnify, defend and hold the other harmless from and against any and all claims with respect to any commissions, finders' fees or other remuneration due to any broker, agent or finder claiming

by, through or under such Party.

## 9. Default.

**9.1 Default by the Buyer.** If Buyer defaults in its obligations hereunder to deliver the Purchase Price at the time required by this Agreement and close on the purchase of the Property at Closing on the Approval Date, then Seller shall be entitled to terminate this Agreement, thereby releasing the Buyer from its obligations hereunder except those which expressly survive the expiration or termination of this Agreement; and Buyer shall thus forfeit the Earnest Money, and Escrow Agent shall deliver the Earnest Money to Seller, and neither Party shall be obligated to proceed with the purchase and sale of the Property. If Buyer defaults in any of its other representations, warranties or obligations under this Agreement, and such default continues for more than ten (10) days after written notice from Seller, then Seller shall be entitled to terminate this Agreement thereby releasing the Buyer from its obligations hereunder except those which expressly survive the expiration or termination of this Agreement; Buyer shall thus forfeit the Earnest Money, and Escrow Agent shall deliver the Earnest Money Deposit to Seller, and neither Party shall be obligated to proceed with the purchase and sale of the Property.

**9.2 Default by the Seller.** If Seller, prior to the Closing, defaults in its representations, warranties, covenants, or obligations under this Agreement, including to sell the Property as required by this Agreement, then this Agreement shall terminate, and all payments and things of value provided by Buyer hereunder, including the Earnest Money, shall be returned to Buyer as its sole recoverable damages. Buyer expressly waives the remedies of specific performance and additional damages for such default by Seller.

**9.3 Recoverable Damages.** The provisions of Sections 9.1 and 9.2 shall limit the damages recoverable by either Party against the other Party due to the other Party's default or breach of the express provisions of this Agreement (except for defaults or breaches due to inaccurate or incorrect representations and warranties resulting from the intentional or knowing actions of a Party) and, in addition to such limitations, **IN NO EVENT SHALL THE SELLER OR THE BUYER BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES.**

**9.4 Costs of Enforcement.** Any provision in this Agreement to the contrary notwithstanding, if a Party files suit to enforce or recover amounts owed under this Agreement before or after Closing or the earlier termination of this Agreement, the prevailing Party in such litigation shall be entitled to recover from the non-prevailing Party court costs and reasonable attorney's fees.

**9.5 Return of Property Information.** If Closing does not occur, Buyer shall return to Seller all Property information within seven (7) days of receipt of written demand by Seller to furnish the same.

**9.6 Liability of Parties.** Except for obligations expressly assumed or agreed to be assumed by Buyer and Seller hereunder, Buyer and Seller are not assuming any obligations of the other Party or any liability for claims arising out of any act, omission or occurrence which occurs, accrues or arises prior to the Closing Date.

## 10. Miscellaneous.

**10.1 Notice.** Any notice, demand, direction, request, or other instrument authorized or

required by this Agreement to be given to or filed with either party, shall be deemed to have been sufficiently given or filed for all purposes, if and when personally delivered or the date the same is sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties. Email notice must be accompanied with another form of notice allowed hereby in order to be effective.

**SELLER:** El Paso Water Utilities Public Service Board  
John E. Balliew, President/CEO  
1154 Hawkins Blvd.  
El Paso, Texas 79925

**Copy to:** El Paso Water Utilities Public Service Board  
Attn: Alma De Anda  
Utility Land and Water Rights Manager  
1154 Hawkins Blvd.  
El Paso, TX 79925  
[ADeAnda@epwater.org](mailto:ADeAnda@epwater.org)

**BUYER:** Tyson Strain and Megan Strain  
345 Heavenly Lane  
Anthony, NM 88021  
Attn: Tyson Strain  
Phone: (575)313-6290  
Email: [megan.kuykendall@ymail.com](mailto:megan.kuykendall@ymail.com); [tstrain53@gmail.com](mailto:tstrain53@gmail.com)

**Copy to:** Gordon Davis Johnson & Shane P.C.  
4695 N. Mesa Street  
El Paso, Texas 79912  
Attn: Josh Rhoads  
Phone: (915) 545-1133  
Email: [jrhoads@eplawyers.com](mailto:jrhoads@eplawyers.com).

**10.2 Entire Agreement/ Governing Law.** This Agreement constitutes the entire agreement between the Parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Agreement, and may be amended or supplemented only by an instrument in writing, executed by the Party against whom enforcement is sought. This Agreement shall be governed in all respects, including validity, interpretation, and effect, by and shall be enforceable in accordance with the laws of the State of New Mexico with jurisdiction in courts of competent jurisdiction of Dona Ana County, New Mexico.

**10.3 Time.** Time is of the essence of this Agreement and each and every provision hereof.

**10.4 Severability.** If any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.

**10.5 Survival of Provisions.** The terms contained in all of Section 1; Section 2; Section 3, Section 5; Section 7; *Section* 8; and Section 9; as well as Section 10.1, 10.2, 10.3, 10.4,

10.5, 10.6, 10.7, 10.8, 10.9, 10.10, 10.11 and 10.12 of this Agreement, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this contract for any reason is held invalid, this invalidity will not affect any other provision of this Agreement, which will be construed as if the invalid or unenforceable provision had never existed.

10.6 **Binding Effect.** This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

10.7 **"AS IS, WHERE IS".** THIS AGREEMENT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION. THE BUYER ACCEPTS THE AS IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS THE WARRANTY OF TITLE AND EXCEPT FOR THE WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE SELLER AND THE BUYER TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE BUYER MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; AND (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY THE SELLER. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED BY THE SELLER WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. THE BUYER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS, WAIVERS AND OTHER AGREEMENTS SET FORTH HEREIN ARE INTEGRAL PARTS OF THE AGREEMENT BETWEEN THE SELLER AND THE BUYER WITH RESPECT TO THE SALE OF THE PROPERTY, AND THAT THE SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO THE BUYER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH ABOVE.

10.8 **ENVIRONMENTAL MATTERS.** AFTER CLOSING, BETWEEN THE SELLER AND THE BUYER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, IF ANY, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE BUYER,

REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, THE BUYER SHALL INDEMNIFY, HOLD HARMLESS, AND RELEASE THE SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE.

10.9 **Effective Date.** As used herein, "**Effective Date**" means the date this Agreement is receipted by the Title Company on the space provided for in this Agreement.

10.10 **Assignment.** The Buyer shall have the right to assign this Agreement or any of its rights hereunder to an affiliate of the Buyer only with the prior written consent of the Seller; provided, however, that (i) such assignee shall assume all of the obligations of the Buyer hereunder, (ii) the Buyer shall remain liable for all of its duties and obligations hereunder, and (iii) the Buyer shall deliver written notice of the assignment, including a copy of the assignment instrument, to the Seller at least three (3) days prior to the Closing.

10.11 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed and emailed signature pages may be accepted as originals.

10.12 **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, administrators, successors, and assigns, as applicable of the respective Parties hereto.

*[Signatures Begin on the Following Page]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date written below each Party's signature below, but to be effective as of the Effective Date.

**SELLER:**

**EL PASO WATER UTILITIES  
PUBLIC SERVICE BOARD**, for and on  
behalf of THE CITY OF EL PASO, a Texas  
municipal corporation

By: [Signature]  
John E. Balliew  
President/CEO

Executed on: 3/22/24

**APPROVED AS TO FORM:**

[Signature]  
Melinda Becker  
Assistant General Counsel

**APPROVED AS TO CONTENT:**

[Signature]  
Alma De Anda  
Utility Land and Water Rights Manager

### ACKNOWLEDGEMENT

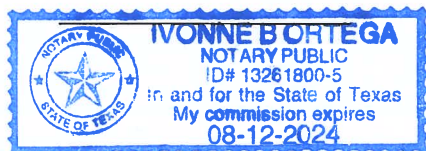
STATE OF TEXAS §

COUNTY OF EL PASO §

This instrument was acknowledged before me on the 27<sup>th</sup> day of March, 2024, by John E. Balliew, President/CEO of the El Paso Water Utilities Public Service Board.

[Signature]  
Notary Public, State of Texas

My Commission Expires:



*[Signatures Continue on the Following Page]*

BUYER:

TYSON STRAIN

Tyson W Strain

Executed on: March 25, 2024

### ACKNOWLEDGEMENT

STATE OF Texas

§

COUNTY OF El Paso

§

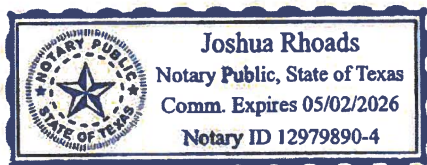
§

This instrument was acknowledged before me on the 25<sup>th</sup> day of March, 2024, by Tyson Strain.

Joshua Rhoads  
Notary Public, State of Texas

My Commission Expires:

05-02-2026



MEGAN STRAIN

Megan Strain

Executed on: March 25, 2024

### ACKNOWLEDGEMENT

STATE OF Texas

§

COUNTY OF El Paso

§

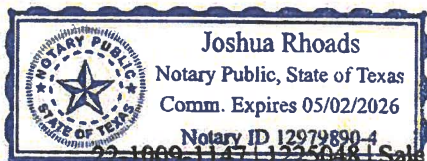
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This instrument was acknowledged before me on the 25<sup>th</sup> day of March, 2024, by Megan Strain.

Joshua Rhoads  
Notary Public, State of Texas

My Commission Expires:

05-02-2026



22-1000-1147-1225048 | Sale to Tyson & Mega Strain

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This Agreement has been received and reviewed by the City of El Paso, Texas and the undersigned has been authorized by the City Council of the City of El Paso, Texas to execute the Deed pursuant to the terms of this Agreement on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, which shall be the *Approval Date* for the purpose described herein.

**THE CITY OF EL PASO, TEXAS,**  
a Texas municipal corporation,

By: \_\_\_\_\_  
Cary Westin  
City Manager

**APPROVED AS TO FORM:**



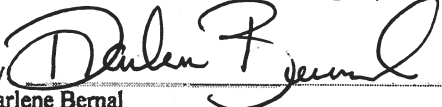
\_\_\_\_\_  
Roberta Brito  
Senior Assistant City Attorney



This Agreement has been received and reviewed by the Title Company this the 2<sup>nd</sup> day of April, 2024. The Title Company acknowledges that all information furnished to it by the parties or obtained by the Title Company in the course of performing its duties, including acting as the Escrow Agent for the parties, under the Agreement will be treated as confidential information.

**TITLE COMPANY:**

**Las Cruces Abstract & Title Company**

By 

Darlene Bernal  
Escrow Officer

## EXHIBIT A



**BROCK & BUSTILLOS INC.**  
CIVIL ENGINEERS    URBAN DESIGNERS    LAND SURVEYORS

ROMAN BUSTILLOS, P.E.  
President  
RANDY F. BRULIN, P.E.  
Executive Vice President  
SERGIO J. ADAME, P.E.  
Vice President - Engineering  
ALEXON ALVARADO, R.P.L.S.  
Vice President - Surveying  
TSPS Reg. No. F-737  
TSPS Reg. No. 101314 00

### METES AND BOUNDS DESCRIPTION

*A 16.2097 acres parcel situate northeast of La Union, Doña Ana County, New Mexico as a portion of Section 9, Township 27 South, Range 3 East, N.M.P.M, and being more particularly described by metes and bounds as follows.*

**COMMENCING** at a Texas-New Mexico State Line Monument No. 9, concrete monument brass disk found; **THENCE**, following the Texas-New Mexico State Line, South 52°40'31" East, a distance of 561.58 feet to a 1/2 inch rebar with survey cap No. "NM 21400" set on the south right-of-way line of Doña Ana County Road A-49 (50 feet wide) for the northeasterly corner and the **POINT OF BEGINNING** of the parcel herein described, identical to the northwesterly corner of Tract 1, Block 20, Upper Valley Grant Surveys as described in Book 2093, Page 691, El Paso County Deed Records;

**THENCE**, leaving the south right-of-way line of said Doña Ana County Road A-49 and continuing along the Texas-New Mexico State Line, South 52°40'31" East (South 52°50'02" East-record), a distance of 49.21 feet to a Texas-New Mexico State Line Monument No. 10, broken concrete monument found for an angle point of the parcel herein described;

**THENCE**, continuing along the Texas-New Mexico State Line, South 46°44'35" East (South 46°56'20" East-record), a distance of 1,070.23 feet (1,069.80 feet-record) to an 8 inch diameter concrete monument stamped "1963" found for the southeasterly corner of the parcel herein described, identical to the southwesterly corner of said Tract 1;

**THENCE**, leaving the Texas-New Mexico State Line, South 68°16'51" West (South 68°06'00" West-record), a distance of 529.58 feet (524.65 feet-record) to an 8 inch diameter concrete monument stamped "1963" found for the southwesterly corner of the parcel herein described, identical to the southeasterly corner of a 8.186 acres parcel as described in Instrument No. 1707880, Doña Ana County Deed Records;

**THENCE**, North 45°40'27" West (North 46°07'00" West-record), a distance of 881.42 feet (882.68 feet-record) to an old 5/8 inch rebar found for an angle point of the parcel herein described, identical to the northeasterly corner of said 8.186 acres parcel;

**THENCE**, South 82°58'38" West (South 82°48'00" West-record), a distance of 380.10 feet (380.17 feet-record) to an old 5/8 inch rebar found on the westerly right-of-way line of the La Union Main Canal for an angle point of the parcel herein described, identical to the northwesterly corner of said 8.186 acres parcel;

**THENCE**, following the easterly right-of-way line of said La Union Main Canal, North 19°34'50" West (North 19°51'03" West-record), a distance of 455.34 feet to a 1/2 inch rebar with survey cap

417 Executive Center Blvd. • El Paso, Texas 79902 • P: (915) 542-4900 • F: (915) 542-2867 • www.brockbustillos.com

Page 2 of 2

No. "NM 21400" set on the southerly right-of-way line of said Doña Ana County Road A-49 for the northwesterly corner of the parcel herein described;

**THENCE**, leaving the easterly right-of-way line of said La Union Main Canal and following the southerly right-of-way line of said Doña Ana County Road A-49, South 87°18'29" East (South 87°29'00" East-record), a distance of 834.74 feet to the **POINT OF BEGINNING**.

Said parcel containing 16.2097 acres (706,093.4 square feet), more or less, and being subject to all easements, restrictions and covenants of record.

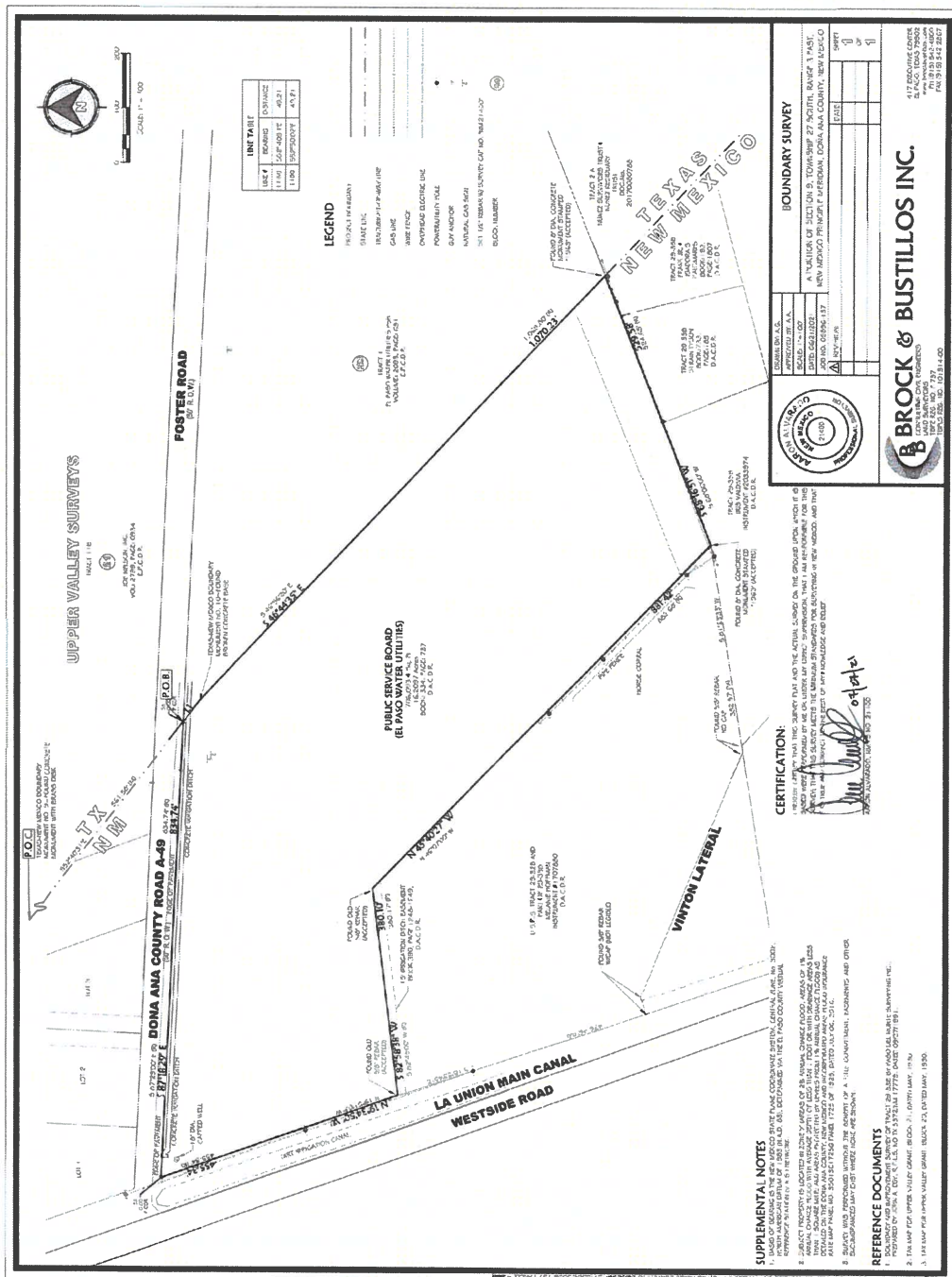
  
 Aaron Alvarado, NM P.S. No. 21400

Date: July 27, 2021

05896-137-16.2097 AC-DESC



Project: 05896 - EL PASO WATER - P39 SURVEYING 137 PARCEL 4 - 16.148 ACRES SURVEY TO PROPERTY DESCRIPTION 05896-137-16.2097 AC-DESC 4/11



**EXHIBIT B**  
**Seller's Reservations & Disclosures**

Reservations: N/A

Disclosures: Water Rights 16.15 acres – La Union East Lateral  
Elephant Butte Irrigation District under permitted water rights LRG-4936

**EXHIBIT C**  
**Deed**

**SPECIAL WARRANTY DEED**

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

**Effective Date:** \_\_\_\_\_.

**Grantor:** **EL PASO WATER UTILITIES PUBLIC SERVICE BOARD THE CITY OF EL PASO, TEXAS**, a Texas municipal corporation  
1154 Hawkins Blvd.  
El Paso, Texas 79925

**Grantee:** Tyson and Megan Strain  
345 Heavenly Lane  
Anthony, NM 88021  
Attn: Tyson Strain  
Phone: (575)313-6290

**Consideration:** TEN AND NO/100THS DOLLARS (\$10.00), and other good and valuable consideration to the undersigned paid by Grantee, the receipt of which is hereby acknowledged.

**Property (including any improvements):**

A parcel of land consisting of approximately 16.2097 acres of land legally described as a portion of Section 9, Township 27, South Range 3 East, New Mexico Principal Meridian, Doña Ana County, New Mexico, such portion being legally described by metes and bounds in **Exhibit A**, attached hereto.

All permitted water rights under permit LRG-4936 for irrigation, domestic use, livestock use, industrial use, and any other purpose of use recognized by the New Mexico Office of the State Engineer and the Courts of New Mexico, and otherwise appurtenant to or in any manner associated with the Land and its use, including but not limited to all vested or unvested surface and groundwater rights, either declared, licensed, permitted, adjudicated or undeclared with the New Mexico Office of the State Engineer (the "***Water Rights***") (collectively, the "**Property**")

**GRANTOR AND GRANTEE AGREE THAT GRANTEE IS ACCEPTING THE PROPERTY FROM GRANTOR IN ITS "AS IS, WHERE IS, AND WITH ALL FAULTS" CONDITION AND THAT THERE ARE NO REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT THE SPECIAL WARRANTY OF TITLE CONTAINED IN THIS DEED. GRANTEE HAS NOT RELIED ON ANY INFORMATION OTHER THAN GRANTEE'S**

**INSPECTION OF THE PROPERTY.**

Grantor, 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 the Property unto Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors and assigns to warrant and forever defend all and singular the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through or under Grantor..

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

*(Signature page and exhibits follow.)*

**EXECUTED** to be effective as of the date first stated above.

**GRANTOR:**

**THE CITY OF EL PASO,  
a Texas municipal corporation**

By: \_\_\_\_\_  
Name: Cary Westin  
Title: Interim City Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF EL PASO         §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2024 by Cary Westin, Interim City Manager of the City of El Paso.

\_\_\_\_\_  
**NOTARY PUBLIC, State of Texas**





## 13.14.18.13 NM FORM 6 COMMITMENT FOR TITLE INSURANCE

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

### NOTICE

**IMPORTANT - READ CAREFULLY:** THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACTIONAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

### COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I - Requirements; Schedule B, Part II - Exceptions; and the Commitment Conditions, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I - Requirements have not been met within six (6) months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

Authorized Countersignature  
TCNM, LLC DBA Las Cruces Abstract  
and Title Company  
119 S Campo Street  
Las Cruces, NM 88001



Frederick H. Eppinger  
President and CEO

David Hisey  
Secretary

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions; and a countersignature by the Company or its issuing agent that may be in electronic form.*

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File No.: 2151996

13.14.18.13 NM Form 6 Commitment for Title Insurance 8-1-16 Modified 7-1-18

Page 1 of 3

AMERICAN  
LAND TITLE  
ASSOCIATION



387

## COMMITMENT CONDITIONS

### 1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
  - (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
  - (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
  - (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
  - (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
  - (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
  - (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
  - (h) "Title": The estate or interest described in Schedule A.
2. If all of the Schedule B, Part I - Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.
3. The Company's liability and obligation is limited by and this Commitment is not valid without:
- (a) the Notice;
  - (b) the Commitment to Issue Policy;
  - (c) the Commitment Conditions;
  - (d) Schedule A;
  - (e) Schedule B, Part I - Requirements;
  - (f) Schedule B, Part II - Exceptions; and
  - (g) a countersignature by the Company or its issuing agent that may be in electronic form.

### 4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

### 5. LIMITATIONS OF LIABILITY

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
  - (i) comply with the Schedule B, Part I - Requirements;
  - (ii) eliminate, with the Company's written consent, any Schedule B, Part II - Exceptions; or
  - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.

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- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I - Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

**6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT**

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II - Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

**7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT**

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

**8. PRO-FORMA POLICY**

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

## **STEWART TITLE GUARANTY COMPANY**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Texas 77252-2029.

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*Pursuant to the New Mexico title insurance law Section 59A-30-4 NMSA 1978, and title insurance rule 13.14.18.9 NMAC, no part of any title insurance commitment, policy or endorsement form promulgated by the New Mexico superintendent of insurance may be added to, altered, inserted in or typed upon, deleted or otherwise changed from the title insurance form promulgated by the New Mexico superintendent of insurance, nor issued by a person or company not licensed with regard to the business of title insurance by the New Mexico superintendent of insurance, nor issued by a person or company who does not own, operate or control an approved title abstract plant as defined by New Mexico law and regulations for the county wherein the property is located, except as authorized by law.*

## **13.14.18.13 NM FORM 6 COMMITMENT FOR TITLE INSURANCE SCHEDULE A**

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

### ***Transaction Identification Data for reference only:***

Issuing Agent: TCNM, LLC DBA Las Cruces Abstract and Title Company  
Issuing Office: 119 S Campo Street, Las Cruces, NM 88001  
Issuing Office's ALTA® Registry ID:  
Loan ID Number:  
Commitment Number: 2151996  
Issuing Office File Number: 2151996  
Property Address: 16.2097 acres SE Corner of Foster Road & Westside Road, Dona Ana, NM 88032  
Revision Number:

1. Commitment Date: October 23, 2023 at 6:00AM
2. Policy to be issued: Proposed Policy Amount  
  
(a) ALTA Owner's Standard \$360,000.00  
Proposed Insured: Tyson Strain and Megan Strain  
  
(b) ALTA Loan Standard  
Proposed Insured: This title commitment is not effective until schedule A is completed and the company reserves the right to amend and supplement this commitment with additional information, requirements and exceptions based upon the provision of additional information.
3. The estate or interest in the Land described or referred to in this Commitment is:  
  
FEE SIMPLE
4. The Title is, at the Commitment Date, vested in:  
  
Public Service Board (El Paso Water Utilities)
5. The Land is described as follows:  
  
See Exhibit "A" Attached Hereto

### **STEWART TITLE GUARANTY COMPANY**



Authorized Countersignature  
TCNM, LLC DBA Las Cruces Abstract and Title Company  
119 S Campo Street  
Las Cruces, NM 88001

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## **13.14.18.13 NM FORM 6 COMMITMENT FOR TITLE INSURANCE SCHEDULE A**

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STEWART TITLE GUARANTY COMPANY

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# 13.14.18.13 NM FORM 6 COMMITMENT FOR TITLE INSURANCE

## EXHIBIT "A"

### LEGAL DESCRIPTION

ISSUED BY

STEWART TITLE GUARANTY COMPANY

File No.: 2151996

A tract of land northeast of La Union, Dona Ana County, New Mexico as a portion of Section 9, Township 27 South, Range 3 East, N.M.P.M. and being more particularly described by metes and bounds as follows:

COMMENCING at a Texas-New Mexico State Line Monument No. 9, concrete monument brass disk found; Thence, the following Texas-New Mexico State Line, South 52°40'31"E., a distance of 561.68 feet to a 1/2 inch rebar with survey cap No. "NM 21400" set on the south right-of-way line of Dona Ana County Road A-49 (50 feet wide) for the northeasterly corner and the POINT OF BEGINNING of the parcel herein described, identical to the northwesterly corner of Tract 1, Block 20, Upper Valley Grant Surveys as described in Book 2093, Page 691, El Paso County Deed Records;

THENCE, leaving the south right-of-way line of said Dona Ana County Road A-49 and continuing along the Texas-New Mexico State Line, South 52°50'02"E (South 52°50'02" East-record), a distance of 49.21 feet to a Texas-New Mexico State Line Monument No. 10, broken concrete monument found for an angle point of the parcel herein described;

THENCE, continuing along the Texas-New Mexico State Line, South 46°44'35"E (South 46°56'20" East-record), a distance of 1,070.23 feet (1,069.80 feet-record) to an 8 inch diameter concrete monument stamped "1963" found for the southeasterly corner of the parcel herein described, identical to the southwesterly corner of said Tract 1;

THENCE, leaving the Texas-New Mexico State Line, South 68°16'51"W (South 68°6'00" West-record), a distance of 529.58 feet (524.65 feet record) to an 8 inch diameter concrete monument stamped "1963" found for the southwesterly corner of the parcel herein described, identical to the southeasterly corner of a 8.186 acre parcel as described in Instrument No. 1707880, Dona Ana County Deed Records;

THENCE, North 45°40'27"W (North 46°07'00" West-record), a distance of 881.42 feet (882.68 feet-record) to an old 5/8 inch rebar found for an angle point of the parcel herein described, identical to the northeasterly corner of said 8.186 acre parcel;

THENCE, South 82°58'38"W (South 82°48'00" West-record), a distance of 380.10 feet (380.17 feet-record) to an old 5/8 inch rebar found on the westerly right-of-way line of the La Union Main Canal for an angle point of the parcel herein described, identical to the northwesterly corner of said 8.186 acre parcel;

THENCE, following the easterly right-of-way line of said La Union Main Canal North 19°34'50"W (North 19°51'03" West-record), a distance of 455.34 feet to a 1/2 inch rebar with survey cap No. "NM 21400" set on the southerly right-of-way line of said Dona Ana County Road A-49 for the northwesterly corner of the parcel herein described;

THENCE, leaving the easterly right-of-way line of said La Union Main Canal and following the southerly right-of-way line of said Dona Ana County Road A-49, South 87°18'29"E (South 87°29'00" East-record), a distance of 834.74 feet to the POINT OF BEGINNING.

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**13.14.18.13 NM FORM 6 COMMITMENT FOR TITLE INSURANCE**  
**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

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# 13.14.18.13 NM FORM 6 COMMITMENT FOR TITLE INSURANCE SCHEDULE B PART I

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

File No.: 2151996

## Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. Payment of the full consideration to, or for the account of, the grantors or mortgagors.
6. Payment of all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.
7. Satisfactory evidence should be had that improvements and/or repairs or alterations thereto are completed; that contractor, subcontractors, labor and materialmen are all paid.
8. Instruments necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed for record, to wit:
9. Provide this Company with official identification of all parties involved in this transaction before or at closing.
10. Provide Las Cruces Abstract and Title Company with a fully executed Purchase Agreement.
11. Payment of property taxes for the year 2023.
12. Affidavit signed by the parties to the transaction as to the accuracy of the existing survey by Brock & Bustillos Inc., dated July 27, 2021.
13. Secure and file for record a Warranty Deed from PUBLIC SERVICE BOARD (EL PASO WATER UTILITIES) to TYSON STRAIN AND MEGAN STRAIN, HUSBAND AND WIFE.
14. Secure and file for record a Mortgage/Deed of Trust from TYSON STRAIN AND MEGAN STRAIN, HUSBAND AND WIFE to PROPOSED LENDER.

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# 13.14.18.13 NM FORM 6 COMMITMENT FOR TITLE INSURANCE SCHEDULE B PART I

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

15. This title commitment is not effective until schedule A is completed and the company reserves the right to amend and supplement this commitment with additional information, requirements and exceptions based upon the provision of additional information.

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# 13.14.18.13 NM FORM 6 COMMITMENT FOR TITLE INSURANCE SCHEDULE B PART II

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

## Exceptions

File No.: 2151996

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

Standard exceptions 1, 2, 3, and or 4, may be deleted from any policy upon compliance with all provisions of the applicable rules, upon payment of all additional premiums required by the applicable rules, upon receipt of the required documents and upon compliance with the company's underwriting standards for each such deletion. Standard exception 5 may be deleted from the policy if the named insured in the case of an owner's policy, or the vestee, in the case of a leasehold or loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee. Except for the issuance of a U.S. policy form (NM form 7 or NM form 34), any policy to be issued pursuant to this commitment will be endorsed or modified in Schedule B by the company to waive its right to demand arbitration pursuant to the conditions and stipulations of the policy at no cost or charge to the insured. The endorsement or the language added to schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of the American Land Title Association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the company and the insured."

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Right or claims of parties in possession not shown by the public records.
2. Easements or claims of easements, not shown by the public records.
3. Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the premises.
4. Any lien, claim or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy)
6. Water rights, claims or title to water.
7. Taxes for the year 2023, and thereafter.
8. Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing in the public records or attaching subsequent to the Effective Date hereof but prior to the date the

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# 13.14.18.13 NM FORM 6 COMMITMENT FOR TITLE INSURANCE SCHEDULE B PART II

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by the Commitment.

9. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
10. Reservations contained in the Patent Deed from the United States of America.
11. Agreement, Public Service Board of the City of El Paso, Texas and Harry J. Stone, Jr., filed of record July 17, 1989, in Book 241, Pages 684-686, Records of Dona Ana County, New Mexico.
12. Concrete Irrigation Ditch inside property line as shown on Plat of Survey by Brock & Bustillos Inc., dated July 27, 2021.

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## RESOLUTION

**A RESOLUTION OF THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD TO AWARD THE SALE OF APPROXIMATELY 16.2097 ACRES OF LAND, LEGALLY DESCRIBED AS PORTION OF SECTION 9, TOWNSHIP 27 SOUTH, RANGE 3 EAST, NEW MEXICO PRINCIPLE MERIDIAN, DOÑA ANA COUNTY, NEW MEXICO, TO TYSON AND MEGAN STRAIN, WHO SUBMITTED THE HIGHEST PURCHASE PRICE, AND AUTHORIZING THE PRESIDENT/CEO TO FORWARD THE RECOMMENDATION TO THE CITY AND SIGN ANY AND ALL DOCUMENTS NECESSARY TO COMPLETE THE SALE**

**WHEREAS**, the El Paso Water Utilities Public Service Board holds certain real properties comprising the water system in its land inventory (collectively the “System”); and,

**WHEREAS**, on December 9, 2020, the El Paso Water Utilities Public Service Board approved the sale of land that has been declared inexpedient to the System through a real estate broker, in accordance with Texas Local Government Code Ann.§253.014(a)-(e), as amended; and

**NOW, THEREFORE, BE IT RESOLVED BY THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD OF THE CITY OF EL PASO, TEXAS:**

Section 1. The recitations as set out in the preamble above are found to be true and correct and are hereby adopted by the El Paso Water Utilities Public Service Board and made a part of this Resolution for all purposes.

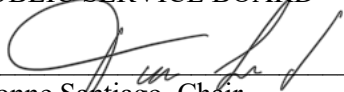
Section 2. That the El Paso Water Utilities Public Service Board recommends that the land described below be sold to Tyson and Melanie Strain, with the highest purchase offer for a total amount of \$360,000.00:

Approximately 16.2097 acres of land, legally described as Portion of Section 9, Township 27 South, Range 3 East, New Mexico Principle Meridian, Doña Ana County, New Mexico

Section 3. That the El Paso Water Utilities Public Service Board authorize the President/CEO to forward the resolution of the El Paso Water Utilities Public Service Board that the above-described land is to be sold in accordance with state law and sign any and all documents necessary to complete the sale of the property to Tyson and Melanie Strain.

**PASSED, ADOPTED and APPROVED** at a Regular Meeting of the El Paso Water Utilities Public Service Board of the City of El Paso, Texas, this 8th day of November 2023, at which meeting a quorum was present and which meeting was held in accordance with the provisions of V.T.C.A. Government Code, Sections 551.001, et. seq.

EL PASO WATER UTILITIES  
PUBLIC SERVICE BOARD

  
Ivonne Santiago, Chair

ATTEST:

  
Charlie Intebi, Secretary-Treasurer

APPROVED AS TO FORM:

  
Daniel Ortiz, General Counsel



Legislation Text

---

**File #: 24-773, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Purchasing and Strategic Sourcing, K. Nicole Cote, (915) 212-1092

Capital Improvement, Yvette Hernandez, (915) 212-1860

Airport, Tony Nevarez, (915) 212-7325

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

The linkage to the Strategic Plan is subsection: 1.4 Grow the core business of air transportation.

**Award Summary:**

Discussion and action on the award of Solicitation 2024-0055 to Terminal Drive and Bridge Improvements to Jordan Foster Construction, LLC for a total estimated amount of \$1,113,593.95. This project will consist of resurfacing the inbound and outbound terminal road and employee parking lot due to cracks, potholes, and failing asphalt.

Department:	Capital Improvement
Award to:	Jordan Foster Construction, LLC
City & State:	El Paso, TX
Item(s):	Base Bid I & II
Contract Term:	70 Consecutive Calendar Days
Base Bid I:	\$1,049,413.95
Base Bid II:	\$64,180.00
Total Estimated Award:	\$1,113,593.95
Account(s):	562-3010-62335-580270-PAP00988
Funding Source(s):	Airport Capital
District(s):	All

This was a Low Bid Procurement - unit price contract.

The Purchasing & Strategic Sourcing and Capital Improvement Departments recommend award as indicated to Jordan Foster Construction, LLC the lowest responsive and responsible bidder.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

Work under this unit price contract is only an estimated value and will be ordered, performed, invoiced, and paid by measured quantity. The actual cost of this contract may be higher or lower than the total estimated

value and will be the sum total of unit prices at the end of the contract term.

As a part of this award, upon the review of the City Attorney, the City Engineer may without further authorization from City Council approve contract changes which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable law, do not make changes to the prices and are within the appropriate budget.

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

**AGENDA DATE:** June 11, 2024  
**PUBLIC HEARING DATE:** Not Applicable

**CONTACT PERSON(S) NAME AND PHONE NUMBER:**  
Yvette Hernandez, City Engineer, (915) 212-1860  
Tony Nevarez, Interim Aviation Director, (915) 474-2424  
K. Nicole Cote, Managing Director (915) 212-1092

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** No. 1 - Create an Environment Conducive to Strong sustainable Economic Development

**SUBGOAL:** 1.4 Grow the core business of air transportation

**SUBJECT:**  
Discussion and action on the award of solicitation 2024-0055 Terminal Drive and Bridge Improvements to Jordan Foster Construction, LLC for a total estimated amount of \$1,113,593.95.

**BACKGROUND / DISCUSSION:**  
The El Paso International Airport is resurfacing the inbound and outbound terminal road and employee parking lot due to cracks, potholes, and failing asphalt. This project consists of mill and overlay Terminal Dr. and the Airport Employee parking lot to include the removal of the existing asphalt and the placement of new asphalt to rejuvenate the road surface and provide a smooth road for all passengers, employees and traveling public. It will also aid in proper drainage and increase safety measures by painting new surface markings and installing new signs. The project will also repair several potholes on the outbound terminal road bridge deck and repair existing bridge rails.

**SELECTION SUMMARY:**  
Solicitation was advertised on February 13, 2024 and February 20, 2024. The solicitation was posted on City website on February 13, 2024. There were a total twenty-one (21) viewers online; two (2) bids were received; from local suppliers. An Inadequate Competition Survey was conducted.

**CONTRACT VARIANCE:**  
N/A

**PROTEST**  
No protest received for this requirement.

**PRIOR COUNCIL ACTION:**  
N/A

**AMOUNT AND SOURCE OF FUNDING:**  
Amount: \$1,113,593.95.  
Funding Source: Airport Capital  
Account: 562-3010-62335-580270-PAP00988

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Capital Improvement  
SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

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

DEPARTMENT HEAD:



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Yvette Hernandez, City Engineer



Project Form  
Low Bid

\*\*\*\*\*Posting Language Below\*\*\*\*\*

Please place the following item on the Regular Agenda for the City Council of June 11, 2024

Strategic Goal 1 - Create an Environment Conducive to Strong sustainable Economic Development

The linkage to the Strategic Plan is subsection: 1.4 Grow the core business of air transportation

**Award Summary:**

Discussion and action on the award of solicitation 2024-0055 to Terminal Drive and Bridge Improvements to Jordan Foster Construction, LLC for a total estimated amount of \$1,113,593.95. This project will consist of resurfacing the inbound and outbound terminal road and employee parking lot due to cracks, potholes, and failing asphalt.

Department:	Capital Improvement
Award to:	Jordan Foster Construction, LLC
City & State:	El Paso, TX
Item(s):	Base Bid I & II
Contract Term:	70 Consecutive Calendar Days
Base Bid I:	\$1,049,413.95
Base Bid II:	\$64,180.00
Total Estimated Award:	\$1,113,593.95
Account(s):	562-3010-62335-580270-PAP00988
Funding Source(s):	Airport Capital
District(s):	All

This was a Low Bid Procurement – unit price contract

The Purchasing & Strategic Sourcing and Capital Improvement Departments recommend award as indicated to Jordan Foster Construction, LLC the lowest responsive and responsible bidder.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

Work under this unit price contract is only an estimated value and will be ordered, performed, invoiced, and paid by measured quantity. The actual cost of this contract may be higher or lower than the total estimated value and will be the sum total of unit prices at the end of the contract term.

As a part of this award, upon the review of the City Attorney, the City Engineer may without further authorization from City Council approve contract changes which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable law, do not make changes to the prices and are within the appropriate budget.

execution of the work and carrying out the intent of the project, which are in accordance with applicable law, do not make changes to the prices and are within the appropriate budget.

2024-0055 Terminal Drive and Bridge Improvements Bid Tab Summary				
	Bidder's Name	Base Bid I	Base Bid II	Sum Total Base Bid I + Base Bid II
1	Jordan Foster Construction, LLC	\$ 1,049,413.95	\$ 64,180.00	\$ 1,113,593.95
2	Martinez Bros. Contractors, LLC	\$ 1,153,533.57	\$ 34,907.60	\$ 1,188,441.17



CITY OF EL PASO  
PRICE TABULATION



BID TITLE: Terminal Drive and Bridge Improvements  
BID DATE: March 27, 2024

BID NO: 2024-0055

DEPARTMENT: Capital Improvement

				Jordan Foster Construction, LLC El Paso, TX Bidder 1 of 2	Martinez Bros. Contractors, LLC El Paso, TX Bidder 2 of 2				
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ITEM NO.	Approximate / Estimate Quantity	Item-Code/ Item No.	Unit of Measure	Description	Price (ONLY 2 DECIMALS)	Total (DO NOT ROUND)	Price (ONLY 2 DECIMALS)	Total (DO NOT ROUND)	Price (ONLY 2 DECIMALS)	Total (DO NOT ROUND)
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BASE BID I - Mill & Overlay of Terminal Roads and Employee Parking Lot

1	38,571.15	354 6045	SY	PLANE ASPH CONC PAV (2")	\$ 3.00	\$ 115,713.45	\$ 9.31	\$ 358,943.12		
2	12.00	420 6002	CY	CL A CONC (MISC)	\$ 800.00	\$ 9,600.00	\$ 572.70	\$ 6,872.40		
3	2.00	479 6001	EA	ADJUSTING MANHOLES	\$ 1,300.00	\$ 2,600.00	\$ 805.00	\$ 1,610.00		
4	1.00	479 6002	EA	ADJUSTING INLETS	\$ 4,800.00	\$ 4,800.00	\$ 920.00	\$ 920.00		
5	24.00	529 6005	LF	CONC CURB (MONO) (TY II)	\$ 60.00	\$ 1,440.00	\$ 44.05	\$ 1,057.08		
6	1.00	500 6001	LS	MOBILIZATION	\$ 52,000.00	\$ 52,000.00	\$ 54,000.00	\$ 54,000.00		
7	2.00	502 6001	MO	BARRICADES, SIGNS AND TRAFFIC HANDLING	\$ 10,000.00	\$ 20,000.00	\$ 17,058.34	\$ 34,116.68		
8	10.00	644 6001	EA	IN SM RD SN SUP&AM TY10BWG(1)SA(P)	\$ 1,100.00	\$ 11,000.00	\$ 1,035.00	\$ 10,350.00		
9	14.00	644 6076	EA	REMOVE SM RD SN SUP&AM	\$ 250.00	\$ 3,500.00	\$ 230.00	\$ 3,220.00		
10	10.00	666 6096	EA	REFL PAV MRK TY I (W)(SYMBOL)(100MIL)	\$ 398.00	\$ 3,980.00	\$ 481.51	\$ 4,815.07		
11	976.00	666 6171	LF	REFL PAV MRK TY II (W) 6" (BRK)	\$ 1.00	\$ 976.00	\$ 1.01	\$ 989.66		
12	15,183.00	666 6174	LF	REFL PAV MRK TY II (W) 6" (SLD)	\$ 1.50	\$ 22,774.50	\$ 1.60	\$ 24,307.98		
13	90.00	666 6180	LF	REFL PAV MRK TY II (W) 12" (SLD)	\$ 5.00	\$ 450.00	\$ 5.22	\$ 469.62		
14	325.00	666 6182	LF	REFL PAV MRK TY II (W) 24" (SLD)	\$ 6.00	\$ 1,950.00	\$ 7.34	\$ 2,385.50		
15	263.00	666 6211	LF	REFL PAV MRK TY II (Y) 8" (SLD)	\$ 4.00	\$ 1,052.00	\$ 4.28	\$ 1,126.69		
16	7.00	5033 6002	EA	REMOVABLE BOLLARD	\$ 3,600.00	\$ 25,200.00	\$ 2,657.65	\$ 18,603.55		
17	3.00	5041 6001	EA	SPEED CUSHIONS	\$ 5,700.00	\$ 17,100.00	\$ 1,341.67	\$ 4,025.00		
18	12.00	610 6101	EA	REPLACE LUMINAIRE W/LED (150W EQ)	\$ 1,200.00	\$ 14,400.00	\$ 977.50	\$ 11,730.00		
19	10.00	6001 6001	DAY	PORTABLE CHANGEABLE MESSAGE SIGN	\$ 125.00	\$ 1,250.00	\$ 100.00	\$ 1,000.00		
20	4,242.00	3077 6032	TON	SP MIXES SP-C PG76-22	\$ 160.00	\$ 678,720.00	\$ 134.93	\$ 572,373.06		
21	5,826.00	3077 6075	GAL	TACK COAT	\$ 8.00	\$ 46,608.00	\$ 5.53	\$ 32,188.65		
22	7.00	6185 6005	DAY	TMA (MOBILE OPERATION)	\$ 900.00	\$ 6,300.00	\$ 506.00	\$ 3,542.00		
23	1.00	ELP 1	EA	SPEED SIGN ASSM	\$ 8,000.00	\$ 8,000.00	\$ 4,887.50	\$ 4,887.50		
Sum Total – Base Bid I (Line items 1-23)						\$ 1,049,413.95		\$ 1,153,533.57		



CITY OF EL PASO  
PRICE TABULATION



BID TITLE: Terminal Drive and Bridge Improvements

BID NO: 2024-0055

BID DATE: March 27, 2024

DEPARTMENT: Capital Improvement

	Jordan Foster Construction, LLC El Paso, TX Bidder 1 of 2	Martinez Bros. Contractors, LLC El Paso, TX Bidder 2 of 2	
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ITEM NO.	Approximate / Estimate Quantity	Item-Code/ Item No.	Unit of Measure	Description	Price (ONLY 2 DECIMALS)	Total (DO NOT ROUND)	Price (ONLY 2 DECIMALS)	Total (DO NOT ROUND)	Price (ONLY 2 DECIMALS)	Total (DO NOT ROUND)
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BaseBid II - Bridge Deck Rehabilitation										
24	550.00	429 6004	SF	CONC STR REPAIR(RAPID DECK REP(PRT DPT)	\$ 90.00	\$ 49,500.00	\$ 46.90	\$ 25,795.00		
25	10.00	776 6031	LF	REPAIR (ALUMINUM RAIL)	\$ 700.00	\$ 7,000.00	\$ 201.25	\$ 2,012.50		
26	15.00	3076 6041	TON	D-GR HMA TY-D SAC-A PG70-22	\$ 460.00	\$ 6,900.00	\$ 425.50	\$ 6,382.50		
27	52.00	3077 6075	GAL	TACK COAT	\$ 15.00	\$ 780.00	\$ 13.80	\$ 717.60		
Sum Total – Base Bid II (Line items 24-27)						\$ 64,180.00		\$ 34,907.60		
Sum Total Base I + Sum Total Base II						\$ 1,113,593.95		\$ 1,188,441.17		
Bid Bond					YES		YES		N/A	
Amendments Acknowledged					YES		YES		N/A	

NOTE: The information contained in this bid tabulation is for information only and does not constitute actual award/execution of contract.

2024-0055 Terminal Drive & Bridge Improvements View List			
	<u>Participant Name</u>	<u>City</u>	<u>State</u>
1	Martinez Bros. Contractors, LLC	El Paso	TX
2	DYER CYCLE	El Paso	TX
3	Jordan Foster Construction, LLC	El Paso	TX
4	Paso-Tex Industries LLC	El Paso	TX
5	BELLA IRRIGATION, LLC	El Paso	TX
6	WOFFORD TRUCK PARTS (TE EL PASO,LLC)	El Paso	TX
7	Filterbuy Incorporated	Talladega	AL
8	Access Communications Group, LLC	El Paso	TX
9	Amtek USA, Austin	Houston	TX
10	ASC General Contractors	El Paso	TX
11	Burke Insurance Group (Risk Strategies Company)	Las Cruces	NM
12	ConstructConnect	Cincinnati	OH
13	Construction Reporter	Albuquerque	NM
14	Dodge Data & Analytics	Hamilton	NJ
15	Elias Concrete Construction LLC	El Paso	TX
16	Hawk Construction	El Paso	TX
17	MANSCo (MANS Construction Company)	Las Cruces	NM
18	PMI Pavement Marking, LLC (Pavement Marking, LLC)	EL PASO	TX
19	Rexcel Coatings Corporation	El Paso	TX
20	The PlanIt Room	El Paso	TX
21	Virtual Builders Exchange	San Antonio	TX

# DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with [Title 2, Chapter 2.92, Section 2.92.080](#)

## Introduction:

Individuals or entities benefiting by a City Council Agenda item must disclose contributions or donations made to current members of Council under the City's Ethics Code. The information on this form is being captured for transparency purposes and will be noted on the relevant City Council Agenda. **Contributions and Donations do NOT disqualify an applicant from doing business with the City.**

## Definitions:

- "Contribution" A direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit.
- "Contributor" A person making a contribution, including the contributor's spouse.
- "Donation" Cash and the value of any in-kind contributions or gifts to the council member for use by their office or in their district.
- "Donor" An individual and spouse, a business entity, or an individual who owns a business entity in whole or in part, or is operated by the individual, that is the subject of a council agenda item.
- "Benefiting" Shall include but not be limited to any contract, bid award, franchise, permit, zoning or rezoning, and other award that council will vote on.

**Instructions:** Please read and complete this form carefully. If you have made campaign contributions or donations to any current City Council member(s) totaling an aggregate of \$500 or more during their campaign(s) or term(s) of City office, you are required to disclose the information as specified below. If you have not made such contributions or donations past the limit specified in the ordinance, you are required to affirm your compliance with the municipal code. Please submit this completed form along with your application or proposal to the relevant city department. Failure to disclose campaign contributions or donations as required by the ordinance may result in a violation of the City's Ethics Code requirements, and sanctions under the Ethics Code 2.92.

## Contributor / Donor Information:

Full Name	Matthew Hardison
Business Name	Jordan Foster Construction, LLC
Agenda Item Type	N/A
Relevant Department	Infrastructure

**Disclosure Affirmation:** Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.



I have **NOT** made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office, as specified in Section 2.92.080 of the El Paso Municipal Code.

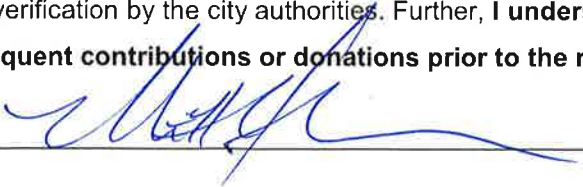
OR



I have made campaign contributions or donations totaling an aggregate of \$500 or more to the following City Council member(s) during their campaign(s) or term(s) of City office:

OFFICE	CURRENT COUNCIL MEMBER NAME	AMOUNT (\$)
Mayor		
District 1		
District 2		
District 3		
District 4		
District 5		
District 6		
District 7		
District 8		

**Declaration:** I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, **I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.**

Signature:  Date: March 27, 2024





Legislation Text

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File #: 24-781, Version: 1

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**CITY OF EL PASO, TEXAS**  
**LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Capital Improvement Department, Yvette Hernandez, (915) 212-1860

Airport, Tony Nevarez, (915) 212-7325

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Discussion and action that the City Manager, or designee, be authorized to sign a two year On-Call Agreement for Professional Services to perform Land Development / Construction Management services on a task order basis between the City of El Paso and each of the following two (2) consultants:

1. Parkhill, Smith & Cooper, Inc.
2. Brock & Bustillos Inc.

Each On-Call Agreement will be for an amount not to exceed \$800,000.00. In addition, the City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed \$50,000.00, if such services are necessary for proper execution of the Project and the increased amounts are within the appropriate budget identified for the identified Project. Further, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such additional Services as also enumerated within Attachment "C" of the agreement in an amount not to exceed \$50,000.00, if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding \$50,000.00 must have prior approval by City Council through written amendment to this Agreement.

In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement.

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

**AGENDA DATE:** June 11, 2024

**PUBLIC HEARING DATE:** N/A

**CONTACT PERSON(S) NAME** Yvette Hernandez, P.E., City Engineer  
**AND PHONE NUMBER:** (915) 212-0065  
Tony Nevarez, Interim Airport Director  
(915) 212 - 7325

**DISTRICT(S) AFFECTED:** ALL

**STRATEGIC GOAL:** No. 1: Cultivate an Environment Conducive to Strong, Economic Development

**SUBGOAL:** 1.4 Grow the Core Business of Air Transportation

**SUBJECT:**

That the City Manager, or designee, be authorized to sign a two year On-Call Agreement for Professional Services to perform Land Development / Construction Management services on a task order basis between the by City of El Paso and each of the following two (2) consultants:

1. Parkhill, Smith & Cooper, Inc.
2. Brock & Bustillos Inc.

Each On-Call Agreement will be for an amount not to exceed \$800,000.00. In addition, the City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed \$50,000.00, if such services are necessary for proper execution of the Project and the increased amounts are within the appropriate budget identified for the identified Project. Further, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such Additional Services as also enumerated within Attachment "C" in an amount not to exceed \$50,000.00, if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding \$50,000.00 must have prior approval by City Council through written amendment to this Agreement.

In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement.

**BACKGROUND / DISCUSSION:**

This Land Development / Construction Management Contract will be used to provide comprehensive services for El Paso International Airport's Capital Improvement Plan and land development efforts. The scope of work encompasses various elements critical to the efficient and safe operation of the airport, aligning with Federal

Aviation Administration (FAA) requirements and industry best practices. The contracts will be used for miscellaneous assignments on an on-call basis.

**PRIOR COUNCIL ACTION:**  
N/A


**AMOUNT AND SOURCE OF FUNDING:**  
\$800,000 Per Contract – Airport Enterprise / FAA Grant Funding

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?** ☒ YES ☐ NO

**PRIMARY DEPARTMENT:** El Paso International Airport  
**SECONDARY DEPARTMENT:** Capital Improvement Department

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

**DEPARTMENT HEAD:**   
\_\_\_\_\_  
Yvette Hernandez, P.E., City Engineer

## RESOLUTION

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

That the City Manager, or designee, be authorized to sign a two year On-Call Agreement for Professional Services to perform Land Development / Construction Management services on a task order basis between the City of El Paso and each of the following two (2) consultants:

1. Parkhill, Smith & Cooper, Inc.
2. Brock & Bustillos Inc.

Each On-Call Agreement will be for an amount not to exceed \$800,000.00. In addition, the City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed **\$50,000.00**, if such services are necessary for proper execution of the Project and the increased amounts are within the appropriate budget identified for the identified Project. Further, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed **\$50,000.00**, if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding **\$50,000.00** must have prior approval by City Council through written amendment to this Agreement.

In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement.

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2024.

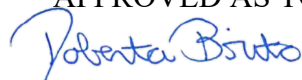
CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leaser  
Mayor

ATTEST:

\_\_\_\_\_  
Laura Prine  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
Roberta Brito  
Assistant City Attorney

APPROVED AS TO CONTENT:



\_\_\_\_\_  
Yvette Hernandez, City Engineer  
Capital Improvement Department



CITY OF EL PASO  
CAPITAL IMPROVEMENT DEPARTMENT  
218 N. CAMPBELL, 2ND FLOOR  
EL PASO, TEXAS 79901

EVALUATION COMMITTEE SCORESHEET SUMMARY					
SOLICITATION #2024-0381R					
ON-CALL LAND DEVELOPMENT / CONSTRUCTION MANAGEMENT SERVICES FOR EPIA CAPITAL PROJECTS					
Consultant	BROCK & BUSTILLOS	CONSOR	FRANK X SPENCER	GARVER	PARKHILL
Rater 1	70	67	64	69	72
Rater 2	73	70	63	66	74
Rater 3	69	67	65	67	70
<b>Total Rater Scores</b>	<b>212</b>	<b>204</b>	<b>192</b>	<b>202</b>	<b>216</b>
References	9.9	10	3	10	6.5
<b>Overall Score:</b>	<b>221.9</b>	<b>214</b>	<b>195</b>	<b>212</b>	<b>222.5</b>

Rankings	Consultant
1	PARKHILL
2	BROCK & BUSTILLOS
3	CONSOR

Rankings	Consultant
4	GARVER
5	FRANK X SPENCER

THE STATE OF TEXAS   )  
  )  
COUNTY OF EL PASO    )

ON-CALL  
AGREEMENT FOR  
PROFESSIONAL SERVICES

This Agreement (“**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the “**Owner**”, and **PARKHILL, SMITH & COOPER, INC.**, a Texas Corporation, hereinafter referred to as the “**Consultant**”.

**WHEREAS**, the Owner intends to engage the Consultant to perform professional Land Development / Construction Management services on a task order basis through the use of task orders referencing this Agreement, the scope of which is further described in **Attachment “A”**; and

**WHEREAS**, the Consultant has been selected to perform such services as required by the Owner, and the Consultant was selected through the Owner’s selection procedure, in accordance with all applicable state and local laws and ordinances;

**NOW, THEREFORE**, for the consideration set forth in this Agreement and its attachments, the Owner and Consultant agree as follows:

**ARTICLE I  
ATTACHMENTS**

**1.1** The attachments listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

Attachment “A”	Scope of Services
Attachment “B”	Consultant’s Fee Proposal and Hourly Rates
Attachment “C”	Consultant's Basic and Additional Services
Attachment “D”	Payment and Deliverable Schedules
Attachment “E”	Insurance Certificate
Attachment “F”	Federal Aviation Administration contract provisions for Airport Improvement Program Projects

**ARTICLE II  
PROJECT**

**2.1** The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform on-call professional services on a Task Order basis. Each individual Task Order will identify the Project (“**Project**”) and the total compensation due to each Project. The Task Order for each Project shall include the Scope of Services described in **Attachment “A”**.

**2.2** For each Project, the Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this

Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.

- 2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.
- 2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each task order. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.
- 2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working days time period.

### **ARTICLE III CONSULTANT FEES AND PROJECT BUDGET**

**3.1 PAYMENT TO CONSULTANT.** The Owner shall pay to the Consultant an amount not to exceed **\$800,000.00** for all basic services and reimbursables performed pursuant to this Agreement.

The City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed **\$50,000.00**, if such services are necessary for proper execution of the Project and the increased amounts are within the appropriate budget identified for the identified Project.

In addition, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed **\$50,000.00**, if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding **\$50,000.00** must have prior approval by City Council through written amendment to this Agreement

**No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement.**

The parties agree and understand that all fees and compensation to the Consultant shall only become due and payable in accordance with the terms of this Agreement and the fees to be charged

for each Project shall be pursuant to the Consultant's fee proposal at the rates which is attached hereto as **Attachment "B"**.

Payments to the Consultant shall be made pursuant to **Attachment "D"**.

**3.2 CONSULTANT'S SERVICES.** The Basic Services and Additional Services, if any, to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C"**.

**3.3 CONSULTANT'S INVOICES.** For each Project, the Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in **Attachment "D"**. Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety (90) days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.

**3.3.1** Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.

**3.3.2** The Owner agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.

**3.4 PROJECT BUDGET.** The Consultant acknowledges that the budget and time for each Project will be identified in each Task Order.

**3.5 COSTS NOT ENUMERATED.** Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

## **ARTICLE IV PERIOD OF SERVICE AND TERMINATION**

**4.1 PERIOD OF SERVICE.** The term of this Agreement shall be for a period not to exceed **two (2) years** from the date first shown above. The services called for by each Task Order shall begin upon the issuance of a Notice to Proceed from the City Engineer and shall continue through the completion of the construction of the Project, including any required extensions beyond the contract time for construction of the Project, as may be directed by the Owner.



**4.2 SUSPENSION.** Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve (12) months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.

**4.3 TERMINATION.** This Agreement may be terminated as provided herein.

**4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.

**4.3.2 TERMINATION BY EITHER PARTY.** It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.

**4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

## **ARTICLE V INSURANCE AND INDEMNIFICATION**

**5.1 INSURANCE.** Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

**5.1.1 WORKERS' COMPENSATION INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

“The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the Owner, its partners, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured.”

**5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Consultant and the Consultant's employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant. The minimum limits of liability and coverages shall be as follows:

a) **COMMERCIAL GENERAL LIABILITY**

\$1,000,000.00 Per Occurrence  
\$2,000,000.00 General Aggregate  
\$2,000,000.00 Products/Completed Operations Aggregate  
\$1,000,000.00 Personal and Advertising Injury

**Personal Injury or Death & Property Damage**

\$1,000,000.00 per occurrence combined single limit for bodily injury and property damage.

**General Aggregate**

\$1,000,000.00  
\$1,000,000.00 per occurrence

c) **AUTOMOBILE LIABILITY**

**Combined Single Limit**

\$1,000,000.00 per accident

**5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the

benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of \$1,000,000.00 on a claims made basis.

**5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.

**5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.

**5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate.

Further, all policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

**5.2 INDEMNIFICATION.** To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

To the extent allowed by state law, the Owner will be responsible for its own actions.

**5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS.** Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence,

professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter “Owner’s Claims”), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant’s insurers in settlement or satisfaction of Owner’s Claims under the terms and conditions of Consultant’s insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner’s Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner’s claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident.

## **ARTICLE VI FEDERAL AND STATE PROVISIONS**

**6.1 COMPLIANCE WITH APPLICABLE LAWS – FEDERAL AND STATE FUNDING REQUIREMENTS.** Consultant, at Consultant’s sole expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Consultant with respect to the use of federal and state funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal and state funds.

Specifically, and not in limitation of the foregoing, Consultant agrees that to the extent required by any agreement between the Owner and any Federal and State agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project, **including but not limited to:**

--The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.

--The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.

--The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment “F”.

--The Texas Department of Transportation through an Agreement with the Owner.

Copies of grant assurances will be made available to Consultant. However, provided copies shall in no way be a limitation on the Consultant’s obligation to comply with any Federal and State agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project.

**6.1.1 CONTRACT ASSURANCE.** The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this

contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**6.1.2 DBE GOOD FAITH EFFORTS.** The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal will be identified pursuant to the federal funding requirements for an individual task order established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this Agreement.

The Consultant will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

**6.2 TERMINATION FOR CANCELLATION OF GRANT.** Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Consultant of the cancellation by certified mail-return receipt requested, whereupon the Consultant shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Consultant will be paid for professional services performed to such date, upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

**6.3 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 78 STAT.252, 42 U.S.C. 2000D TO 2000D-4 AND TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION.**

During the performance of this contract, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

- (1) **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations),

which are herein incorporated by reference and made a part of this contract.

- (2) **Nondiscrimination:** Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. ADP shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports:** Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by Client to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information Consultant shall so certify to Client, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this contract, the Client shall impose such contract sanctions as it may determine to be appropriate, including but not limited to:
  - a. Withholding of payments to the Consultant under the contract until the Consultant complies, and / or
  - b. Cancellation, termination or suspension of the contract in whole or in part.
- (6) **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Client may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Consultant may request Client to enter into such litigation to protect the interests of Client and in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

## ARTICLE VII GENERAL PROVISIONS

**7.1 CONTRACT TIME.** Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment "D"**. The Consultant shall timely notify the City Engineer

of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in **Attachment “D”**.

## **7.2 INTENTIONALLY DELETED.**

**7.3 CONSULTANT’S QUALITY OF WORK.** The Owner’s review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant’s services shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the Project and in accordance with the time periods established in **Attachment “D”** and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner’s review, for the performance of the Owner’s consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner.

**7.4 COPYRIGHT AND REPRODUCTION RIGHTS.** Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the “Instruments of Service”) are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant’s seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

**7.5 AUDITING RECORDS FOR THE SPECIFIC PROJECT.** Consultant’s records subject to audit shall include but not be limited to records which, in the Owner’s discretion, have a bearing on matters of interest to the Owner in connection with the Consultant’s work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner’s agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant’s compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated

with this Agreement. In those situations where Consultant's records have been generated from computerized data, Consultant agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The Owner or its designee shall be entitled, at its expense, to audit all of the Consultant's records related to this Project, and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times and places.

**7.6 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

**7.7 VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

**7.8 GOVERNING LAW.** The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

**7.9 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.

**7.10 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

**7.11 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner:	The City of El Paso Attn: City Manager P.O. Box 1890 El Paso, Texas 79950-1890
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With a Copy to:	The City of El Paso Attn: City Engineer P.O. Box 1890 El Paso, Texas 79950-1890
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To the Consultant:	Parkhill, Smith & Cooper Inc. Mark Haberer, PE, CM 4222 85 <sup>th</sup> Street Lubbock, Texas, 79423
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Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

**7.12 CONFLICTING PROVISIONS.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.

**7.13 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. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

**7.14 TEXAS GOVERNMENT CODE.** In accordance to Chapter 2274 of the Texas Government Code, as amended from time to time, the Consultant represents and warrants to the Owner the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

**WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:**

**(SIGNATURES ON THE FOLLOWING PAGES)**

**CITY OF EL PASO:**

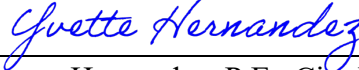
\_\_\_\_\_  
Cary Westin  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



\_\_\_\_\_  
Roberta Brito  
Assistant City Attorney



\_\_\_\_\_  
Yvette Hernandez, P.E., City Engineer  
Capital Improvement Department

**(Acknowledgment)**

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

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2024,  
by **Cary Westin**, as **City Manager** of the **City of El Paso, Texas**.


\_\_\_\_\_  
Notary Public, State of Texas

My commission expires:

\_\_\_\_\_

*(Signatures continue on following page)*

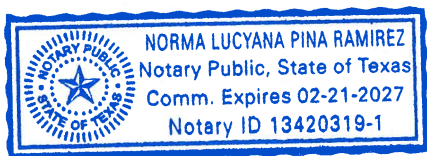
CONSULTANT:  
PARKHILL, SMITH & COOPER, INC.


  
By: Mark Haberer  
Title: Principal-in-Charge

(Acknowledgment)

THE STATE OF TEXAS §  
COUNTY OF EL PASO §

This instrument was acknowledged before me on this 24 day of May, 2024,  
by Mark Haberer, as Principal-in-Charge of Parkhill, Smith & Cooper, Inc.



  
Notary Public, State of Texas

My commission expires:

02/21/2027

**ATTACHMENT “A”  
SCOPE OF SERVICES**

## **ATTACHMENT “A” SCOPE OF SERVICES**

The selected firm is expected to provide comprehensive services for El Paso International Airport's Capital Improvement Plan and land development efforts. The scope of work encompasses various elements critical to the efficient and safe operation of the airport, aligning with Federal Aviation Administration (FAA) requirements and industry best practices. The contracts will be used for miscellaneous assignments on an on-call basis to include as appropriate but not limited to:

### **1.1. Investigation:**

The firm is responsible for meeting with stakeholders to obtain all necessary design standards and specifications such as the City of El Paso and El Paso International Airport Design Standards, Federal Aviation Administration (FAA), and State standards, among others.

### **1.2. Design:**

Design shall meet all City, State, and Federal requirements for the project and shall be performed in phases as presented in the project schedule specified for each project.

The firm is responsible to submit a turnkey design product. The firm shall be responsible for providing State of Texas licensed Engineers and Land Surveyors required to provide design services. The firm shall follow City of El Paso and El Paso International Airport design specifications and procedures for the development of the specified project and comply with all laws, regulations and policies set by the City of El Paso, FAA and the State. In addition, the firm shall be responsible for necessary Texas Department of Licensing and Regulation (TDLR) fees, registration, and for inspection.

The selected firm shall offer comprehensive Land Development / Construction Management services, encompassing project management, design, survey, and planning expertise. Responsibilities include the development of land development plans, construction specifications, contract documentation, cost estimates, and, if required, an Engineer's Report.

Sole sourcing will not be allowed. The firm shall prepare both design and performance specifications. The firm shall provide a guide schedule of necessary testing and sampling. Buy America must be enforced during design process.

The firm shall respond to comments regarding constructability, operability reviews on proposed construction projects and assist the City with but not limited to the following items: review of proposed construction projects including items as detail and cut omissions and inconsistencies between plans and specifications, vague or ambiguous notes, references, and lack of coordination between the drawings of all disciplines involved in the project.

#### **1.2.1. Errors and Omissions on Design:**

The City expects the firm to have an adequate Quality Assurance / Quality Control Program to minimize the potential for errors and omissions. Recently, the City has observed inconsistencies between plans and specifications including but not limited to conflicts between civil and landscape plans, inadequate review by the prime of the adequacy of the work of any and all subcontractors, discrepancies between the measurement and payment specifications and bid forms, and failure of the firms to verify utility locations in the field. The firm shall revise the work as necessary to correct errors and omissions appearing therein, when required to do so by the City (Owner). If

errors or omissions are identified during the construction phase, the firm at its sole expense, shall modify plans and specifications, as necessary, to remedy the errors/omissions at no cost to the City. The firm may also be held financially liable for costs of any rework of work that has already been completed beyond the cost of the provision of the original / revised requirement. Finally, in the event that the construction contractor requires additional time to complete the project beyond the approved scheduled date of substantial completion due to an error or omission, the firm may also be financially liable for the cost of any Extended General Conditions deemed by the City to be appropriate.

#### **1.2.2. Design Analysis:**

The firm shall perform design analysis for the project to ensure public safety. Design analysis shall include all engineering calculations for review by the City, governmental authorities who may have jurisdiction over each construction contract, and public utilities. All design analysis must comply with all applicable City, County, State, and Federal laws and regulations.

### **1.3. Land Development:**

#### **1.3.1. Site Analysis and Assessment**

- Conduct a thorough analysis of the airport site, considering topography, soil conditions, and environmental factors.
- Assess the feasibility of proposed land development projects, considering existing infrastructure and potential impacts.

#### **1.3.2. Master Planning**

The firm shall assist the City in providing schedules for obtaining utility easements, utility service lines and other permits. The firm shall comply with requirements set by the City's Capital Improvement and Planning and Inspections Departments. Preparation of plans, specifications and cost estimates for design of buildings, structures and similar construction, design of street and drainage improvements, other site improvements, civil, structural, soils forensic engineering, and subsurface utility engineering to include records research and field verification. Contribute to the development and refinement of the airport's master plan, ensuring alignment with long-term goals and regulatory requirements.

Provide expertise in optimizing land use for current and future airport needs.

#### **1.3.3. Surveys:**

The firm shall provide all topographic, horizontal surveys necessary to provide a complete design. Survey shall include project boundaries, improvement surveys and identify all utilities. Immediately after Notice to Proceed (NTP) the firm shall verify all right-of-way (ROW) boundaries and identify any conflicts with the project.

#### **1.3.4. Geometric Improvements:**

The firm shall provide a detailed schematic and preferred geometric alignment, including typical section(s) that should be defined enough to determine basic requirements such as drainage structures, ROW, business or home relocations, and utility conflicts that must comply and meet with all applicable City, County, State, and Federal laws and regulations.

The firm shall be responsible for the preparation of traffic data and provide existing ROW limits and location of utilities. The firm shall also generate preliminary cross sections to aid in determining ROW needs and control of access restrictions and examine needs for special drainage

or run-off pollution control measures, and hydraulic system issues. The plans and specifications must identify how constraints will be handled, consider utility conflict, and identify potential conflicts. The firm shall prepare and evaluate pavement design report for compatibility with proposed construction, skewed intersections or replace with better functional and operational design. The firm will be tasked with determining the appropriate sizes and locations of drainage structures and incorporating this information into schematic design.

When work is railroad ROW, the firm shall coordinate with the railroad as appropriate to locate all potential and existing railroad crossings, determine existing crossing conditions, traffic control requirements, and identify the need and recommendations for interconnection, closing, or consolidating grade crossings.

#### **1.3.5. Technical Specifications:**

The firm shall prepare and provide technical specifications. The specifications shall be based on the most current version of CSI Master Format. No sole sourcing shall be allowed. All specifications must include type of materials listed in the construction drawings, placement method and quality control and quality assurance testing. The specification shall correlate with unit price format. All specifications must comply with established specification standards and formats. The firm shall provide both design and performance specifications.

#### **1.3.6. Utility Services and Utility Easements:**

Based on the design, the firm shall coordinate with all utilities and interested parties that will be affected by the proposed project improvements. The firm shall submit all applications to the utilities and interested parties on behalf of the City. However, the City shall pay all utility service fees. Installation of service will not be part of the firm's scope of work. The building contractor shall coordinate the installation of the service. Construction documents shall clearly show all utility company contacts and type of service requested. Before the construction documents are submitted for bid advertisement, the firm shall submit all utility service requests. The firm shall prepare all metes and bounds descriptions for utility easements and / or vacations. The firm shall coordinate easements and / or vacations with City staff and respective utility companies and all interested parties. All documents and coordination efforts by the firm shall be complete by or before the 90% design phase due date. A checklist of all coordinated services and easements shall be submitted monthly.

#### **1.3.7. Utility Coordination:**

The firm shall be responsible to verify utility locations in the field and coordinate design efforts with all affected utility companies and interested parties. The purpose is to minimize utility relocation without compromising design standards. The firm shall verify utility lines, valves, covers, manholes, etc. from the different utility companies and interested parties during the preliminary design phase. Subsurface utilities shall be included as part of the firm's responsibilities to include records research and field verifications. All existing utility structures shall be shown on the preliminary design plan submittal. The firm shall meet with all affected utility companies and interested parties to discuss proposed design. Based on these coordination meetings and correspondence that is sent between the firm, utility companies and interested parties the need and extent of relocation shall be determined. If a dispute arises, the firm shall immediately setup a meeting between the City's Project Manager and the utility company or interested parties to resolve the dispute. The firm, on behalf of the City, shall request from all utility companies or interested parties that they relocate all lines that conflict with new improvements. However, El Paso Water Utilities (EPWU) can request that the City include as part of the street and drainage

improvement bid package the relocation of their utility lines provided that the utility company or interested parties signs an agreement with the City and that funding is provided. The firm shall coordinate this effort with the utility companies and interested parties and advise them of the City policy to minimize pavement cuts on new roadways. All correspondence and meeting minutes shall be submitted to the City when each phase is due. Construction documents shall clearly show all existing and proposed utility lines and utility company or interested party contacts. All documents and coordination efforts by the firm shall be complete by or before the final design phase due date. The firm shall submit all utility clearance letters from each utility company or interested parties by or before the 90% design phase. If relocations cannot occur before construction, consultant must incorporate into the construction phasing and coordinate relocation date.

## **1.4. Pavement Design**

### **1.4.1. Runways, Taxiways and Aprons**

- Develop pavement designs that adhere to FAA standards and specifications.
- Conduct structural analysis and provide recommendations for optimal pavement performance.

### **1.4.2. Standard Paving Design**

#### **1.4.2.1. Asphalt Paving**

- Provide expertise in the design of asphalt pavements for streets, crossroads, and parking lots.
- Consider factors such as traffic loadings, climate conditions, and sustainability to deliver durable and cost-effective solutions.

#### **1.4.2.2. Concrete Paving**

- Demonstrate proficiency in designing concrete pavements for various applications, including streets, intersections, and parking areas.
- Utilize best practices in joint design, reinforcement, and surface finishes to ensure longevity and minimal maintenance.

### **1.4.3. Compliance with FAA Regulations**

- Ensure that all pavement designs comply with current FAA regulations and guidelines.
- Stay abreast of any updates or changes to FAA requirements and adjust designs accordingly.

## **1.5. Environmental Considerations:**

### **1.5.1. Environmental Impact Assessment:**

- Conduct environmental impact assessments for proposed projects, addressing potential ecological, noise, and air quality concerns.
- Propose mitigation strategies to minimize the environmental footprint of the projects.

### **1.5.2. Sustainability Initiatives**

- Explore and integrate sustainable practices into the design and development process.
- Propose innovative solutions to enhance the airport's environmental stewardship.



### **1.5.3. Soils Investigation:**

- The firm shall provide a soil investigation and soils forensic engineering, and pavement design report for specified projects. Pavement design report shall include a life expectancy analysis.

### **1.5.4. Storm Water Pollution Prevention and Erosion Control Plan:**

- The firm shall prepare and provide storm water pollution prevention plan. The firm shall be knowledgeable on the storm water pollution prevention plan requirements. The storm water pollution prevention plan shall be submitted to BP&I for review and approval.

### **1.5.5. ADA Compliance and Requirements:**

- The firm shall include and comply with Americans With Disabilities Act (ADA), the 2022 Texas Accessibility Standards (T.A.S), and Texas Department of Licensing and Regulation requirements.
- Under this contract, the firm will employ the services of a Registered Accessibility Specialist (RAS) to perform a review of design documents and inspection of construction. The firm shall comply with RAS design comments.

## **1.6. Documentation and reporting**

The selected firm is expected to prepare detailed project documentation, including design drawings, specifications, and reports. Provide regular progress reports and attend meetings to update stakeholders on project status.

### **1.6.1. Studies and Reports:**

The firm shall perform research and database creation to conduct studies and produce reports to include investigations, drawings and sketches and, cost estimates. Reports shall include description of alternatives considered, estimates of construction costs, conclusions and recommendations. This task includes the preparation of feasibility studies, structural analysis, design analysis, traffic impact analysis, and other studies as required.

The firm shall provide a soil investigation and soils forensic engineering, and pavement design report for specified projects. Pavement design report shall include a life expectancy analysis.

### **1.6.2. Cost Estimates:**

The firm shall develop and submit the construction cost estimates. The cost opinion of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within ten percent (10%) of the bid for the base bid item expected from the selected contractor. As noted herein, if the all responsible bids exceed the final cost opinion by more than ten percent (10%), the firm agrees, at the direction of the City, to redesign the project without additional charge to the City to bring the project within the budgetary limitations. After bidding, the firm shall submit a bid evaluation per bid item table and a letter of recommendation or rejection of bids.

### **1.6.3. Building Permits, Special Permits, and Other Land Use Permits:**

The firm shall be responsible to comply with all local, state, and federal codes. The firm shall be responsible to submit required sets to City of El Paso Planning and Inspections Department (BP&I) for review and approval during final design phase period. The firm shall be responsible to obtain approval from BP&I before the construction documents are submitted for bid advertisement. It shall be the responsibility of the firm to follow up review and approval process with the BP&I. After approval, the firm will pick up approved plans and store them in a safe place. The firm shall

not be responsible to pull permit. The pulling of the permit shall be responsibility of building contractor. BP&I shall be responsible to review grading and drainage, storm water pollution prevention plan, electrical, structural, mechanical, plumbing permit requirements.

The firm shall be responsible for the preparation of all documents that include but are not limited to: metes and bounds descriptions, site plans, elevations, and applications for permits, special permits, zoning changes, and land use permits. The provider shall represent the City of El Paso to make presentations, answer questions at the City of El Paso Bicycle Advisory Committee meetings and City Council meetings.

#### **1.6.4. Construction Sequencing Plan:**

The firm shall provide a construction-sequencing plan. The firm shall take into consideration all work tasks required of all base bids, and different work tasks to include EPWU, which shall be shown as other phases or on its own.

#### **1.6.5. Construction Schedule:**

The firm shall meet with City's Project and Construction Managers to determine construction schedule. The schedule shall consider lead delivery time of materials, equipment, and any known utility relocations. The firm shall evaluate proposed changes to the contract and actively manage impacts to the project. The meeting shall be held after pre-final plans are submitted, but before Final Design Notice to proceed is issued. The information will allow the firm to prepare a current market cost estimate at the final design phase submittal.

#### **1.6.6. Contract Time Determination:**

The firm shall prepare a contract time determination to identify clearly and accurately the critical path as the longest continuous path. Provide a legend for all abbreviations, run date, data date, project start date, and project completion date in the title block necessary for the activities and estimated expected duration of the activity or milestone indicating the progress of the project.

Using calendars incorporate seasonal weather conditions into the schedule for work (e.g., earthwork, concrete paving, structures, asphalt, drainage, utilities, etc.) that may be influenced by temperature or precipitation. Also, include non-work periods such as holidays, weekends, or other non-work days as identified in the contract.

### **1.7. PRODUCTS REQUIRED:**

#### **1.7.1. Pre-Design Report (If applicable)**

The firm shall be responsible for conducting a Pre-Design Analysis prior to the 30% design phase submission. Upon receipt of the notice to proceed, the schedule for the pre-design report will be established on a project-by-project basis. This process shall include but not be limited to the following:

- Evaluate existing ROW and expected ROW acquisition if any
- Evaluate street alignment
- Develop typical sections
- Pavement design based on geotechnical recommendation

- Identify possible utility conflicts
- Identify possible additional conflicts with proposed improvements
- Provide construction estimate of proposed improvements
- Evaluate bicycle and pedestrian improvements

### **1.7.2. 30% Design**

The firm shall submit the following preliminary design submittal, as applicable.

- Coversheet (90% complete)
- Quantity Summary Sheet (100% complete)
- Landscape Architectural Plan and Details (50% complete)
- Electrical Plan and Details (50% complete)
- Mechanical Plan and Details (50% complete)
- Plumbing Plan and Details (50% complete)
- Horizontal Control Plan (90% complete)
- Demolition Plan (90% complete)
- Construction Notes (50% complete)
- Storm Water Pollution Prevention Plan (75% complete)
- Typical Construction Details (75% complete)
- Site Plan (75% complete)
- Grading Plan (50% complete)
- Landscape Plan (50% complete)
- Typical Landscape Details (75% complete)
- Preliminary Irrigation Layout (40% complete)
- Typical Irrigation Details (75% complete)
- List of Governing Specs (100% complete)
- General Notes
- Engineer's Estimate
- Design Criteria
- Geotechnical Report
- Pavement Design Memo (if applicable)
- Utility Status and coordination report

If the City considers the submittal as not compliant to the above-required completion percentages, the provider must resubmit as per the above-mentioned requirements. Additional forms might be required as requested by the City.

### **1.7.3. 60% Design**

The firm shall submit the following pre-final design phase submittal, as applicable:

- Coversheet (100% complete)
- Quantity Summary Sheet (100% complete)
- Architectural Plan and Details (75% complete)
- Electrical Plan and Details (75% complete)
- Mechanical Plan and Details (75% complete)
- Plumbing Plan and Details (75% complete)

- Horizontal Control Plan (100% complete)
- Demolition Plan (100% complete)
- Construction Notes (90% complete)
- Storm Water Pollution Prevention Plan (100% complete)
- Typical Construction Details (100% complete)
- Special Construction Details (75% complete)
- Site Plan (95% complete)
- Grading Plan (95% complete)
- Landscape Plan (95% complete)
- Typical Landscape Details (100% complete)
- Special Landscape Details (75% complete)
- Pre-final Irrigation Layout (75% complete)
- Typical Irrigation Details (100% complete)
- Special Irrigation Details (75% complete)
- Outline of Specs (100% complete)
- List of Governing Specs (100% complete)
- General Notes
- Engineer's Estimate
- Design Criteria
- 30% complete action items report and complete review comment forms
- Contract time determination
- Certifications (ROW, Utilities, etc.)
- Temporary Road Closure Request
- Construction Speed Zone Request
- TDLR Registration Form
- Redlines showing quality control
- Utility Status and coordination report

If the City considers the submittal as not compliant to the above-required completion percentages, the provider must resubmit as per the above-mentioned requirements. Additional forms might be required as requested by the City.

#### **1.7.4. 95% Design**

The firm shall submit, at a minimum, the following final design phase submittal, as applicable:

- Cover Sheet (100% complete)
- Quantity Summary Sheet (100% complete)
- Architectural Plan and Details (100% complete)
- Electrical Plan and Details (100% complete)
- Mechanical Plan and Details (100% complete)
- Plumbing Plan and Details (100% complete)
- Horizontal Control Plan (100% complete)
- Demolition Plan (100% complete)
- Construction Notes (100% complete)
- Storm Water Pollution Prevention Plan (100% complete)
- Typical Construction Details (100% complete)

- Special Construction Details (100% complete)
- Site Plan (100% complete)
- Grading Plan (100% complete)
- Landscape Plan (100% complete)
- Typical Landscape Details (100% complete)
- Special Landscape Details (100% complete)
- Pre-final Irrigation Layout (100% complete)
- Typical Irrigation Details (100% complete)
- Special Irrigation Details (100% complete)
- Outline of Specifications (100% complete)
- List of Governing Specs (100% complete)
- General Notes
- Engineer's Estimate
- Design Criteria
- 60% complete action items report and complete review comment forms
- Contract time determination
- Certifications (ROW, Utilities, etc.)
- Temporary Road Closure Request
- Construction Speed Zone Request
- TDLR Registration Form
- Performance end date
- Redlines showing quality control
- Utility status and coordination report

If the City considers the submittal as not compliant to the above-required completion percentages, the provider must resubmit as per the above-mentioned requirements. Additional forms might be required as requested by the City.

#### **1.7.5. 100% Design**

The firm shall re-submit the 95% documentation with City comments addressed.

#### **1.7.6. Bidding and Construction**

The firm shall provide constructability, ability to bid, operability reviews on proposed construction projects. The review will cover such items as detail and cut omissions and inconsistencies between plans and specifications, vague or ambiguous notes and references and lack of coordination between drawings of all disciplines involved in the project.

The firm shall submit the following for bidding both in hard copy and in electronic format:

- Full and complete sealed set of drawings
- Full and complete sealed set of technical specifications and list of governing specs both in hard copy and electronic format
- Detailed scope of work both in hard copy and electronic format
- Detailed unit price bid proposal form, both in hard copy and electronic format
- Detailed real-world value cost estimate
- Construction time determination schedule

During the bidding process, the firm shall respond to all questions from prospective bidders, attend a pre-bid conference, and if required prepare addendums.

After bid opening, the firm shall provide all documentation required for State concurrence, these items include:

- Engineer's Cost Estimate line item review
- Engineer's Bid Tab review and recommendation letter

During the construction phase, the firm shall assist the City, on a time and materials basis, with but not limited to the following items:

- Responding to all questions from the contractor (requests for information, RFIs)
- Providing advice and recommendation to the Owner and other technical engineering functions and analysis as may be required by the City
- Reviewing contractor technical submittals
- Participate in "punch list" inspection and provide punch list to Owner
- Produce and provide a set of reproducible (11"x17") "as-built" drawings of new construction in electronic format or hard copy if requested

#### **1.7.7. Construction Observation**

The firm shall provide the following and upon request:

- Designate and assign a project representative, subject to the approval of the City, who will serve as the point of contact during the on-site observation and inspection of the construction work in progress and to ascertain that the work is properly executed in conformance with the drawings and specifications.
- The project representative will be responsible for the complete coordination of work developed under each assignment. Work will be accomplished with adequate controls and review procedures to eliminate conflicts, errors, and omissions, and to ensure the technical accuracy of all design information.
- Attend the weekly construction meetings as requested, to be scheduled by the City Project Manager. Other periodic meetings shall be held whenever requested by the City for discussion of questions and problems relating to the work being performed by the firm. The firm shall be required to attend and participate in all design conferences pertinent to the work being performed.
- Respond to Requests for Information (RFIs) within three (3) business days
- Conduct project site visits and produce a project observations report within three (3) business days of the project site visit as requested by the Project Manager.
- Review and approve contractor shop drawings and material submittals and make recommendations within three (3) business days at a maximum or within a schedule previously agreed established by the City Project Manager and with the final approval by the City.
- Prepare cost estimates for street and drainage improvements, park and site improvements, and other project estimates as requested when the contractor submits a change order.
- Provide as-built drawings of new construction.
- Provide other civil engineering functions and analysis as may be required by the City as

unforeseen conditions may occur.

- Participate in punch list inspections as scheduled by the City Project Manager
- Provide a letter at the end of the construction to certify that the project was constructed according to project requirements, plans, and specifications.

#### **1.7.8. Reproduction**

The firm shall be responsible for printing for the different project phases and code review requirements.

#### **1.8. Project Schedule**

The consultant shall submit a detailed preliminary schedule based on the project scope including review time by the owner. The schedule shall include preliminary design, pre-final design, final design, public involvement and owner's review time as follows:

<b>Preliminary Design Phase:</b>	<b>60 consecutive calendar days</b>
<b>Pre-Final Design Phase:</b>	<b>60 consecutive calendar days</b>
<b>Final Design Phase:</b>	<b>15 consecutive calendar days</b>
<b>Bid Phase (Signed and Sealed):</b>	<b>15 consecutive calendar days</b>

**ATTACHMENT “B”**  
**CONSULTANT’S FEE PROPOSAL AND HOURLY RATES**



# Parkhill

## Hourly Rate Schedule

June 1, 2024 through June 1, 2026

Client: City of El Paso

Solicitation #2024-038-1R  
Project: 42640.24 EPIA On-Call CM - Project Management

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

Location: El Paso, TX

CLASSIFICATION	HOURLY RATE	CLASSIFICATION	HOURLY RATE	CLASSIFICATION	HOURLY RATE
<b>SUPPORT STAFF I</b>	\$63.00	<b>PROFESSIONAL LEVEL III</b>		<b>PROFESSIONAL LEVEL VI</b>	
<b>SUPPORT STAFF II</b>	\$74.00	Architect	\$156.00	Architect	\$258.00
<b>SUPPORT STAFF III</b>	\$102.00	Civil Engineer	\$192.00	Civil Engineer	\$291.00
<b>SUPPORT STAFF IV</b>	\$108.00	Electrical Engineer	\$187.00	Electrical Engineer	\$303.00
<b>SUPPORT STAFF V</b>	\$120.00	Interior Designer	\$140.00	Interior Designer	\$223.00
<b>SUPPORT STAFF VI</b>	\$130.00	Landscape Architect	\$151.00	Landscape Architect	\$240.00
<b>PROFESSIONAL LEVEL I</b>		Mechanical Engineer	\$179.00	Mechanical Engineer	\$290.00
Architect	\$128.00	Structural Engineer	\$185.00	Structural Engineer	\$278.00
Civil Engineer	\$139.00	Survey Tech	\$144.00	Professional Land Surveyor	\$225.00
Electrical Engineer	\$142.00	Other Professional	\$138.00	Other Professional	\$219.00
Interior Designer	\$121.00	<b>PROFESSIONAL LEVEL IV</b>		<b>PROFESSIONAL LEVEL VII</b>	
Landscape Architect	\$121.00	Architect	\$191.00	Architect	\$298.00
Mechanical Engineer	\$133.00	Civil Engineer	\$224.00	Civil Engineer	\$312.00
Structural Engineer	\$133.00	Electrical Engineer	\$220.00	Electrical Engineer	\$312.00
Survey Tech	\$113.00	Interior Designer	\$153.00	Interior Designer	\$225.00
Other Professional	\$119.00	Landscape Architect	\$163.00	Landscape Architect	\$298.00
<b>PROFESSIONAL LEVEL II</b>		Mechanical Engineer	\$210.00	Mechanical Engineer	\$298.00
Architect	\$138.00	Structural Engineer	\$214.00	Structural Engineer	\$312.00
Civil Engineer	\$155.00	Survey Tech	\$175.00	Professional Land Surveyor	\$243.00
Electrical Engineer	\$160.00	Other Professional	\$162.00	Other Professional	\$298.00
Interior Designer	\$128.00	<b>PROFESSIONAL LEVEL V</b>			
Landscape Architect	\$128.00	Architect	\$232.00		
Mechanical Engineer	\$153.00	Civil Engineer	\$270.00		
Structural Engineer	\$151.00	Electrical Engineer	\$268.00		
Survey Tech	\$123.00	Interior Designer	\$184.00		
Other Professional	\$126.00	Landscape Architect	\$199.00		
		Mechanical Engineer	\$256.00		
		Structural Engineer	\$258.00		
		Professional Land Surveyor	\$203.00		
		Other Professional	\$181.00		

**ATTACHMENT “C”  
CONSULTANT'S BASIC AND ADDITIONAL SERVICES**

**ATTACHMENT “C”  
CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

Each individual Task Order will identify the “**Project**”, and the Consultant shall provide the Basic and Additional Services as noted herein.

**BASIC SERVICES OF THE CONSULTANT**

**GENERAL**

1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated.
2. The Consultant shall comply with the City of El Paso Engineering and Construction Management Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the design phases of this Agreement.
3. The Consultant shall serve as the Owner’s professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.
4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner’s review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

**REPORT PHASE**

1. Upon receipt of the Owner’s written authorization to proceed with the **Report Phase**, the Consultant shall:
  - a. Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.
  - b. Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.
  - c. (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory testing, and (d) Inspection or other special consultation; (2) Act as the Owner's representative in connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

## ATTACHMENT “C”

### CONSULTANT’S BASIC AND ADDITIONAL SERVICES

- d. Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant's recommendations.
  - e. As per Attachment "D", furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.
2. Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
3. As identified in the Scope of Work in Attachment "A", the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

## PHASE I - PRELIMINARY DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Consultant shall do the following separately for each construction contract:

1. Consult with the Owner to determine the Owner's requirements for the Project.
2. Provide at the Consultant's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.
4. Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.
5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner’s representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.
6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.
8. Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.
9. As per **Attachment “D”**, furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

**PHASE II - PRE-FINAL DESIGN PHASE**

Upon receipt of the Owner’s written authorization to proceed with the Pre-Final Design Phase, the Consultant shall do the following separately for each construction contract:

1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant’s assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.
2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the “**Drawings,**” to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called “**Specifications.**” These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.
3. Advise the Owner of any adjustment to the Consultant’s previous opinion of probable construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant’s cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor’s method of pricing and that the Consultant’s opinion of probable construction costs are made on the basis of professional judgment and experience. The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.
4. Prepare proposal forms.

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

5. As per **Attachment “D”**, furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

**PHASE III - FINAL DESIGN PHASE**

Upon receipt of the Owner’s written authorization to proceed with the Final Design Phase, the Consultant shall do the following separately for each construction contract:

1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.
2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility Consultant comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.
3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.
4. **As per Attachment “D”**, furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.
5. **As per Attachment “D”**, furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.
6. Additional copies of the drawings and specifications beyond those identified in **Attachment “D”**, required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

**BIDDING PHASE**

Upon receipt of Owner’s written request, the Consultant shall provide any of the following services during the Bidding Phase:

1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.
2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.
3. Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.
4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment “D”, deliver copies of all addenda to the Owner for appropriate action.
5. As identified in Attachment “A”, assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.
6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

**CONSTRUCTION PHASE**

At Owner’s request, the Consultant shall provide any of the following services associated with the Construction Phase:

1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.
2. Advise and consult with the Owner and act as the Owner’s representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner’s standard general conditions for construction projects, with



**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

3. Unless otherwise stipulated in Attachment “A”, Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.
4. Visit each construction site at least once each week or more frequently, if necessary, to observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant’s efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor’s failure to perform the construction work in accordance with the construction contract documents.

Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. **Such review must be complete within ten City working days following receipt of submittal documents.** The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.
6. Issue the Owner’s instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner’s approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner’s representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract

**ATTACHMENT "C"**  
**CONSULTANT'S BASIC AND ADDITIONAL SERVICES**

documents, subject to the Owner's interpretation of such terms and conditions. If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.

7. Based on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.
8. Conduct with the Owner and construction contractor no more **than two brief preliminary inspections**, at times requested by the construction contractor to determine if the Project is ready for final inspection.
9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The **"punch list"** shall be furnished to the construction contractor and the Owner within **two City working days** after the final inspection.
10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the final inspection.
11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.
12. Furnish the Owner one set of reproducible (**D format**) "record" drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints,

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format.

13. Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.
14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner’s request, have recommendations implemented by the construction contractor.
15. Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.
16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.
17. Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.
18. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.
19. Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.
20. Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.
21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.
22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.
23. Provide additional or extended services during construction made necessary by: **a)** work damaged by fire or other cause during construction; **b)** prolongation of the construction contract time by more than **twenty-five percent** provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Consultant; **c)** Acceleration of the work schedule involving services beyond normal city working hours; or **d)** the

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

construction contractor’s default under the construction contract due to delinquency or insolvency.

24. Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.
25. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

**ADDITIONAL SERVICES OF THE CONSULTANT**

**GENERAL**

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.
2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner’s scope or budget, except where the Consultant’s preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant’s final design cost opinions by **ten percent** or more.
3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.
4. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.
5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

**RESIDENT PROJECT SERVICES**

1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.
2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.
3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor’s failure to perform the construction work in accordance with the construction contract documents.

**ATTACHMENT “D”  
PAYMENT AND DELIVERABLE SCHEDULES**

**PAYMENT SCHEDULE**

Basic services for design shall include the phases listed below at the fixed fee shown for each phase. The remainder of the fixed contract amount, if any, shall consist of the estimate for the time and materials for the bidding phase and construction phase.

**Fixed fee Payment to Consultant**

<b>Report Phase</b>	<b>To be determined by Task Order</b>
<b>Preliminary Design Phase</b>	<b>To be determined by Task Order</b>
<b>Pre-Final Design Phase</b>	<b>To be determined by Task Order</b>
<b>Final Design Phase</b>	<b>To be determined by Task Order</b>
<b>Bidding Phase</b>	<b>To be determined by Task Order</b>
<b>Construction Phase</b>	<b>To be determined by Task Order</b>

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant’s proposal found in **Attachment “B”**. The time shown in **Attachment “B”** is an estimate. Should the services rendered during the bidding and construction phases exceed the estimated amount, written authorization will be required prior to rendering services. Written authorization shall be only by contract amendment in accordance with the contract provisions. For contracts with a total value less than Fifty Thousand and No/100 Dollars (\$50,000), the parties agree that at no time may the amount of the compensation under this contract exceed Fifty Thousand and No/100 Dollars (\$50,000) except by execution of an amendment to this Agreement.

Payment for each Phase shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant’s detailed Invoice and a Consulting Summary and Progress Report and the Owner’s written approval.

The invoice must clearly identify each employee name, title, hours worked, date of performance, task or project description, rate per hours and/or cost, and office/Consultant location.

**Reimbursable Costs:** Efforts must be made to secure a *reasonable* and/or lowest rate available in the marketplace.

**Receipts:** Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable.*

No single invoice may include items for both August and September of any given year. The Owner’s fiscal year begins on September 1<sup>st</sup> of each year and ends on August 31<sup>st</sup> of each year. Consultant’s invoices must be separated into items that end August 31<sup>st</sup> and those that begin on Septembers 1<sup>st</sup> of any given year, to coincide with Owner’s fiscal year.

## **ATTACHMENT “D” PAYMENT AND DELIVERABLE SCHEDULES**

**Communications Costs:** Long Distance telephone calls need to be identified and strictly related to work performed under this Agreement in order to be reimbursable by the City. A log is preferred showing the date, person’s name called, and explanation. Cell phone monthly charges are reimbursable if usage is strictly related to work performed under this Agreement. Legible itemized cell phone records are required.

**Personal Automobile Mileage:** Expense report must clearly identify the departure/arrival time, To/From destinations and purpose of trip.

**Entertainment Costs:** Entertainment costs are not reimbursable, including: 1. Movie costs for “Pay for View” or Cable service. 2. Alcohol costs. 3. Monetary Tips (tipping) for any and all services related to all forms of travel (and/or entertainment).

### **DELIVERABLE SCHEDULE**

#### **REPORT PHASE**

The services called for in the Report Phase of this Agreement shall be completed and **5 copies** of the Preliminary Study and Report shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### **PHASE I—PRELIMINARY DESIGN PHASE**

The services called for in **Phase I** of this Agreement shall be completed and **10 copies** of any required documents and opinion of probable construction costs shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. If Owner does not approve the preliminary design documents, the Consultant shall furnish **five copies** of the resubmitted design documents.

#### **PHASE II—PRE-FINAL DESIGN PHASE**

The services called for in **Phase II** of this Agreement shall be completed and **10 copies** the required documents and services shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### **PHASE III—FINAL DESIGN PHASE**

The services called for in **Phase III** of this Agreement shall be completed and **10 copies** of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. After review, the Consultant shall submit to Owner **3 copies** of the final revised design documents and specifications for final check. Upon the approval of the final design documents, the Consultant shall furnish **10 copies** of the final design documents and specifications for bidding to the Owner within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

**ATTACHMENT “D”  
PAYMENT AND DELIVERABLE SCHEDULES**

**PHASE IV—BIDDING PHASE**

Provide services as authorized by Owner during the bid phase as described in Attachment “C” and submit **1 copy** of all addenda to the Owner for appropriate action within **2 consecutive calendar days**.

**PHASE V - CONSTRUCTION PHASE**

Provide services as authorized by Owner during construction phase as described in Attachment “C” and submit one set of Mylar and one set of electronic media format copies of all record drawings to the Owner within sixty days from the date of substantial completion.



**ATTACHMENT “E”**  
**Insurance**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/12/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Risk Strategies 12801 North Central Expy. Suite 1725 Dallas, TX 75243	<b>CONTACT NAME:</b> Joe Bryant <b>PHONE (A/C, No. Ext):</b> (214) 323-4602 <b>E-MAIL ADDRESS:</b> RSCcertrequest@risk-strategies.com <b>FAX (A/C, No):</b> (214) 503-8899
<b>INSURED</b> Parkhill 4222 85th St. Lubbock TX 79423	<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Travelers Casualty and Surety Co of Amer INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
	<b>NAIC #</b> 31194

**COVERAGES****CERTIFICATE NUMBER:** 79492076**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability		✓	106653747	1/10/2024	1/10/2025	Per Claim \$2,000,000 Annual Aggregate \$4,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The claims made professional liability coverage is the total aggregate limit for all claims presented within the annual policy period and is subject to a deductible. Thirty day notice of cancellation in favor of the certificate holder on all policies.

RE: Professional Engineering Services related to City of El Paso, Solicitation #2024-0381R// Parkhill Project No. 42640.24 EPIA On-Call CM – Project Management.

**CERTIFICATE HOLDER**

City of El Paso  
ATTN: Elsa Rodriguez  
218 N. Campbell, 2nd Floor  
El Paso TX 79901

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Joe Bryant

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ACORD 25 (2016/03)

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/11/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Sanford & Tatum Insurance Agency PO Box 64790  Lubbock TX 79464		<b>CONTACT NAME:</b> Dee Bartlett <b>PHONE (A/C, No, Ext):</b> (806) 792-5564 <b>E-MAIL ADDRESS:</b> dee.bartlett@sanfordtatum.com <b>FAX (A/C, No):</b> (806) 792-9344	
<b>INSURED</b>  Parkhill, Smith & Cooper, Inc. dba Parkhill 4222 85th Street  Lubbock TX 79423		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Phoenix Insurance Co <b>INSURER B:</b> Charter Oak Fire Ins. Co <b>INSURER C:</b> Travelers Property Casualty Co. of America <b>INSURER D:</b> Standard Fire Insurance Co <b>INSURER E:</b> <b>INSURER F:</b>	
		<b>NAIC #</b> 25623 25615 25674 19070	

**COVERAGES****CERTIFICATE NUMBER:** 23/24**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			6305H948872	09/30/2023	09/30/2024	EACH OCCURRENCE \$ 1,000,000
			DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000				
			MED EXP (Any one person) \$ 5,000				
			PERSONAL & ADV INJURY \$ 1,000,000				
B	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			BA4N167444	09/30/2023	09/30/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
			BODILY INJURY (Per person) \$				
			BODILY INJURY (Per accident) \$				
			PROPERTY DAMAGE (Per accident) \$				
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP5H948872	09/30/2023	09/30/2024	EACH OCCURRENCE \$ 10,000,000
			AGGREGATE \$ 10,000,000				
			\$				
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N <input checked="" type="checkbox"/> N	N / A	UB5H948872	09/30/2023	09/30/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
			E.L. EACH ACCIDENT \$ 1,000,000				
			E.L. DISEASE - EA EMPLOYEE \$ 1,000,000				
			E.L. DISEASE - POLICY LIMIT \$ 1,000,000				

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

For Professional Engineering Services related to City of El Paso, Solicitation # 2024-0381R//Parkhill Project No. 42640.24 EPIA on-Call CM-Project Management  
The General Liability & Auto Policies include a Blanket Automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder only when there is a written contract between the Named Insured and the Certificate Holder that requires such status. The General Liability, Auto & Workers' Comp policies include a Blanket Waiver of Subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. The General Liability, Auto & Workers' Comp. policies include a Blanket Notice of Cancellation endorsement, providing for 30 Days Advance Notice if the policy is canceled by the company other than for nonpayment of premium, 10 day's notice after

**CERTIFICATE HOLDER****CANCELLATION**

City of El Paso Attn: Elsa Rodriguez 218 N. Campbell, 2nd Floor  El Paso TX 79901	<b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b>
	<b>AUTHORIZED REPRESENTATIVE</b> 

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**ATTACHMENT “F”**  
**FEDERAL AVIATION ADMINISTRATION CONTRACT PROVISIONS FOR**  
**AIRPORT IMPROVEMENT PROGRAM PROJECTS**

## **ATTACHMENT “F”**

### **FEDERAL AVIATION ADMINISTRATION (FAA) CONTRACT PROVISIONS**

**In this Attachment “F”, the term “Contractor” shall refer to the “Consultant”, and the term “Airport Sponsor” shall refer to the “City”.**

**If there are any conflicts between the terms and conditions of Attachment “F” and Article VI of the Agreement, the terms and conditions of Attachment “F” will prevail.**

#### **A. GENERAL REQUIREMENT FOR CONTRACT**

1. The contractor (including all subcontractors) are required to insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all subcontracts;
2. The contractor (or subcontractor) is required to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services;
3. The contractor is responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider; and
4. The contractor (or subcontractor) shall not modify the provisions.

Subject to the applicability criteria noted in the specific contract provisions, these contract provisions apply to all work performed on the contract.

#### **B. FAILURE TO COMPLY**

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

1. Withhold progress payments or final payment,
2. Terminate the contract,
3. Seek suspension/debarment, or
4. Any other action determined to be appropriate by the Airport Sponsor or the FAA.

#### **C. CONTRACT PROVISIONS**

##### **1. ACCESS TO RECORDS AND REPORTS (all AIP-funded projects)**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized

representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after the final payment is made and all pending matters are closed.

2. **BREACH OF CONTRACT TERMS** (all contracts that exceed the simplified acquisition threshold as fixed at 41 USC 403(11). This threshold is presently set at \$100,000.)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. **BUY AMERICAN PREFERENCES** (all AIP-funded projects, if this professional services agreement includes any manufactured product as a deliverable.)

### **BUY AMERICAN CERTIFICATION**

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

#### **Type of Certification is based on Type of Project:**

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

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### **Certificate of Buy American Compliance for Total Facility**

(Buildings such as Terminal, SRE, ARFF, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter "X".

☒ Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:

- a. Only installing steel and manufactured products produced in the United States; or
- b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
- c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
  2. To faithfully comply with providing US domestic products
  3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- ☐ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
  3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.

4. To furnish US domestic product for any waiver request that the FAA rejects.
5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### **Required Documentation**

**Type 3 Waiver** - The cost of components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the “facility”. The required documentation for a type 3 waiver is:

- a. Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c. Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

05/24/2024

\_\_\_\_\_  
Date



\_\_\_\_\_  
Signature

Parkhill

\_\_\_\_\_  
Company Name

Principal

\_\_\_\_\_  
Title



\* \* \* \* \*

### **Certificate of Buy American Compliance for Manufactured Products**

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter "X".

☒ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:

- a. Only installing steel and manufactured products produced in the United States, or;
- b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
- c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing US domestic product
3. To furnish US domestic product for any waiver request that the FAA rejects
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

☐ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.

3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

**Type 3 Waiver** - The cost of the item components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a. Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

05/24/2024

\_\_\_\_\_  
Date



\_\_\_\_\_  
Signature

Parkhill

\_\_\_\_\_  
Company Name

Principal

\_\_\_\_\_  
Title

4. **GENERAL CIVIL RIGHTS PROVISIONS (all contracts)**

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- a. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

5. **CIVIL RIGHTS-TITLE IV COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS (all AIP funded projects)**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
  4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
  5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
    - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
    - b. Cancelling, terminating, or suspending a contract, in whole or in part.
  6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontractor or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.
6. **CLEAN AIR AND WATER POLLUTION CONTROL** (all contracts that exceed \$100,000)

Contractors and subcontractors agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

**7. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS (all contracts that exceed \$100,000)**

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in

excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

8. **CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)** (all contracts that exceed \$25,000)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

9. **DISADVANTAGED BUSINESS ENTERPRISES** (all AIP-funded projects)

**Contract Assurance (49 CFR § 26.13)** - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (49 CFR §26.29)**- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame

may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

**10. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE) (all contracts)**

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

**11. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES (all AIP-funded projects)**

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**12. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (all contracts)**

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

**13. RIGHTS TO INVENTIONS (all AIP-funded projects)**

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

**14. TERMINATION OF CONTRACT (contracts that exceed \$10,000)**

1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed



to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

5. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

**15. TRADE RESTRICTION CLAUSE (all AIP-funded projects)**

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may

direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

**16. TEXTING WHEN DRIVING (all contracts)**

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

THE STATE OF TEXAS   )  
  )  
COUNTY OF EL PASO   )

**ON-CALL  
AGREEMENT FOR  
PROFESSIONAL SERVICES**

This Agreement (“**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the “**Owner**”, and **BROCK & BUSTILLOS INC.**, a Texas Corporation , hereinafter referred to as the “**Consultant**”.

**WHEREAS**, the Owner intends to engage the Consultant to perform professional Land Development / Construction Management services on a task order basis through the use of task orders referencing this Agreement, the scope of which is further described in **Attachment “A”**; and

**WHEREAS**, the Consultant has been selected to perform such services as required by the Owner, and the Consultant was selected through the Owner’s selection procedure, in accordance with all applicable state and local laws and ordinances;

**NOW, THEREFORE**, for the consideration set forth in this Agreement and its attachments, the Owner and Consultant agree as follows:

**ARTICLE I  
ATTACHMENTS**

**1.1** The attachments listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

Attachment “A”	Scope of Services
Attachment “B”	Consultant’s Fee Proposal and Hourly Rates
Attachment “C”	Consultant's Basic and Additional Services
Attachment “D”	Payment and Deliverable Schedules
Attachment “E”	Insurance Certificate
Attachment “F”	Federal Aviation Administration contract provisions for Airport Improvement Program Projects

**ARTICLE II  
PROJECT**

**2.1** The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform on-call professional services on a Task Order basis. Each individual Task Order will identify the Project (“**Project**”) and the total compensation due to each Project. The Task Order for each Project shall include the Scope of Services described in **Attachment “A”**.

**2.2** For each Project, the Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this

Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.

- 2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.
- 2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each task order. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.
- 2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working days time period.

### **ARTICLE III CONSULTANT FEES AND PROJECT BUDGET**

**3.1 PAYMENT TO CONSULTANT.** The Owner shall pay to the Consultant an amount not to exceed **\$800,000.00** for all basic services and reimbursables performed pursuant to this Agreement.

The City Engineer may, without further authorization from the City Council and in a form approved by the City Attorney, increase the total payment identified for all basic services and reimbursables performed pursuant to this Agreement in an amount not to exceed **\$50,000.00**, if such services are necessary for proper execution of the Project and the increased amounts are within the appropriate budget identified for the identified Project.

In addition, if authorized in advance by the City Engineer, in a form approved by the City Attorney, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed **\$50,000.00**, if such services are necessary for proper execution of any identified Projects and the increased amounts are within the appropriate budget identified for the identified Projects. Additional Services exceeding **\$50,000.00** must have prior approval by City Council through written amendment to this Agreement

**No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement.**

The parties agree and understand that all fees and compensation to the Consultant shall only become due and payable in accordance with the terms of this Agreement and the fees to be charged

for each Project shall be pursuant to the Consultant's fee proposal at the rates which is attached hereto as **Attachment "B"**.

Payments to the Consultant shall be made pursuant to **Attachment "D"**.

**3.2 CONSULTANT'S SERVICES.** The Basic Services and Additional Services, if any, to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C"**.

**3.3 CONSULTANT'S INVOICES.** For each Project, the Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in **Attachment "D"**. Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety (90) days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.

**3.3.1** Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.

**3.3.2** The Owner agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.

**3.4 PROJECT CONSTRUCTION BUDGET.** The Consultant acknowledges that the budget and time for each Project will be identified in each Task Order.

**3.5 COSTS NOT ENUMERATED.** Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

## **ARTICLE IV PERIOD OF SERVICE AND TERMINATION**

**4.1 PERIOD OF SERVICE.** The term of this Agreement shall be for a period not to exceed **two (2) years** from the date first shown above. The services called for by each Task Order shall begin upon the issuance of a Notice to Proceed from the City Engineer and shall continue through the completion of the construction of the Project, including any required extensions beyond the contract time for construction of the Project, as may be directed by the Owner.

**4.2 SUSPENSION.** Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve (12) months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.

**4.3 TERMINATION.** This Agreement may be terminated as provided herein.

**4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.

**4.3.2 TERMINATION BY EITHER PARTY.** It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.

**4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

## **ARTICLE V INSURANCE AND INDEMNIFICATION**

**5.1 INSURANCE.** Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

**5.1.1 WORKERS' COMPENSATION INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

“The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the Owner, its partners, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured.”

**5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Consultant and the Consultant's employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant. The minimum limits of liability and coverages shall be as follows:

a) **COMMERCIAL GENERAL LIABILITY**

\$1,000,000.00 Per Occurrence  
\$2,000,000.00 General Aggregate  
\$2,000,000.00 Products/Completed Operations Aggregate  
\$1,000,000.00 Personal and Advertising Injury

**Personal Injury or Death & Property Damage**

\$1,000,000.00 per occurrence combined single limit for bodily injury and property damage.

**General Aggregate**

\$1,000,000.00  
\$1,000,000.00 per occurrence

c) **AUTOMOBILE LIABILITY**

**Combined Single Limit**

\$1,000,000.00 per accident

**5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the

benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of \$1,000,000.00 on a claims made basis.

**5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.

**5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.

**5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate.

Further, all policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

**5.2 INDEMNIFICATION.** To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

To the extent allowed by state law, the Owner will be responsible for its own actions.

**5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS.** Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence,



professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter “Owner’s Claims”), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant’s insurers in settlement or satisfaction of Owner’s Claims under the terms and conditions of Consultant’s insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner’s Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner’s claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident.

## **ARTICLE VI FEDERAL AND STATE PROVISIONS**

### **6.1 COMPLIANCE WITH APPLICABLE LAWS – FEDERAL AND STATE FUNDING REQUIREMENTS.**

Consultant, at Consultant’s sole expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Consultant with respect to the use of federal and state funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal and state funds.

Specifically, and not in limitation of the foregoing, Consultant agrees that to the extent required by any agreement between the Owner and any Federal and State agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project, **including but not limited to:**

--The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.

--The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.

--The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment “F”.

--The Texas Department of Transportation through an Agreement with the Owner.

Copies of grant assurances will be made available to Consultant. However, provided copies shall in no way be a limitation on the Consultant’s obligation to comply with any Federal and State agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project.

**6.1.1 CONTRACT ASSURANCE.** The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this

contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**6.1.2 DBE GOOD FAITH EFFORTS.** The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal will be identified pursuant to the federal funding requirements for an individual task order established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this Agreement.

The Consultant will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

**6.2 TERMINATION FOR CANCELLATION OF GRANT.** Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Consultant of the cancellation by certified mail-return receipt requested, whereupon the Consultant shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Consultant will be paid for professional services performed to such date, upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

**6.3 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 78 STAT.252, 42 U.S.C. 2000D TO 2000D-4 AND TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION.**

During the performance of this contract, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

- (1) **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations),

which are herein incorporated by reference and made a part of this contract.

- (2) **Nondiscrimination:** Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. ADP shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports:** Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by Client to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information Consultant shall so certify to Client, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this contract, the Client shall impose such contract sanctions as it may determine to be appropriate, including but not limited to:
  - a. Withholding of payments to the Consultant under the contract until the Consultant complies, and / or
  - b. Cancellation, termination or suspension of the contract in whole or in part.
- (6) **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Client may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Consultant may request Client to enter into such litigation to protect the interests of Client and in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

## ARTICLE VII GENERAL PROVISIONS

**7.1 CONTRACT TIME.** Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment "D"**. The Consultant shall timely notify the City Engineer

of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in **Attachment “D”**.

## **7.2 INTENTIONALLY DELETED.**

**7.3 CONSULTANT’S QUALITY OF WORK.** The Owner’s review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant’s services shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the Project and in accordance with the time periods established in **Attachment “D”** and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner’s review, for the performance of the Owner’s consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner.

**7.4 COPYRIGHT AND REPRODUCTION RIGHTS.** Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the “Instruments of Service”) are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant’s seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

**7.5 AUDITING RECORDS FOR THE SPECIFIC PROJECT.** Consultant’s records subject to audit shall include but not be limited to records which, in the Owner’s discretion, have a bearing on matters of interest to the Owner in connection with the Consultant’s work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner’s agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant’s compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated

with this Agreement. In those situations where Consultant's records have been generated from computerized data, Consultant agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The Owner or its designee shall be entitled, at its expense, to audit all of the Consultant's records related to this Project, and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times and places.

**7.6 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

**7.7 VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

**7.8 GOVERNING LAW.** The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

**7.9 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.

**7.10 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

**7.11 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner:	The City of El Paso Attn: City Manager P.O. Box 1890 El Paso, Texas 79950-1890
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With a Copy to:	The City of El Paso Attn: City Engineer P.O. Box 1890 El Paso, Texas 79950-1890
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To the Consultant:	Brock & Bustillos Inc. Roman Bustillos, PE, CNU-A 417 Executive Center Blvd. El Paso, Texas, 79902
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Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

**7.12 CONFLICTING PROVISIONS.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.

**7.13 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. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

**7.14 TEXAS GOVERNMENT CODE.** In accordance to Chapter 2274 of the Texas Government Code, as amended from time to time, the Consultant represents and warrants to the Owner the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

**WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:**

**(SIGNATURES ON THE FOLLOWING PAGES)**

**CITY OF EL PASO:**

\_\_\_\_\_  
Cary Westin  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



\_\_\_\_\_  
Roberta Brito  
Assistant City Attorney

\_\_\_\_\_  
Yvette Hernandez, P.E., City Engineer  
Capital Improvement Department

**(Acknowledgment)**

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

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2024,  
by **Cary Westin**, as **City Manager** of the **City of El Paso, Texas**.


\_\_\_\_\_  
Notary Public, State of Texas

My commission expires:

\_\_\_\_\_

*(Signatures continue on following page)*

CONSULTANT:  
BROCK & BUSTILLOS INC.

  
By: Roman Bustillos  
Title: President

(Acknowledgment)


THE STATE OF TEXAS   §  
                                     §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on this 24th day of May, 2024,  
by Roman Bustillos, as President of Brock & Bustillos Inc.

My commission expires:

November 14, 2026



  
Martin A. Garcia  
Notary Public, State of Texas



**ATTACHMENT “A”  
SCOPE OF SERVICES**

## **ATTACHMENT “A” SCOPE OF SERVICES**

The selected firm is expected to provide comprehensive services for El Paso International Airport's Capital Improvement Plan and land development efforts. The scope of work encompasses various elements critical to the efficient and safe operation of the airport, aligning with Federal Aviation Administration (FAA) requirements and industry best practices. The contracts will be used for miscellaneous assignments on an on-call basis to include as appropriate but not limited to:

### **1.1. Investigation:**

The firm is responsible for meeting with stakeholders to obtain all necessary design standards and specifications such as the City of El Paso and El Paso International Airport Design Standards, Federal Aviation Administration (FAA), and State standards, among others.

### **1.2. Design:**

Design shall meet all City, State, and Federal requirements for the project and shall be performed in phases as presented in the project schedule specified for each project.

The firm is responsible to submit a turnkey design product. The firm shall be responsible for providing State of Texas licensed Engineers and Land Surveyors required to provide design services. The firm shall follow City of El Paso and El Paso International Airport design specifications and procedures for the development of the specified project and comply with all laws, regulations and policies set by the City of El Paso, FAA and the State. In addition, the firm shall be responsible for necessary Texas Department of Licensing and Regulation (TDLR) fees, registration, and for inspection.

The selected firm shall offer comprehensive Land Development / Construction Management services, encompassing project management, design, survey, and planning expertise. Responsibilities include the development of land development plans, construction specifications, contract documentation, cost estimates, and, if required, an Engineer's Report.

Sole sourcing will not be allowed. The firm shall prepare both design and performance specifications. The firm shall provide a guide schedule of necessary testing and sampling. Buy America must be enforced during design process.

The firm shall respond to comments regarding constructability, operability reviews on proposed construction projects and assist the City with but not limited to the following items: review of proposed construction projects including items as detail and cut omissions and inconsistencies between plans and specifications, vague or ambiguous notes, references, and lack of coordination between the drawings of all disciplines involved in the project.

#### **1.2.1. Errors and Omissions on Design:**

The City expects the firm to have an adequate Quality Assurance / Quality Control Program to minimize the potential for errors and omissions. Recently, the City has observed inconsistencies between plans and specifications including but not limited to conflicts between civil and landscape plans, inadequate review by the prime of the adequacy of the work of any and all subcontractors, discrepancies between the measurement and payment specifications and bid forms, and failure of the firms to verify utility locations in the field. The firm shall revise the work as necessary to correct errors and omissions appearing therein, when required to do so by the City (Owner). If

errors or omissions are identified during the construction phase, the firm at its sole expense, shall modify plans and specifications, as necessary, to remedy the errors/omissions at no cost to the City. The firm may also be held financially liable for costs of any rework of work that has already been completed beyond the cost of the provision of the original / revised requirement. Finally, in the event that the construction contractor requires additional time to complete the project beyond the approved scheduled date of substantial completion due to an error or omission, the firm may also be financially liable for the cost of any Extended General Conditions deemed by the City to be appropriate.

#### **1.2.2. Design Analysis:**

The firm shall perform design analysis for the project to ensure public safety. Design analysis shall include all engineering calculations for review by the City, governmental authorities who may have jurisdiction over each construction contract, and public utilities. All design analysis must comply with all applicable City, County, State, and Federal laws and regulations.

### **1.3. Land Development:**

#### **1.3.1. Site Analysis and Assessment**

- Conduct a thorough analysis of the airport site, considering topography, soil conditions, and environmental factors.
- Assess the feasibility of proposed land development projects, considering existing infrastructure and potential impacts.

#### **1.3.2. Master Planning**

The firm shall assist the City in providing schedules for obtaining utility easements, utility service lines and other permits. The firm shall comply with requirements set by the City's Capital Improvement and Planning and Inspections Departments. Preparation of plans, specifications and cost estimates for design of buildings, structures and similar construction, design of street and drainage improvements, other site improvements, civil, structural, soils forensic engineering, and subsurface utility engineering to include records research and field verification. Contribute to the development and refinement of the airport's master plan, ensuring alignment with long-term goals and regulatory requirements.

Provide expertise in optimizing land use for current and future airport needs.

#### **1.3.3. Surveys:**

The firm shall provide all topographic, horizontal surveys necessary to provide a complete design. Survey shall include project boundaries, improvement surveys and identify all utilities. Immediately after Notice to Proceed (NTP) the firm shall verify all right-of-way (ROW) boundaries and identify any conflicts with the project.

#### **1.3.4. Geometric Improvements:**

The firm shall provide a detailed schematic and preferred geometric alignment, including typical section(s) that should be defined enough to determine basic requirements such as drainage structures, ROW, business or home relocations, and utility conflicts that must comply and meet with all applicable City, County, State, and Federal laws and regulations.

The firm shall be responsible for the preparation of traffic data and provide existing ROW limits and location of utilities. The firm shall also generate preliminary cross sections to aid in determining ROW needs and control of access restrictions and examine needs for special drainage

or run-off pollution control measures, and hydraulic system issues. The plans and specifications must identify how constraints will be handled, consider utility conflict, and identify potential conflicts. The firm shall prepare and evaluate pavement design report for compatibility with proposed construction, skewed intersections or replace with better functional and operational design. The firm will be tasked with determining the appropriate sizes and locations of drainage structures and incorporating this information into schematic design.

When work is railroad ROW, the firm shall coordinate with the railroad as appropriate to locate all potential and existing railroad crossings, determine existing crossing conditions, traffic control requirements, and identify the need and recommendations for interconnection, closing, or consolidating grade crossings.

#### **1.3.5. Technical Specifications:**

The firm shall prepare and provide technical specifications. The specifications shall be based on the most current version of CSI Master Format. No sole sourcing shall be allowed. All specifications must include type of materials listed in the construction drawings, placement method and quality control and quality assurance testing. The specification shall correlate with unit price format. All specifications must comply with established specification standards and formats. The firm shall provide both design and performance specifications.

#### **1.3.6. Utility Services and Utility Easements:**

Based on the design, the firm shall coordinate with all utilities and interested parties that will be affected by the proposed project improvements. The firm shall submit all applications to the utilities and interested parties on behalf of the City. However, the City shall pay all utility service fees. Installation of service will not be part of the firm's scope of work. The building contractor shall coordinate the installation of the service. Construction documents shall clearly show all utility company contacts and type of service requested. Before the construction documents are submitted for bid advertisement, the firm shall submit all utility service requests. The firm shall prepare all metes and bounds descriptions for utility easements and / or vacations. The firm shall coordinate easements and / or vacations with City staff and respective utility companies and all interested parties. All documents and coordination efforts by the firm shall be complete by or before the 90% design phase due date. A checklist of all coordinated services and easements shall be submitted monthly.

#### **1.3.7. Utility Coordination:**

The firm shall be responsible to verify utility locations in the field and coordinate design efforts with all affected utility companies and interested parties. The purpose is to minimize utility relocation without compromising design standards. The firm shall verify utility lines, valves, covers, manholes, etc. from the different utility companies and interested parties during the preliminary design phase. Subsurface utilities shall be included as part of the firm's responsibilities to include records research and field verifications. All existing utility structures shall be shown on the preliminary design plan submittal. The firm shall meet with all affected utility companies and interested parties to discuss proposed design. Based on these coordination meetings and correspondence that is sent between the firm, utility companies and interested parties the need and extent of relocation shall be determined. If a dispute arises, the firm shall immediately setup a meeting between the City's Project Manager and the utility company or interested parties to resolve the dispute. The firm, on behalf of the City, shall request from all utility companies or interested parties that they relocate all lines that conflict with new improvements. However, El Paso Water Utilities (EPWU) can request that the City include as part of the street and drainage

improvement bid package the relocation of their utility lines provided that the utility company or interested parties signs an agreement with the City and that funding is provided. The firm shall coordinate this effort with the utility companies and interested parties and advise them of the City policy to minimize pavement cuts on new roadways. All correspondence and meeting minutes shall be submitted to the City when each phase is due. Construction documents shall clearly show all existing and proposed utility lines and utility company or interested party contacts. All documents and coordination efforts by the firm shall be complete by or before the final design phase due date. The firm shall submit all utility clearance letters from each utility company or interested parties by or before the 90% design phase. If relocations cannot occur before construction, consultant must incorporate into the construction phasing and coordinate relocation date.

## **1.4. Pavement Design**

### **1.4.1. Runways, Taxiways and Aprons**

- Develop pavement designs that adhere to FAA standards and specifications.
- Conduct structural analysis and provide recommendations for optimal pavement performance.

### **1.4.2. Standard Paving Design**

#### **1.4.2.1. Asphalt Paving**

- Provide expertise in the design of asphalt pavements for streets, crossroads, and parking lots.
- Consider factors such as traffic loadings, climate conditions, and sustainability to deliver durable and cost-effective solutions.

#### **1.4.2.2. Concrete Paving**

- Demonstrate proficiency in designing concrete pavements for various applications, including streets, intersections, and parking areas.
- Utilize best practices in joint design, reinforcement, and surface finishes to ensure longevity and minimal maintenance.

### **1.4.3. Compliance with FAA Regulations**

- Ensure that all pavement designs comply with current FAA regulations and guidelines.
- Stay abreast of any updates or changes to FAA requirements and adjust designs accordingly.

## **1.5. Environmental Considerations:**

### **1.5.1. Environmental Impact Assessment:**

- Conduct environmental impact assessments for proposed projects, addressing potential ecological, noise, and air quality concerns.
- Propose mitigation strategies to minimize the environmental footprint of the projects.

### **1.5.2. Sustainability Initiatives**

- Explore and integrate sustainable practices into the design and development process.
- Propose innovative solutions to enhance the airport's environmental stewardship.

### **1.5.3. Soils Investigation:**

- The firm shall provide a soil investigation and soils forensic engineering, and pavement design report for specified projects. Pavement design report shall include a life expectancy analysis.

### **1.5.4. Storm Water Pollution Prevention and Erosion Control Plan:**

- The firm shall prepare and provide storm water pollution prevention plan. The firm shall be knowledgeable on the storm water pollution prevention plan requirements. The storm water pollution prevention plan shall be submitted to BP&I for review and approval.

### **1.5.5. ADA Compliance and Requirements:**

- The firm shall include and comply with Americans With Disabilities Act (ADA), the 2022 Texas Accessibility Standards (T.A.S), and Texas Department of Licensing and Regulation requirements.
- Under this contract, the firm will employ the services of a Registered Accessibility Specialist (RAS) to perform a review of design documents and inspection of construction. The firm shall comply with RAS design comments.

## **1.6. Documentation and reporting**

The selected firm is expected to prepare detailed project documentation, including design drawings, specifications, and reports. Provide regular progress reports and attend meetings to update stakeholders on project status.

### **1.6.1. Studies and Reports:**

The firm shall perform research and database creation to conduct studies and produce reports to include investigations, drawings and sketches and, cost estimates. Reports shall include description of alternatives considered, estimates of construction costs, conclusions and recommendations. This task includes the preparation of feasibility studies, structural analysis, design analysis, traffic impact analysis, and other studies as required.

The firm shall provide a soil investigation and soils forensic engineering, and pavement design report for specified projects. Pavement design report shall include a life expectancy analysis.

### **1.6.2. Cost Estimates:**

The firm shall develop and submit the construction cost estimates. The cost opinion of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within ten percent (10%) of the bid for the base bid item expected from the selected contractor. As noted herein, if the all responsible bids exceed the final cost opinion by more than ten percent (10%), the firm agrees, at the direction of the City, to redesign the project without additional charge to the City to bring the project within the budgetary limitations. After bidding, the firm shall submit a bid evaluation per bid item table and a letter of recommendation or rejection of bids.

### **1.6.3. Building Permits, Special Permits, and Other Land Use Permits:**

The firm shall be responsible to comply with all local, state, and federal codes. The firm shall be responsible to submit required sets to City of El Paso Planning and Inspections Department (BP&I) for review and approval during final design phase period. The firm shall be responsible to obtain approval from BP&I before the construction documents are submitted for bid advertisement. It shall be the responsibility of the firm to follow up review and approval process with the BP&I. After approval, the firm will pick up approved plans and store them in a safe place. The firm shall

not be responsible to pull permit. The pulling of the permit shall be responsibility of building contractor. BP&I shall be responsible to review grading and drainage, storm water pollution prevention plan, electrical, structural, mechanical, plumbing permit requirements.

The firm shall be responsible for the preparation of all documents that include but are not limited to: metes and bounds descriptions, site plans, elevations, and applications for permits, special permits, zoning changes, and land use permits. The provider shall represent the City of El Paso to make presentations, answer questions at the City of El Paso Bicycle Advisory Committee meetings and City Council meetings.

#### **1.6.4. Construction Sequencing Plan:**

The firm shall provide a construction-sequencing plan. The firm shall take into consideration all work tasks required of all base bids, and different work tasks to include EPWU, which shall be shown as other phases or on its own.

#### **1.6.5. Construction Schedule:**

The firm shall meet with City's Project and Construction Managers to determine construction schedule. The schedule shall consider lead delivery time of materials, equipment, and any known utility relocations. The firm shall evaluate proposed changes to the contract and actively manage impacts to the project. The meeting shall be held after pre-final plans are submitted, but before Final Design Notice to proceed is issued. The information will allow the firm to prepare a current market cost estimate at the final design phase submittal.

#### **1.6.6. Contract Time Determination:**

The firm shall prepare a contract time determination to identify clearly and accurately the critical path as the longest continuous path. Provide a legend for all abbreviations, run date, data date, project start date, and project completion date in the title block necessary for the activities and estimated expected duration of the activity or milestone indicating the progress of the project.

Using calendars incorporate seasonal weather conditions into the schedule for work (e.g., earthwork, concrete paving, structures, asphalt, drainage, utilities, etc.) that may be influenced by temperature or precipitation. Also, include non-work periods such as holidays, weekends, or other non-work days as identified in the contract.

### **1.7. PRODUCTS REQUIRED:**

#### **1.7.1. Pre-Design Report (If applicable)**

The firm shall be responsible for conducting a Pre-Design Analysis prior to the 30% design phase submission. Upon receipt of the notice to proceed, the schedule for the pre-design report will be established on a project-by-project basis. This process shall include but not be limited to the following:

- Evaluate existing ROW and expected ROW acquisition if any
- Evaluate street alignment
- Develop typical sections
- Pavement design based on geotechnical recommendation

- Identify possible utility conflicts
- Identify possible additional conflicts with proposed improvements
- Provide construction estimate of proposed improvements
- Evaluate bicycle and pedestrian improvements

### **1.7.2. 30% Design**

The firm shall submit the following preliminary design submittal, as applicable.

- Coversheet (90% complete)
- Quantity Summary Sheet (100% complete)
- Landscape Architectural Plan and Details (50% complete)
- Electrical Plan and Details (50% complete)
- Mechanical Plan and Details (50% complete)
- Plumbing Plan and Details (50% complete)
- Horizontal Control Plan (90% complete)
- Demolition Plan (90% complete)
- Construction Notes (50% complete)
- Storm Water Pollution Prevention Plan (75% complete)
- Typical Construction Details (75% complete)
- Site Plan (75% complete)
- Grading Plan (50% complete)
- Landscape Plan (50% complete)
- Typical Landscape Details (75% complete)
- Preliminary Irrigation Layout (40% complete)
- Typical Irrigation Details (75% complete)
- List of Governing Specs (100% complete)
- General Notes
- Engineer's Estimate
- Design Criteria
- Geotechnical Report
- Pavement Design Memo (if applicable)
- Utility Status and coordination report

If the City considers the submittal as not compliant to the above-required completion percentages, the provider must resubmit as per the above-mentioned requirements. Additional forms might be required as requested by the City.

### **1.7.3. 60% Design**

The firm shall submit the following pre-final design phase submittal, as applicable:

- Coversheet (100% complete)
- Quantity Summary Sheet (100% complete)
- Architectural Plan and Details (75% complete)
- Electrical Plan and Details (75% complete)
- Mechanical Plan and Details (75% complete)
- Plumbing Plan and Details (75% complete)



- Horizontal Control Plan (100% complete)
- Demolition Plan (100% complete)
- Construction Notes (90% complete)
- Storm Water Pollution Prevention Plan (100% complete)
- Typical Construction Details (100% complete)
- Special Construction Details (75% complete)
- Site Plan (95% complete)
- Grading Plan (95% complete)
- Landscape Plan (95% complete)
- Typical Landscape Details (100% complete)
- Special Landscape Details (75% complete)
- Pre-final Irrigation Layout (75% complete)
- Typical Irrigation Details (100% complete)
- Special Irrigation Details (75% complete)
- Outline of Specs (100% complete)
- List of Governing Specs (100% complete)
- General Notes
- Engineer's Estimate
- Design Criteria
- 30% complete action items report and complete review comment forms
- Contract time determination
- Certifications (ROW, Utilities, etc.)
- Temporary Road Closure Request
- Construction Speed Zone Request
- TDLR Registration Form
- Redlines showing quality control
- Utility Status and coordination report

If the City considers the submittal as not compliant to the above-required completion percentages, the provider must resubmit as per the above-mentioned requirements. Additional forms might be required as requested by the City.

#### **1.7.4. 95% Design**

The firm shall submit, at a minimum, the following final design phase submittal, as applicable:

- Cover Sheet (100% complete)
- Quantity Summary Sheet (100% complete)
- Architectural Plan and Details (100% complete)
- Electrical Plan and Details (100% complete)
- Mechanical Plan and Details (100% complete)
- Plumbing Plan and Details (100% complete)
- Horizontal Control Plan (100% complete)
- Demolition Plan (100% complete)
- Construction Notes (100% complete)
- Storm Water Pollution Prevention Plan (100% complete)
- Typical Construction Details (100% complete)

- Special Construction Details (100% complete)
- Site Plan (100% complete)
- Grading Plan (100% complete)
- Landscape Plan (100% complete)
- Typical Landscape Details (100% complete)
- Special Landscape Details (100% complete)
- Pre-final Irrigation Layout (100% complete)
- Typical Irrigation Details (100% complete)
- Special Irrigation Details (100% complete)
- Outline of Specifications (100% complete)
- List of Governing Specs (100% complete)
- General Notes
- Engineer's Estimate
- Design Criteria
- 60% complete action items report and complete review comment forms
- Contract time determination
- Certifications (ROW, Utilities, etc.)
- Temporary Road Closure Request
- Construction Speed Zone Request
- TDLR Registration Form
- Performance end date
- Redlines showing quality control
- Utility status and coordination report

If the City considers the submittal as not compliant to the above-required completion percentages, the provider must resubmit as per the above-mentioned requirements. Additional forms might be required as requested by the City.

#### **1.7.5. 100% Design**

The firm shall re-submit the 95% documentation with City comments addressed.

#### **1.7.6. Bidding and Construction**

The firm shall provide constructability, ability to bid, operability reviews on proposed construction projects. The review will cover such items as detail and cut omissions and inconsistencies between plans and specifications, vague or ambiguous notes and references and lack of coordination between drawings of all disciplines involved in the project.

The firm shall submit the following for bidding both in hard copy and in electronic format:

- Full and complete sealed set of drawings
- Full and complete sealed set of technical specifications and list of governing specs both in hard copy and electronic format
- Detailed scope of work both in hard copy and electronic format
- Detailed unit price bid proposal form, both in hard copy and electronic format
- Detailed real-world value cost estimate
- Construction time determination schedule

During the bidding process, the firm shall respond to all questions from prospective bidders, attend a pre-bid conference, and if required prepare addendums.

After bid opening, the firm shall provide all documentation required for State concurrence, these items include:

- Engineer's Cost Estimate line item review
- Engineer's Bid Tab review and recommendation letter

During the construction phase, the firm shall assist the City, on a time and materials basis, with but not limited to the following items:

- Responding to all questions from the contractor (requests for information, RFIs)
- Providing advice and recommendation to the Owner and other technical engineering functions and analysis as may be required by the City
- Reviewing contractor technical submittals
- Participate in "punch list" inspection and provide punch list to Owner
- Produce and provide a set of reproducible (11"x17") "as-built" drawings of new construction in electronic format or hard copy if requested

#### **1.7.7. Construction Observation**

The firm shall provide the following and upon request:

- Designate and assign a project representative, subject to the approval of the City, who will serve as the point of contact during the on-site observation and inspection of the construction work in progress and to ascertain that the work is properly executed in conformance with the drawings and specifications.
- The project representative will be responsible for the complete coordination of work developed under each assignment. Work will be accomplished with adequate controls and review procedures to eliminate conflicts, errors, and omissions, and to ensure the technical accuracy of all design information.
- Attend the weekly construction meetings as requested, to be scheduled by the City Project Manager. Other periodic meetings shall be held whenever requested by the City for discussion of questions and problems relating to the work being performed by the firm. The firm shall be required to attend and participate in all design conferences pertinent to the work being performed.
- Respond to Requests for Information (RFIs) within three (3) business days
- Conduct project site visits and produce a project observations report within three (3) business days of the project site visit as requested by the Project Manager.
- Review and approve contractor shop drawings and material submittals and make recommendations within three (3) business days at a maximum or within a schedule previously agreed established by the City Project Manager and with the final approval by the City.
- Prepare cost estimates for street and drainage improvements, park and site improvements, and other project estimates as requested when the contractor submits a change order.
- Provide as-built drawings of new construction.
- Provide other civil engineering functions and analysis as may be required by the City as

unforeseen conditions may occur.

- Participate in punch list inspections as scheduled by the City Project Manager
- Provide a letter at the end of the construction to certify that the project was constructed according to project requirements, plans, and specifications.

#### **1.7.8. Reproduction**

The firm shall be responsible for printing for the different project phases and code review requirements.

#### **1.8. Project Schedule**

The consultant shall submit a detailed preliminary schedule based on the project scope including review time by the owner. The schedule shall include preliminary design, pre-final design, final design, public involvement and owner's review time as follows:

<b>Preliminary Design Phase:</b>	<b>60 consecutive calendar days</b>
<b>Pre-Final Design Phase:</b>	<b>60 consecutive calendar days</b>
<b>Final Design Phase:</b>	<b>15 consecutive calendar days</b>
<b>Bid Phase (Signed and Sealed):</b>	<b>15 consecutive calendar days</b>

**ATTACHMENT “B”**  
**CONSULTANT’S FEE PROPOSAL AND HOURLY RATES**

**Brock & Bustillos Inc.**

Rates Effective: January 2024

**Professional**

	<b>2024 Hourly Rate Schedule</b>	(+3.50%) <b>2025 Hourly Rate</b>	(+3.50%) <b>2026 Hourly Rate</b>
Principal Engineer	\$236.00	\$244.26	\$252.81
Senior Engineer (QA/QC)	\$236.00	\$244.26	\$252.81
Senior Surveyor/R.P.L.S.	\$236.00	\$244.26	\$252.81
Survey Manager/R.P.L.S.	\$236.00	\$244.26	\$252.81
Project Manager	\$204.00	\$211.14	\$218.53
Project Engineer	\$149.00	\$154.22	\$159.61
Design Engineer	\$139.00	\$143.87	\$148.90
Utilities Engineer	\$139.00	\$143.87	\$148.90
Graduate Engineer	\$122.00	\$126.27	\$130.69
Expert Witness (Civil Discipline)	\$415.00	\$429.53	\$444.56
Expert Witness (Surveying Discipline)	\$415.00	\$429.53	\$444.56

**Technical**

Civil Designer	\$138.00	\$142.83	\$147.83
Engineering Design Technician	\$113.00	\$116.96	\$121.05
Senior Engineering CAD Draftsman	\$95.00	\$98.33	\$101.77
Engineering CAD Draftsman	\$73.00	\$75.56	\$78.20
Utilities Coordinator	\$120.00	\$124.20	\$128.55
Surveying Technician	\$126.00	\$130.41	\$134.97
Senior Surveying Technical Manager	\$130.00	\$134.55	\$139.26
Senior Surveying CAD Draftsman	\$95.00	\$98.33	\$101.77
Surveying CAD Draftsman	\$73.00	\$75.56	\$78.20
GIS Technician	\$130.00	\$134.55	\$139.26
Field Project Representative (FPR/RPR)	\$126.00	\$130.41	\$134.97

**Administrative**

Public Involvement Officer	\$115.00	\$119.03	\$123.19
Graphic Designer	\$175.00	\$181.13	\$187.46
Administrative Assistant	\$85.00	\$87.98	\$91.05
Administrative Clerk	\$73.00	\$75.56	\$78.20

**Field Survey Crews**

One Man Survey Crew (Regular Rate-Party Chief)	\$126.00	\$130.41	\$134.97
One Man Survey Crew (OT Rate-Party Chief)	\$168.00	\$173.88	\$179.97
One Man Survey Crew with Trimble X7 Scanner (Regular Rate-Party Chief)	\$147.00	\$152.15	\$157.47
One Man Survey Crew with Trimble X7 Scanner(OT Rate-Party Chief)	\$191.00	\$197.69	\$204.60
Two Man (Regular Rate-Party Chief, Rodman)	\$170.00	\$175.95	\$182.11
Two Man (OT Rate-Party Chief, Rodman)	\$232.00	\$240.12	\$248.52
Two Man w/Prof. Surveyor as Party Chief (Regular Rate)	\$295.00	\$305.33	\$316.01
Two Man w/Prof. Surveyor as Party Chief (OT Rate)	\$341.00	\$352.94	\$365.29
Three Man (Regular Rate-Party Chief, Instrumentman, Rodman)	\$238.00	\$246.33	\$254.95
Three Man (OT Rate-Party Chief, Instrumentman, Rodman)	\$295.00	\$305.33	\$316.01
Four Man (Regular Rate-Party Chief, Instrumentman, 2-Rodmen)	\$267.00	\$276.35	\$286.02
Four Man (OT Rate-Party Chief, Instrumentman, 2-Rodmen)	\$381.00	\$394.34	\$408.14
Flagger (Daily Rate) *This rate can be added to any of the above crews and is per individual Flagger.	\$110.00	\$113.85	\$117.83

**Special Field Survey Crew Equipment**

Mileage - Personal Owned Vehicles	\$0.67	Mile	\$0.69	Mile	\$0.72	Mile
Mileage - Survey 4X4 Vehicles	\$1.03	Mile	\$1.07	Mile	\$1.10	Mile
Ranger All Terrain Vehicle Usage	\$147.00	Day	\$152.15	Day	\$157.47	Day
*Surveying Supplies (ie, lathes, stakes, flagging, whisksers, nails, rebar, markers, etc, are to be determined per individual task.)						

**Other Direct Costs**

Postage - Letter Size (Metered)	\$0.64	Each	\$0.66	Each	\$0.69	Each
Postage - Additional ounces: for letters and flats	\$0.24	Ounce	\$0.25	Ounce	\$0.26	Ounce
Reproduction-Copies (8.5 X 11) - Bond (B&W)	\$0.23	Each	\$0.24	Each	\$0.25	Each
Reproduction-Copies (8.5 X 11) - Bond (Color)	\$0.55	Each	\$0.57	Each	\$0.59	Each
Reproduction-Copies (11 X 17) - Bond (B&W)	\$0.50	Each	\$0.52	Each	\$0.54	Each
Reproduction-Copies (11 X 17) - Bond (Color)	\$1.16	Each	\$1.20	Each	\$1.24	Each
Reproduction-Copies (12 X 18) - Bond (B&W)	\$0.79	Each	\$0.82	Each	\$0.85	Each
Reproduction-Copies (12 X 18) - Bond (Color)	\$1.58	Each	\$1.64	Each	\$1.69	Each
Reproduction-Copies (24 X 36) - Bond (B&W)	\$7.72	Each	\$7.99	Each	\$8.27	Each
Reproduction-Copies (24 X 36) - Bond (Color)	\$14.70	Each	\$15.21	Each	\$15.75	Each
Reproduction-Copies (30 X 42) - Bond (B&W)	\$11.29	Each	\$11.69	Each	\$12.09	Each
Reproduction-Copies (30 X 42) - Bond (Color)	\$19.95	Each	\$20.65	Each	\$21.37	Each
Reproduction-Copies (36 X 48) - Bond (B&W)	\$14.70	Each	\$15.21	Each	\$15.75	Each
Reproduction-Copies (36 X 48) - Bond (Color)	\$27.30	Each	\$28.26	Each	\$29.24	Each
Reproduction-Copies (12 X 18) - Mylars (B&W)	\$7.35	Each	\$7.61	Each	\$7.87	Each
Reproduction-Copies (24 X 36) - Mylars (B&W)	\$14.18	Each	\$14.68	Each	\$15.19	Each
Reproduction-Copies (30 X 42) - Mylars (B&W)	\$17.85	Each	\$18.47	Each	\$19.12	Each
Deliveries	\$40.00	Each	\$41.40	Each	\$42.85	Each

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

Each individual Task Order will identify the “**Project**”, and the Consultant shall provide the Basic and Additional Services as noted herein.

**BASIC SERVICES OF THE CONSULTANT**

**GENERAL**

1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated.
2. The Consultant shall comply with the City of El Paso Engineering and Construction Management Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the design phases of this Agreement.
3. The Consultant shall serve as the Owner’s professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.
4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner’s review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

**REPORT PHASE**

1. Upon receipt of the Owner’s written authorization to proceed with the **Report Phase**, the Consultant shall:
  - a. Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.
  - b. Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.
  - c. (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory testing, and (d) Inspection or other special consultation; (2) Act as the Owner's representative in connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

- d. Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant’s recommendations.
  - e. As per Attachment “D”, furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.
- 2. Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
- 3. As identified in the Scope of Work in Attachment “A”, the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

**PHASE I - PRELIMINARY DESIGN PHASE**

Upon receipt of the Owner’s written authorization to proceed with the **Preliminary Design Phase**, the Consultant shall do the following separately for each construction contract:

- 1. Consult with the Owner to determine the Owner’s requirements for the Project.
- 2. Provide at the Consultant’s sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the



**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.
4. Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.
5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner’s representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.
6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.
8. Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.
9. As per **Attachment “D”**, furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

**PHASE II - PRE-FINAL DESIGN PHASE**

Upon receipt of the Owner’s written authorization to proceed with the Pre-Final Design Phase, the Consultant shall do the following separately for each construction contract:

1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant’s assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.
2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the **“Drawings,”** to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called **“Specifications.”** These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.
3. Advise the Owner of any adjustment to the Consultant’s previous opinion of probable construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant’s cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor’s method of pricing and that the Consultant’s opinion of probable construction costs are made on the basis of professional judgment and experience. The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.
4. Prepare proposal forms.

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

5. As per **Attachment “D”**, furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

**PHASE III - FINAL DESIGN PHASE**

Upon receipt of the Owner’s written authorization to proceed with the Final Design Phase, the Consultant shall do the following separately for each construction contract:

1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.
2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility Consultant comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.
3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.
4. **As per Attachment “D”**, furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.
5. **As per Attachment “D”**, furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.
6. Additional copies of the drawings and specifications beyond those identified in **Attachment “D”**, required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

**BIDDING PHASE**

Upon receipt of Owner’s written request, the Consultant shall provide any of the following services during the Bidding Phase:

1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.
2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.
3. Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.
4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment “D”, deliver copies of all addenda to the Owner for appropriate action.
5. As identified in Attachment “A”, assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.
6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

**CONSTRUCTION PHASE**

At Owner’s request, the Consultant shall provide any of the following services associated with the Construction Phase:

1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.
2. Advise and consult with the Owner and act as the Owner’s representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner’s standard general conditions for construction projects, with

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

3. Unless otherwise stipulated in Attachment “A”, Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.
4. Visit each construction site at least once each week or more frequently, if necessary, to observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant’s efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor’s failure to perform the construction work in accordance with the construction contract documents.

Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. **Such review must be complete within ten City working days following receipt of submittal documents.** The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.
6. Issue the Owner’s instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner’s approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner’s representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract

**ATTACHMENT "C"**  
**CONSULTANT'S BASIC AND ADDITIONAL SERVICES**

documents, subject to the Owner's interpretation of such terms and conditions. If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.

7. Based on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.
8. Conduct with the Owner and construction contractor no more **than two brief preliminary inspections**, at times requested by the construction contractor to determine if the Project is ready for final inspection.
9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The **"punch list"** shall be furnished to the construction contractor and the Owner within **two City working days** after the final inspection.
10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the final inspection.
11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.
12. Furnish the Owner one set of reproducible (**D format**) "record" drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints,

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format.

13. Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.
14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner’s request, have recommendations implemented by the construction contractor.
15. Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.
16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.
17. Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.
18. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.
19. Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.
20. Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.
21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.
22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.
23. Provide additional or extended services during construction made necessary by: **a)** work damaged by fire or other cause during construction; **b)** prolongation of the construction contract time by more than **twenty-five percent** provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Consultant; **c)** Acceleration of the work schedule involving services beyond normal city working hours; or **d)** the

**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

construction contractor’s default under the construction contract due to delinquency or insolvency.

24. Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.
25. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

**ADDITIONAL SERVICES OF THE CONSULTANT**

**GENERAL**

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.
2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner’s scope or budget, except where the Consultant’s preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant’s final design cost opinions by **ten percent** or more.
3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.
4. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.
5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.



**ATTACHMENT “C”**  
**CONSULTANT’S BASIC AND ADDITIONAL SERVICES**

**RESIDENT PROJECT SERVICES**

1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.
2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.
3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor’s failure to perform the construction work in accordance with the construction contract documents.

**ATTACHMENT “D”  
PAYMENT AND DELIVERABLE SCHEDULES**

**PAYMENT SCHEDULE**

Basic services for design shall include the phases listed below at the fixed fee shown for each phase. The remainder of the fixed contract amount, if any, shall consist of the estimate for the time and materials for the bidding phase and construction phase.

**Fixed fee Payment to Consultant**

<b>Report Phase</b>	<b>To be determined by Task Order</b>
<b>Preliminary Design Phase</b>	<b>To be determined by Task Order</b>
<b>Pre-Final Design Phase</b>	<b>To be determined by Task Order</b>
<b>Final Design Phase</b>	<b>To be determined by Task Order</b>
<b>Bidding Phase</b>	<b>To be determined by Task Order</b>
<b>Construction Phase</b>	<b>To be determined by Task Order</b>

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant’s proposal found in **Attachment “B”**. The time shown in **Attachment “B”** is an estimate. Should the services rendered during the bidding and construction phases exceed the estimated amount, written authorization will be required prior to rendering services. Written authorization shall be only by contract amendment in accordance with the contract provisions. For contracts with a total value less than Fifty Thousand and No/100 Dollars (\$50,000), the parties agree that at no time may the amount of the compensation under this contract exceed Fifty Thousand and No/100 Dollars (\$50,000) except by execution of an amendment to this Agreement.

Payment for each Phase shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant’s detailed Invoice and a Consulting Summary and Progress Report and the Owner’s written approval.

The invoice must clearly identify each employee name, title, hours worked, date of performance, task or project description, rate per hours and/or cost, and office/Consultant location.

**Reimbursable Costs:** Efforts must be made to secure a *reasonable* and/or lowest rate available in the marketplace.

**Receipts:** Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable.*

No single invoice may include items for both August and September of any given year. The Owner’s fiscal year begins on September 1<sup>st</sup> of each year and ends on August 31<sup>st</sup> of each year. Consultant’s invoices must be separated into items that end August 31<sup>st</sup> and those that begin on Septembers 1<sup>st</sup> of any given year, to coincide with Owner’s fiscal year.

## **ATTACHMENT “D” PAYMENT AND DELIVERABLE SCHEDULES**

**Communications Costs:** Long Distance telephone calls need to be identified and strictly related to work performed under this Agreement in order to be reimbursable by the City. A log is preferred showing the date, person’s name called, and explanation. Cell phone monthly charges are reimbursable if usage is strictly related to work performed under this Agreement. Legible itemized cell phone records are required.

**Personal Automobile Mileage:** Expense report must clearly identify the departure/arrival time, To/From destinations and purpose of trip.

**Entertainment Costs:** Entertainment costs are not reimbursable, including: 1. Movie costs for “Pay for View” or Cable service. 2. Alcohol costs. 3. Monetary Tips (tipping) for any and all services related to all forms of travel (and/or entertainment).

### **DELIVERABLE SCHEDULE**

#### **REPORT PHASE**

The services called for in the Report Phase of this Agreement shall be completed and **5 copies** of the Preliminary Study and Report shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### **PHASE I—PRELIMINARY DESIGN PHASE**

The services called for in **Phase I** of this Agreement shall be completed and **10 copies** of any required documents and opinion of probable construction costs shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. If Owner does not approve the preliminary design documents, the Consultant shall furnish **five copies** of the resubmitted design documents.

#### **PHASE II—PRE-FINAL DESIGN PHASE**

The services called for in **Phase II** of this Agreement shall be completed and **10 copies** the required documents and services shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

#### **PHASE III—FINAL DESIGN PHASE**

The services called for in **Phase III** of this Agreement shall be completed and **10 copies** of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within the time frame set forth in the written authorization from the Owner for the Consultant to proceed. After review, the Consultant shall submit to Owner **3 copies** of the final revised design documents and specifications for final check. Upon the approval of the final design documents, the Consultant shall furnish **10 copies** of the final design documents and specifications for bidding to the Owner within the time frame set forth in the written authorization from the Owner for the Consultant to proceed.

**ATTACHMENT “D”  
PAYMENT AND DELIVERABLE SCHEDULES**

**PHASE IV—BIDDING PHASE**

Provide services as authorized by Owner during the bid phase as described in Attachment “C” and submit **1 copy** of all addenda to the Owner for appropriate action within **2 consecutive calendar days**.

**PHASE V - CONSTRUCTION PHASE**

Provide services as authorized by Owner during construction phase as described in Attachment “C” and submit one set of Mylar and one set of electronic media format copies of all record drawings to the Owner within sixty days from the date of substantial completion.

**ATTACHMENT “E”**  
**Insurance**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/04/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> WestStar Insurance P.O. Box 99105  El Paso TX 79999-9105	<b>CONTACT</b> NAME: Eric M Swanson PHONE (A/C, No, Ext): (915) 747-4114 E-MAIL ADDRESS: Eric.Swanson@WestStar-Insurance.com FAX (A/C, No):  <b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Texas Mutual Insurance Co INSURER B: United Fire & Casualty Co. INSURER C: Pacific Insurance Company INSURER D: INSURER E: INSURER F:	<b>NAIC #</b> 22945 13021 10046
<b>INSURED</b> Brock & Bustillos, Inc  417 Executive Center Blvd  El Paso TX 79902 (915) 542-4900		

**COVERAGES**      **MA**      **CERTIFICATE NUMBER:** Cert ID 9849      **(12)**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b>  <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		60541187	11/01/2023	11/01/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Empl Benefits Liab \$ 1,000,000
B	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b>  <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		60541187	11/01/2023	11/01/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		60541187	11/01/2023	11/01/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input type="checkbox"/> N/A		0002101576	11/01/2023	11/01/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	<b>Errors and Omissions</b>		010H057993823	11/01/2023	11/01/2024	Aggregate \$ 2,000,000 \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Project: City of El Paso/El Paso International Airport Solicitation #2024-0381R  
On-Call Land Development/Construction Management Services for EPIA Capital Plan Projects

## CERTIFICATE HOLDER

## CANCELLATION

City of El Paso

218 N. Campbell, 2nd Floor

El Paso TX 79901

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD™

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/16/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER		CONTACT NAME: Tami Melton	
USI Southwest		PHONE (A/C, No, Ext): 713 490-4600	FAX (A/C, No): 713-490-4700
9811 Katy Freeway, Suite 500		E-MAIL ADDRESS: tami.melton@usi.com	
Houston, TX 77024			
713 490-4600			
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A : Phoenix Insurance Company	25623
		INSURER B : Travelers Property Cas. Co. of America	25674
		INSURER C : Farmington Casualty Company	41483
		INSURER D : Endurance American Specialty Ins Co	41718
		INSURER E : Travelers Indemnity Company	25658
		INSURER F :	


COVERAGES CERTIFICATE NUMBER: 44447248 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			P6306T020324PHX23	07/10/2023	07/10/2024	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
E	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			BA5T9261002343G	07/10/2023	07/10/2024	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10000			CUP4S01891423NF	07/10/2023	07/10/2024	EACH OCCURRENCE \$12,000,000 AGGREGATE \$12,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	UB6T0405192343G	07/10/2023	07/10/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D	Professional Liability			DPL30039639000	07/10/2023	07/10/2024	\$5,000,000 per claim \$5,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The General Liability and Automobile Liability policies include an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate holder, only when there is a written contract or written agreement between the named insured and the certificate holder that requires such status, and only with regard to work performed on behalf of the named insured (GL: CGD3790219 ongoing and completed operations, CG D2460419; AL: CA T3530817).  
(See Attached Descriptions)

CERTIFICATE HOLDER	CANCELLATION
Brock and Bustillos, Inc. 417 Executive Center Blvd. El Paso, TX 79902	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 

**ACORD**<sup>TM</sup>**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

4/04/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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<b>PRODUCER</b> <b>USI Southwest</b> <b>9811 Katy Freeway, Suite 500</b> <b>Houston, TX 77024</b>		<b>CONTACT NAME:</b> Lora Abeyta <b>PHONE (A/C, No, Ext):</b> 346-336-2505 <b>E-MAIL ADDRESS:</b> lora.abeyta@usi.com		<b>FAX (A/C, No):</b> 610-362-8216
		<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
		<b>INSURER A:</b> Hanover Insurance Company		<b>22292</b>
		<b>INSURER B:</b> Hartford Ins Co of the Midwest		<b>37478</b>
		<b>INSURER C:</b>		
		<b>INSURER D:</b>		
		<b>INSURER E:</b>		
		<b>INSURER F:</b>		

<b>COVERAGES</b>	<b>CERTIFICATE NUMBER:</b>	<b>REVISION NUMBER:</b>
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INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			OHDA581896	03/16/2024	03/16/2025	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			OHDA581896	03/16/2024	03/16/2025	COMBINED SINGLE LIMIT (Ea accident) \$Included BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			OHDA581896	03/16/2024	03/16/2025	EACH OCCURRENCE \$3,000,000 AGGREGATE \$3,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	65WBCAC9VBX	03/16/2024	03/16/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	Professional Liability			LHDA58695809	03/16/2024	03/16/2025	Each claim: \$1,000,000 Aggregate: \$2,000,000 Deductible: \$2,500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

**BROCK & BUSTILLOS INC.**  
**417 Executive Center Blvd.**  
**El Paso, TX 79902-1003**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE







# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/09/2024

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<b>PRODUCER</b> Hiscox Inc. 5 Concourse Parkway Suite 2150 Atlanta GA, 30328	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> (888) 202-3007 <b>E-MAIL ADDRESS:</b> contact@hiscox.com <b>FAX (A/C, No):</b>
<b>INSURED</b> Lattice Blue LLC 5905 PARKMONT PL El Paso, TX 79912	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Hiscox Insurance Company Inc <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>
	<b>NAIC #</b> 10200

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

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INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <b>EXCESS LIAB</b> <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability			P100.110.872.5	02/20/2024	02/20/2025	Each Claim: \$ 1,000,000 Aggregate: \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Solicitation# 2024-0381R On-Call Land Development / Construction Management Services for EPIA Projects

**CERTIFICATE HOLDER****CANCELLATION**

Brock & Bustillos 417 Executive Center Blvd. El Paso, TX 79902	<b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b>  <b>AUTHORIZED REPRESENTATIVE</b> 
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/09/2024

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<b>PRODUCER</b> Hiscox Inc. 5 Concourse Parkway Suite 2150 Atlanta GA, 30328	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> (888) 202-3007 <b>E-MAIL ADDRESS:</b> contact@hiscox.com <b>FAX (A/C, No):</b>
<b>INSURED</b> Lattice Blue LLC 5905 PARKMONT PL El Paso, TX 79912	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Hiscox Insurance Company Inc <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>
	<b>NAIC #</b> 10200


**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

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INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <b>EXCESS LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE  DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability	Y		P100.110.872.5	02/20/2024	02/20/2025	Each Claim: \$ 1,000,000 Aggregate: \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Solicitation# 2024-0381R On-Call Land Development / Construction Management Services for EPIA Projects

**CERTIFICATE HOLDER****CANCELLATION**

City of El Paso 218 N. Campbell, 2nd Floor El Paso, TX 79901	<b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b>  <b>AUTHORIZED REPRESENTATIVE</b> 
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/08/2023

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<b>PRODUCER</b>  SANDRA SERNA, AGENT 10965 BEN CRENSHAW D3 EL PASO, TEXAS 79935	<b>CONTACT</b> NAME: SANDRA SERNA PHONE (A/C, No, Ext): 915-591-0727 E-MAIL ADDRESS: sandra.serna.QSVK@statefarm.com FAX (A/C, No): 915-591-3443														
<b>INSURED</b> RCPM LLC 1116 MONTANA AVE EL PASO, TEXAS 79902-5510	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A : State Farm Lloyds</td><td>43419</td></tr><tr><td>INSURER B : State Farm Mutual Automobile Insurance Company</td><td>25178</td></tr><tr><td>INSURER C :</td><td></td></tr><tr><td>INSURER D :</td><td></td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : State Farm Lloyds	43419	INSURER B : State Farm Mutual Automobile Insurance Company	25178	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A : State Farm Lloyds	43419														
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INSURER C :															
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INSURER E :															
INSURER F :															

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

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INSR LTR	TYPE OF INSURANCE	ADD INSD	SUB WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	93-GV-A498-3	10/18/2023	10/18/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 BPP \$ 50,000
B	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	548-8609-E18-43 573 3154-A31-43	11/18/2023 01/31/2024	05/18/2024 07/31/2024	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ 50,000 BODILY INJURY (Per accident) \$ 100,000 PROPERTY DAMAGE (Per accident) \$ 50,000
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**BROCK & BUSTILLOS INC.  
417 EXECUTIVE BLVD.  
EL PASO, TX 79902

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Irma Collins*

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/08/2023

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<b>PRODUCER</b>  SANDRA SERNA, AGENT 10965 BEN CRENSHAW D3 EL PASO, TEXAS 79935	<b>CONTACT NAME:</b> SANDRA SERNA <b>PHONE (A/C, No, Ext):</b> 915-591-0727 <b>E-MAIL ADDRESS:</b> sandra.serna.QSVK@statefarm.com	<b>FAX (A/C, No):</b> 915-591-3443
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b>  RCPM LLC 1116 MONTANA AVE EL PASO, TEXAS 79902-5510	<b>INSURER A:</b> State Farm Lloyds	<b>NAIC #</b> 43419
	<b>INSURER B:</b> State Farm Mutual Automobile Insurance Company	25178
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

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INSR LTR	TYPE OF INSURANCE	ADD INSD	SUB WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	93-GV-A498-3	10/18/2023	10/18/2024	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000						
	MED EXP (Any one person) \$ 5,000						
	PERSONAL & ADV INJURY \$ 1,000,000						
B	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	548-8609-E18-43 573 3154-A31-43	11/18/2023 01/31/2024	05/18/2024 07/31/2024	COMBINED SINGLE LIMIT (Ea accident) \$
	BODILY INJURY (Per person) \$ 50,000						
	BODILY INJURY (Per accident) \$ 100,000						
	PROPERTY DAMAGE (Per accident) \$ 50,000						
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE \$
							E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**CITY OF EL PASO  
300 N. CAMPBELL  
EL PASO, TX 79901

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Irma Collins*

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## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/4/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 4682 Hub International Insurance Services 601 N. Mesa, Suite 1550 El Paso, TX 79901	CONTACT NAME: PHONE (A/C, No, Ext): (915) 206-6023 FAX (A/C, No): (866) 399-3972 E-MAIL ADDRESS: tex.elpasoinfo@hubinternational.com
INSURED  CQC Testing and Engineering, LLC 4606 Titanic El Paso, TX 79904	INSURER(S) AFFORDING COVERAGE INSURER A : Charter Oak Fire Insurance Company 25615 INSURER B : The Travelers Indemnity Company 25658 INSURER C : Travelers Property Casualty Company of America 25674 INSURER D : Admiral Insurance Company 24856 INSURER E : INSURER F :

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			680 - 001J918282	6/10/2023	6/10/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			8R454046-BA	6/10/2023	6/10/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP-7K239149	6/10/2023	6/10/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N N	N / A	UB - 006K08380A	6/10/2023	6/10/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Errors & Omissions			EO000044657-06	6/10/2023	6/10/2024	Each Limit 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The General Liability and Automobile policies includes a blanket automatic additional insured endorsement or policy terms that provide additional insured status to the Certificate Holder and organization named in a contract or agreement, with a waiver of subrogation.

The General Liability, Automobile and Workers Compensation policies includes a blanket notice of cancellation to certificate holders endorsement, providing for 30 days' advance notice if the policy is canceled by the company other than for nonpayment of premium, 10 days' notice after the policy is canceled for nonpayment of premium. Notice is sent to certificate holders with mailing addresses on file with the agent or the company.

SEE ATTACHED ACORD 101

## CERTIFICATE HOLDER

## CANCELLATION

Brock & Bustillos Inc. 417 Executive Center Blvd. Attn: Roman Bustillos, P.E., CNU-A El Paso, TX 79902	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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ACORD™

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/05/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER		CONTACT NAME:	
USI Southwest		PHONE (A/C, No, Ext): 713 490-4600	
9811 Katy Freeway, Suite 500		FAX (A/C, No): 713-490-4700	
Houston, TX 77024		E-MAIL ADDRESS:	
713 490-4600		INSURER(S) AFFORDING COVERAGE	
		INSURER A : Travelers Indemnity Company of CT	
		INSURER B : Travelers Property Cas. Co. of America	
		INSURER C : Travelers Casualty and Surety Company	
		INSURER D : XL Specialty Insurance Company	
		INSURER E : Phoenix Insurance Company	
		INSURER F :	
INSURED		NAIC #	
RBM Engineering, Inc.		25682	
150 N. Festival, Ste A		25674	
El Paso, TX 79912		19038	
		37885	
		25623	

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.


INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			6801J4577132347	06/01/2023	06/01/2024	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
E	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			BA8R2203952347G	06/01/2023	06/01/2024	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> RETENTION \$10000			CUP0L3535112347	06/01/2023	06/01/2024	EACH OCCURRENCE \$2,000,000 AGGREGATE \$2,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	UB5K7607122347G	06/01/2023	06/01/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D	Professional Liab Claims Made & Reported Pol			DPR5015546 Retro:07/30/2003	07/30/2023	07/30/2024	\$1,000,000 per claim \$2,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The Gen Liab. and Auto Liab.policy(s) include a blanket automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder only when there is a written contract that requires such status, and only with regard to work performed on behalf of the named insured. All policies provide a Blanket Waiver of Subrogation when required by written contract. Umbrella follows form for all policies except Professional Liability. The General Liability policy(s) contains a special endorsement with (See Attached Descriptions)

## CERTIFICATE HOLDER

## CANCELLATION

City of El Paso 218 N. Campbell, 2nd Floor El Paso, TX 79901	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**ATTACHMENT “F”**  
**FEDERAL AVIATION ADMINISTRATION CONTRACT PROVISIONS FOR**  
**AIRPORT IMPROVEMENT PROGRAM PROJECTS**

## **ATTACHMENT “F”**

### **FEDERAL AVIATION ADMINISTRATION (FAA) CONTRACT PROVISIONS**

**In this Attachment “F”, the term “Contractor” shall refer to the “Consultant”, and the term “Airport Sponsor” shall refer to the “City”.**

**If there are any conflicts between the terms and conditions of Attachment “F” and Article VI of the Agreement, the terms and conditions of Attachment “F” will prevail.**

#### **A. GENERAL REQUIREMENT FOR CONTRACT**

1. The contractor (including all subcontractors) are required to insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all subcontracts;
2. The contractor (or subcontractor) is required to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services;
3. The contractor is responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider; and
4. The contractor (or subcontractor) shall not modify the provisions.

Subject to the applicability criteria noted in the specific contract provisions, these contract provisions apply to all work performed on the contract.

#### **B. FAILURE TO COMPLY**

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

1. Withhold progress payments or final payment,
2. Terminate the contract,
3. Seek suspension/debarment, or
4. Any other action determined to be appropriate by the Airport Sponsor or the FAA.

#### **C. CONTRACT PROVISIONS**

##### **1. ACCESS TO RECORDS AND REPORTS (all AIP-funded projects)**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized



representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after the final payment is made and all pending matters are closed.

2. **BREACH OF CONTRACT TERMS** (all contracts that exceed the simplified acquisition threshold as fixed at 41 USC 403(11). This threshold is presently set at \$100,000.)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. **BUY AMERICAN PREFERENCES** (all AIP-funded projects, if this professional services agreement includes any manufactured product as a deliverable.)

### **BUY AMERICAN CERTIFICATION**

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

#### **Type of Certification is based on Type of Project:**

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

\*\*\*\*\*

### **Certificate of Buy American Compliance for Total Facility**

(Buildings such as Terminal, SRE, ARFF, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter "X".

☒ Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:

- a. Only installing steel and manufactured products produced in the United States; or
- b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
- c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
  2. To faithfully comply with providing US domestic products
  3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- ☐ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
  3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.

4. To furnish US domestic product for any waiver request that the FAA rejects.
5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

**Type 3 Waiver** - The cost of components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the “facility”. The required documentation for a type 3 waiver is:

- a. Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c. Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

05/24/2024

Date

  
Signature

Brock & Bustillos Inc.

Company Name

President

Title

\* \* \* \* \*

### **Certificate of Buy American Compliance for Manufactured Products**

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

☒ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:

- a. Only installing steel and manufactured products produced in the United States, or;
- b. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
- c. Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing US domestic product
3. To furnish US domestic product for any waiver request that the FAA rejects
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

☐ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.

3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

**Type 3 Waiver** - The cost of the item components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a. Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c. Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a. Detailed cost information for total project using US domestic product
- b. Detailed cost information for total project using non-domestic product

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

05/24/2024

Date

Signature

Brock & Bustillos Inc.

Company Name

President

Title

4. **GENERAL CIVIL RIGHTS PROVISIONS (all contracts)**

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- a. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

5. **CIVIL RIGHTS-TITLE IV COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS (all AIP funded projects)**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
  4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
  5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
    - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
    - b. Cancelling, terminating, or suspending a contract, in whole or in part.
  6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontractor or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.
6. **CLEAN AIR AND WATER POLLUTION CONTROL** (all contracts that exceed \$100,000)

Contractors and subcontractors agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

**7. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS (all contracts that exceed \$100,000)**

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in



excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

8. **CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)** (all contracts that exceed \$25,000)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

9. **DISADVANTAGED BUSINESS ENTERPRISES** (all AIP-funded projects)

**Contract Assurance (49 CFR § 26.13)** - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (49 CFR §26.29)**- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame

may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

**10. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE) (all contracts)**

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

**11. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES (all AIP-funded projects)**

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**12. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (all contracts)**

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

**13. RIGHTS TO INVENTIONS (all AIP-funded projects)**

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

**14. TERMINATION OF CONTRACT (contracts that exceed \$10,000)**

1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed

to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

5. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

**15. TRADE RESTRICTION CLAUSE (all AIP-funded projects)**

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may

direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

**16. TEXTING WHEN DRIVING (all contracts)**

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

# DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with Title 2, Chapter 2.92, Section 2.92.080

## Introduction:

Individuals or entities benefiting by a City Council Agenda item must disclose contributions or donations made to current members of Council under the City's Ethics Code. The information on this form is being captured for transparency purposes and will be noted on the relevant City Council Agenda. **Contributions and Donations do NOT disqualify an applicant from doing business with the City.**

## Definitions:

- "Contribution"** A direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit.
- "Contributor"** A person making a contribution, including the contributor's spouse.
- "Donation"** Cash and the value of any in-kind contributions or gifts to the council member for use by their office or in their district.
- "Donor"** An individual and spouse, a business entity, or an individual who owns a business entity in whole or in part, or is operated by the individual, that is the subject of a council agenda item.
- "Benefiting"** Shall include but not be limited to any contract, bid award, franchise, permit, zoning or rezoning, and other award that council will vote on.

**Instructions:** Please read and complete this form carefully. If you have made campaign contributions or donations to any current City Council member(s) totaling an aggregate of \$500 or more during their campaign(s) or term(s) of City office, you are required to disclose the information as specified below. If you have not made such contributions or donations past the limit specified in the ordinance, you are required to affirm your compliance with the municipal code. Please submit this completed form along with your application or proposal to the relevant city department. Failure to disclose campaign contributions or donations as required by the ordinance may result in a violation of the City's Ethics Code requirements, and sanctions under the Ethics Code 2.92.

## Contributor / Donor Information:

Full Name Eleece Wilson

Business Name Parkhill

Agenda Item Type \_\_\_\_\_

Relevant Department Accounting

**Disclosure Affirmation:** Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.

☒ I have **NOT** made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office, as specified in Section 2.92.080 of the El Paso Municipal Code.

OR

☐ I have made campaign contributions or donations totaling an aggregate of \$500 or more to the following City Council member(s) during their campaign(s) or term(s) of City office:

OFFICE	CURRENT COUNCIL MEMBER NAME	AMOUNT (\$)
Mayor		
District 1		
District 2		
District 3		
District 4		
District 5		
District 6		
District 7		
District 8		

**Declaration:** I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.

Signature: Blanca Wilson, AP Supervisor Date: 9-10-24

# DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with [Title 2, Chapter 2.92, Section 2.92.080](#)

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## Contributor / Donor Information:

Full Name \_\_\_\_\_

Business Name \_\_\_\_\_

Agenda Item Type \_\_\_\_\_

Relevant Department \_\_\_\_\_



**Disclosure Affirmation:** Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.

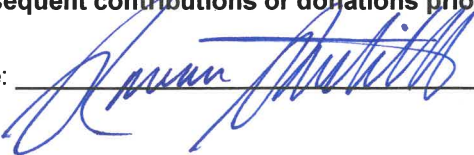
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District 3		
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District 5		
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District 7		
District 8		

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Signature:  Date: 04/09/2024

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2024-1144248

Date Filed:  
04/09/2024

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Brock & Bustillos Inc.  
El Paso, Texas, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of El Paso

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

RFQ #2024-0381R  
On-Call Land Development/Construction Management Services for EPIA Capital Projects

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



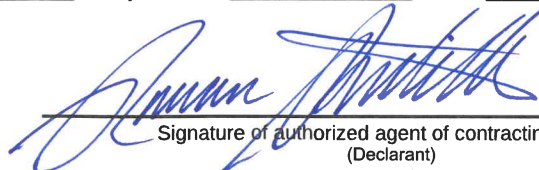
### 6 UNSWORN DECLARATION

My name is Roman Bustillos, P.E., and my date of birth is Nov 18, 1965.

My address is 417 Executive Center Boulevard, El Paso, Texas, 79902, USA.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in El Paso County, State of Texas, on the 9th day of April, 2024.  
(month) (year)



Signature of authorized agent of contracting business entity  
(Declarant)



Legislation Text

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**File #: 24-746, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.  
No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Purchasing and Strategic Sourcing, K. Nicole Cote, (915) 212-1092  
Capital Improvement Department, Yvette Hernandez, (915) 212-1860

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

The linkage to the Strategic Plan is subsection: 1.4 Grow the core business of air transportation.

**Award Summary:**

Discussion and action on the request that City Manager is authorized to execute the Design-Build documents considered to be the agreement ("Contract") between the City of El Paso and Jordan Foster Construction, LLC, for the project known as the George Perry Boulevard Extension 2023-0576R in an initial amount of one million thirty one thousand six hundred eighty one and 81/100 dollars (\$1,031,681.81) for work prior to the execution of the Design-Build Amendment; and that the City Engineer is authorized to approve additional preconstruction services in the amount of \$50,000.00 if the services are necessary for the proper execution of the project.

Department:	Capital Improvement
Award to:	Jordan Foster Construction, LLC
City & State:	El Paso, TX
Item(s):	Pre-Construction Services
Total Estimated Award:	\$1,081,681.81
Account(s):	562-3010-62335-580270-PAP00998
Funding Source(s):	Airport Enterprise
District(s):	All

This was a Design-Build Procurement - Service Contract.

The Purchasing & Strategic Sourcing and Capital Improvement Departments recommend award as indicated to Jordan Foster Construction, LLC. The Design-build team offering the best value on the basis of the published selection criteria and on its ranking evaluations.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

Additionally, it is requested that the City Attorney's Office review and that the City Manager or designee be authorized to execute any related contract documents and agreements necessary to effectuate this award.

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

**AGENDA DATE:** June 4, 2024  
**PUBLIC HEARING DATE:** Not Applicable

**CONTACT PERSON(S) NAME AND PHONE NUMBER:**  
Yvette Hernandez, City Engineer, (915) 212-1860  
Tony Nevarez, Interim Aviation Director, (915) 474-2424  
K. Nicole Cote, Managing Director (915) 212-1092

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** No. 1 – Cultivate an Environment Conducive to Strong, Economic Development

**SUBGOAL:** 1.4 Grow the core business of air transportation

**SUBJECT:**

Discussion and action on the request that City Manager is authorized to execute the Design-Build documents considered to be the agreement ("Contract") between the City of El Paso and Design-Builder, for the project known as the George Perry Boulevard Extension 2023-0576R in an initial amount of one million thirty one thousand six hundred eighty one and 81/100 dollars (\$1,031,681.81) for work prior to the execution of the Design-Build Amendment; and that the City Engineer is authorized to approve additional preconstruction services in the amount of \$50,000.00 if the services are necessary for the proper execution of the project.

**BACKGROUND / DISCUSSION:**

George Perry Boulevard will be extended from the existing intersection on Walter Jones Boulevard to Constitution Avenue. The 1.1-mile roadway extension includes drainage, utilities, illumination, landscaping, and irrigation improvements. The new roadway will provide accessibility for future development along the 601 Corridor Business District.

**SELECTION SUMMARY:**

Solicitation was advertised on May 30, 2023 and June 6, 2023. The solicitation was posted on City website on May 30, 2023. There were a total of twenty eight (28) viewers online; two (2) proposals were received; all from local suppliers. An Inadequate Competition Survey was conducted.

**CONTRACT VARIANCE:**

Not Applicable

**PROTEST**

No protest received for this requirement.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

Amount: \$1,031,681.00

Funding Source: Airport Enterprise

Account: 562-3010-62335-580270-PAP00998

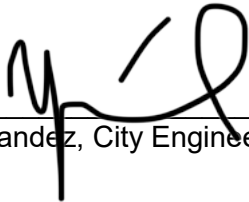
HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Capital Improvement  
SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

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

DEPARTMENT HEAD:



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Yvette Hernandez, City Engineer

Project Form  
Design-Build

\*\*\*\*\*Posting Language Below\*\*\*\*\*

Please place the following item on the Regular Agenda for the City Council Meeting of June 4, 2024.

Strategic Goal 1 – Cultivate an Environment Conducive to Strong, Economic Development

The linkage to the Strategic Plan is subsection: 1.4 Grow the core business of air transportation.

**Award Summary:**

Discussion and action on the request that City Manager is authorized to execute the Design-Build documents considered to be the agreement (“Contract”) between the City of El Paso and Design-Builder, for the project known as the George Perry Boulevard Extension 2023-0576R in an initial amount of one million thirty one thousand six hundred eighty one and 81/100 dollars (\$1,031,681.81) for work prior to the execution of the Design-Build Amendment; and that the City Engineer is authorized to approve additional preconstruction services in the amount of \$50,000.00 if the services are necessary for the proper execution of the project.

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Award to:	Jordan Foster Construction, LLC
City & State:	El Paso, TX
Item(s):	Pre-Construction Services
Total Estimated Award:	\$1,081,681.81
Account(s):	562-3010-62335-580270-PAP00998
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Additionally, it is requested that the City Attorney's Office review and that the City Manager or designee be authorized to execute any related contract documents and agreements necessary to effectuate this award.

Scoresheet			
Desing-Build Request for Qualifications			
PROJECT:	2023-0576R Design-Build for George Perry Boulevard Extension		
MAX POINTS		International Eagle	Jordan Foster Construction
Factor A - Project Team			
Factor Total	20	11.75	17.00
Factor B - Comparable Design Experience			
Factor Total	30	20.25	24.95
Factor C - Comparable Construction Experience			
Factor Total	40	18.68	31.90
Factor D - Project Delivery Approach			
Factor Total	10	5.75	7.50
TOTAL SCORE	100	56.43	81.35



Technical & Cost Proposals Scoresheet		
Desing-Build Request for Proposal		
PROJECT:	2023-0576R Design-Build for George Perry Boulevard Extension	
		Jordan Foster Construction
		MAX POINTS
Technical Proposal		
Factor A - Summary of Project Approach Desing and Construction	20	16.50
Factor B - Guaranteed Price (GMP) Approach	10	8.00
Factor C - Anticipated Problems and Proposed Solutions	5	3.50
Factor D - Recovery Schedule and Project Status Reports	5	4.00
Factor E - Safety Program and Records	5	4.50
Factor F - Quality Assurance & Quality Control	20	17.25
Total Technical Proposal	65	53.75
Cost Proposal		
Factor G - Fee of Work prior to Execution of the Desing-Build Amendment	35	35.00
TOTAL SCORE	100	88.75

**2023-0576R George Perry Boulevard Extension  
View List**

	<u>Participant Name</u>	<u>Contact</u>	<u>City</u>	<u>State</u>
1	Alejandro Motta (Tri-State Electric)	Alex Motta	Vinton	TX
2	Brock & Bustillos Inc.	Roman Bustillos, PE	El Paso	TX
3	CEA Group (CEA Engineering Group, Inc.)	David Concha	El Paso	TX
4	Civil Associates, Inc. (Civil Associates, Inc. - A Bartlett & West Company)	Naser Abusaad	Dallas	TX
5	ConstructConnect	Content	Cincinnati	OH
6	Construction Reporter	Rebecca Taylor	Albuquerque	NM
7	CSA Constructors (Karlsruher, Inc.)	Hilary Oney	El Paso	TX
8	Dantex General Contractors	Jessica Reyes	El Paso	TX
9	GAREDA Engineering	Gerardo Garcia	El Paso	TX
10	GC Services Limited Partnership	Sandy Ellis	Houston	TX
11	Group Travel Consultants, Inc	Laurie DeCrotie	Orlando	FL
12	Hawk Construction	Jorge Ojeda	El Paso	TX
13	High Voltage Electric	Brian White	El Paso	TX
14	International Eagle Enterprises	Marcos Molina	El Paso	TX
15	J Carrizal General Constructio	Marlena Cervantes	El Paso	TX
16	Jordan Foster Construction, LLC	Ashok Kamath	El Paso	TX
17	Keystone GC, LLC	Francisco Guillen	EL PASO	TX
18	Moreno Cardenas Inc.	Veronica Quintanilla	El Paso	TX
19	OTHON, INC.	Tess Neilson	Richardson	TX
20	Paradigm Traffic Systems, Inc.	Jerry Priester	Arlington	TX
21	Paso-Tex Industries LLC	Kelly Shankles	El Paso	TX
22	Ricks Paving & Sealing Inc.	Rick Cavazos	El Paso	TX
23	Textbook Warehouse (Textbook Warehouse, LLC)	James Adams	Alpharetta	GA
24	The PlanIt Room	Cecilia Hernandez	El Paso	TX
25	Tri-State Electric Ltd	Anna Fuller	Vinton	TX
26	UebelKorp industries		El Paso	TX
27	Varsity Roofing	Thomas Aragon	EL PASO	TX
28	Virtual Builders Exchange	Jeannette	San Antonio	TX

## **RESOLUTION**

**WHEREAS**, on July 20, 2004, the City Council adopted a resolution approving the use of design-build as an alternative procurement method for construction projects, as permitted by Section 271.113 of the Texas Local Government Code (now Section 2269 of the Texas Government Code); and

**WHEREAS**, on April 17, 2018 the City Council approved a resolution amending the delegation of authority from the City Engineer to the Director of Purchasing & Strategic Sourcing (“Director”) to determine which alternative construction project delivery method provides the best value for the City before advertising; and

**WHEREAS**, the Director considered the following criteria as a minimum basis for determining the circumstances under which the Design-build method for civil works project is appropriate for a civil works project:

- (1) the extent to which the City can adequately define the project requirements;
- (2) the time constraints for the delivery of the project;
- (3) the ability to ensure that a competitive procurement can be held; and
- (4) the capability of the City to manage and oversee the project, including the availability of experienced personnel or outside consultants who are familiar with the design-build method of project delivery.

**WHEREAS**, the Director determined that the design-build method for the civil works project for the George Perry Boulevard Extension 2023-0576R project is appropriate and provides the best value to the City; and

**WHEREAS**, the City of El Paso (“City”) issued a Request for Qualifications and a Request for Proposals as part of the design-build project delivery method for civil works projects through solicitation George Perry Boulevard Extension 2023-0576R (“Project”); and

**WHEREAS**, the City desires to select, Jordan Foster Construction, LLC a Texas Limited Liability Corporation (“Design-Builder”), as the Design-build firm for the Project after the evaluation of the combination of technical and cost proposals submitted by Design-Builder, on the basis of the published selection criteria and on the ranking evaluations; and

**WHEREAS**, the City negotiated a contract with Design-Builder and desires to enter into a contract for the George Perry Boulevard Extension 2023-0576R with Design-Builder; and

**WHEREAS**, the initial contract award will commence the work prior to the execution of the design-build amendment and the parties understand that an amendment to establish the Guaranteed Maximum Price for the project will be subject to City Council approval.

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

**THAT** the City Manager is authorized to execute the Design-Build documents considered to be the agreement (“Contract”) between the City of El Paso and Design-Builder, for the project known as the George Perry Boulevard Extension 2023-0576R in an initial amount of \$1,031,681.81 for work prior to the execution of the Design-Build Amendment; and that the City Engineer is authorized to approve additional preconstruction services in the amount of \$50,000 if the services are necessary for the proper execution of the project.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2024.


**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Lesser  
Mayor

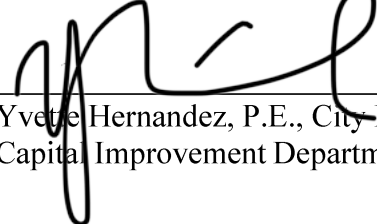
**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Yvette Hernandez, P.E., City Engineer  
Capital Improvement Department

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
K. Nicole Cote, Managing Director  
Purchasing & Strategic Sourcing

**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND DESIGN-BUILDER**

This Agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (“The Date of Execution”) by and between the:

**“Owner”**

The City of El Paso  
300 N. Campbell  
El Paso, Texas 79901  
915.212.0000

and

**“Design-Builder”**

Jordan Foster Construction, LLC

for the following Project:

**2023-0576R George Perry Boulevard Extension**

## ARTICLE 1 - GENERAL PROVISIONS

### 1.01 *Owner's Criteria:*

- A.** This Agreement is based on the Owner's Criteria set forth in this Section 1.01 and Exhibit 1-A.
- B.** *The Owner's program for the Project:*
- Bridging Document and Additional Information Document.
- C.** *The Owner's design requirements for the Project and related documentation:*  
The scope of services and work will include the planning, development, design, engineering, and construction of the site work, facilities, parking, roadways, and related improvements for the Project, including but not limited to all architect, engineering, construction, and other services necessary for the successful development, execution and completion of the Project. The Design Build Team shall perform all services and work necessary to complete and deliver the Turn-Key Project in accordance with the terms of the Design Criteria Package.
- D.** *The Project's physical characteristics*  
To the extent available, the Owner has provided Design-Builder all geotechnical and other survey data in its possession. If no geotechnical data is available and provide to the Design-Builder, Design-Builder shall be required to retain a geotechnical engineer to perform geotechnical analysis. If geotechnical data is available and provided to the Design-Builder by Owner, the Design-Builder may, at its election, retain its own geotechnical firm and a registered professional land surveyor to generate any data that Design-Builder will require for the performance of its work. Costs for such consultants may be included in the Cost of the Work as described herein.
- E.** Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:
- F.** The Owner's budget for the Work to be provided by the Design-Builder is \$12,000,000.
- G.** The Owner's design and construction milestone dates:
1. Design phase milestone dates:
    - A. Evaluation of Owner's Criteria 10 Calendar days
    - B. Preliminary Design 90 calendar days at which time a final GMP will be negotiated between the Design-Build Team and the City.
    - C. Submission of Design-Builder Proposal and GMP Date will be determined after issuance of NTP

D. Design-Build Amendment	TBD
E. Construction Phase NTP	TBD
F. Substantial Completion Date	TBD
G. Final Completion	TBD

- H.** The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:
- 1.** Architect: Landscape Architect, Architect
  - 2.** Consultants: Civil Engineer, Electrical Engineer, and Surveyor, structural Engineer, Licensed Irrigator and all necessary consultants to fulfill the SOW of the project
  - 3.** Contractors: Site work, electrical, structural, specialties, concrete, utilities, landscaping, and all necessary contractors to comply with SOW
- I.** Additional Owner's Criteria upon which the Agreement is based:  
Design/Build additional information and bridging documents
- J.** The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.
- K.** If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.
- L.** If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.
- M.** If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

## 1.02 *Project Team*

- A.** The Owner identifies the following representative in accordance with this agreement:  
**City Engineer or Designee**
- B.** The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:  
**City Engineer or Designee**
- C.** The Owner will retain the following consultants and separate contractors:
1. Consultant
  2. Contractor
- D.** The Design-Builder identifies the following representative in accordance with this

agreement:

1. TBD

- E. Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party. The Design-Builder's representative may be replaced only with Owner's approval, but such approval shall not be unreasonably withheld, delayed or conditioned.

1.03 ***Binding Dispute Resolution***

Disputes will be resolved in accordance with the General Conditions.

1.04 ***Prevailing Wage Rates***

Design-Builder and any subcontractor shall pay not less than the general prevailing wage rates contained herein in Exhibit 4, to all laborers, workmen and mechanics employed by them in the execution of this contract in accordance with Section 7.02 of the General Conditions.

1.05 ***Apprenticeship Program***

Construction Manager and any subcontractor shall also comply with the Owner's Apprenticeship Program attached and incorporated to this Agreement herein in Exhibit 5.

1.06 ***Definitions***

Unless otherwise stated in this Section, the Terms used in this Agreement will have the meanings indicated in the General Conditions.

A. ***Design-Build Documents***

The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); the General Conditions; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

B. ***The Contract***

The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

C. ***The Work***

The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.



**D. *The Project***

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

**E. *Instruments of Service***

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

**F. *Submittals***

A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

**G. *Cost Effective Schedule***

A construction schedule developed by the prime contractor which takes into account coordination with suppliers/vendors and subcontractors. The cost-effective schedule will serve as a tool to identify issues with delivery dates, availability of special equipment, materials, and manpower in order to mitigate cost and time growth.

**H. *Owner***

The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

**I. *Design-Builder***

The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

**J. *Consultant***

A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

**K. *Architect***

The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

**L. *Contractor***

A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

**M. *Engineer***

The Engineer is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice engineering in the applicable jurisdiction. The Engineer is referred to throughout the Design-Build Documents as if singular in number.

**N. *Schematic Design Documents (30% SDs)***

Documents developed during the first phase of design and submitted to Owner for review and approval prior to proceeding with the work for the Design Development Documents.

**O. *Design Development Documents (60% DDs)***

Drawings and Specifications that include developing structural, layout, grading, utilities, mechanical, and electrical drawings and specifying materials and the probable cost of construction.

**P. *Pre-Construction Services***

Including but not limited to;

- a. Conceptual schedules and budgets
- b. Risk identification and mitigation
- c. Constructability assessments
- d. Project phasing assessments
- e. Development and Review of drawings and specifications
- f. Value engineering
- g. Monitoring of the design process
- h. Utility coordination, including but not limited to El Paso Water, Texas Gas, El Paso Electric, AT&T, Spectrum and other utilities within the area
- i. Coordination with the Museum and Cultural Affairs Department (MCAD) for public art piece(s)
- j. Coordination with the City of El Paso Information Technology (IT), Fire, Police, Planning and Inspections, Streets and Maintenance, Sun Metro, and El Paso International Airport.
- k. Submission of developed a GMP (Guaranteed Maximum Price) that meets established budget

**Q. *Building Information Modeling (BIM)***

A digital representation of physical and functional characteristics of a facility. A BIM is a shared knowledge resource for information about a facility forming a reliable basis for decisions during its life-cycle; defined as existing from earliest conception to demolition.

**R. *Design-Build Amendment***

The Design-Build Amendment is executed after the Design-Builder completes the design phase of services and provides the Owner with a Design-Build Proposal. Upon agreement to a proposal, the Owner and Design-Builder are required to execute the Design-Build Amendment, which becomes a part of the Agreement. The Design-Build Amendment establishes the Contract Sum and Contract Time and sets forth the agreed upon design documents and other information upon which the Contract Sum and Contract Time are based. In establishing the Contract Sum, the parties can choose a Stipulated Sum or Cost of the Work (with or without a GMP). If the parties choose Cost of the Work, the Amendment establishes the items included within the Cost of the Work.

**S. *Design Builder Contingency***

Design build contractor, can utilize Design build contingency, for both design and construction contingency. Contingency can be utilized during design to assure that the design addresses full scope at project completion. During Construction, contingency can be utilized to clarify design as necessary to provide a fully functioning facility that meets all scope requirements, changes in market conditions, and issues that occur through no fault of the contractor, including supplementing subcontractors and suppliers to assure an on-time completion of the design and full scope. Contingencies shall not be used to correct construction deficiencies, rework, quality control issues or warranty, for internal staffing necessary for contractor-controlled delays and shall not be utilized to cover costs of liquidated damages.

**T. *Owner's contingency***

Owner's contingency shall be utilized solely at the Owners discretion to address and authorize additional scopes of work not included in the original requirements. Owner's contingency can be utilized to address any differing site conditions identified during construction.

**U. *Allowances***

Allowance shall be included and identified in the GMP per the direction of the City, for the sole purpose to address design and construction activities where scope is not clear and quantifiable at the time of development of the GMP proposal. Allowance shall specify the general scope for that allowance and may be subject to approval by the City. Funds remaining in an allowance upon completion of the specific SOW will transfer to Owner's contingency

**V. *Buyout savings***

The difference between the cost for portions of work budgeted on the GMP including construction Manager's Fee and the actual cost of work received by Design Builder during bidding when the cost for the portion of work is less than the amount budgeted in the GMP proposal approved by the owner.

## **ARTICLE 2 -THE WORK OF THIS CONTRACT**

- 2.01 Design-Builder shall perform all design, engineering, procurement, construction, start-up and performance testing services, and provide all material, equipment, tools and labor, necessary to complete the Project, including all the work described in and reasonably inferable from the Contract Documents. All performance items described herein shall be referred to as the "Work".

The Contract Documents for this Project include this Standard Form of Agreement and the following documents, if applicable:

Addenda issued by Design-Builder  
General Conditions  
Performance and Payment Bonds  
Insurance Rider  
Request for Qualifications (RFQ) 2023-0576R  
Request for Proposals (RFP)\_ 2023-0576R  
Technical Specifications  
Drawings  
Bidding Documents  
Design-Build Additional information document

### **ARTICLE 3 - GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT**

#### **3.01    *General***

- A.**    The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.
- B.**    The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.
- C.**    The Design-Builder shall perform the Work in strict accordance with the Design-Build Documents. This obligation shall be absolute. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.
  - 1.**    The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.
  - 2.**    Neither the Design-Builder nor any Contractor, Consultant, Engineer or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

- D.** The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Engineer, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work. In addition, the Design-Builder represents that all subcontractors performing services under this agreement have all applicable licenses by the State to perform such services.
- E.** *General Consultation*  
The Design-Builder shall schedule and conduct progress meetings with the Owner, on a weekly basis, to review matters such as procedures, progress in design and/or construction, coordination (Design-Builder shall be responsible for all utilities cost and coordination), and scheduling of the Work.
- F.** When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals in accordance with the Texas Occupations Code and all applicable legal standards of care applicable to design professionals.
- G.** The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.
- H.** *Progress Reports*
1. The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:
    - a. Work completed for the period;
    - b. Project schedule status;
    - c. Submittal schedule and status report, including a summary of outstanding Submittals;
    - d. Responses to requests for information to be provided by the Owner;
    - e. Approved Change Orders and Change Directives;
    - f. Pending Change Order and Change Directive status reports;
    - g. Tests and inspection reports;
    - h. Status report of Work rejected by the Owner;
    - i. Status of Claims previously submitted in accordance with Article 14;
    - j. Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
    - k. Current Project cash-flow and forecast reports; and
    - l. Additional information as agreed to by the Owner and Design-Builder.
  2. In addition, where the Contract Price is the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:
    - a. Design-Builder's work force report;
    - b. Equipment utilization report;

- c. Cost summary, comparing actual costs to updated cost estimates.
- d. Constructability report, and
- e. Value Engineering

**I. *Design-Builder's Schedules***

The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information and approval a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. In no circumstance shall the preparation and presentation of a schedule extending the completion beyond the time limits contained in the Design-Build Documents entitle the Design-Builder to an extension of time absent a fully executed change order extending such contract time.

The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner. The schedule shall be updated regularly and in advance of periodic Project meetings with the Owner and Owner's Engineer. Such schedules shall be posted at the Project meetings in a convenient location for review and approval by the Owner.

**J. *Certifications***

Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Engineer, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Engineer, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications.

**K. *Design-Builder's Submittals***

1. Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in this Section, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Price or extension of Contract Time based on the time required for review of Submittals.
2. By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, and (3) checked and

coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

3. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.
4. The Work shall be in accordance with approved Submittals. Work done in compliance of an approved Submittal does not relieve the Design-Builder of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents and the design intent if the Work subject to an approved Submittal fails or is deemed defective by the Owner. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals or by the Owner's approval of the Submittals.
5. All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**L. *Warranty***

The Design-Builder's warranty obligations shall be governed in accordance with Paragraph 7.17 of the General Conditions.

**M. *Royalties, Patents and Copyrights***

The Design-Builder's royalty, patent, and copyright obligations shall be governed in accordance with Paragraph 7.07 of the General Conditions.

**N. *Indemnification***

The Design-Builder's indemnify obligations shall be governed in accordance with the General Conditions.

**ARTICLE 4 - WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT**

**4.01 *General***

- A.** Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

- B.** The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; conceptual schedules and budgets, evaluation of design professionals, risk identification and mitigation, constructability assessments, project phasing assessments, reviews of drawings and specifications, monitoring of the design process, develop a Guaranteed Maximum Price that meets budget restraints and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

4.02 *Evaluation of the Owner's Criteria*

- A.** The Design-Builder shall schedule and conduct meetings with the Owner, Owner's Program Manager and any other necessary individuals or entities to discuss and review the Owner's Criteria. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues. Consideration of fast-track and phased construction shall be addressed by Design-Builder due to Owner's specific concerns relating to Project delivery and schedule constraints for the end-users of the Project.
- B.** After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include:
1. allocations of program functions, detailing each function and their square foot areas;
  2. a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
  3. a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner.
  4. recommended testing and surveys that should be conducted prior to the development of the plans and specifications
  5. Quality control programs that ensure the design meets the Owner's requirements and applicable codes, standards, etc. The Design- Builder shall submit for Owner review the following items:
    - Project reporting procedures
    - Quality Control and Testing program; and safety program
- C.** The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Design Development Documents. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.



#### 4.03 Schematic Design Documents (30% SDs) and *Design Development Documents (60% DDs)*

- A. Upon the Owner's issuance of a written consent to proceed, the Design-Builder shall prepare and submit Design Development Documents to the Owner. The Design Development Documents shall include a report identifying any deviations from the Owner's Criteria, the design development shall meet the requirements stipulated in Exhibit 1-A: Design/Construction Service Package, the design development include but not limited to the following:
1. Confirmation of the allocations of program functions;
  2. Site plan, including preliminary grading, utility infrastructure, storm water management, all proposed structures, parking and circulation.
  3. Building plans, sections and elevations;
  4. Structural system;
  5. Selections of major building systems, including but not limited to mechanical, electrical, special systems, landscaping, and plumbing systems, and
  6. Outline specifications or sufficient drawing notes describing construction materials.

The Design Development Documents should include some combination of physical study models, perspective sketches, 3-dimensional renderings or digital modeling, energy conservation approach and building systems parameters

- B. The Owner shall review the Design Development Documents and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Design Development Documents shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

#### 4.04 *Pre-Construction Services.*

- A. The Design-Builder shall execute Pre-Construction Services, as defined in this agreement throughout work prior to execution of the Design-Build Amendment and prior to construction commencing.
- B. A fully integrated Building Information Modeling ("BIM"), shall be used by Design-Builder throughout the entirety of the design and construction of the project. The parties to this agreement will use and rely the Models developed and transmitted by Design-Builder. The extent of the use of BIM in the Project shall be at the Owner's discretion.

#### 4.05 *Design-Builder's Proposal*

- A. Upon the Owner's issuance of a written consent to proceed, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:
1. A list of the Design Development Documents (60%) and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
  2. The proposed Guaranteed Maximum Price (GMP), including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Price;
  3. The proposed date the Design-Builder shall achieve Substantial Completion;
  4. An enumeration of any qualifications and exclusions, if applicable;

5. A list of the Design-Builder's key personnel, Contractors and suppliers; and
  6. The date on which the Design-Builder's Proposal expires.
- B.** Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site, evaluated the conditions and features of the site, made determinations relevant to design and construction relating to such evaluations, and become familiar with local conditions under which the Work is to be completed.
- C.** If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

## **ARTICLE 5 - WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT**

### **5.01** *General*

Unless otherwise specified herein, all work performed pursuant to this Article shall be governed in accordance with the General Conditions.

### **5.02** *Construction Documents*

- A.** Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents through 100% design and permitting. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.
- B.** The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information and approval. If the Design-Builder has included any deviations between the Construction Documents and the Design-Build Documents, the Design-Builder shall notify the Owner of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure to notify the Owner of any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

### **5.03** *Construction*

- A. Commencement.** Except as otherwise permitted in this Section, construction shall not commence prior to execution of the Design-Build Amendment.
- B. General Intent.**  
The Design-Builder shall perform all Work and construction administration services necessary to construct the Project in accordance with the Contract for Design/Build Construction and to render the Project and all of its components operational and functionally and legally usable.
- C. Order of Precedence.**  
In accordance with the approved/acceptance design and meeting all elements of the Owner's requirements.
- Any betterments accepted on the proposal
  - Any requirements of the identified owner requirements
  - Any requirements of the Owner accepted design documents

**D. Construction Supervision.**

Commencing with the award of the agreement and terminating on the date of Final Completion, the Design/Builder shall provide the services described herein.

1. The Design/Builder shall provide/ generate redlines during construction, and provide administration of the Construction Documents.

2. The Design/Builder shall supervise and direct the Work at the Site. The Design/Builder shall, at a minimum, staff the Project Site with personnel who shall:

- supervise and coordinate the Design/Builder's personnel and act as its primary liaison with the Owner;
- coordinate trade contractors and suppliers, and supervise Site construction management services;
- be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes and standards, and the Contract for Design/Build Construction;
- check, review, coordinate and distribute shop drawings and check and review materials delivered to the Site, regularly review the Work to determine its compliance with the Construction Documents and this Agreement, confer with the appropriate Owner's consultant(s) as necessary to assure acceptable levels of quality;
- prepare and maintain Project records and process documents;
- schedule and conduct weekly progress meetings with subcontractors to review such matters as jobsite safety, job procedures, construction progress, schedule, shop drawing status, submittal log, RFI logs, and other information as necessary and provide notification of, and minutes from, such meetings to Owner; schedule and conduct weekly progress meetings with the Owner to review such matters as construction progress, schedule, shop drawing status, and other information as necessary; and
- make provision for Project security to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents as required by the Design/Build General Terms and Conditions.

**ARTICLE 6 - CHANGES IN THE WORK**

**6.01**     *General*

A Change Order or Change Directive may accomplish a change or Modification in the Work after execution of the Contract, and without invalidating the Contract, subject to the limitations stated in the General Conditions.

**ARTICLE 7 - OWNER'S RESPONSIBILITIES**

**7.01**     *General*

The Owner's responsibilities shall be governed in accordance with the General Conditions.

## ARTICLE 8 - CONTRACT TIME AND COMPLETION

### 8.01 *General*

The Design-Builder's obligations with respect to the Contract Time shall be governed in accordance with the General Conditions, unless otherwise stated in this Article.

- A.** Time limits stated in the Design-Build Documents are of the essence of the Contract. In all aspects of the Work, time is of the essence of the Contract. Additionally, time limits stated in the Design-Build Documents are of the essence. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.
- B.** The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.
- C.** The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.
- D.** The date of commencement of the Work shall be stated in a Notice to Proceed issued by the Owner.
- E.** The Contract Time shall be measured from the date of commencement.
- F.** ***Substantial Completion.*** The Design-Builder shall achieve Substantial Completion of the entire Work not later than **TBD** calendar days from the date of commencement subject to and adjustments of this Contract Time as provided in the Contract Documents and Changer Orders modifying and extending this Agreement. It is specifically understood and agreed to by and between Owner and Design-Builder that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.
- G.** ***Final Completion.*** The Design-Builder shall achieve Final Completion of the entire Work not later than **TBD** calendar days from the date of commencement subject to and adjustments of this Contract Time as provided in the Contract Documents and Changer Orders modifying and extending this Agreement. It is specifically understood and agreed to by and between Owner and Design-Builder that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.
- H.** Utility transfer to the City of El Paso shall not take place until ***Final Completion.***

8.02 *Delays and Extensions of Time:* Unless otherwise set forth in this Section, Project delays shall be governed in accordance with the General Conditions.

- A.** Claims relating to time shall be made in accordance with applicable provisions of Article 12 of the General Conditions.
- B.** This Section 8.02 does not preclude recovery of damages for delay by Owner under other provisions of the Design-Build Documents.
- C.** Should the Design-Builder default on its obligations to make progress and complete the Work on time, as allowed in the Contract Documents, the Owner may withhold or deduct all costs and damages for compensable delay caused by the Design-Builder from the Contract Price. Such costs shall include any attorney's fees, and all other costs, expenses, and damages actually incurred by the Owner as a result of such delay. Owner's delay damages, may be incidental to and not directly associated with the Project.
- D.** The Design-Builder shall receive no financial compensation for delay or hindrance of the Work. In no event shall the Owner be liable to the Design-Builder for any damages arising out of or associated with any delay or hindrance to the Work, regardless of the source of the delay or hindrance. The Design-Builder's sole remedy for delay or hindrance shall be an extension of time, provided the delay must be beyond the control and without the fault of negligence of the Design-Builder.
- E.** The procedure for the determination of time extensions for unusually severe weather. In order for the Owner to award a time extension under this clause, the following conditions must be satisfied.
  - 1. The weather experienced at the Project site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month.
  - 2. The unusually severe weather must actually cause a delay to the completion of the Project.
- F.** The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the Project location and will constitute the base line for monthly weather time evaluations. The Design-Builder's activity durations provided in the progress schedule must reflect these anticipated adverse weather delays in all-weather dependent activities.

**MONTHLY ANTICIPATED ADVERSE WEATHER DELAY  
WORK DAYS BASED ON FIVE (5) DAY WORK WEEK**

JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
(1)	(3)	(0)	(1)	(1)	(2)	(0)	(8)	(5)	(1)	(1)	(2)

- G.** For the duration of the Contract, the Design-Builder shall maintain in its daily reports an accurate and contemporaneous record of the occurrence of adverse weather and resultant impact to normally scheduled Work. Delay from adverse weather unless Work on the overall Project's critical activities is prevented for 50 percent or more of the

Design-Builder's scheduled work day. The number of actual adverse weather days shall be calculated monthly. If the number of actual adverse weather delay days in a month exceed the number of days for that month as referenced above, the Owner upon notification by the Design-Builder, will convert any qualifying delays to calendar days, giving full consideration for equivalent fair-weather work days, and a modification shall be issued in accordance with the Contract.

#### **H. *Liquidated Damages (TBD)***

The Design-Builder acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed work following expiration of the Contract Time. The Design-Builder further acknowledges and agrees that, if the Design-Builder fails to meet the Substantial Completion or Final Completion dates for the completion of any portion of the Work within the Contract time, the Owner will sustain actual damages as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Owner and Design Builder agree that, if the Design-Builder shall neglect, fail, or refuse to achieve substantial completion of the Work by the Substantial Completion or Final Completion date, subject to proper extension granted by the Owner, then the Design-Builder agrees to pay the Owner the sum stipulated herein for each day in which such Work is not completed, not as penalty, but as liquidated damages, for the damages ("Liquidated Damages") that would be suffered by Owner as a result of delay for each and every calendar day that the Design-Builder shall have failed to have completed the Work as required herein. The Liquidated Damages shall be in lieu of any and all other damages which may be incurred by Owner as a result of the failure of Design-Builder to complete within the Contract Time.

1. Design-Builder agrees to pay, as liquidated damages, the sum of TBD for each consecutive calendar day after the date of Substantial Completion.
2. Design Builder agrees to pay, as liquidated damages, the sum of TBD for each consecutive calendar day after the date of Final completion.

#### **I. *Mutual Waiver of Consequential Damages***

Excluding losses covered by insurance required by the Contract Documents, the Owner and Design-Builder agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, loss of reputation, or insolvency. The Design-Builder agrees to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, losses of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. To extent there is a conflict between the terms of this provision and the terms of the General Conditions, this provision shall prevail. The Owner's reasonable rental expenses incurred are excluded from this mutual waiver.

## ARTICLE 9 – CONTRACT PRICE

### 9.01 *General*

Owner shall pay Design-Builder in accordance with the General Conditions a Contract Price equal to Design-Builder's Fee (as defined in this Article) plus the Cost of the Work (as defined in this Article), subject to the GMP established in Section 9.05 hereof and any adjustments made in accordance with the General Conditions.

### 9.02 *Design-Builder's Fee*

**A.** Design-Builder's Fee shall be **TBD** percent (TBD%) of the Cost of the Work, as adjusted in accordance with Section 9.02.B below. Such Fee shall not be earned with respect to Design-Builder's in-house personnel Soft Costs and travelling and lodging expenses and bonding and insurance cost as set forth in the Proposal of Design-Builder attached hereto. Such Soft Costs include (i) lead engineer, (ii) applications engineer, (iii) project manager, (iv) process engineer, (v) accounting personnel and services, (vi) electrical engineers, (vii) construction supervisor, (viii) travel and out-of-office living expenses, including airfare, lodging, food, ground transportation, (ix) administrative or overhead costs and expenses related to insurance and bonding not specifically required by the Contract Documents.

**B.** Design-Builder's Fee will be adjusted as follows for any Change Orders approved by Owner:

1. For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design Builder shall receive a Fee of **TBD** percent (TBD%) of the additional Costs of the Work incurred for that Change Order, exclusive of Design-Builder's Soft Costs as defined in Section 9.02.A.
3. For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, Design Builder shall receive no fee on that portion of the Cost of Work that is eliminated by any deductive Change Order.

### 9.03 *Cost of the Work*

The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

- A.** Fees for direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site, calculated on the basis of those rates set forth on Exhibit 1 to this Agreement, or, if no such rate is set forth on Exhibit 4, at prevailing rates for such personnel.
- B.** Fees for Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work at the rates set forth on Exhibit 1 to this Agreement, or, if no such rate is set forth on Exhibit 4, at prevailing rates for such personnel.

- C.** Fees for Design-Builder's personnel stationed at Design-Builder's principal offices, but only to the extent said personnel are identified in Exhibit 1 and performing the function set forth in said Exhibit and compensated in accordance with the rates set forth on Exhibit 4, or if no such rate is set forth on Exhibit 1, at prevailing rates for such personnel.
- D.** The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.
- E.** Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.
- F.** Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.
- G.** Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
- H.** Costs of removal of debris and waste from the Site.
- I.** The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.
- J.** Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.
- K.** Premiums for insurance and bonds purchased specifically for this Project as required by this Agreement or the performance of the Work.
- L.** All fuel and utility costs incurred in the performance of the Work.
- M.** Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work. Provided that if the Owner is exempt from such taxes and provides a tax exemption certificate or certificates to Design-Builder that effect, no such taxes shall apply.
- N.** Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.



- O. Deposits which are lost, except to the extent caused by Design-Builder's negligence or default under this Agreement.
- P. Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property, except to the extent caused by Design-Builder or anyone performing Work on its behalf.
- Q. Accounting and data processing costs related to the Work.
- R. Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.
- S. Costs incurred by Design-Builder to provide the payment and performance bonds, warranties and guarantees with respect to the Work as provided herein.

9.04 *Non-Reimbursable Costs* The following shall be excluded from the Cost of the Work:

- A. Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 9.03.A, 9.03.B and 9.03.C.
- B. Overhead and general expenses, except as provided for in Section 9.03 hereof, or which may be recoverable for changes to the Work.
- C. The cost of Design-Builder's capital used in the performance of the Work.
- D. If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.
- E. Any and all costs incurred by Design Builder, including but not limited to costs for project management and costs to comply with the General Conditions, to the extent that such costs would cause the GMP to be exceeded.

9.05 *The Guaranteed Maximum Price ("GMP")*

- A. *GMP Established Upon Execution of this Agreement*  
Design-Builder guarantees that the total charge to Owner for completion of all Work shall not exceed the GMP of **TBD Dollars (\$TBD)**. Additional detail regarding the GMP is included in Exhibit 1 ("GMP Exhibit"). **Design-Builder agrees that it will be responsible for paying or absorbing all costs of completing the Work which exceed the GMP, as said GMP may be adjusted in accordance with the Contract Documents, including but not limited to the markups for Change Orders set forth herein. Design-Builder's contingency, Owner's contingency and allowances**
- B. It is the intent of the parties that the GMP will be increased or decreased by any additive or deductive Change Orders that change the scope of the Work with commensurate changes to the Design Fee and Cost of Work in accordance with Article 6.

## ARTICLE 10 - COMPENSATION AND PROGRESS PAYMENTS

### 10.01 *General*

Payments to Design-Builder are governed in accordance with this Article and the General Conditions.

- A.** Design-Builder shall submit to Owner on the twenty-fifth (25th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with the General Conditions.
- B.** Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with the General Conditions, but in each case less the total of payments previously made, and less amounts properly withheld under the General Conditions.
- C.** If Design-Builder's Fee under Section 6.02.A hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.
- D.** All payments to Design-Builder exclusive of those made directly by Owner to any vendor to Design Builder will be made by electronic transfer to Design Builder's bank account. Design- Builder shall promptly provide Owner with wire transfer instructions for the making of such wire transfers to Design-Builder's bank account.
- E.** Design builder construction contingency established and approved on the GMP may be utilized by the Design Builder to cover changes arising under the following reasons:
  - Errors and omissions in the Design-Builder's design, and scoping processes provided the additional work adds previously excluded value to the Project (but expressly excluding any other costs related to the substitution of such work for previously installed work, associated design fees, mistakes of subcontractors or material suppliers, warranty work)
  - reasonable schedule recovery
  - means, methods, and materials reasonably inferred from the Construction Documents
  - work not included in the Construction Documents which is necessary to cause the Project to conform to applicable building codes but was not identified as missing during the review of Construction Documents (through no fault of the Design/Builder), but expressly excluding any legal costs and expenses, including attorney's fees and costs associated with the Project
  - The design builder may use the Design Builder contingency without the Owner's approval so long as the contingency amount does not cause the GMP to exceed. However, the Design Builder shall report to the Owner the status of the Design Builder Contingency with each application for payment. The owner will not increase the Design Builder's fee for any funds expended from Design Builder Construction contingency. If upon completion of 100% of work, the remaining amount of Design-Builder contingency shall be split up 70-30 with Owner via change order.

**F.** Owner's contingency shall be utilized solely at the Owner's discretion to address and authorize additional scope of work not included in the original requirements as well as to address any differing site conditions identified during construction. The Design-Builder shall not use Owner's contingency until authorized in writing is issue by the Owner.

If upon completion of 100% of the work, the remaining amount of Owner's contingency shall be transferred to the owner on its entirely and credited from the GMP.

**G.** Allowances identified on the GMP as listed and quantified assumptions shall be use by Design Builder when information is acquired to reconcile these items. Allowances shall be used with Owner's authorization. Any savings from the allocated allowances shall return to the Owner's contingency in accordance with the buyout process.

#### *10.02 Retainage on Progress Payments*

Owner will retain five percent (5%) of each Application for Payment. Upon Substantial Completion of the Work, the retainage shall be reduced in accordance with the Design-Build Amendment.

#### *10.03 Interest*

Timeliness and interest due or payments to the Design-Builder are subject to and controlled by Chapter 2251 of the Texas Government Code.

#### *10.04 Buyout Savings*

If Design/Builder receives bids for portions of the Work which are less than the amounts budgeted in the GMP proposal approved by Owner for such portions of the Work, such buyout savings shall first be utilized to offset shortfalls on other bid packages. If, after offsetting any shortfalls, buyout savings remain, at the time of the award of subcontractors, all buyout savings shall be returned to the Owner via "no cost" change order.

#### *10.05 Compensation for Work Performed Prior To Execution of Design-Build Amendment*

- A.** Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:
- B.** The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth in Exhibit 1.
- C.** The compensation for Reimbursable Expenses incurred by additional services when requested by the owner shall submitted for review and acceptance in accordance with the executed Design-Build Agreement.

1. Reimbursable Expenses include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- a. Transportation and authorized out-of-town travel and subsistence;
- b. Fees paid for securing approval of authorities having jurisdiction over the

- Project;
- c. Printing, reproductions, plots, standard form documents;
  - d. Postage, handling and delivery;
  - e. Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner; and
  - f. Other Project-related expenditures, if authorized in advance by the Owner.

**D.** Payments to the Design-Builder Prior To Execution of Design-Build Amendment

1. Monthly progress payments are due and payable thirty-days following submission, review and approval of the Design- Builder's invoice to Engineer and Owner.
2. Design-Builder shall maintain, at its office, a complete record of all costs and accounting data generated for services performed for a period of five following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first. Upon request of Owner, and within a reasonable time following such request, Design-Builder will make available for inspection and duplication all records required to be maintained by this section or elsewhere in the Design-Build Documents.

**10.06** *Contract Price and Payment for Work Performed After Execution of Design-Build Amendment*

- A.** For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Price in current funds as agreed in the Design-Build Amendment. Notwithstanding any terms to the contrary, the provisions of this Article and the General Conditions shall control the obligations of the Parties with respect to payments made pursuant to the Design-Build Documents.

**10.07** *Construction Trust Funds*

- A.** Contractor shall comply with the provisions of the Texas Trust Fund Act, Chapter 162 of the Texas Property Code. With respect to payments made by the Owner, such funds are considered Trust Funds and shall be safeguarded and used as represented by Design-Builder to pay any consultants and subcontractors that may be due payment pursuant to the schedule of values.

**ARTICLE 11 - PAYMENT APPLICATIONS**

- 11.01** After execution of the Design-Build Amendment this Article shall be governed by the General Conditions unless specified otherwise herein. To the extent there is a conflict between the terms of this Agreement and the terms of the General Conditions, this Agreement shall prevail.

**11.02** *Contract Price*

The Contract Price is stated in the Design-Build Amendment.

**11.03** *Applications for Payment*

Applications for Payment shall be governed in accordance with the General Conditions.

11.04 *Progress Payments*

Progress Payments shall be governed in accordance with the General Conditions.

**A.** After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time limits required by the General Conditions.

**B.** The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by the General Conditions.

11.05 *Failure of Payment*

Failure of payment by Owner within the time limits required by the General Conditions shall entitle the Contractor to the remedies contained in Article 16 of the General Conditions.

## **ARTICLE 12 - FINAL COMPLETION**

12.01 Final completion shall be governed in accordance with the General Conditions, except as otherwise set forth in this Article.

**A.** Timely final completion is an essential condition of this contract. Design-Builder agrees to achieve final completion of the Work within 30 days of the designated or extended substantial completion date. The date of Substantial Completion shall be fixed by this Agreement, unless modified by Change Order, and memorialized by a Certificate of Substantial Completion as provided in the General Conditions.

## **ARTICLE 13 - OWNERSHIP OF WORK PRODUCT, COPYRIGHTS AND LICENSES**

**13.01** General Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. As part of the total compensation which Owner has agreed to pay Design-Builder for the professional services to be rendered under this Contract, Design-Builder agrees that all finished and unfinished “Instruments of Service” including but not limited to documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, preliminary reports, reports, bid packet/construction contract documents/advertisement for bids incorporating any Owner standard provisions provided by Design-Builder, all of which are produced by Design-Builder and paid for by Owner are, and will remain, the property of the Owner. Architect will furnish Owner with electronic copies in .PDF format, to the extent they are available, of all of the foregoing to facilitate coordination; however, ownership of the underlying work product shall remain the intellectual property of the Design-Builder. Design-Builder shall have the right to use such work products for Design-Builder’s purposes on this Project. However, such documents are not intended to be suitable for reuse by Owner or others. The above notwithstanding, Design-Builder shall retain all rights in its standard drawing details, designs, specifications, databases, computer software and any other proprietary and intellectual property information provided pursuant to this Contract.

**13.02** The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

**A.** The Design-Builder shall obtain non-exclusive licenses from the Architect, Engineer, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 13.

**B.** In the event the Owner alters the Instruments of Service without the author's written authorization, the Owner releases the Design-Builder, Architect, Engineer, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from to such alteration. The terms of this Section shall not apply if the Owner rightfully terminates this Agreement for cause

## **ARTICLE 14- CLAIMS AND DISPUTE RESOLUTION**

14.01 General Claims and dispute resolution will be governed in accordance with the General Conditions.

## **ARTICLE 15 - BONDS AND INSURANCE**

### *15.01 Insurance*

Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Rider **Exhibit 3** attached hereto and in accordance with Article 6 of the General Conditions.

### *15.02 Bonds and Other Performance Security*

**A.** In accordance with Article 6 of the General Conditions and Texas Government Code chapter 2253, Design-Builder shall provide performance bond and labor and material payment bonds.

## **ARTICLE 16 - MISCELLANEOUS PROVISIONS**

### *16.01 Governing Law*

The Contract shall be governed by the law of the state of Texas.

### *16.02 Venue*

This Agreement is entered into and performed in El Paso County, Texas, and the Design-Builder and the Owner agree that mandatory venue for any legal action related to this contract shall be in the District Courts of El Paso County, Texas.

### *16.03 Successors and Assigns*

The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Neither party to the Contract shall assign the Contract in whole or in part without the express written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract and the attempted assignment shall be of no legal force or effect as to the other party.

16.04 *Written Notice*

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice sent or transmitted by electronic mail or facsimile must be actually received to be considered delivered and to comply with notice requirements herein. Transmission alone by electronic mail or facsimile does not constitute delivery.

16.05 *Rights and Remedies*

**A.** Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**B.** No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

16.06 *Interpretation*

Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

*(Signatures Begin on the Following Page)*

This Agreement is entered into as of the day and year written above (“The Date of Execution”):

**OWNER:**

City of El Paso, Texas

**DESIGN-BUILDER:**

Jordan Foster Construction, LLC

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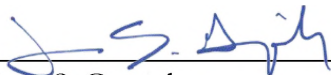
Cary Westin  
Interim City Manager

---

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

**APPROVED AS TO FORM:**

---



Juan S. Gonzalez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

---



Yvette Hernandez, City Engineer  
Capital Improvement Department



## Exhibit 1-A – DESIGN/CONSTRUCTION SERVICE PACKAGE

# DESIGN CRITERIA & REQUIREMENTS

- A. EPIA has prepared a schematic layout and cross-section of the proposed concept to meet EPIA's project goals, refer to Exhibit A. These schematic documents shall be used for reference only. The schematic layout and cross-section is based on EPIA's requirements and stakeholder meetings within City Government, and generally include the following:
  - 1. Minimum of 12-foot-wide traffic lanes.
  - 2. Roundabout and intersection improvements.
  - 3. Shared use path or dedicated bike lane.
  - 4. Pedestrian accessible routes.
  - 5. Dark sky compliant illumination improvements.
  - 6. Landscaping and irrigation improvements.
  - 7. Coordination with Ft. Bliss and EPIA on proposed construction at Constitution Avenue and Bert Williams Boulevard.
  - 8. Relocation of Utilities to meet new design.
  - 9. Utility Improvements (Water, Sewer, and Drainage).
- B. Design shall meet all City requirements for the project and shall be performed in phases as presented in the project schedule.
- C. The firm is responsible for submitting a turnkey design product. The firm shall be responsible for providing State of Texas licensed designers required by the state to perform this type of project design. The firm shall follow TxDOT design specifications and procedures for the development of this project and comply with all laws, regulations and policies set by the City of El Paso and TxDOT. The irrigation design shall be designed by a licensed irrigator registered in the State of Texas and shall comply with the City of El Paso Design and Construction Standards for park facilities.
- D. Aside from complying with local building codes, the firm shall comply, at a minimum, with the City of El Paso Design Standards for Construction and Grading Ordinance, City of El Paso Design and Construction Standards for Park Facilities, City of El Paso Capital Improvement Department Drawing Guidelines, National Association of Transportation Officials Urban Bikeway Design and Urban Street Design Guide, and the Dark Sky Ordinance as applicable.
- E. The firm is charged with ensuring the project design follows all MUTCD, AASHTO, federal, state, and local regulations and ordinances.
- F. Early in the design the firm shall coordinate selection of materials and equipment with the City support departments.

## Design Phase

- A. Design deliverables for the Project shall include all items listed below. If the Design-Build Team proposes a different approach, it must be indicated in the Project Delivery Approach narrative in the Request for Proposal.
  - a) Roadway Plan & Profiles.
  - b) Hydraulic/Hydrologic Analysis
  - c) Drainage Plan.
  - d) Illumination Plan.
  - e) Landscape and Irrigation Plan.
  - f) Signage and Striping Plan.
  - g) Utility Improvements Plan.
  - h) Technical Specifications.

## Design Phase Deliverables

- A. The deliverables provided by the Design-Build team as part of the Design Services are described in the following subsections.

### Design Development Submittal (60% Complete).

- A. The Design-Build team shall submit the design development documents for EPIA review and approval. Project schedule updates, proposed substitution, Value Engineering or other innovative solutions to reduce costs and/or schedule shall be provided/explored.
- B. Completion of the 60% Design is anticipated to be 60-business days after the preconstruction phase notice to proceed is issued (Stage 1). The Design-Build Team shall submit five (5) hard copies of the design development documents for review and comments and upload an electronic version (PDF format) of the submittals into a web-based software.
- C. The Design-Build Team will meet with EPIA to review the constructability program to identify and document project cost and savings opportunities.
- D. **60% Design:** The Design-Build Team shall prepare and submit the 60% design development package to include but not limited to the following:
  - 1. Coversheet (80% complete);
  - 2. General and Construction Notes (80% complete).
  - 3. Construction Phasing Plan (60% complete).
  - 4. Traffic Control Plans (60% complete).
  - 5. Horizontal Control Plan (100% complete).
  - 6. Existing Utilities Plan (60% complete).
  - 7. Roadway Plan and Profiles (60% complete).
  - 8. Intersection Plans (60% complete).
  - 9. Utility Plan and Profiles (60% complete).
  - 10. Landscape and Irrigation Plans (60% complete).
  - 11. Illumination Plans (60% complete).
  - 12. Drainage Plan (60% complete).
  - 13. Signage and Striping plans (60% complete).
  - 14. Construction Details (60% complete).
  - 15. Utility Details (60% complete).

16. Landscape Details (60% complete).
  17. Irrigation Details (60% complete).
  18. List of Standard Specifications (60% complete).
  19. List of Special and/or Supplemental Specifications (60%).
  20. Storm Water Pollution Prevention Plan (60% complete).
  21. Geotechnical Study and Recommendations (100% complete).
  22. Subsurface Utility Engineering quality level of effort C for all known utilities (60% complete).
  23. Project Risk Matrix (60% complete).
- E. If EPIA considers the submittal as not compliant to the above required completion percentages, the Design-Build Team must resubmit as per the above-mentioned requirements.
- F. A **PRELIMINARY Guaranteed Maximum Price (GMP)** shall be provided to the City for review. The Preliminary GMP will be used as a reference to establish budgets only.\
- G. Upon EPIA's review and comment process, the Design-Build Team shall respond to the comments within 10 business days.

#### Pre-Final Construction Documents (90% Complete).

After EPIA's approval of the Design Development submittal package, the Design-Build team shall submit the Pre-Final Construction Documents for EPIA review and approval. Project schedule updates, final utility coordination shall be provided.

- A. Completion of the 90% Design is anticipated to be 30-business days after the approval of the 60% package. The Design-Build Team shall submit five (5) hard copies of the design development documents for review and comments and upload an electronic version (PDF format) of the submittals into a web-based software.
- B. **90% Design:** The Design-Build Team shall prepare and submit the 95% design development package to include but not limited to the following:
1. Coversheet (95% complete).
  2. General and Construction Notes (90% complete).
  3. Construction Phasing Plan (90% complete).
  4. Traffic Control Plans (100% complete).
  5. Horizontal Control Plan (100% complete).
  6. Existing Utilities Plan (100% complete).
  7. Roadway Plan and Profiles (95% complete).
  8. Intersection Plans (90% complete).
  9. Utility Plan and Profiles (90% complete).
  10. Landscape and Irrigation Plans (90% complete).
  11. Illumination Plans (90% complete).
  12. Drainage Plan (90% complete).
  13. Signage and Striping plans (90% complete).
  14. Construction Details (90% complete).
  15. Utility Details (90% complete).
  16. Landscape Details (90% complete).
  17. Irrigation Details (90% complete).
  18. List of Standard Specifications (100% complete).
  19. List of Special and/or Supplemental Specifications (100%).

20. Technical Specifications (General, Special and/or Supplemental) (90%).
21. Storm Water Pollution Prevention Plan (100% complete).
22. Geotechnical Study and Recommendations (100% complete).
23. Subsurface Utility Engineering quality level of effort C for all known utilities (90% complete).
24. Project Risk Matrix (90% complete).
  - a. If EPIA considers the submittal as not compliant to the above required completion percentages, the Design-Build Team must resubmit as per the above-mentioned requirements.
- C. Upon EPIA's review and comment process, the Design-Build Team shall respond to the comments within 10 business days.
- D. The **FINAL Guaranteed Maximum Price (GMP)** will be provided to the City for review. The City reserves the right to not issue an NTP for the remainder of the project. Upon City concurrence of GMP and design development, City Council will issue and execute a Design-Build agreement.

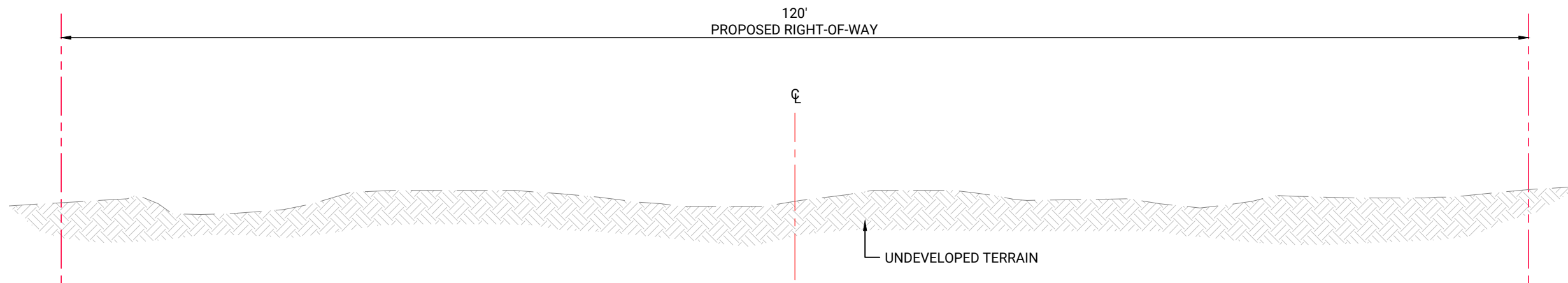
#### Final Construction Documents (100% Complete).

After EPIA's approval of the Pre-Final Construction Documents submittal package, the Design-Build team shall submit the Final Construction Documents for EPIA review and approval.

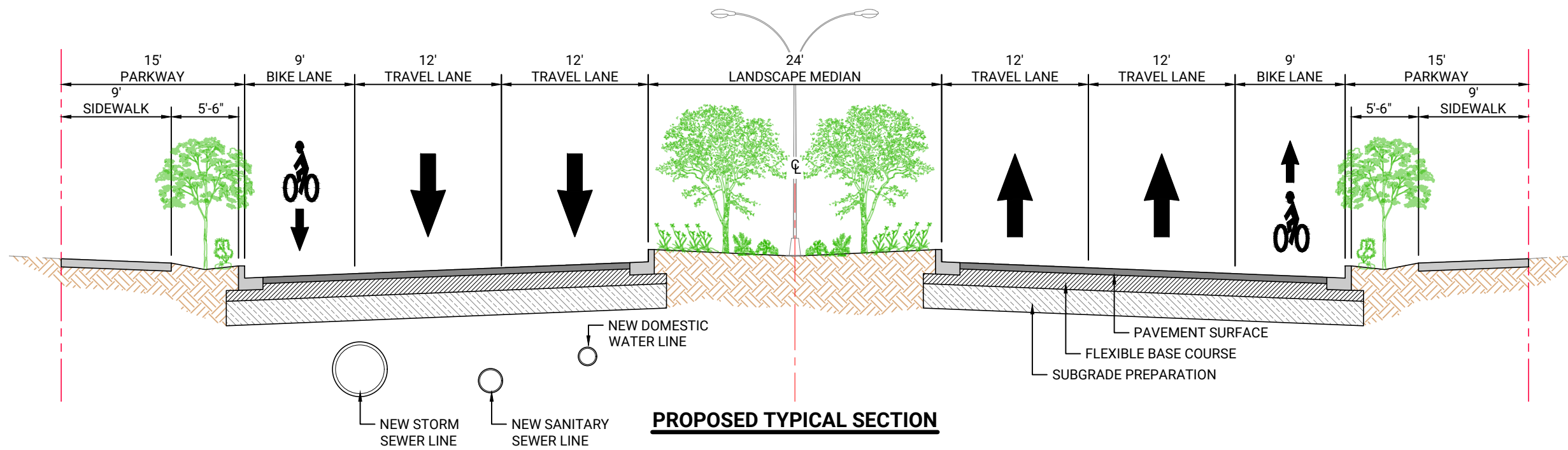
- A. **100% Design:** After EPIA's approval of the 95% design package, the Design-Build Team shall prepare and submit the 100% Design and Construction Documents to include but not limited to the following:
  1. Coversheet (100% complete).
  2. General and Construction Notes (100% complete).
  3. Construction Phasing Plan (100% complete).
  4. Traffic Control Plans (100% complete).
  5. Horizontal Control Plan (100% complete).
  6. Existing Utilities Plan (100% complete).
  7. Roadway Plan and Profiles (100% complete).
  8. Intersection Plans (100% complete).
  9. Utility Plan and Profiles (100% complete).
  10. Landscape and Irrigation Plans (100% complete).
  11. Illumination Plans (100% complete).
  12. Drainage Plan (100% complete).
  13. Signage and Striping plans (100% complete).
  14. Construction Details (100% complete).
  15. Utility Details (100% complete).
  16. Landscape Details (100% complete).
  17. Irrigation Details (100% complete).
  18. List of Standard Specifications (100% complete).
  19. List of Special and/or Supplemental Specifications (100%).
  20. Technical Specifications (General, Special and/or Supplemental) (100%).
  21. Storm Water Pollution Prevention Plan (100% complete).
  22. Geotechnical Study and Recommendations (100% complete).
  23. Subsurface Utility Engineering quality level of effort B for all known utilities (100% complete).

24. Project Risk Matrix (100% complete).
- B. Completion of the Construction Documents is anticipated to be 10-business days after EPIA's approval of the 95% Design Package. Upon the completion of the Construction Documents package, the Design-Build Team shall submit four (4) copies of the final construction documents and upload pdf of submittals into web-based software.

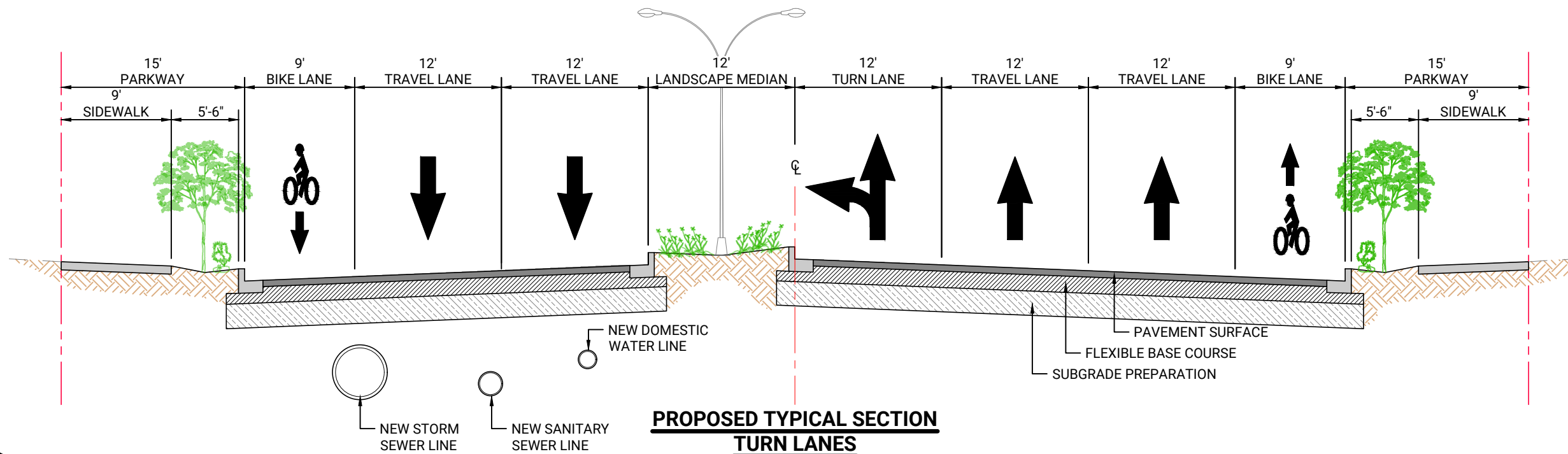
## EXHIBIT A PROPOSED TYPICAL CROSS-SECTIONS



**EXISTING TYPICAL SECTION**



**PROPOSED TYPICAL SECTION**



**PROPOSED TYPICAL SECTION  
TURN LANES**

**EXHIBIT A  
TYPICAL ROADWAY  
SECTIONS**



**Exhibit 1-Design Cost Detail and Schedule and Rates of Members of Design-Builder Team**



7700 C.F. Jordan Drive  
El Paso, TX 79912  
P: 915.877.3333  
F: 915.877.3999

A Foundation of Excellence<sup>SM</sup>

May 2, 2024

Ms. Claudia Garcia  
Purchasing and Strategic Sourcing Department  
City of El Paso, City 1  
300 N. Campbell, 1<sup>st</sup> Floor  
El Paso, Texas 79901

**RE: 2023-0576R DESIGN-BUILD FOR GEORGE PERRY BOULEVARD EXTENSION- NEGOTIATED COST PROPOSAL**

Dear Ms. Garcia:

Jordan Foster Infrastructure is pleased to provide our updated cost proposal for the above-mentioned project. We have broken down our proposal below per the Request for Proposals, Evaluation Factor "Fee for Work Prior to Execution of Design-Build Agreement" on Page 3 of 4 of the requests.

**SCOPE OF WORK:**

- A. Evaluation of Owners Criteria with RFP - \$33,840.48**
- B. Geotechnical Investigation - \$21,262.50**
- C. Survey Investigation - \$20,344.35**
- D. Pre-Construction Services - \$790,800.53**
- E. KCI Reimbursables – \$142,914.36**
- F. Parkhill Reimbursables (5%) - \$22,655.26**

**Lump Sum Total: \$1,031,681.81**

We offer this proposal in its entirety, if a change of scope of work is required Jordan Foster Infrastructure will price accordingly. Please review this proposal at your convenience and should you have any questions or comments, please feel free to contact our office at 915-877-3333.

Sincerely,

***Matt Hardison***

Matt Hardison  
Area Manager

## Jordan Foster Construction Overall Breakdown

### Totals

Engineering Cost      JFC Cost      JFC Markup 4.33%      Total

<b>Evaluation</b>	\$ 16,686.00	\$ 15,750.00	\$ 1,404.48	\$ 33,840.48
<b>Geotech</b>	\$ 20,250.00		\$ 876.83	\$ 21,126.83
<b>Survey</b>	\$ 19,500.00		\$ 844.35	\$ 20,344.35
<b>Precon Services</b>	\$ 696,489.00	\$ 61,491.00	\$ 32,820.53	\$ 790,800.53
<b>KCI Reimbursable</b>	\$ 136,983.00		\$ 5,931.36	\$ 142,914.36
<b>Parkhill Reimbursable with 5% Markup</b>	\$ 21,715.00		\$ 940.26	\$ 22,655.26

**\$ 1,031,681.81**

### Jordan Foster Construction - George Perry Extension

	Principle	Operations Manager	Sr. Estimator	Jr. Estimator	Project Manager	Quality Control	Superintendent	Scheduler	Direct Expenses	Totals
Hourly Rate	\$ 250.00	\$ 175.00	\$ 150.00	\$ 115.00	\$ 120.00	\$ 100.00	\$ 100.00	\$ 115.00		
Evaluation of Owners Criteria	4	35	4	10	40		10	5		
	\$ 1,000.00	\$ 6,125.00	\$ 600.00	\$ 1,150.00	\$ 4,800.00	\$ -	\$ 1,000.00	\$ 575.00	\$ 500.00	\$ 15,750.00
Schematic Design	2.5	20	20	40	40	5	10	10		
	\$ 625.00	\$ 3,500.00	\$ 3,000.00	\$ 4,600.00	\$ 4,800.00	\$ 500.00	\$ 1,000.00	\$ 1,150.00	\$ 850.00	\$ 20,025.00
Design Development	2.5	25	30	50	35	5	20	10		
	\$ 625.00	\$ 4,375.00	\$ 4,500.00	\$ 5,750.00	\$ 4,200.00	\$ 500.00	\$ 2,000.00	\$ 1,150.00	\$ 1,125.00	\$ 24,225.00
Pre-Construction Services	2	18	20	30	20	5	5	20		
	\$ 500.00	\$ 3,150.00	\$ 3,000.00	\$ 3,450.00	\$ 2,400.00	\$ 500.00	\$ 500.00	\$ 2,300.00	\$ 1,441.00	\$ 17,241.00
Fully Integrated Bim		0			0					
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

		Page
<b>George Perry Blvd. Extension Fee - Estimate Total</b>	<b>\$ 911,623</b>	2
<b>Evaluation of Owner's Criteria with RFP</b>	<b>\$ 16,686</b>	3, 5, 6, 7, 8
<b>Geotechnical Investigation*</b>	<b>\$ 20,250</b>	9
WSP		
<b>Survey Investigation*</b>	<b>\$ 19,500</b>	9
Brock & Bustillos		
<b>Pre-Construction Services</b>	<b>\$ 696,489</b>	
Discipline - Roadway	\$ 296,912	3, 4
Discipline - Drainage	\$ 173,098	5
Discipline - Water & Wastewater	\$ 85,156	6
Discipline - Landscape	\$ 50,616	7
Discipline - Electrical	\$ 90,707	8
<b>Reimbursable Consultants (KCI)*</b>	<b>\$ 136,983</b>	11
<b>Reimbursable Expenses (w/ 5% Markup)</b>	<b>\$ 21,715</b>	11, 12

\* The Geotechnical and Survey Investigation proposals are provided in Appendix A, B, and C, respectively.

## Parkhill

### Project Fee and Budget Sheet

(Hourly/Billing Rates)

Today's Date: May 1st, 2024

Prepared By: Sandra Gutierrez, PE  
Principal: Mike Ramirez, PE  
Project Manager: Corky Neukam, PE

Project Name: George Perry Blvd. Extension  
Project Number: 40631.23  
Task/Discipline: Multiple  
Projected Start Date: June 10th, 2024

Fee (Revenue) Type: Hourly Rate w/Max  
Markup on Direct Expenses: 5.00%  
Markup on Reimbursables: 5.00%

#### Fee Costs Summary

(Profit and Markup Included in Total Fee)

Labor Cost:	\$713,175
Direct Consultants:	\$39,750
Direct Expenses:	\$0
Reimbursable Consultants:	\$136,983
Reimbursable Expenses:	\$20,681
<b>Total Fee:</b>	<b>\$911,623</b>

#### Fee Summary

(OH and Profit in Labor, Markup included in Directs and Reimbursables)

Labor:	\$713,175
Directs:	\$39,750
Subtotal:	\$752,925
Reimbursables:	\$158,698
<b>Total Fee:</b>	<b>\$911,623</b>

## Labor Costs

Project: George Perry Blvd. Extension

Project Number: 40631.23

Task/Discipline: Roadway

Current Fee: \$911,623

Category	Staff Title - Level	Hourly/Billing Rate	1	2	3	4	5	6	7	8	Total	
			CivilEngineers	CivilEngineers	CivilEngineers	CivilEngineers	SupportEmployees	SupportEmployees				
			Sector Director Civil-PL7	Senior Civil Engineer-PL6	Civil Project Engineer-PL5	Civil Engineer-PL3	Engineering Technician-SS5	Project Assistant-SS6	QA/QC - JH			
Task/Discipline	Subtask/Phase	Trips	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours		
Evaluation of Owner's Criteria with RFP											7	\$ 8,182.00
Coordination			1	2	4						6	
Meeting with Designers				2	4						16	
Development of Engineer's Design Report			1	2	6			7			4	
Meeting with Client				2	2						33	
Subtotal			2	8	16	0	0	7	0	0		
Project Management & Administration												\$ 128,806.00
Project Setup			2	8	2			4			16	
General Project Management (3 Months)				96				8			104	
Special meetings w/City (assume 3)				5	6		3	4			18	
General Project Communication					18						18	
Weekly phone calls with client (1 hr/week, 12 weeks)				16							16	
Deliverable Review Meetings (30, 60)				5	2			6			13	
Sub Consultant Coordination				8							8	
SUE (Level A investigation)				4							4	
Geotechnical & Pavement Design coord				4							4	
Monthly Status Reports and schedule updates (3)				4							4	
QA/QC									40		40	
OTS	12	12		144	20				12		188	
Coordinate Deliverable (30, 60)					16						16	
Coordinate Constructability Review (60)					8						8	
Subtotal	12		14	294	72	0	3	22	52	0	457	
Data Collection/Research												\$ 9,432.00
Gather as-builts and other applicable plans					2	4					6	
Gather Engineering Studies					2	4					6	
Perform Site Visits	2			16	8						24	
Subtotal	2	0	0	16	12	8	0	0	0	0	36	
Topographic Survey												\$ 2,976.00
Coordinate limits and special conditions					2	4					6	
Review survey deliverables					2	4	3				9	
Subtotal	0	0	0	0	4	8	3	0	0	0	15	
Other (Stakeholder Exhibits)												\$ 7,548.00
Exhibits for other Stakeholders as necessary					2	4	16				22	
Prepare, attend, present (assume 2)			2		8	8					18	
Subtotal	0	2	0	0	10	12	16	0	0	0	40	
30% Design Phase												\$ 26,880.00
Establish Roadway Design Criteria					6	6					12	
Typical Sections Concept					4	4	8				16	
Preliminary Geometric Design					8	8	32				48	
Preliminary Geometric Design (vertical)					8	8	32				48	
Preliminary Schematic					6	4	32				42	
Subtotal	0	0	0	0	32	30	104	0	0	0	166	
Utilities												\$ 6,336.00
Utility Coordination meetings (assume 4 on site)	4				8						8	
Utility Conflict Resolution					8	8	4				20	
Subtotal	4	0	0	0	16	8	4	0	0	0	28	
60% Roadway Design												\$ 55,820.00
CADD Project Set up							2				2	
Roadway Model setup						12	4				16	
Existing Roadway Typical Sections						4	8				12	

		1	2	3	4	5	6	7	8		
Category		CivilEngineers	CivilEngineers	CivilEngineers	CivilEngineers	SupportEmployees	SupportEmployees				
Staff Title - Level		Sector Director Civil-PL7	Senior Civil Engineer-PL6	Civil Project Engineer-PL5	Civil Engineer-PL3	Engineering Technician-SS5	Project Assistant-SS6	QAQC - JH			
Hourly/Billing Rate		\$312.00	\$291.00	\$270.00	\$192.00	\$120.00	\$130.00	\$312.00			
Task/Discipline	Subtask/Phase	Trips	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Total
Ultimate Roadway Typical Sections					6	8					14
Interim Roadway Typical Sections					6	8					14
Horizontal Geometric Design					20						20
Vertical Geometric Design					24						24
Ultimate Grading Design					16						16
Interim Grading Design					16						16
Intersection Design					24						24
Signing and Pavement Marking Design					16	6					22
Revisions following review meetings/comments				8	16	24					48
Compile General Notes				6		4	8				18
Compile Specifications				38			18				56
Subtotal		0	0	0	52	160	64	26	0	0	302
Deliverables											
PS&E General Sheets (4)				4		16					20
Roadway Sheets & Details (42 sheets)				12	22	252					286
Sign & Pavement Marking Sheets & Details (9 sheets)				5	6	12					23
Additional Contract Documents				6			8				14
Cross sections				16	24	24					64
Subtotal		0	0	0	43	52	304	8	0	0	407
Construction Phase Services											
GMP TBD											0
Subtotal		0	0	0	0	0	0	0	0	0	0
Labor Subtotals	Hours	Trip Count	18	18	318	257	278	498	63	52	1484
	Salary		\$5,616	\$92,538	\$69,390	\$53,376	\$59,760	\$8,190	\$16,224		\$305,094



## Labor Costs

Project: George Perry Blvd. Extension

Project Number: 40631.23

Task/Discipline: Drainage

Current Fee: \$911,623

Category	Staff Title - Level	Hourly/Billing Rate	1	2	3	4	5	6	7	8	Total	
			CivilEngineers	CivilEngineers	CivilEngineers	OtherProfessionals	SupportEmployees					
			Team Leader Civil-PL6	Senior Civil Engineer-PL6	Civil Engineer-PL3	Technologist-PL5	Project Assistant-SS6					
			\$312.00	\$291.00	\$192.00	\$184.00	\$130.00					
Task/Discipline	Subtask/Phase	Trips	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours		
Evaluation of Owner's Criteria with RFP												\$ 3,804.00
Coordination				2							2	
Meeting with Designers				2							2	
Development of Engineer's Design Report		1		6							7	
Meeting with Client				2							2	
Subtotal		0	1	12	0	0	0	0	0	0	13	
Drainage Plans												\$ 173,098.00
Internal and Over-the-shoulder Meetings				24							24	
Drainage Area Map			4	8	40	54					106	
Drainage Plan & Profiles			18	34	136	102					290	
Hydraulic Calculations			4	8	16						28	
Drainage Details			8	20	32	48					108	
SW3P (Erosion Control Plan)			8	16	36	72					132	
SW3P Details			4	8	16	24					52	
Technical Specifications			8	40			16				64	
Subtotal		0	54	158	276	300	16	0	0	0	804	
Labor Subtotals	Hours	Trip Count	0	55	170	276	300	16	0	0	0	817
	Salary			\$17,160	\$49,470	\$52,992	\$55,200	\$2,080				\$176,902

Category		1							2		3		4		5		6		7		8	
		CivilEngineers		CivilEngineers		CivilEngineers		CivilEngineers		OtherProfessionals		SupportEmployees										
		Sector Director Civil-PL7		Professional Civil Engineer-PL5		Senior Civil Engineer-PL6		Civil Engineer-PL1		Technologist-PL4		Support Staff-SS6										
		Hourly/Billing Rate		\$312.00		\$270.00		\$291.00		\$139.00		\$165.00		\$130.00								
Task/Discipline	Subtask/Phase	Trips	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Total		
Evaluation of Owner's Criteria with RFP																					\$ 1,662.00	
Coordination				1																1		
Meeting with Designers				1																1		
Development of Engineer's Design Report			1	1																2		
Meeting with Client				2																2		
Subtotal		0	1	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6		
Water & Wastewater Plans																					\$ 85,156.00	
Utility exhibits coordination				8				12												20		
Utility coordination meetings (3 meetings)				4				4												8		
Meetings Over the shoulder and Internal				20		4														24		
60% Specifications			6	20				60				16								102		
60% Plans			8	60				80		120										268		
Modeling						20														20		
Subtotal		0	14	112	24	156	120	120	16	0	0	0	0	0	0	0	0	0	0	442		
Labor Subtotals		Hours	Trip Count	0	15	117	24	156	120	16	0	0	0	0	0	0	0	0	0	448		
		Salary			\$4,680	\$31,590	\$6,984	\$21,684	\$19,800	\$2,080										\$86,818		

Category			1		2		3		4		5		6		7		8	
			Landscape Architect Planners		Landscape Architect Planner													
			Project Landscape Architect - PL VII		Landscape Architectual Professional - PL II													
			Staff Title - Level															
Hourly/Billing Rate		\$298.00		\$123.00														
Task/Discipline	Subtask/Phase	Trips	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Total		
Evaluation of Owner's Criteria with RFP																2	\$ 1,211.00	
Coordination			1	1												1		
Meeting with Designers				1												2		
Development of Engineer's Design Report			1	1												2		
Meeting with Client				2												2		
Subtotal		0	2	5	0	0	0	0	0	0	0	0	0	0	0	7		
Landscape Plans																	\$ 50,616.00	
Internal and Over-the-shoulder Meetings			24													24		
Utility coordination			4													4		
Schematic			4	16												20		
Specs			12													12		
60% Design			8	72												80		
60% sheets			24	120												144		
Specs			8													8		
Subtotal		0	84	208	0	0	0	0	0	0	0	0	0	0	0	292		
Labor Subtotals		Hours	Trip Count	0	86	213	0	0	0	0	0	0	0	0	0	299		
		Salary			\$25,628	\$26,199										\$51,827		

Labor Costs

Project: George Perry Blvd. Extension

Project Number: 40631.23

Task/Discipline: Electrical

Current Fee: \$911,623

Category	Staff Title - Level	Hourly/Billing Rate	1	2	3	4	5	6	7	8	Total	
			ElectricalEngineers	ElectricalEngineers	Electrical Engineer	Other Professional	Support Empolyees					
			Senior Electrical Engineer-PL7	Senior Practice Leader Elec-PL6	Electrical Engineer - PL III	Technologist - PL III	Support Staff - SS VI					
			\$312.00	\$303.00	\$187.00	\$140.00	\$130.00					
Task/Discipline	Subtask/Phase	Trips	Hours	Hours	Hours	Hours	Hours					
Evaluation of Owner's Criteria with RFP												\$ 1,827.00
Coordination				1							1	
Meeting with Designers				1							1	
Development of Engineer's Design Report		1		1							2	
Meeting with Client				2							2	
Subtotal		0	1	5	0	0	0	0	0	0	6	
Electrical Plans												\$ 90,707.00
Internal and Over-the-shoulder Meetings				24							24	
Data collection				4	6						10	
Utility coordination				24	15						39	
Schematic				24	40	42					106	
Specs				6	14		4				24	
60%		8	20	48	40						116	
Specs		2	12	20			8				42	
Coordination w/ El Paso Electric		3	16	40							59	
Subtotal		0	13	130	183	82	12	0	0	0	420	
Labor Subtotals	Hours	Trip Count	0	14	135	183	82	12	0	0	0	426
	Salary			\$4,368	\$40,905	\$34,221	\$11,480	\$1,560				\$92,534

<b>Direct Expenses</b>		Project: George Perry Blvd. Extension	Project No: 40631.23	Task: Multiple	Current Fee: \$911,623
Expenses included in lump sum fee. Not billed to client.					
<b>Direct Consultant Costs</b>					<b>Amount</b>
611 Structural Consultant					
612 Mech/Elec Consultant					
613 Environ/Civil Consultant					
614 Architectural Consultant					
<b>615 Testing Consultant (Geotech, CMT, TAB, etc.) (WSP)</b>					<b>\$20,250</b>
<b>616 Surveying Consultant (Brock &amp; Bustillos)</b>					<b>\$19,500</b>
617 Interior Design Consultant					
618 Other Consultant - Kitchen / Food Consultant					
618 Other Consultant - Acoustical Consultant					
618 Other Consultant - AV/ IT Consultant					
618 Other Consultant					
<b>Total Direct Consultants</b>					<b>\$39,750</b>
<b>Direct Expense Costs</b>					
621 Travel					
<b>Motel</b>	<b>Days @</b>	<b>1 Men @</b>	<b>/Man-day</b>	<b>=</b>	<b>\$0.00</b>
Air Travel	Air Fare @	Men @	/Man	=	\$0.00
Parking	Days @	/Day		=	\$0.00
<b>Car Rental</b>	<b>Days @</b>	<b>\$250.00 /Day</b>		<b>=</b>	<b>\$0.00</b>
<b>Car Rental Fuel</b>	<b>Gallons @</b>	<b>\$3.500 @</b>	<b>Trips</b>	<b>=</b>	<b>\$0.00</b>
Subtotal					\$0
622 Reproductions					
Blackline Prints					\$0.00
34" x 22"	Shts @	\$2.50 /Sht @	Sets =		\$0.00
36" x 24"	Shts @	\$2.75 /Sht @	Sets =		\$0.00
42" x 30	Shts @	\$3.25 /Sht @	Sets =		\$0.00
Other	sf @	\$0.55 /sf @	Sets =		\$0.00
Mounting Foam Board	Boards @	\$10.00 /ea @			\$0.00
Printing:					
Set Up Fee	Originals @	\$0.15 /Sht @	Submittals =		\$0.00
8-1/2" x 11" B&W	Originals @	\$0.09 /Sht @	Sets =		\$0.00
<b>8-1/2" x 11" Color</b>	<b>Originals @</b>	<b>\$0.603 /Sht @</b>	<b>Sets =</b>		<b>\$0.00</b>
11" x 17" B&W	Originals @	\$0.18 /Sht @	Sets =		\$0.00
<b>11" x 17" Color</b>	<b>Originals @</b>	<b>\$1.500 /Sht @</b>	<b>Sets =</b>		<b>\$0.00</b>
Binding Cost	Sets @	\$2.00 /Set	=		\$0.00
Laminating	Shts @	\$2.00 /Sht	=		\$0.00
Scan to file					
Burn to CD/DVD	CD/DVD @	\$13.50 /each	0 =		\$0.00
Scan Specs	Originals @	\$0.15 /Sht	0 =		\$0.00
Scan Drawings	Originals @	\$1.50 /Sht	0 =		\$0.00
Subtotal					\$0.00
623 Models/Renderings/Photos					\$0
Shots @ /Shot					

624 Telephone	Calls @	/Call	\$0
<b>625 Meals</b>	<b>Days @</b>	<b>Men @</b>	<b>/Man-day</b>
626 Field Supplies			\$0
628 Postage	Mailings @	/Mailing (Standard)	\$0
628 Postage	Mailings @	/Mailing (Overnight)	\$0
629 Publications			
630 Misc Reimbursable Exp			
632 Temporary Personnel			
634 Office Supplies			
635 CADD			
636 Field Equip Rental			\$0
639 License & Regulation Fee			
643 NM Gross Receipt Tax			
647 Computer Supplies			\$0
<b>Total Direct Expenses</b>			<b>\$0.00</b>

Reimbursable Expenses		Project: George Perry Blvd. Extension	Project No: 40631.23	Task: Multiple	Current Fee: \$911,623
Expenses NOT included in lump sum fee. These are billed to client, including markup, if allowed.					
Reimbursable Consultant Costs					Amount
611 Structural Consultant					
612 Mech/Elec Consultant					
613 Environ/Civil Consultant					
614 Architectural Consultant					
615 Testing Consultant (Geotech, CMT, TAB, etc.)					
616 Surveying Consultant					
617 Interior Design Consultant					
618 Other Consultant - Kitchen / Food Consultant					
618 Other Consultant - Acoustical Consultant					
618 Other Consultant - AV/ IT Consultant					
618 Other Consultant (KCI for Topo and SUE)					\$136,983
Total Reimbursable Consultants					\$136,983
Reimbursable Expenses					
521 Travel					
Motel	12.00 Days @	1 Men @	\$150.00 /Man-day	=	\$1,800.00
Air Travel	Air Fare @	Men @	/Man	=	\$0.00
Parking	Days @	/Day		=	\$0.00
Car Rental	36.00 Days @	\$250.00 /Day		=	\$9,000.00
Car Rental Fuel	35.00 Gallons @	\$3.500 @	12 Trips	=	\$1,470.00
Subtotal					\$12,270
522 Reproductions					
Blackline Prints					\$0.00
34" x 22"	Shts @	\$2.50 /Sht @	Sets =	\$0.00	
36" x 24"	Shts @	\$2.75 /Sht @	Sets =	\$0.00	
42" x 30	Shts @	\$3.25 /Sht @	Sets =	\$0.00	
Other	sf @	\$0.55 /sf @	Sets =	\$0.00	
Mounting Foam Board	Boards @	\$10.00 /ea @		\$0.00	
Printing:					
Set Up Fee	Originals @	\$0.15 /Sht @	Submittals =	\$0.00	
8-1/2" x 11" B&W	Originals @	\$0.09 /Sht @	Sets =	\$0.00	
8-1/2" x 11" Color	200 Originals @	\$0.603 /Sht @	18 Sets =	\$2,170.80	
11" x 17" B&W	Originals @	\$0.18 /Sht @	Sets =	\$0.00	
11" x 17" Color	200 Originals @	\$1.500 /Sht @	18 Sets =	\$5,400.00	
Binding Cost	Sets @	\$2.00 /Set	=	\$0.00	
Laminating	Shts @	\$2.00 /Sht	=	\$0.00	
Scan to file					
Burn to CD/DVD	CD/DVD @	\$13.50 /each	0 =	\$0.00	
Scan Specs	Originals @	\$0.15 /Sht	0 =	\$0.00	
Scan Drawings	Originals @	\$1.50 /Sht	0 =	\$0.00	
Subtotal					\$7,571
523 Models/Renderings/Photos		Shots @	/Shot		\$0

524 Telephone	Calls @	/Call		\$0
<b>525 Meals</b>	<b>24 Days @</b>	<b>1 Men @</b>	<b>\$35.00 /Man-day</b>	<b>\$840</b>
526 Field Supplies				\$0
528 Postage	Mailings @	/Mailing	(Standard)	\$0
528 Postage	Mailings @	/Mailing	(Overnight)	\$0
530 Publications				\$0
532 Misc Reimbursable Exp				\$0
534 Temporary Personnel				
535 Office Supplies				
536 CADD				\$0
537 Field Equip Rental				
539 License & Regulation Fee				\$0
543 NM Gross Receipt Tax				
547 Computer Supplies				\$0
<b>Total Reimbrusable Expenses</b>				<b>\$20,681</b>



## Appendix A: WSP Proposal



WSP USA Environment & Infrastructure Inc.  
125 Montoya Road  
El Paso, TX 79932, USA  
T: 915-585-2472  
[www.WSP.com](http://www.WSP.com)

December 1, 2023  
WSP Proposal 23-07-11E  
Revision 1

Parkhill  
501 West San Antonio Street  
El Paso, Texas 79902

Attn.: Mr. Michael Ramirez, P.E.

**Re: Geotechnical Study  
George Perry Blvd. Extension  
El Paso, Texas**

Dear Mr. Ramirez:

In accordance with your request, WSP USA Environment & Infrastructure Inc. (WSP) has reviewed the scope of the referenced project for the purpose of submitting a cost proposal for a geotechnical study. The objective of this study will be to evaluate the physical properties of the soils underlying the site to provide recommendations for pavement design and related earthwork activities.

The details of the project, as understood by WSP, the proposed scope of work, fees, other contractual items, and schedule are presented in the following sections of this proposal.

## **1.0 PROJECT DESCRIPTION**

It is our understanding that the project will consist of the extension of George Perry Boulevard from its current termination point and connecting to Constitutional Avenue in east El Paso, Texas. It is anticipated that the new roadway will consist of a 4-lane arterial roadway with a total alignment of about 1.1 miles. We understand that the pavement design for both flexible and rigid pavement sections will be needed and should meet TxDOT standards and specifications. In addition, a life cycle cost analysis will be needed to evaluate the flexible and rigid pavement sections. It is anticipated that minor cuts and fills may be needed along the project alignment to achieve final grades.

The project will also include water, sewer, and stormwater drainage improvements along the project alignment. Ponding areas may also be required along the alignment, however, have not been defined.

## **2.0 SCOPE OF WORK**

### **2.1 UTILITY CLEARANCE**

WSP will contact the appropriate one-call utility locate service for line location prior to initiation of field activities. Additionally, WSP requests coordination with the current site owner to provide information regarding the locations of buried utility lines including the layout of any existing subsurface structures within the proposed work areas.

## **Proposal for Geotechnical Services**

George Perry Blvd. Extension, El Paso, Texas



In addition, a trained field professional from our office will conduct an initial site reconnaissance to observe the site and surrounding area for evidence of geotechnical/geologic concerns and stake the proposed boring locations for utility location clearance along with drilling and soil sampling.

Prior to the commencement of our field study, we will also clear the boring locations for underground utilities using ground penetrating radar (GPR) or other line-locating tools. This is in addition to contacting one-call services to add another level of protection for our employees and clients. We see this as particularly important on sites where underground utilities are known to be present.

We cannot retain responsibility for damage associated with lines that were not properly located prior to field operations.

### **2.2 BORING SURVEYS**

The layout of the borings and supervision of drilling and sampling operations will be performed by an experienced field professional. We will lay out our borings from existing survey monuments or surface features, based on the site plan provided by you. The surface elevation of the borings will be based on sufficiently accurate topographic mapping if available. If requested, a level survey will be conducted to establish the elevation of the borings at an additional cost.

WSP assumes that the client will arrange access with the property owner in order to complete the geotechnical study. Based on our experience within the project area, access is anticipated to be difficult due to the loose surface soils along the project alignment. As a result, WSP will rent a dozer to tow the drill rig to the boring locations.

We assume all access agreements for the site will be provided and, no third-party access agreements or permits are required to be obtained by WSP to complete the geotechnical investigation. We also assume no threatened or endangered species, wetlands, cultural resources, and/or other restrictions will be encountered which will affect the execution of the project. Finally, we have assumed no weather delays and that all work can be conducted in a single mobilization.

### **2.3 EXPLORATORY DRILLING**

WSP will drill a total of six (6) borings along the project alignment using a truck-mounted drill rig equipped with hollow stem augers. Test borings will be completed using Standard Penetration testing. The proposed boring locations and proposed depths are summarized in the table below.

<b>FIELD EXPLORATION - AUGER BORINGS</b>			
<b>QUANTITY</b>	<b>DEPTH (FT.)</b>	<b>SAMPLING</b>	<b>LOCATION</b>
3	20	2.5' intervals to 10' 5' intervals from 10'	Pavement Borings spaced along the project alignment.
2	40	2.5' intervals to 10' 5' intervals from 10'	Pavement Borings spaced along the project alignment.
1	40	2.5' intervals to 10' 5' intervals from 10'	Ponding area. Percolation test

The borings will be terminated at shallower depths if we encounter refusal on rock, strongly cemented materials, or other obstructions. Sampling will be obtained by standard penetration testing methods and from auger cuttings. Other sampling methods will be used as appropriate including open-end drive sampling, Shelby tube sampling, or tube sampling by other methods. Drilling and sampling operations will be conducted in general accordance with the requirements of ASTM D 1452, D 1586, D 1587, and D 2488.

Borings will be backfilled with drilled cuttings and the site will be restored as best practicable to the original condition.

## **2.4 LABORATORY ANALYSES**

Laboratory tests will be performed as considered necessary for engineering analyses. Tests that may be necessary for the project include moisture content, density, particle size analyses, California Bearing Ratio (CBR) tests, unconfined compressive strength, and Atterberg limits tests. Subsurface conditions and specific design criteria will be the basis for testing requirements.

Selected soil samples will also be tested for pH, sulfate, and chlorides to evaluate the corrosion potential of the native soils.

## **2.5 ENGINEERING ANALYSES & REPORT**

Engineering analyses of the data collected in the field and laboratory studies will be made. An electronic copy of our preliminary and final geotechnical reports will be submitted for the project and will include the following:

- A.** The logs of the test borings, a site plan showing the boring locations, and a description of procedures and equipment used in the boring program. Depth to groundwater, if encountered, will be presented on the boring logs.
- B.** A discussion of geologic conditions for the subject area based on readily available information.

## Proposal for Geotechnical Services

George Perry Blvd. Extension, El Paso, Texas



- C. Results of laboratory tests and a description of test methods.
- D. Recommendations for pavement design in general accordance with AASHTO pavement design guidelines for both flexible and rigid pavement sections. The results of CBR testing will be summarized in the report.
- E. Guide specifications for site grading, compaction requirements, and methods for backfill.
- F. Earth pressures and other criteria for the design of retaining walls and other earth retaining structures.
- G. Special treatment recommended for any expansive soil, "collapsing" soil, man-made fills, or other moisture-sensitive materials that may be present beneath the site.
- H. Discussion of geotechnical conditions for foundation and earthwork construction presented for use in the preparation of preliminary construction cost estimates.
- I. Slope stability evaluation for existing and new ponding area design.
- J. Results of testing to evaluate the corrosion potential of the native soils.
- K. Results of Percolation test.
- L. Results of Life Cycle Analysis.

### 3.0 FEES

Charges for the geotechnical study, as described in Section 2, will be billed as a **lump sum of \$20,250.00**.

Additional charges that might arise from changes in project details and scope of work would be made based on our negotiated rates. The basic fee quoted includes the routine minor consultation with the prime professional and other members of the design team normally involved with this type of project and, if required, the submission of one addendum clarifying the details of the reports. Where extensive consultation or major addenda are necessary as a result of substantial changes in the project details, additional fees will be involved.

### 4.0 SCHEDULE

The schedule for the services defined in this proposal is indicated in the following table:

**Proposal for Geotechnical Services**

George Perry Blvd. Extension, El Paso, Texas



GEOTECHNICAL STUDY SCHEDULE OF WORK		
TASK	TIME TO COMPLETE (DAYS)*	TIME FROM NOTICE TO PROCEED (DAYS)*
Utility clearance, mobilize to Site	--	10
Field Study	2	12
Laboratory Testing, Report Writing and Shipping/Delivery of Report	13	25

\*Working Days (non-weekend, non-holidays)

This schedule assumes full access to the site and assistance as needed from the client to perform the work expeditiously manner. Additional time may be required if delays occur in receiving critical design input from design team members, or for delays or stoppage of work required by the client.

All work on this project will be completed in accordance with our existing Master Services Agreement with Parkhill. If this proposal is satisfactory, please sign the attached task order indicating your acceptance. Should you have any questions concerning this proposal, we would appreciate the opportunity to review and clarify.

Respectfully submitted,

**WSP USA Environment & Infrastructure Inc.***Texas Registered Engineering Firm F-0012**Texas Registered Geoscience Firm 50184*

David A. Varela, P.E.  
Lead Consultant - Geotechnical

Reviewed by:

Jamie R. Barnes  
Asst Vice President

Copies: Addressee (1) via email

**EXHIBIT 1**  
**WORK ORDER NO.: 1**

Issued Pursuant to Master Services Agreement

Effective August 27, 2018

By and Between

WSP Environment & Infrastructure Inc. (formerly Wood)

and

Parkhill (CLIENT)

Client Office: 501 West San Antonio

WSP Project No.:

El Paso, Texas

Work Order Type: (Check One)

Time-and-Materials \_\_\_\_\_

Fixed-Price XX

WSP Office: 125 Montoya Road

El Paso, Texas

WSP Contract:

1. SCOPE OF WORK: WSP will conduct a geotechnical study for the George Perry Extension project as indicated in our proposal 23-07-11E revision 1.
2. LOCATION/CLIENT FACILITY INVOLVED: El Paso, Texas.
3. PERIOD OF PERFORMANCE:

AUTHORIZED FUNDING: The total budget for the geotechnical study of \$20,250.00 as indicated in our proposal 23-07-11E revision 1 dated December 1, 2023.

5. SPECIAL PROVISIONS:

**WSP**

**Parkhill**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Address: 125 Montoya Road

Address: 501 West San Antonio

El Paso, Texas 79932

El Paso, Texas 79901

## Appendix B: Brock & Bustillos Proposal





ROMAN BUSTILLOS, P.E.  
President  
SERGIO J. ADAME, P.E.  
Vice President - Engineering  
AARON ALVARADO, R.P.L.S.  
Vice President - Surveying  
HECTOR MARTINEZ, P.E.  
Associate Partner  
TBPE Reg. No. F-737  
TBPLS Reg. No. 101314-00

March 11, 2024

***Via E-Mail: MRamirez@Parkhill.com***

Parkhill  
501 W. San Antonio  
El Paso, Texas 79901

Attn: Mr. Mike Ramirez, P.E., CNU-A, CCM

Re: Proposed 3,600 linear feet± George Perry Boulevard Right-of-Way Dedication Plat Extension from Walter Jones Boulevard to "Future" Constitution Avenue by others being a portion of Section 22, Block 80, Township 2, Texas and Pacific Railway Company Surveys  
Proposal No. 2023-1206

Dear Mr. Ramirez:

We appreciate the opportunity to present to you our proposal for Professional Surveying Services for the referenced project. The following is our proposed Scope of Work:

***SCOPE OF WORK: (Subdivision Platting)***

1. Research all available deeds, easements, plats, maps and surveys for the subject parcel;
2. Prepare a preliminary and final plat for said proposed George Perry Right-of-Way Dedication Plat;
3. The preliminary plat will utilize the aerial topography that was done in 2020 by Aerotech and Brock & Bustillos, Inc.;
4. Prepare a major subdivision combination application for the City of El Paso (COEP);
5. Submit one (1) preliminary plat, final plat and subdivision application pdf to the COEP for five-day review via the citizens access portal;
6. Review and address the five-day review comments from the COEP for the preliminary and final plats;
7. Submit one (1) revised preliminary plat, final plat and the paid subdivision application to the COEP for final approval via the citizens access portal;
8. Review and address the City of El Pas Staff Report comments for the preliminary and final plats;
9. Submit one (1) pdf copy of the revised preliminary plat and final plat to the city planning department to present at City Plan Commission (CPC);
10. Represent applicant at all public hearings;
11. If approval by CPC deliver one (1) pdf copy of the "pre-cloth" final plat to the city planning department to approve before preparing the recording mylars;
12. Prepare six (6) mylar copies of the approved final plat and collect signatures;
13. Deliver the six (6) signed mylars and tax certificates to the city planning department to record;

14. Prepare one (1) pdf and one (1) AutoCAD file of the recorded final plat subdivision to be delivered to COEP;
15. Deliver one (1) recorded mylar to the client; and
16. Set the new George Perry Extension right-of-way corners.

**APPLICANT WILL BE RESPONSIBLE TO PAY FOR ALL APPLICATION AND RECORDING FEES AND CERTIFIED TAX CERTIFICATES IN THE APPROXIMATE AMOUNT OF \$2,500.**

***EXEMPTIONS:***

The above scope of work excludes the following: rezoning application, phasing plan, metes and bounds description, new topographic survey, construction staking, ALTA/NSPS Land Title Survey, title commitment, staking of utilities, subdivision improvement plans, sub-surface utility engineering, soils investigation, application fees, recording fees, as-built survey, preparation of as-built plans, elevation certificate, representation through the El Paso Water Utilities, Txdot and any other item not specifically listed in the above scope of work.

***COMPLETION:***

Brock & Bustillos Inc. will complete the above Scopes of Work, items 1-5 within twenty-five (25) workdays or receiving your written notice to proceed and approved George Perry Boulevard alignment in AutoCAD.

***BASIS OF COMPENSATION:***

We propose that Brock & Bustillos Inc. be paid a Lump Sum Amount of **\$19,500.00** for the above Scopes of Work. A sales tax amount of **\$800.00** shall be added to the Lump Sum Amount above if client does not provide a Tax Resale Certificate. Terms of payment and charges for any additional work will be done in accordance with the attached "Other Terms and Conditions." This proposal is valid for 60 days from the date above.

***TERMINATION AGREEMENT:***

This agreement may be terminated without cause at any time prior to completion of work by either "**Parkhill**" or **Brock & Bustillos Inc.** by seven days written notice to the other. Upon termination, "**Parkhill**" will owe **Brock & Bustillos Inc.** for all compensation earned under this Agreement the date of termination.

***[INTENTIONALLY LEFT BLANK]***

## ACCEPTANCE:

If this proposal meets with your approval, we will consider the receipt of one signed copy of this Proposal as our authorization to proceed. Please call if you have any questions. We look forward to serving you on this project.

Sincerely,

**BROCK & BUSTILLOS INC.**

Aaron Alvarado, R.P.L.S.  
Vice President Surveying  
Principal Approval

Attachment: (1) Other Terms & Conditions  
(2) Road Exhibit  
(3) Fee Breakdown

## Authorization To Proceed

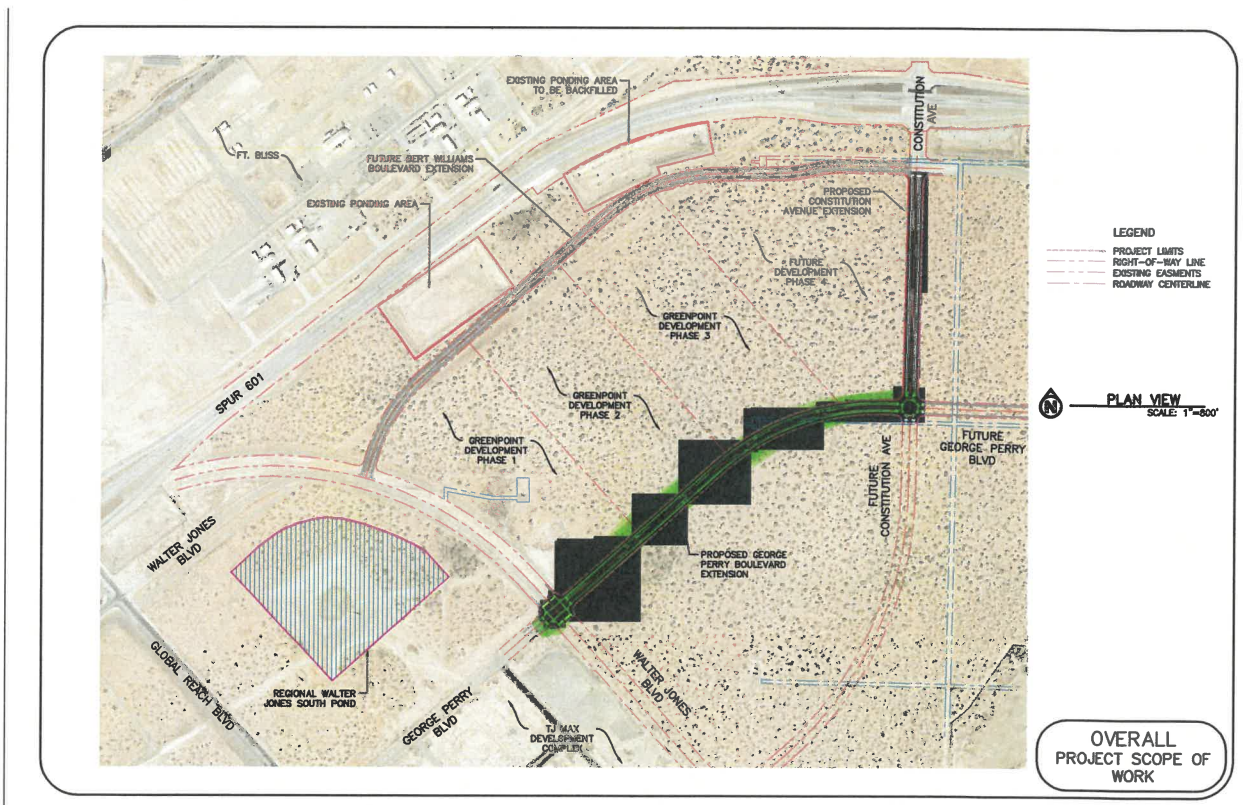
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

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

P.O./REF. No.: \_\_\_\_\_



## **OTHER TERMS AND CONDITIONS**

Brock & Bustillos Inc. shall perform the services outlined in this agreement for the stated fee arrangement.

### **Service Fees:**

The total fee shall be understood to be an estimate unless the agreement is for a Lump Sum amount. The estimate shall not be exceeded by ten percent without written approval of the Client. For the services of the Engineer's staff (except survey personnel covered below) the charge will be the "Salary Cost" of each employee so engaged plus a multiplier of 2.5. "Salary Cost" is defined as the cost of salaries of the Engineer's employees for time directly chargeable to the Project, plus cost of social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, medical and insurance benefits, sick leave, vacation, and holiday pay applicable thereto. The overtime premium (required by the Fair Labor Standards Act for nonexempt classifications) for draftsmen and technician classifications will be charged for overtime hours worked because of the Client's requirements, and upon his specific authorization.

For the Engineer's survey crews, the following schedule of rates applies. Overtime rate applies for hours in excess of eight (8) per day, Saturday, Sunday and Holidays.

	<b><u>BASIC RATE</u></b>	<b><u>OVERTIME RATE</u></b>
<b>Two-Man Party</b>	<b>\$170.00/Hour</b>	<b>\$232.00/Hour</b>
<b>Three-Man Party</b>	<b>\$238.00/Hour</b>	<b>\$295.00/Hour</b>
<b>Two-Man w/Prof. Surveyor as Party Chief</b>	<b>\$295.00/Hour</b>	<b>\$341.00/Hour</b>

### **Direct Expenses:**

For all direct expense, including supplies, transportation, telephone toll charges, reproductions, etc., and travel and subsistence for the Engineer's officers and staff, all as required for the proper execution of the work, and for all work subcontracted, the charge will be invoice cost plus 10 percent. Travel by vehicles owned by the Engineer will be at .655 cents per mile and surveying vehicles will be at \$1.03 per mile.

### **Outside Services:**

For outside services, such as soil investigations, laboratory tests, or retaining special consultants, Client may contract directly with a third party for such services, or may contract through Brock & Bustillos Inc. If such contracts are made through Brock & Bustillos Inc., a service charge of 10 percent will be added to the net amount of the contract.

### **Indemnification:**

The Client shall indemnify and hold harmless Brock & Bustillos Inc. and all of its personnel from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the performance of the services, provided that any such claim, damage, loss or expense is caused in whole or in part by the negligent act, omission, and/or strict liability of the Client, anyone directly or indirectly employed by the Client (except Brock & Bustillos Inc.), or anyone for whose acts any of them may be liable.

### **Risk Allocation:**

In recognition of the relative risks, rewards and benefits of the project to both the Client and Brock & Bustillos Inc., the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, Brock & Bustillos Inc.'s total liability to the Client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes, shall not exceed ten times our fee or \$50,000, whichever is less. Such caused include, but are not limited to Brock & Bustillos Inc.'s negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

### **Ownership of Documents:**

All documents produced by Brock & Bustillos Inc. under this agreement shall remain the property of Brock & Bustillos Inc. and may not be used by the Client for any other endeavor without the written consent of Brock & Bustillos Inc.

### **Dispute Resolution:**

Any claim or dispute between the Client and Brock & Bustillos Inc. shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator(s). This agreement shall be governed by the laws of State of Texas.

### **Sales Tax and Gross Receipts Tax:**

**The State of Texas has imposed sales tax on certain boundary related survey services. When applicable, the invoice will show total amount of taxable services, percentage rate of sales tax, and amount of sales tax charged.**

**The State of New Mexico imposes a gross receipts tax on all professional services performed in New Mexico. The gross receipts tax rates varies throughout the state of New Mexico depending on the location of the project site. Gross receipts tax will be added to all costs for services performed in the State of New Mexico.**

### **Billings/Payments:**

Invoices for Brock & Bustillos Inc.'s services shall be submitted either upon completion of such services or on a monthly basis. Payment to the Engineer will be due upon receipt of monthly invoices. If Client fails to pay the Engineer the full invoice amount within thirty (30) days of receipt, Client will be charged for collection efforts in accordance with this Compensation Schedule. If payment is not received by the 60<sup>th</sup> day, a Work Stoppage Order will become effective. If payment is not received by the 75<sup>th</sup> day, a Mechanic's Lien will be filed with the County Clerk's Office in pursuit of payment for professional surveying and/or engineering services, in accordance with the procedures as outlined in the most current edition of the Texas Property Code. Aged invoices will begin accumulating collection fees and 1.50% interest per month based on an average APR of 18.0 % per year after the 100<sup>th</sup> day of the invoice.

<p style="text-align: center;"><b>12/12/2023</b></p> <p><b>GEORGE PERRY BLVD.</b></p> <p><b>R.O.W. DEDICATION PLAT</b></p>	<p>PROPOSAL NO.</p> <p>Is This A Lump Sum? (Y/N)</p> <p>DATE:</p>
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Task	Quantities	Units	Rate	Amount
<b>Professional Staff</b>				
Principal Engineer		Hour	\$218.00	\$ -
Senior Engineer		Hour	\$218.00	\$ -
Survey Manager/R.P.L.S.	16.00	Hour	\$218.00	\$ 3,488.00
Project Manager		Hour	\$194.00	\$ -
Design Engineer		Hour	\$152.00	\$ -
Expert Witness (Civil Discipline)		Hour	\$395.00	\$ -
Expert Witness (Surveying Discipline)		Hour	\$395.00	\$ -

<b>Technical Staff</b>				
Civil Designer		Hour	\$131.00	\$ -
Engineering Design Technician		Hour	\$108.00	\$ -
Senior Engineering CAD Draftsman		Hour	\$89.00	\$ -
Engineering CAD Draftsman		Hour	\$69.00	\$ -
Surveying Technician	30.0	Hour	\$118.00	\$ 3,540.00
Senior Surveying CAD Draftsman	40.0	Hour	\$90.00	\$ 3,600.00
Surveying CAD Draftsman		Hour	\$69.00	\$ -
Field Project Representative (FPR/RPR)		Hour	\$120.00	\$ -

<b>Administrative Staff</b>				
Administrative Assistant	8.5	Hour	\$69.00	\$ 586.50

<b>GPS Technicians</b>				
One Man Survey Crew (Regular Rate-Party Chief)		Hour	\$120.00	\$ -
One Man Survey Crew (OT Rate-Party Chief)		Hour	\$169.00	\$ -
Two Man (Regular Rate-Party Chief, Rodman)	32.0	Hour	\$162.00	\$ 5,184.00
Two Man (OT Rate-Party Chief, Rodman)		Hour	\$221.00	\$ -
Two Man w/Prof. Surveyor as Party Chief (Regular Rate)		Hour	\$280.00	\$ -
Two Man w/Prof. Surveyor as Party Chief (OT Rate)		Hour	\$290.00	\$ -
Three Man (Regular Rate-Party Chief, Instrumentman, Rodman)		Hour	\$223.00	\$ -
Three Man (OT Rate-Party Chief, Instrumentman, Rodman)		Hour	\$272.00	\$ -
Four Man (Regular Rate-Party Chief, Instrumentman, 2-Rodmen)		Hour	\$252.00	\$ -
Four Man (OT Rate-Party Chief, Instrumentman, 2-Rodmen)		Hour	\$345.00	\$ -
Flagger (Daily Rate) *This rate can be added to any of the above crews and is per individual Flagger.		Hour	\$100.00	\$ -

**Subtotal Labor** **\$ 16,398.50**

<b>Sub Consultants</b>				
Subcontract - Engineer		LS	\$ -	\$ -
Subcontract - Soil Services/Testing		LS	\$ -	\$ -
Subcontract - Subsurface Utility Mapping/Engineering		LS	\$ -	\$ -
Subcontract - Aerial Mapping		LS	\$ -	\$ -
Subcontract - Elect/Mech		LS	\$ -	\$ -
Subcontract - Other		LS	\$ -	\$ -

**Subtotal Subs** **\$ -**

<b>Direct Costs</b>				
Mileage (Personal Vehicle)	120.0	mile	\$ 0.560	\$ 67.20
Mileage (Survey Crew)	120.0	mile	\$ 0.950	\$ 114.00
Mileage Ranger All Terrain Vehicle Usage		day	\$ 131.00	\$ -
Reproduction-photoCopies (8.5 X 11) - Bond (B&W)	175	each	\$ 0.20	\$ 35.00
Reproduction-Copies (11 X 17) - Bond (B&W)	55	each	\$ 0.60	\$ 33.00
Reproduction-Copies (24 X 36) - Bond (B&W)	100	each	\$ 7.00	\$ 700.00
Reproduction-Copies (24 X 36) - Mylars (B&W)	6	each	\$ 13.00	\$ 78.00
Delivery by Courier		each	\$ 40.00	\$ -
Safety - Traffic Control Plan (Typical - Work Zone)		LS	\$ 1,550.00	\$ -
Safety - Traffic Control - Setup & Maintenance (Can be Project Specific per Day)		Day(s)	\$ 510.00	\$ -
Legal Research/Title Commitment		each	\$ 325.00	\$ -
1st Class Mail Postage-Letter		each	\$ 0.63	\$ -
Surveying Field Supplies	6	LS	\$ 50.00	\$ 300.00
Field Scanner		HR	\$ 1,200.00	\$ -
Meals & Lodging		LS	\$ 175.00	\$ -
Travel		LS	\$ -	\$ -
GPS Time for OPUS		LS	\$ -	\$ -
Miscellaneous Other		LS	\$ -	\$ -

**Subtotal Direct Costs** **\$ 1,327.20**

<b>Subtotal Labor</b>	<b>\$ 16,398.50</b>
<b>Subtotal Sub's Labor</b>	<b>\$ -</b>
<b>Subtotal Direct Costs</b>	<b>\$ 1,327.20</b>
<b>10% Mark Up on Subs &amp; ODC's</b>	<b>0.00</b>
<b>Subtotal * (Subs, D.C.s &amp; Mark-Ups)</b>	<b>\$ 1,327.20</b>
<b>If Lump Sum or NTE, Add Risk %</b>	<b>10.00%</b>
<b>Subtotal * All %</b>	<b>\$ 19,498.27</b>

Boundary Taxable Amount;	
(Surveyor to determine the Applicable Boundary Costs)	
If Applicable, Tax Rate	8.25%
Texas Boundary Taxes	\$ -

<b>Proposal Total:</b>	<b>\$ 19,498.27</b>
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## Appendix C: KCI Proposal

**KCI Level A & B SUE Investigation Estimate**  
**George Perry Blvd. Improvements**  
**El Paso Tx**

Task Description	
<b>SURVEY</b>	
TOPO SURVEY	\$78,360.00
<b>SUE</b>	
Level B Designation	\$30,348.00
Level A Test Holes	\$28,275.00
<b>LEVEL A &amp; B PROJECT TOTAL</b>	<b>\$136,983.00</b>

**KCI Level A & B SUE Investigation Estimate**  
**George Perry Blvd. Improvements**  
**El Paso Tx**

TOPO SURVEY							
FIELD CREW	DRONE PILOT	SURVEY TECH	PER DIEM	HOTEL	RPLS	CP	DESC.
20			4	2			MOBILIZATION
160			32	32			FIELD
		160					DRAFTING
					80		REVIEW
180	0	160	36	34	80	0	TOTAL
\$ 180.00	\$ 220.00	\$ 120.00	\$ 65.00	\$ 130.00	\$ 250.00	\$ 250.00	RATES
\$ 32,400.00	\$ -	\$ 19,200.00	\$ 2,340.00	\$ 4,420.00	\$ 20,000.00	\$ -	COST
						\$ 78,360.00	TOTAL COST



## Exhibit A

KCI Level A & B SUE Investigation Estimate  
George Perry Blvd. Improvements  
El Paso Tx

Task Description	UNIT	RATE	QTY	AMT.
<b>Level A Test Holes</b>				
Vac Truc Mileage	Mile	\$3.00	250	\$750.00
Mobilization Level A	LS	\$2,500.00	1	\$2,500.00
Test Hole 0 - 5' (Incl Truck & Crew)	Each	\$1,350.00	6	\$8,100.00
Test Hole 5' - 8' (Incl Truck & Crew)	Each	\$1,650.00	2	\$3,300.00
Test Hole 8 - 13' (Incl Truck & Crew)	Each	\$1,850.00	2	\$3,700.00
Test Hole 13' - 20' (Incl Truck & Crew)	Each	\$2,150.00	2	\$4,300.00
Traffic Control	Daily	\$1,850.00	1	\$1,850.00
Dump Fee	Each	\$350.00	5	\$1,750.00
Backfill	Each	\$275.00	5	\$1,375.00
El Paso Water-Meter	Each	\$2,000.00	0	\$0.00
Core & Restore Pvt (Includes Labor & Equipment to core and retore paving with Cold Patch)	Each	\$325.00	2	\$650.00
<b>Level A Total</b>				<b>\$28,275.00</b>
<b>Level B Designation</b>				
Designating Truck Mileage	Miles	\$0.75	960	\$720.00
Mobilization	LS	\$2,100.00	1	\$2,100.00
Project Manager	Hours	\$302.00	4	\$1,208.00
Level B Designating & Test Hole Set Up ( Incl. 2-Man Crew & Locate Equip)	Daily	\$2,250.00	3	\$6,750.00
Cad of Level A, B, C, & D Utility Information	Hourly	\$145.00	24	\$3,480.00
Project Engineer	Hours	\$205.00	24	\$4,920.00
Record Research Level C, & D	Daily	\$1,850.00	2	\$3,700.00
Survey of Level A & B SUE	Daily	\$1,850.00	2	\$3,700.00
SUE Manager	Hourly	\$145.00	8	\$1,160.00
Admin	Hourly	\$95.00	8	\$760.00
Traffic Control	Daily	\$1,850.00	1	\$1,850.00
<b>SUE Level B Total</b>				<b>\$30,348.00</b>
<b>LEVEL A &amp; B PROJECT TOTAL</b>				<b>\$58,623.00</b>

## Exhibit 2 – Forms of Payment Bond and Performance Bond

**PAYMENT BOND**

THE STATE OF TEXAS	§	
	§	KNOW ALL BY THESE PRESENTS:
COUNTY OF EL PASO	§	

That we, \_\_\_\_\_, as Principal herein, and (2) \_\_\_\_\_, a corporation organized and existing under the laws of the State of Texas and who is authorized and admitted to use surety bonds in the State of Texas, as surety, are held and firmly bound unto the City of El Paso located in El Paso County, Texas, Obligee herein, in the amount of \_\_\_\_\_ Dollars (\$) for the payment whereof, the said Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Obligee dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, which contract is hereby referred to herein as “the Contract” and is incorporated herein to the same extent as if copied at length, for the following project: 2023-0576R George Perry Boulevard Extension.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall directly or indirectly timely make payment to each and every claimant (as defined in Chapter 2253, Texas Government Code, as amended) supplying labor or materials in the prosecution of the work under the Contract, then this obligation shall be void; otherwise, to remain in full force and effect. *This obligation may be enforced by the Obligee in the event of bankruptcy or default by Principal in payments to suppliers of labor or materials in the prosecution of the work under the Contract, in either of which events the Surety shall make such payments as Principal has failed to pay and as may be required to complete the work under the contract.* The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and any notices provided in such regard shall not create as to any party a duty related thereto.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in accordance with the provisions of said statute, to the same extent as if it were

copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**The date of bond shall not be prior to date of Contract.**

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(S E A L)

\_\_\_\_\_  
Witness as to Principal

ATTEST:

\_\_\_\_\_  
Secretary

(S E A L)

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
PRINCIPAL

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

\_\_\_\_\_  
SURETY

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

Name: \_\_\_\_\_  
Attorney in Fact

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

**An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.**

**PERFORMANCE BOND**

THE STATE OF TEXAS	§	
	§	KNOW ALL BY THESE PRESENTS:
COUNTY OF EL PASO	§	

That we, \_\_\_\_\_, as Principal herein, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and who is authorized and admitted to issue surety bonds in the State of Texas, Surety herein, are held and firmly bound unto the City of El Paso, located in El Paso County, Texas, Obligee herein, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a certain written contract with the Obligee dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, herein referred to as “the Contract” and incorporated herein and made a part hereof for all purposes, for the construction of 2023-0576R George Perry Boulevard Extension.

NOW, THEREFORE, the condition of this obligation is such, if the said Principal shall faithfully perform the work in accordance with the plans, specifications, and other Contract Documents and shall fully indemnify and hold harmless the Obligee from all costs and damages which Obligee may suffer by reason of Principal’s failure to perform the Work in conformity with the Contract Documents, and reimburse and repay Obligee for all outlay and expense that Obligee may incur in making good such default, then this obligation shall be void; otherwise, to remain in full force and effect. Whenever Contractor shall be declared by Obligee to be in default under the Contract, the Surety shall, upon request of Obligee and within seven (7) calendar days from receipt of Obligee’s notice of Contractor’s default, commence and thereafter complete performance of Contractor’s obligations under the Contract. This Bond covers all contractual obligations of Contractor under the Contract, including, without limitation, the indemnity, warranty and guaranty obligations. The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of any of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and any notices provided in such regard shall not create as to any party a duty related thereto. The penal limit of this bond shall automatically be increased by

the amount of any change order, supplemental agreement or amendment which increases the price of the Contract.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in accordance with the provisions of such statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**The date of bond shall not be prior to date of Contract.**

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(S E A L)

\_\_\_\_\_  
Witness as to Principal

ATTEST:

\_\_\_\_\_  
Secretary

(S E A L)

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
PRINCIPAL

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

\_\_\_\_\_  
SURETY

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

Name: \_\_\_\_\_  
Attorney in Fact

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

**An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.**



### Exhibit 3 – Insurance Rider



## Owner's Insurance Requirements of Contractor

### 1. Specific Insurance Requirements

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

Insurance	Coverage/Limits	Other Requirements
Commercial General Liability (Occurrence Basis)	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 Per Occurrence</li> <li>▪ \$2,000,000 General Aggregate</li> <li>▪ \$2,000,000 Products/Completed Operations Aggregate</li> <li>▪ \$1,000,000 Personal And Advertising Injury</li> <li>▪ Designated Construction Project(s) General Aggregate Limit</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CG 00 01</li> <li>▪ Additional insured status shall be provided in favor of Owner Parties on a combination of ISO forms CG 20 10 04 13 and CG 20 37 04 13.</li> <li>▪ This coverage shall be endorsed to provide primary and non-contributing liability coverage. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and will not seek contribution from any other insurance held by Owner Parties, with Owner Parties' insurance being excess, secondary and non-contributing.</li> <li>▪ Stop Gap coverage shall be provided if any work is to be performed in a monopolistic workers' compensation state.</li> <li>▪ The following exclusions/limitations (or their equivalent(s), are prohibited: <ul style="list-style-type: none"> <li>○ Contractual Liability Limitation CG 21 39</li> <li>○ Amendment of Insured Contract Definition CG 24 26</li> <li>○ Limitation of Coverage to Designated Premises or Project, CG 21 44</li> <li>○ Exclusion-Damage to Work Performed by Subcontractors On Your Behalf, CG 22 94 or CG 22 95</li> <li>○ Exclusion-Explosion, Collapse and Underground Property Damage Hazard, CG 21 42 or CG 21 43</li> <li>○ Any Classification limitation</li> <li>○ Any Construction Defect Completed Operations exclusion</li> <li>○ Any endorsement modifying the Employer's Liability exclusion or deleting the exception to it</li> <li>○ Any endorsement modifying or deleting Explosion, Collapse or Underground coverage</li> <li>○ Any Habitational or Residential exclusion applicable to the Work</li> <li>○ Any "Insured vs. Insured" exclusion except Named Insured vs. Named Insured</li> <li>○ Any Punitive, Exemplary or Multiplied Damages exclusion</li> <li>○ Any Subsidence exclusion</li> </ul> </li> </ul>

Business Auto Liability	<p>Amount of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 Per Accident</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CA 00 01</li> <li>▪ Arising out of any auto (Symbol 1), including owned, hired and nonowned</li> </ul>
Workers' Compensation and Employer's Liability	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ Statutory Limits</li> <li>▪ \$1,000,000 Each Accident and Disease</li> <li>▪ Alternate Employer endorsement</li> <li>▪ USL&amp;H must be provided where such exposure exists.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The State in which work is to be performed must be listed under Item 3.A. on the Information Page</li> <li>▪ Such insurance shall cover liability arising out of the Contractor's employment of workers and anyone for whom the Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.</li> <li>▪ Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Contractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Contractor and Owner. Where Contractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Contractor is strictly prohibited from subletting any of its work without the express written agreement of Owner.</li> </ul>
Excess Liability (Occurrence Basis)	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$5,000,000 Each Occurrence</li> <li>▪ \$5,000,000 Annual Aggregate</li> </ul>	<ul style="list-style-type: none"> <li>▪ Such insurance shall be excess over and be no less broad than all coverages described above.</li> <li>▪ Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits and shall include a duty to defend any insured.</li> </ul>
Professional Liability	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 Each Occurrence</li> <li>▪ \$2,000,000 Annual Aggregate</li> <li>▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Loss and Aggregate.</li> <li>▪ Such insurance shall cover all services rendered by the Contractor and its consultants under the Agreement, including but not limited to design or design/build services.</li> <li>▪ Policies written on a Claims-Made basis shall be maintained for at least two years beyond termination of the Agreement.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Such insurance shall cover all services rendered by the Contractor and its subcontractors under the Agreement.</li> <li>▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> <li>○ bodily injury or property damage where coverage is provided in behalf of design professionals or design/build contractors</li> <li>○ habitational or residential operations</li> <li>○ mold and/or microbial matter and/or fungus and/or biological substance</li> <li>○ punitive, exemplary or multiplied damages.</li> </ul> </li> <li>▪ Any retroactive date must be effective prior to beginning of services for the Owner.</li> <li>▪ Policies written on a Claims-Made basis shall have an extended reporting period of at least two years beyond termination of the Agreement. Vendor shall trigger the extended reporting period if identical coverage is not otherwise maintained with the expiring retroactive date.</li> </ul>

Contractors Pollution Liability	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 Each Loss</li> <li>▪ \$2,000,000 Annual Aggregate</li> <li>▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Loss and Aggregate.</li> <li>▪ The policy must provide coverage for: <ul style="list-style-type: none"> <li>○ the full scope of the named insured's operations (on-going and completed) as described within the scope of work for this Agreement</li> <li>○ loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall</li> <li>○ third party liability for bodily injury, property damage, clean up expenses, and defense arising from the operations;</li> <li>○ diminution of value and Natural Resources damages</li> <li>○ contractual liability</li> <li>○ claims arising from non-owned disposal sites utilized in the performance of this Agreement.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ The policy must insure contractual liability, name Owner Parties as an Additional Insured, and be primary and noncontributory to all coverage available to the Additional Insured.</li> <li>▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> <li>○ Insured vs. insured actions. However exclusion for claims made between insured within the same economic family are acceptable.</li> <li>○ impaired property that has not been physically injured</li> <li>○ materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval.</li> <li>○ property damage to the work performed by the contractor</li> <li>○ faulty workmanship as it relates to clean up costs</li> <li>○ punitive, exemplary or multiplied damages</li> <li>○ work performed by subcontractors</li> </ul> </li> <li>▪ If coverage is provided on a Claims Made basis, coverage will at least be retroactive to the earlier of the date of this Agreement or the commencement of contractor services relation to the Work.</li> <li>▪ The policy will offer an extended discovery or extended reporting clause of at least three (3) years.</li> <li>▪ Completed Operations coverage shall be maintained through the purchase of renewal policies to protect the insured and additional insured for at least two (2) years after the property owner accepts the project or this contract is terminated. The purchase of an extended discovery period or an extended reporting period on a Claims Made policy or the purchase of occurrence based Contractors Environmental Insurance will not be sufficient to meet the terms of this provision.</li> </ul>
Builders Risk	<ul style="list-style-type: none"> <li>▪ Coverage shall be provided in an amount equal at all times to the full contract value, including change orders, and cost of debris removal for any single occurrence.</li> <li>▪ Coverage shall be at least as broad as an unmodified ISO Special form, shall be provided on a completed-value basis, and shall be primary to any other insurance coverage</li> </ul>	<ul style="list-style-type: none"> <li>▪ Insureds shall include Owner, General Contractor, all Loss Payees and Mortgagees, and subcontractors of all tiers in the Work as Insureds.</li> <li>▪ Such insurance shall cover: <ul style="list-style-type: none"> <li>○ all structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings,</li> </ul> </li> </ul>

	<p>available to the named insured parties, with that other insurance being excess, secondary and non-contributing.</p> <ul style="list-style-type: none"> <li>▪ The policy must provide coverage for: <ul style="list-style-type: none"> <li>○ Agreed Value Included</li> <li>○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse Included</li> <li>○ Debris removal additional limit \$1,000,000</li> <li>○ Earthquake and Earthquake Sprinkler Leakage \$5,000,000</li> <li>○ Flood \$5,000,000</li> <li>○ Freezing Included</li> <li>○ Mechanical breakdown including hot &amp; cold testing Included</li> <li>○ Ordinance or law \$1,000,000</li> <li>○ Pollutant clean-up and removal \$ 25,000</li> <li>○ Preservation of property Included</li> <li>○ Theft Included</li> <li>• Deductible shall not exceed <ul style="list-style-type: none"> <li>○ All Risks of Direct Damage, Per Occurrence, except \$10,000</li> <li>○ Named Storm 2% subject to \$50,000 minimum</li> <li>○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence \$100,000</li> <li>○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V \$100,000</li> </ul> </li> </ul> </li> </ul>	<p>underground pipes and wiring, excavations, grading, backfilling or filling;</p> <ul style="list-style-type: none"> <li>○ all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site;</li> <li>○ all property including materials and supplies on site for installation;</li> <li>○ all property including materials and supplies at other locations but intended for use at the site;</li> <li>○ all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and</li> <li>○ other Work at the site identified in the Agreement to which this Exhibit is attached.</li> <li>• No protective safeguard warranty shall be permitted.</li> <li>• The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed This insurance shall be maintained in effect, unless otherwise provided for the Agreement Documents, until the earliest of: <ul style="list-style-type: none"> <li>○ the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated;</li> <li>○ occupancy, in whole or in part;</li> <li>○ the date on which release of substantial completion is executed; or</li> <li>○ the date on which the insurable interests of Contractor in the Covered Property has ceased.</li> </ul> </li> <li>• A waiver of subrogation provision shall be provided in favor of all insureds.</li> </ul>
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## 2. General Insurance Requirements

### A. Definitions. For purposes of this Agreement:

- i. "ISO" means Insurance Services Office.
- ii. "Contractor" shall include subcontractors of any tier.
- iii. "Owner Parties" means (a) Karnes County ("Owner"), (b) the Project, (c) any lender whose loan is secured by a lien against the Work, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (e) any directors, officers, employees, or agents of such persons or entities, and (f) others as required by the Construction Documents.

### B. Policies.

- i. Contractor shall maintain such General Liability, Excess Liability, Professional and Pollution insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall provide written representation to Owner stating Work completion date.
- ii. All policies must:
  - a. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed.
  - b. Provide a waiver of subrogation in favor of Owner Parties on all insurance coverage carried by Contractor, whether required herein or not.
  - c. Contain an endorsement providing for thirty (30) days prior written notice of cancellation to Owner.
  - d. Be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.
- iii. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.
- iv. Contractor shall provide to the Owner a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to the Owner prior to the expiration of the previous policy.
- v. Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

**C. Limits, Deductibles and Retentions**

- i. The limits of liability may be provided by a single policy of insurance or by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
- ii. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the Owner, except as otherwise specified herein. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk. The Contractor shall not be reimbursed for same

**D. Forms**

- i. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, Owner will have the right to require other equivalent forms.
- ii. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Owner.

**E. Evidence of Insurance.** Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
  - a. Owner as certificate holder at Owner's mailing address;
  - b. Insured's name, which must match that on this Agreement;
  - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
  - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
  - e. Additional Insured status in favor of Owner Parties;
  - f. Amount of any deductible or self-insured retention in excess of \$25,000;

- g. Designated Construction Project(s) General Aggregate Limit;
- h. Primary and non-contributory status;
- i. Waivers of subrogation; and
- j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
  - a. General Liability Additional insured endorsement(s);
  - b. General Liability Schedule of Forms and Endorsements page(s); and
  - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

**F. Contractor Insurance Representations to Owner Parties**

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Contractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If the Contractor shall fail to remedy such breach within five (5) business days after notice by the Owner, the Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Contractor by the Owner. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance, at the Contractor's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Construction Agreement.

**G. Insurance Requirements of Contractor's Subcontractors**

- i. Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.
- ii. The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

**H. Use of the Owners Equipment**

The Contractor, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use.

If the Contractor or any of its agents, employees, subcontractors or suppliers utilize any of the Owners equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Owner, the Contractor shall defend, indemnify and be liable to the Owner Parties for any and all loss or damage which may arise from such use.

**I. Release and Waiver**

The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Contractor and/or its subcontractors pursuant to this Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**

## Exhibit 4 – Prevailing Wage Rates





## **NOTICE OF CLARIFICATION PREVAILING WAGE RATES**

### **2023-0576R George Perry Boulevard Extension**

Effective February 28, 2017, City Council passed a resolution adopting the City of El Paso Prevailing Wage Rates for “Highway” and “Heavy” construction in accordance with Chapter 2258.022(a)(1) of the Texas Government Code.

This Contract contains multiple sets of wage rates:

- The City of El Paso Prevailing Wage Rates

**\*\*\*APPRENTICES MAY BE REQUIRED FOR THIS PROJECT\*\*\***



## CITY OF EL PASO, TEXAS

### 2016 Paving and Street Construction, Dirt Work, Heavy Construction, Pipeline Work, Highway Wage Rates

CLASSIFICATION	BASE WAGE PER HOUR	TOTAL FRINGES PER HOUR	HOURLY PREVAILING WAGE RATE	(8 HOURS) PER DIEM WAGE RATE
Asphalt Distributor Operator	14.64	0.00	14.64	117.12
Asphalt Paving Machine Operator / Spreader Box Operator	14.20	0.00	14.20	113.60
Asphalt Raker	12.99	0.00	12.99	103.92
Backhoe Operator	15.95	0.00	15.95	127.60
Concrete Finishers (Paving and Structures)	13.88	0.00	13.88	111.04
Crane Operator, Lattice Boom	17.50	0.00	17.50	140.00
Crane Operator, Hydraulic	17.50	0.00	17.50	140.00
Electrician	23.09	0.00	23.09	184.72
Excavator Operator	16.10	0.00	16.10	128.80
Form Builder/Setter	15.02	0.00	15.02	120.16
Form Setter (Paving and Curb)	12.86	0.00	12.86	102.88
Front End Loader	14.82	0.00	14.82	118.56
Laborer	11.89	0.00	11.89	95.12
Laborer (Skilled)(Utility)	13.65	0.00	13.65	109.20
Mechanic	17.50	0.00	17.50	140.00
Motor Grader Operator (Fine)	17.54	0.00	17.54	140.32
Pipe Layer	12.94	0.00	12.94	103.52
Reinforcing Steel Setter (Structure and Paving)/ Structural Steel Worker	17.00	0.00	17.00	136.00
Rock Mason	12.00	0.00	12.00	96.00
Roller Operator	13.70	0.00	13.70	109.60
Servicer	14.33	0.00	14.33	114.64
Truck Driver, Single Axle	13.19	0.00	13.19	105.52
Truck Driver, Tandem Axle	15.32	0.02	15.34	122.72
Utility Operator Grade 1	12.00	0.00	12.00	96.00
Utility Operator Grade 2	13.95	0.00	13.95	111.60
Welder, Certified/ Structural Steel Welder	13.83	0.00	13.83	110.64

All persons required to be licensed or certified must meet those qualifications to be paid the associated rate.

## **2016 HEAVY / HIGHWAY DEFINITIONS**

1	Asphalt Distributor Operator	Drives distributor truck, sets spray bars and operates valves and levers to control distribution of bituminous material for highway surfacing. May oil, grease or otherwise service and make adjustments to equipment as needed. Performs other related duties.
2	Asphalt Paving Machine Operator/Spreader Box Operator	Operates paving machine that spreads and levels asphaltic concrete on highway. Controls movement of machine, raises and lowers screed, regulates width of screed. Operates spreader box by adjusting hopper and strike-off blade so that gravel, stone or other material may be spread to a specific depth on road surface during seal coat and surface treatment operations. May oil, grease, service and make adjustments to equipment as needed. Performs other related duties.
3	Asphalt Raker	Distributes asphaltic materials evenly over road surface by hand-raking and brushing material to correct thickness; may control screed to regulate width and depth of materials; directs Laborers (skilled and unskilled) when to add or take away material to fill low spots or to reduce high spots.
4	Backhoe Operator	Operates a rubber-tired machine mounted with a backhoe bucket on one end and a loader bucket on the other end. Used for excavating ditches and structures, laying pipe and precast concrete structures, carrying material in the loader bucket, and general excavation and backfill. May also be equipped with hydraulic attachments. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
5	Concrete Finisher (Paving and Structures)	Finishes the exposed surfaces of fresh concrete paving, median barrier and every element of concrete structures. Operates bridge deck finishing machine. Forms and finishes edges and joints. Finishes concrete curbs and gutters. Finishes exposed surface of concrete after forms have been removed by patching imperfections with fresh concrete, rubbing surface with abrasive stone, and directing others in removing excess or defective concrete with power tools. Performs other related duties.
6	Crane Operator, Lattice Boom	A worker who operates a lattice boom type crane to hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber tired. May include placement of rock riprap, clamshell, dragline, pipe and pile driving operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

7	Crane Operator, Hydraulic	A worker who operates a hydraulic telescoping boom type crane to hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber-tired. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
8	Electrician	Plan and execute the layout and installation of electrical conduit, switch panels, buss bars, outlet boxes, electrical wires and cables, lighting standards, lighting fixtures, receptacles, switches, and other electrical devices and apparatus necessary for the complete installation of wiring systems, works on overhead distribution systems and underground distribution systems. Includes installation of photovoltaic solar panels.
9	Excavator Operator	Operates a crawler or rubber-tired machine mounted with an excavator bucket. Used for excavating ditches and structures, laying pipe and precast concrete structures, loading trucks and placing rock riprap. May also be equipped with various hydraulic attachments. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
10	Form Builder/Setter	Works from plans to build, assemble, fit together, align, plumb, and set in place forms for molding concrete structures. Forms may be wood, steel, aluminum, fiberglass or any other type of material. Checks forms while concrete is being placed. May install miscellaneous materials integral to concrete structures. May set precast concrete elements. Prepares for slipforming traffic rail and median barrier. May install permanent metal deck forms. May work with power tools. Performs other related duties. Includes guardrail installation.
11	Form Setter (Paving and Curb)	Fits together, aligns and sets to grade metal and wooden forms for placement for concrete paving and curbs. Works with survey crew to set stringline for paving, curb and gutter and curb. Performs other related duties.
12	Front End Loader	Operates a rubber-tired, skid steer or crawler type tractor with an attached scoop type bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading and unloading trucks. May be used with attachments in lieu of the bucket. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
13	Laborer	A general term used on construction work covering many unskilled classifications requiring work of a physical nature. Performs a variety of work ranging from pick and shovel work to cleaning up lumber with hammer, shoveling and placing concrete, uses air tools, under the supervision of qualified personnel. Cleans concrete joints and fills joints with sealing compound from bucket or with hose and nozzle from a central source, applies coating of oil to inside face of forms and strip forms, unloads and transports reinforcing steel, cures newly poured concrete, assists pipelayers, works with dirt crew keeping construction layout stakes out of the way of dirt-moving equipment. May fine grade excavation and ditches, shovels hot asphalt material. May use power

		tools and other necessary equipment in demolition work under the supervision of qualified personnel. Does not ordinarily perform work permitting exercise of independent judgment or without close direction by other workers. Installs and maintains erosion control. Performs other related duties.
14	Laborer (Skilled) (Utility)	Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects and tasks where demands require workmen with varied experience and ability to work without close direction. Unloads and transports reinforcing steel. Directs laborers in pouring concrete. Erects trench shoring and bracing. Installs, operates, and maintains watering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators to dumping positions to maintain grades as directed. Uses power tools and air tools. May work as lead man in a labor crew. Is more or less a general utility construction worker. May be a second step in learning a skill. Includes Concrete/Granite Pump Operator, Concrete Saw Operator, Fence Erector, Flagger, and Sign Erector. Performs other related duties.
15	Mechanic	Assembles, assist set up, adjusts and maintains and repairs all types of construction equipment and trucks. May perform the duties of a welder in repair of equipment. Performs other related duties.
16	Motor Grader Operator (Fine)	Operates motor grader. Performs many of the same duties of Motor Grader, Rough, but in addition performs finish grade work to bluetops or other close specification control. This work is subject to strict inspection and must conform closely to specifications. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
17	Pipe Layer	Installs concrete, clay, steel, ductile iron, plastic, corrugated pipe and any other type of pipe for storm drainage, water lines, gas lines and sanitary sewer lines. Lays underground communication and electrical ducts. May install and set electrical ground boxes, hand holes, manholes, inlets and other structures. Caulks joints, makes threaded and flanged connections. Installs valves and other accessories. Performs other related duties.
18	Reinforcing Steel Setter (Structure and Paving)/ Structural Steel Worker	Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. Erects and places reinforcing steel and fabricated structural steel members, such as girders, plates, diaphragms, lateral bracing, and unites them permanently to form a completed structural steel unit, including reinforcing members. Fastens steel members together by welding or bolting. May include dismantling and erecting large units of equipment. Gives direction to reinforcing steel worker apprentice or utility laborers. Performs other related duties.
19	Rock Mason	Constructs partitions, fences, walls, using rock. Cutting, grouting and pointing of materials listed above which is necessary shall be part of this classification. May also build or repair rock retaining walls, cutting or placing of rock in mortar or other similar material.

20	Roller Operator	Operates a self-propelled machine with either steel wheels or pneumatic tires which is used to compact and smooth bituminous and flexible base materials and compact earth fills, subgrade, and all other types of materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
21	Servicer	Drives a truck which carries various fuels, oils, greases and filters. Must have knowledge of and is responsible for the correct oiling and greasing and changing of filters on equipment according to manufacturers' specifications. Uses compressed air grease guns, wrenches and other tools. May make adjustments to clutches, brakes and other mechanical items. Keeps record of service for preventive maintenance records. May require a Commercial Driver's License if driving truck on public highways. Performs other related duties.
22	Truck Driver, Single Axle	Drives a light capacity truck for transporting loads of construction material. The truck is of single rear axle type, may have various kinds of beds attached such as dump, flat bed, tank, etc. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.
23	Truck Driver, Tandem Axle	Drives a tandem axle powered vehicle. Hauls dirt, rock, aggregates or other material. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.
24	Utility Operator Grade 1	Clam, ditching machine, side booms (except those in Grade 2), operator on dredges, cleaning machine, coating machine, blending machine, water-kote machine, equipment welder, track tractor, derrick, dragline, shovel, motor grader rough grade, Crawler tractor, foundation drill operator, crawler and truck mounted, and piledriver.
25	Utility Operator Grade 2	Pipe, gin truck or winch truck with poles when used for hoisting, side boom (cradling rock drill), tow tractor, farm tractor road boring machine, fork lift (industrial type), pot fireman (power agitated), straightening machine, boring machine, bombardier (track or tow rig), , hydrostatic testing operator, scraper, stalking machine, plant mix pavement roller operator, plant mix pavement, pneumatic motor operator. Concrete paving curing, float, texturing machine, subgrade trimmer, slip-form machine, milling machine, self-propelled sweeping machine, trenching machine, directional drill, trenching, screening plant, and joint sealer. Off Road Hauler, Pavement Marking Machine Operator Reclaimer/Pulverizer Operator, Slurry Seal or MicroSurfacing Machine Operator.

26	Welder, Certified/ Structural Steel Welder	<p>Certified by the American Welding Society to perform structural steel welding. Operates welding equipment. Welds structural steel girders and diaphragms. May weld permanent metal deck forms. Cuts, lays-out, fits and welds metals or alloyed metal parts to fabricate or repair equipment. Welds the joints between lengths of pipe for oil, gas or other types of pipelines. May assist in welding of permanent metal deck forms. Performs other related duties.</p>
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## Exhibit 5– Apprenticeship Program



## Apprenticeship Program

City construction contracts require that the construction contractors performing work for the City for such contract shall participate in a United States Department of Labor (“DOL”) certified apprenticeship program when the work required under the contract includes work that must be performed by any of the apprenticeable occupations listed in the City’s apprenticeship program adopted September 24, 2013, as amended, and the work involving such apprenticeable occupation has a value of **fifty thousand dollars** or more. Information relating to the apprenticeship program, use of apprentices and trades shall be submitted prior to the start of the work of the applicable occupations listed below. Prior to the start of the work of the applicable apprenticeable occupations listed below the contractor or the applicable subcontractor through the prime contractor shall provide written certification to the city that it is a sponsor or participant in a DOL approved apprenticeship program.

### Apprenticeable Occupations:

Bricklayer
Carpenter
Cement mason
Drywall applicator
Electrician
Glazier
Operating engineer
Painter
Pipefitter
Plasterer
Plumber
Roofer
Sheet metal worker
Structural worker/ironworker
Taper
Carpenter – Acoustical Ceilings
Cabinet Maker
HVAC
Insulation Worker
Electronic Technician
Elevator Installer & Repairer
Floor Layer
Locksmith
Tile and Marble Setter

The Contractor shall comply with the following:

1. Shall hire registered apprentices enrolled in a DOL certified apprenticeship program.
2. Shall not substitute helpers, unregistered apprentices or other substitutes to perform apprentice level work in place of registered apprentices.
3. Shall pay wage rates and benefit package for apprentices as determined by the apprenticeship program/DOL.
4. Shall comply with DOL requirements for the ratio of apprentices to journeymen.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship & Training or a State Apprenticeship Agency (where appropriate) to be eligible for probation employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor/subcontractor as to the entire work force under the registered program.

The Contractor shall furnish the City's Capital Improvement Department with sufficient information, which demonstrates that apprentices are employed pursuant to and individually registered in a bona fide apprenticeship program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the City wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the City wage determination for the work actually performed. Every apprentice must be paid at not less than the rates specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the City wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Bureau of Apprenticeship Training determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship & Training, or a state apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

The Contractor shall post the prevailing wage rate schedules made part of this contract at each work site in a prominent location readily accessible to the workers through the duration of the project. In addition, the Contractor shall post a notice to be provided by the Capital Improvement Department Director regarding prevailing wage rates and the City of El Paso Apprenticeship Program, in English and Spanish, which shall be posted nearby the prevailing wage rates schedules.

The Contractor shall, in addition to all other information items to be provided to City, certify to City the names of all apprentices on the project; verification of their status as registered apprentices; and documentation as to their proper wage rates; and documentation as the journeyman-to-apprentice ratios for each trade as determined by the apprenticeship program.

No worker shall be discharged by the Contractor or Subcontractor or in any other manner discriminated against because such worker has filed an inquiry or complaint, has instituted or caused to be instituted any legal or equitable proceeding or has testified or is about to testify in any such proceeding under or relating to the apprenticeship program.

The Contractor and every subcontractor shall allow immediate entry, into all areas of the job site, by the Capital Improvement Department Director and his/her agents and representatives displaying and presenting proper identification credentials to the job site superintendent or his/her representative. While on the job site the Capital Improvement Department Director and his/her agents and representatives may inspect for all job site and regulations, including but not limited to those concerning safety, security and fire prevention. The Contractor and each subcontractor shall allow any employee to be interviewed at random, at any time and for any reasonable duration by the Capital Improvement Department Director and his/her agents and representatives to determine compliance with the provisions of this contract regarding the apprenticeship program. *The Contractor and each subcontractor shall allow access to its personnel and apprenticeship books and records, at any time and for any reasonable duration by the Capital Improvement Department Director and his/her agents and representatives to determine compliance with the provisions of this contract regarding the apprenticeship program.*

The City reserves the right to terminate this Contract for cause in the Contractor and/or any subcontractor shall breach any of these provisions regarding the apprenticeship program.

The Contractor shall cause these and any other appropriate provisions regarding the apprenticeship program to be inserted in all subcontractor relative to the work to bind the subcontractor to the same apprenticeship program requirements as are applicable to the Contractor.

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## Definitions and Terminology

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
  3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  5. *Bidder*—An individual or entity that submits a Bid to Owner.
  6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
  8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both.
  10. *Claim*—(a) A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Owner's decision regarding a Change Proposal; seeking resolution of a contractual issue that



Owner has declined to address; or seeking other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Construction Documents* - The documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design Consultant consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by these General Conditions of Contract.
13. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
14. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
15. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
16. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
17. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work. If the Work is to be performed using a Design-Build project delivery method, then any reference to the Contractor herein, shall mean the Contractor, Architect or Engineer comprising the Design-Build Team.
18. *Cost of the Work*—See Paragraph 13.01 for definition.
19. *Design-Build Team*— Group comprised of the General Contractor, Architect, Design Engineers/Consultants, and key Subcontractors identified by the Design-Builder.
20. *Design Consultant (if applicable)*- A qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed

or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

21. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
22. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
23. *Engineer*—The individual or entity named as such in the Agreement. The individual or entity may be an employee of Owner, whether that individual holds the title of City Engineer or is an individual within the City Engineer's department, or may be an independent design consultant retained by Owner for the Project. In any event, the Engineer will serve as Owner's agent during design and construction phases, and provide technical guidance and recommendations, subject to Owner's approval.
24. *Field Order*—A written order approved by Owner and issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
25. *Final Completion* - The date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared in accordance with the General Conditions of Contract and the submission of all documents required by the General Conditions of Contract.
26. *Force Majeure Events* - Those events that are beyond the control of both Contractor and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, unusually severe weather conditions not reasonably anticipated, and other acts of God, not due to the negligence of the party claiming Force Majeure.
27. *GMP Exhibit* - That exhibit attached to the Agreement, which exhibit will have been agreed upon by Owner and Design- Build prior to the execution of the Agreement. The GMP Exhibit will be referred to as the Design-Build Agreement.
28. *GMP Proposal* - That proposal developed by Contractor in accordance with the Agreement Between Owner and Contractor with an option for a Guaranteed Maximum Price.
29. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
30. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
31. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior

to Substantial Completion of all the Work.

32. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
33. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
34. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
35. *Owner’s Project Criteria* – Criteria developed by or for Owner to describe Owner’s program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Build Teams performance of the Work. Owner’s Project Criteria may include conceptual documents, design criteria, performance requirements, prescriptive specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.
36. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
37. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
38. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
39. *Resident Project Representative*—The authorized representative of Owner assigned to assist Owner at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative. Owner’s Resident Project Representative may be the Engineer or Architect if Owner so designates.

40. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
41. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review and Owner’s approval of the submittals and the performance of related construction activities.
42. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
43. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
44. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
45. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
46. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
47. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer and subject to the Owner’s approval, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
48. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
49. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
50. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at

the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.

51. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
52. *Unit Price Work*—Work to be paid for on the basis of unit prices.
53. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents. If the Work is to be performed using a Design-Build project delivery method, then the Work also includes the design services required by the Contract Documents. If the Work is to be performed using a CMAR project delivery method, then the Work also includes the preconstruction services required by the Contract Documents.
54. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
55. *Design-Build Contingency*- Allocated amount established in the GMP. Design build contractor, can utilize Design build contingency, for both design and construction contingency. Contingency can be utilized during design to assure that the design addresses full scope at project completion. During Construction, contingency can be utilized to clarify design as necessary to provide a fully functioning facility that meets all scope requirements, changes in market conditions, and issues that occur through no fault of the contractor, including supplementing subcontractors and suppliers to assure an on-time completion of the design and full scope. Contingencies shall not be used to correct construction deficiencies, rework, quality control issues or warranty, for internal staffing necessary for contractor controlled delays and shall not be utilized to cover costs of liquidated damages
56. *Owner's contingency*- Allocated amount established in the GMP. Owner's contingency shall be utilized solely at the Owners discretion to address and authorize additional scopes of work not included in the original requirements. Owner's contingency can be utilized to address any differing site conditions identified during construction.

57. *Allowances* shall be included in the GMP per the direction of the City, for the sole purpose to address design and construction activities where scope is not clear and quantifiable at the time of development of the GMP proposal. Allowance shall specify the general scope for that allowance and may be subject to approval by the City. Funds remaining in an allowance upon completion of the specific SOW will transfer to Owner's contingency
58. Remediation plan- guideline that proposes a series of procedures/actions in order to correct deficiencies or defective work, including any proposed schedule revision needed to maintain project schedule completion.
59. Buyout savings- The difference between the cost for portions of work budgeted on the GMP including construction Manager's Fee and the actual cost of work received by Design Builder during bidding when the cost for the portion of work is less than the amount budgeted in the GMP proposal approved by the owner.

## 1.02 *Terminology*

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Day*:
  1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
- C. *Defective*:
  1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:
    - a. does not conform to the Contract Documents; or
    - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or has been damaged prior to Engineer's recommendation of final payment unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion.
- D. *Furnish, Install, Perform, Provide*:
  1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- E. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01   *Delivery of Bonds and Evidence of Insurance***

- A. *Bonds:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.

### **2.02   *Copies of Documents***

- A. Owner shall furnish to Contractor four copies of the Contract as follows: One fully executed original of the Agreement, two copies of executed Agreement and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by the Architect, engineers and other design professionals.

### **2.03   *Before Starting Construction***

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit for Engineer’s review and - Owner’s approval:
  1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  2. a preliminary Schedule of Submittals; and
  3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

## 2.04 *Preconstruction Conference*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. Should the Contractor or Owner wish to establish any Milestones that will be subject to individual schedules and/or completion dates, these Milestones shall be established at this conference and any Change Orders or contract modifications relating to the establishment of Milestones will be presented to the Owner for acceptance and execution by the Parties in accordance with the terms and provisions contained herein.

## 2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, Owner, and others as appropriate, will be held to review for acceptability to Owner as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer and approved by Owner based on Engineer's recommendations.
  - 1. The Progress Schedule will be acceptable to Engineer and Owner if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer or Owner responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  - 2. Contractor's Schedule of Submittals will be acceptable to Engineer and Owner if it provides a workable arrangement for reviewing and processing the required submittals.
  - 3. Contractor's Schedule of Values will be acceptable to Engineer and Owner as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

## 2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, three-dimensional modeling (such as Building Information Models), and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secured 3<sup>rd</sup> party Project website.
- B. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating



systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

**2.07**    *Designation of Authorized Representatives*

- A. As part of the Agreement, Design-Builder shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Subject to Owner's approval, such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

**ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

**3.01**    *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

**3.02**    *Reference Standards*

- A. Standards Specifications, Codes, Laws and Regulations
  - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies:*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to the Owner any errors or omissions within the Contract Documents.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer and Owner in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer subject to Owner's approval, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Should Contractors perform the Work after discovery of such a conflict without reporting the conflict or before receipt of a clarification or interpretation by Engineer, Contractor will be solely liable for any correction or other measures that may be required to overcome the conflict or bring the Work into compliance with the Contract Documents.

#### B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder. The Engineer will provide a recommendation to Owner who

will ultimately approve or disapprove such Work.

- B. Engineer will, with reasonable promptness and with Owner's prior written approval, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

#### **ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

##### **4.01**    *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence upon issuance of notice to proceed.

##### **4.02**    *Commencement of Performance*

- A. No Work shall be done at the Site prior to such date. Contractor may commence performance upon receipt of the Notice to Proceed and in accordance with any terms and dates contained therein.

##### **4.03**    *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.
- B. Contractor shall note the location of all reference points and controls on a set of red-lined drawings or exhibits to be maintained at all time on the jobsite.

##### **4.04**    *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit for Engineer's review and Owner's approval (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will

not result in changing the Contract Times.

2. Contractor shall provide an updated schedule with each Pay Application for Owner's review. Extensions to the Project Schedule that propose to increase Contract Time must be submitted for the Owner's approval and such approval must be reflected and memorialized in a written Change Order.
  3. The Contractor shall maintain a current Progress Schedule at the Project site. The current Progress Schedule shall be displayed at the site and shall be available for use and reference by the Owner, Engineer, and Contractor. The Contractor shall have weekly meetings with the Owner where the current Progress Schedule is reviewed and evaluated based on work performed in the past week and planned work for the following week. Should the Progress Schedule require an update or amendment as a result of these meetings, the Progress Schedule provided with the subsequent Pay Application shall so indicate.
  4. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Time. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. severe and unavoidable natural catastrophes such as fires, floods, epidemics/pandemics and earthquakes;
  2. abnormal weather conditions;

3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
  4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
  - E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
  - F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
  - G. Contractor must submit any Change Proposal seeking an adjustment in Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.
  - H. Contractor expressly waives any right to an adjustment in Contract Price for any event of delay. Contractor's sole remedy for any delay shall be limited to an adjustment in Contract Time.

## **ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01** *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### **5.02** *Use of Site and Other Areas*

- A. *Limitation on Use of Site and Other Areas:*
  1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall

not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, INDEMNIFY AND HOLD HARMLESS OWNER, ITS OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS FROM AND AGAINST ANY SUCH CLAIM, AND AGAINST ALL COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH OWNER OR OCCUPANT AGAINST OWNER OR ANY OTHER PARTY INDEMNIFIED HEREUNDER TO THE EXTENT CAUSED DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART BY, OR BASED UPON, CONTRACTOR'S PERFORMANCE OF THE WORK, OR BECAUSE OF OTHER ACTIONS OR CONDUCT OF THE CONTRACTOR OR THOSE FOR WHICH CONTRACTOR IS RESPONSIBLE.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger

them.

5.03 *Subsurface and Physical Conditions*

- A. Contractor accepts the responsibility to satisfy itself as to the soil conditions and nature and type of geological formations in and through which this Project will be constructed. Such information as may be obtained from the test borings and accompanying notations shown on the plans and/or documents provided by the Owner is merely for reference only of the Contractor and is not to be construed in any manner as a guarantee by the Owner that such conditions of sub- surface strata are infallible.
- B. Contractor waives any and all rights to make a claim against Owner relating to representations related to geotechnical data provided in the contract documents, plans and specifications. The locations of the test holes, if applicable, are shown in the Geotechnical Report. Logs of these test holes are included in the Geotechnical Report. Test holes information represents subsurface characteristics to the extent indicated and only for the point location of the test hole. Contractor shall make its own interpretation of the character and condition of the materials, which will be encountered. Contractor may, at its own expense, make all additional surveys and investigations as it may deem necessary to determine conditions, which will affect performance of the Work.
- C. *Reports and Drawings.* Owner will identify to the Contractor:
  - 1. any reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
  - 2. any drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
  - 3. Technical Data contained in such reports and drawings.
- D. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified by Owner with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared by the Contractor's consultants for the Project. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner with respect to:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.
  - 4. It is the responsibility of the Design-Builder to retain all necessary geotechnical survey and environmental Surveys required for the performance of its work.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
  2. is of such a nature as to require a change in the Drawings or Specifications; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner or Owner's representative in writing about such condition and provide action plan to the Owner for review. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.
- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Times to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's time required for performance of the Work; subject, however, to the following:
    - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
  2. Contractor shall not be entitled to any adjustment in the Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor submitted its Bid or entered into the Agreement with Owner for the Project; or
    - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study



- of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
- c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
- 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Times, then any such adjustment shall be set forth in a Change Order.
- 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Contract Documents:
  - 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
  - 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
    - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
    - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice and remediation plan to that owner and to Owner.
- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the

Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility.* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Times Adjustments:*
  - 1. Contractor shall be entitled to an equitable adjustment in the Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's time required for, performance of the Work; subject, however, to the following:
    - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
    - b. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
    - c. Contractor gave the notice required in Paragraph 5.05.B.
  - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Times then any such adjustment shall be set forth in a Change Order.
  - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Times no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

#### 5.06 *Hazardous Environmental Conditions at Site*

- A. Contractor shall be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site regardless of whether such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- B. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for

the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

- C. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and deduct all costs incurred from the contract balance or if no contract balance, may file a claim for costs.
- D. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- E. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- G. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ITS OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, AND CONSULTANTS FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE

FAILURE TO CONTROL, CONTAIN, OR REMOVE A CONSTITUENT OF CONCERN BROUGHT TO THE SITE BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE, OR TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE.

- H. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6 – BONDS AND INSURANCE**

### **6.01**    *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond in accordance with chapter 2253 of the Texas Government Code. Contractor shall also furnish such other bonds as are required by other specific provisions of the Contract.
- B. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds in a form acceptable to Owner. The surety on the bonds must be duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in Texas, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide bonds from another surety, all of which shall comply with the requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

### **6.02**    *Insurance—General Provisions*

- A. Owner is self-insured as a municipality of the State of Texas.
- B. Contractor shall provide all insurance with required by Exhibit A to these General Conditions, Owner's Insurance Requirements.

## **ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES**

### **7.01**    *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and

procedures of construction, unless the Contract Documents give other specific instructions concerning these matters.

- B. The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- C. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written consent of Owner. Such consent shall not be unreasonably withheld.

#### 7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.
- C. Prevailing Wages must be paid to all laborers on the Project. Contractor shall provide and pay for labor in accordance with the prevailing wage in the locality and shall not pay less than the prevailing wage. The City of El Paso has performed and requires the use of its Wage Rate Determination. Such wage rate determination is available to Contractor and shall be the basis of any bids and payments to labor for the Project. If the Project involves federal funding, the Contractor is required to pay the higher wage as between the El Paso wage rate determination and the rates published by the U.S. Department of Labor pursuant to the Davis-Bacon Act.
- D. Certified payrolls demonstrating compliance with the prevailing wage requirements shall be maintained by the Contractor and all Subcontractors performing the Work. The Contractor is required to submit to the Owner a copy of all certified payrolls for any pay period with each Pay Application. Pursuant to Chapter 2258, Texas Government Codes, the Contractor shall forfeit as a penalty to the City of El Paso sixty dollars (\$60.00) for each laborer, workman or mechanic employed, for each calendar day, or portion thereof such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under this contract, by him, or by any subcontractor under him. Furthermore, failure to provide certified payrolls may be grounds for withholding of funds and default as provided in sections 15.01 and 15.06 herein.

#### 7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and

incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer or Owner, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 7.04 “Or Equals”

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that Engineer recommend the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below and subject to written approval by Owner.
  - 1. If Engineer in its discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, and provided Owner has authorized such determination, Engineer shall deem it an “or equal” item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) it has a proven record of performance and availability of responsive service; and
      - 4) it is not objectionable to Owner.
    - b. Contractor certifies that, if approved and incorporated into the Work:
      - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
      - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor’s Expense.* Contractor shall provide all data in support of any proposed “or equal” item at Contractor’s expense.

- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the judge of acceptability, subject to Owner's approval. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination. Use of an unapproved "or-equal" item will render such Work defective and will be subject to Article 14 provisions.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

#### 7.05 *Substitutes*

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer, with Owner's approval, authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
  - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
    - a. shall certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design,
      - 2) be similar in substance to that specified, and
      - 3) be suited to the same use as that specified.
    - b. will state:
      - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
      - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other

- direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from that specified, and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer will be the judge of acceptability. Subject to Owner's approval, no substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- E. *Effect of Engineer's Determination*: If Engineer and Owner approve the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.

#### 7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- B. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- C. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- D. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.



- E. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- F. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- G. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- H. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner.
- I. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

#### 7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents. However, if the Contractor has reason to believe that the design, process or product required by the Owner is an infringement of a copyright or a patent, the Contractor shall be responsible for such any loss on account thereof, unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Contractor, the Owner shall give prompt written notice to the Contractor.
- B. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ITS OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, AND CONSULTANTS OF EACH AND ANY OF THEM FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE NOT

SPECIFIED IN THE CONTRACT DOCUMENTS.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, fees, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

7.09 *Taxes*

- A. The Owner enjoys tax-exempt status as a municipality. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Contractor for use on the Project. The Contractor shall use that certificate to exempt any purchases made for the Work from taxes. All savings for the tax-exempt status will be passed on to the Owner by the Contractor. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses. However, Contractor has no responsibility or liability for determining whether the Work as described in the Contract Documents complies with applicable Laws or Regulations.

7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Schedules, O&Ms (Operations and Maintenance manuals), Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings and submittals. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer and Owner for reference. Upon completion of the Work, Contractor shall deliver these record documents to Owner. Delivery of a complete set of record documents to Owner is a condition precedent to Final Completion.

7.12 *Safety and Protection*

- A. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall comply with all Laws and Regulations regarding safety and shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks,

pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

- B. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

## 7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Owner prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. Upon recommendation provided by Engineer, if Owner determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.
- B. In the event there is an accident involving injury to any individual on or near the Work, the Contractor shall notify Owner's Representative within twenty-four (24) hours of the event and shall be responsible for recording the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining medical reports and other documentation that describes the event. Copies of such documentation shall be provided to Owner, for the Owner's and Engineer's records, within forty-eight (48) hours of the event. Nothing in this section will relieve Contractor of its obligations and responsibilities with respect to an injury under any state and federal laws and regulations.

## 7.16 *Shop Drawings, Samples, and Other Submittals*

- A. *Shop Drawing and Sample Submittal Requirements:*
  - 1. Before submitting a Shop Drawing or Sample, Contractor shall have:
    - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
    - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
    - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
  - 2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
  - 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and Owner's approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.
1. *Shop Drawings:*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.
  2. *Samples:*
    - c. Contractor shall submit the number of Samples required in the Specifications.
    - d. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's and Owner's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer and Owner. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's and Owner's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
  3. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
  4. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

5. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.
- E. *Resubmittal Procedures:*
1. Contractor shall make corrections required by Engineer or Owner and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
  2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
  3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- B. The Contractor warrants and guarantees for one (1) year from Final Completion, or for a longer period if expressly stated in the Contract Documents, the Work. This includes a Warranty and Guarantee against any and all defects. The Contractor must correct any and all defects in material and/or workmanship which may appear during the Warranty and Guarantee period, or any defects that occur within one (1) year of Final Completion even if discovered more than one (1) year after Final Completion, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to the Owner, within a reasonable period of time, and to the Owner's satisfaction.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, modification, or improper maintenance or operation by persons other than

Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal;
  6. the issuance of a notice of acceptability by Engineer;
  7. any inspection, test, or approval by others; or
  8. any correction of defective Work by Owner.
- E. The Design-Builder must furnish all special warranties required by the Design-Build Documents to the Owner no later than Final Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work which is defective or nonconforming, or the acceptance of nonconforming Work.
- F. The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.
- G. The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- H. The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.
- I. Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in this Section relates only to the specific obligation of the Contractor to correct the Work, pursuant to the warranties provided, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

7.18 *Indemnification*

- A. TO THE FULLEST EXTENT PERMITTED BY LAW, AND IN ADDITION TO ANY OTHER OBLIGATIONS OF CONTRACTOR UNDER THE CONTRACT OR OTHERWISE, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER, ITS OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, AND CONSULTANTS FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE PERFORMANCE OF THE WORK, EVEN WHERE ANY SUCH CLAIM, COST, LOSS, OR DAMAGE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING FROM THE NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, AGENTS, OR EMPLOYEES AND BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR, ANY DESIGN CONSULTANT, ANY SUBCONTRACTOR, ANY SUPPLIER, OR ANY INDIVIDUAL OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM ANY OF THE WORK OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.
- B. CONTRACTOR SHALL DEFEND ANY ACTION OR PROCEEDING BROUGHT AGAINST OWNER BASED ON ANY CLAIM THAT THE WORK, OR ANY PART THEREOF, OR THE OPERATION OR USE OF THE WORK OR ANY PART THEREOF, CONSTITUTES INFRINGEMENT OF ANY PATENT (ENFORCEABLE IN THE UNITED STATES), COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT NOW OR HEREAFTER ISSUED ("IP RIGHT"). CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER FROM AND AGAINST ALL DAMAGES AND COSTS, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND EXPENSES AWARDED AGAINST OWNER OR CONTRACTOR IN ANY SUCH ACTION OR PROCEEDING. CONTRACTOR AGREES TO KEEP OWNER INFORMED OF ALL DEVELOPMENTS IN THE DEFENSE OF SUCH ACTIONS.
- C. IF OWNER IS ENJOINED FROM THE OPERATION OR USE OF THE WORK, OR ANY PART THEREOF, AS THE RESULT OF ANY IP RIGHT SUIT, CLAIM, OR PROCEEDING, CONTRACTOR SHALL AT ITS SOLE EXPENSE TAKE REASONABLE STEPS TO PROCURE THE RIGHT TO OPERATE OR USE THE WORK WITH DUE CONSIDERATION OF THE MINIMIZING THE IMPACT ON OWNER'S OPERATIONS AND THE COST THEREOF. IF CONTRACTOR CANNOT SO PROCURE SUCH RIGHT WITHIN A REASONABLE TIME, CONTRACTOR SHALL PROMPTLY, AT CONTRACTOR'S OPTION AND AT CONTRACTOR'S EXPENSE, (I) MODIFY THE WORK SO AS TO AVOID INFRINGEMENT OF ANY SUCH IP RIGHT OR (II) REPLACE SAID WORK WITH WORK THAT DOES NOT INFRINGE OR VIOLATE ANY SUCH IP RIGHT.
- D. PROVIDED THAT OWNER IS NOT IN BREACH OF ITS CONTRACTUAL OBLIGATION TO MAKE PAYMENTS TO CONTRACTOR FOR UNDISPUTED



AMOUNTS, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER FROM ANY CLAIMS BROUGHT AGAINST OWNER OR AGAINST THE PROJECT AS A RESULT OF THE FAILURE OF CONTRACTOR, OR THOSE FOR WHOSE ACTS IT IS RESPONSIBLE, TO PAY FOR ANY SERVICES, MATERIALS, LABOR, EQUIPMENT, TAXES OR OTHER ITEMS OR OBLIGATIONS FURNISHED OR INCURRED FOR OR IN CONNECTION WITH THE WORK. WITHIN THREE (3) DAYS OF RECEIVING WRITTEN NOTICE FROM OWNER THAT SUCH A CLAIM HAS BEEN FILED, CONTRACTOR SHALL COMMENCE TO TAKE THE STEPS NECESSARY TO DISCHARGE SAID CLAIM, INCLUDING, IF NECESSARY, THE FURNISHING OF A PAYMENT BOND. IF CONTRACTOR FAILS TO DO SO, OWNER WILL HAVE THE RIGHT TO DISCHARGE THE CLAIM AND HOLD CONTRACTOR LIABLE FOR COSTS AND EXPENSES INCURRED, INCLUDING ATTORNEYS' FEES.

**7.19** *Delegation of Professional Design Services*

- A. Contractor will be required to provide all professional design services unless such services in accordance with the Agreement, the Contract Documents or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's and Owner's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's and Owner's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.

**7.20** *Contractor's Payment Obligations*

- A. Contractor shall pay each Design Consultant, Subcontractor, and other person or entity providing services or work for the Contractor no later than the time period required by chapter 2251 of the Texas Government Code, and in accordance with its contractual obligations to such parties, all the amounts Contractor has received from Owner on account of their work. Contractor will impose similar requirements on Design

Consultants and Subcontractors to pay those parties with whom they have contracted.

## **ARTICLE 8 – OTHER WORK AT THE SITE**

### **8.01   *Other Work***

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer and Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

### **8.02   *Coordination***

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the Owner must provide written notice to the Contractor of additional work that includes the scope of the work, general location, time-frame, and the identity of the party(ies) performing the work. Additionally, the Owner must provide or have provided to Contractor prior to the start of any such other work:
  - 1. the identity of the individual or entity that will have authority and responsibility on behalf of the Owner to address coordination of the activities among the various contractors;

2. an itemization of the specific matters to be covered by such authority and responsibility; and
  3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in writing, the Contractor shall have responsibility for coordination among other parties at and adjacent to the Project Site. The Contractor shall ensure through such coordination that neither its Work, nor any other parties' work is delayed or impeded because of a lack of such coordination.

### 8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times and the Contractor performing its obligation pursuant to section 8.02.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) INDEMNIFY AND HOLD HARMLESS OWNER, ITS OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, AND CONSULTANTS FROM AND AGAINST ANY SUCH CLAIMS, AND AGAINST ALL COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO SUCH DAMAGE, DELAY, DISRUPTION, OR INTERFERENCE.

## ARTICLE 9 – OWNER’S RESPONSIBILITIES

### 9.01 *Communications to Contractor*

- A. For all Project and performance of Work matters, Owner will issue communications to Contractor through Engineer. However, Owner may, at its discretion, issue communications related to the Project directly to Contractor. In all such direct communications, Owner will endeavor to copy Engineer.

### 9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer. The replacement engineer’s status under the Contract Documents shall be that of the former Engineer.

### 9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### 9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due in the manner and within the time limits proscribed by chapter 2251 of the Texas Government Code.

### 9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner’s duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

### 9.06 *Limitations on Owner’s Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

### 9.07 *Evidence of Financial Arrangements*

- A. Within Thirty (30) days of executing the Agreement, Contractor may request, and Owner shall furnish, reasonable evidence that financial arrangements have been made to satisfy Owner’s obligations under the Contract Documents.

### 9.08 *Safety Programs*

- A. While at the Site, Owner’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## ARTICLE 10 – ENGINEER’S STATUS DURING CONSTRUCTION

### 10.01 *Owner’s Representative*

- A. Engineer will act as the Owner’s representative for Project administration during the construction period. Engineer shall not have the authority to bind the Owner as that authority lies with the Owner’s designated representative, but Engineer may communicate on behalf of Owner in all Project matters.

### 10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer’s efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer’s visits and observations are subject to all the limitations on Engineer’s authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer’s visits or observations of Contractor’s Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in this article 10.

### 10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14, subject to Owner’s approval.

### 10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer’s authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer’s authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.

- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

**10.06** *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

**10.07** *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Subject to Owner's approval, Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor.

**10.08** *Limitations on Engineer's Authority and Responsibilities*

- A. Engineer's authority, responsibility and actions as Owner's representative shall not give rise to any liability to Contractor. Contractor expressly waives any claims it has against Engineer for the performance of its responsibilities as Owner's representative.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto.
- C. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- D. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

**10.09** *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

**ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

**11.01** *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

1. *Change Orders:*
  - a. A Change Order shall be used to amend or supplement the Contract Documents when the Parties agree to the amendment, supplement, modification to the scope of work, or change in the Contract Price or the Contract Times.
2. *Work Change Directives:* A Work Change Directive may be issued by the Owner if the Parties cannot agree on a Change Order. A Work Change Directive may also be issued if the Parties expect that the change ordered by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times.
  - b. In the event the Owner has issued a Work Change Directive that the Parties subsequently agree shall be incorporated into a Change Order, the Contractor must submit its Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive.
  - c. Adjustments to the Contract Price for Work performed pursuant to a Work Change Directive issued by the Owner without agreement of the Parties shall be governed by the provisions in section 11.04.
  - d. Upon receipt of a Change Directive, Contractor shall promptly proceed with the change in the Work involved.
3. *Field Orders:* Owner or Engineer (with Owner's approval) may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein. Provided the Design-Build project delivery method is being used, subject to Owner's prior written approval, Contractor may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Contractor shall promptly inform Owner and Engineer, in writing, of any such changes and record such changes on the documents maintained by Contractor.

#### 11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any

such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

**11.03** *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

**11.04** *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order or Work Change Directive. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  - 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
  - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2) properly itemized and supported by sufficient substantiating data to permit evaluation by the Owner; or
  - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
  - 1. a mutually acceptable fixed fee; or
  - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;



- b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

#### 11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order or Work Change Directive. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

#### 11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer and Owner to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.
  - 1. *Procedures:* Contractor shall submit each Change Proposal to Engineer and Owner promptly (but in no event later than 30 days) after the start of the event giving rise

thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. Failure by Contractor to comply with this submittal procedure will constitute an express waiver of any Claim for relief.

2. *Engineer's Action:* Engineer will review each Change Proposal with Owner and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Engineer's action on a Change Proposal will not have the effect of adjusting the Contract Time or Contract Price without express written approval of Owner and a memorialization of Engineer's Action in a Change Order. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  3. *Binding Decision:* Engineer's decision will be final and binding upon Contractor, unless Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

#### 11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07; and
  4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

#### 11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### ARTICLE 12 – CLAIMS

#### 12.01 *Claims*

- A. The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
  - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
  - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver written notice directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. In the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The responsibility to substantiate a Claim shall rest with the party making the Claim. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
  - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
  - 2. If Owner and Contractor agree to mediation, the mediation shall occur within 60 days of the agreement to mediate. However, the mediation may be stayed and its scope and schedule may be amended, provided that the mediation occur no later than 60 days following Final Completion. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a

mediator designated by the American Arbitration Association (“AAA”) pursuant to its Construction Industry Mediation Rules.

3. Owner and Contractor shall each pay one-half of the mediator’s fees and costs.
4. Mediation is a condition precedent to litigation before a court of competent jurisdiction or tribunal.
- E. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party.
- F. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise, that agreement should be memorialized in a Change Order if the Project is ongoing at the time of resolution and the agreement affects the Contract scope, price, or time.
- G. *Duty to Continue Performance:* Unless provided to the contrary in the Contract Documents, Contractor shall continue to perform the Work pending the final resolution of any dispute or disagreement between Contractor and Owner.
- H. The Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise arising out of or related to the Contract in accordance with the requirements of this article 12, the dispute resolution provisions of article 17 and within the time period specified by applicable law. The Contractor waives all claims and causes of action not commenced in strict accordance with this Article.
- I. *Claims Arising After Final Payment:* If the Contractor intends to make a Claim for an increase in the Contract Price or Contract Time, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property. Failure to provide written notice of a Claim in accordance with this Article and other applicable provisions of the Contract Documents constitutes an express waiver by the Contractor of any right of recovery on such Claim.

## **ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **13.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
1. Payroll costs for employees in the employ of Contractor in the direct performance of the Work. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation and health and retirement benefits applicable thereto.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
  4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
  5. Supplemental costs including the following:
    - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
    - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
    - c. Rentals of all construction equipment and machinery, and the parts thereof, approved by Owner, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
    - d. The cost of utilities, fuel, and sanitary facilities at the Site.
    - e. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
1. Payroll costs and other compensation of Contractor's employees, agents and other personnel not included in Paragraph 13.01.B, whether at the Site or in Contractor's principal or branch office for general administration of the Work. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
  2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  4. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee:* In the event that additional services are requested by the owner on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.
- E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

#### 13.02 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor and Owner the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Provided the Owner has approved such decision, Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.

- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
  2. there is no corresponding adjustment with respect to any other item of Work; and
  3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

#### **ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

##### **14.01** *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

##### **14.02** *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer and Owner timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall be responsible for providing the services of an independent inspection and testing lab if the Contract Documents and Specifications so require.
- C. Contractor shall be responsible for arranging, obtaining, and coordinating all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

**NOTE(S) TO USER: 14.02** Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner.

- D. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work, subject to Owner's approval.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner



may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

- A. Subject to Owner's prior written approval, Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
  - B. If any Work is covered contrary to the written request of Engineer or Owner, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
  - C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, upon Owner's approval and Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
- 6. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 7. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

#### 14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer or Owner to correct defective Work, or to remove and replace rejected Work as required by the Owner, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work. If no payments are due to the Contractor or insufficient funds remain as part of the Contract Price then unpaid to the Contractor, the Contractor shall be liable to the Owner and shall promptly reimburse the Owner for all costs following written notice of the amount due to the Owner.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

## **ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

### **15.01 *Progress Payments***

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer and Owner. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
  - 1. At least 25 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer and Owner for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and

evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents; and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - d. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - e. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
  - f. the Work is defective, requiring correction or replacement;

- g. the Contract Price has been reduced by Change Orders;
- h. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
- i. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- j. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

**D. *Reductions in Payment by Owner:***

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work;
  - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required certified payrolls, bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. the Work is defective, requiring correction or replacement;
  - g. liquidated damages, if applicable, or other damages resulting from delay have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - h. there are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for

such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, services, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens, claims, security interests, encumbrances, and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment. If the Agreement calls for a Design-Build project delivery method, the Contractor shall issue a certificate of Substantial Completion to the Owner.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. At that inspection, Owner and Engineer will review, supplement, and edit the initial punch list prepared by Contractor or prepare an additional punch list if Contractor has not yet provided a punch list. If Owner or Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Owner and Engineer consider the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall set forth (i) the date of Substantial Completion, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Contractor's responsibility for the Project's security, maintenance, utilities and insurance pending final payment and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. If Owner and Engineer do not consider the Work substantially complete, the Engineer shall notify Contractor of such, in writing, with a specific explanation of those portions of the Work that are the basis for determining the Work is not substantially complete. If the Agreement calls for a Design- Build project delivery method, the Contractor shall submit a preliminary certificate of Substantial Completion to the Owner.
- D. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03 for that part of the Work.
  2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Owner or Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Owner or Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work.
  4. No use or occupancy or separate operation of part of the Work by Owner will relieve Contractor of its insurance obligations under these Contract Documents.
- B. The Owner, at the Owner's sole option, shall have the right to take possession of and use any completed or partially completed portion of the Work regardless of the time for completing the entire Work. The Owner's exercise of such use and possession shall not be construed to mean that the Owner acknowledges that any part of the Work so possessed and used is substantially complete or that it is accepted by Owner, and the Owner's exercise of such use and possession shall not relieve the Contractor of its responsibility to complete all Work in accordance with the Contract Documents.

#### 15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies. In such case, Contractor must bear the cost of any additional Work or services of the Owner until the Work is determined to be finally complete.

## 15.06 *Final Payment*

### A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer and Owner, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
  - d. a list of all disputes that Contractor believes are unsettled;
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights or claims arising out of the Work, and of Liens or claims filed in connection with the Work; and
  - f. a general release executed by Contractor waiving, upon receipt of final payment by Contractor, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien or claim could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in claims, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien or claim, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

### B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's

recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due*: Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off) will become due and shall be paid by Owner to Contractor.

#### 15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from defective Work appearing after final inspection, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted, expressly reserved, or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is in need of repair, adjustment, modification, correction, or found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such other adjacent areas;
  - 2. correct such defective Work;
  - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.



- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

### **16.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply an Architect, Engineer, or sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
  2. Fails to make payment to the Consultants, Contractors, Subcontractors, or Suppliers for services, materials or labor in accordance with their respective agreements with the Contractor;
  3. Repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

4. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents; or
  5. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor and the Contractor's surety, if any, ten (10) days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
1. declare Contractor to be in default,
  2. exercise any rights afford to it under the Contract Documents,
  3. give Contractor notice that the Contract is terminated; and/or
  4. enforce the rights available to Owner under any applicable performance bond.
- C. If Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient. If Owner chooses to complete the Work in accordance with this provision, Owner and Contractor expressly agree that Owner shall be exempt from publicly bidding the completion work pursuant to Sections 252.021 and 252.022 of the Texas Local Government Code.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within the ten (10) day cure period begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds to complete the Work and/or correct the default, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Contractor will only be entitled to be paid for Work performed prior to its default. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such costs shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Contractor's default.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety.

- G. If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Paragraph 16.03 of the Agreement.

**16.03** *Owner May Terminate For Convenience*

- A. Upon seven (7) days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid (subject to the GMP) for:
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work; and
  - 3. demobilization expenses.
- B. Contractor shall not be paid for any economic loss arising out of or resulting from such termination, except for those costs expressly identified above.
- C. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:
  - 1. cease operations as directed by the Owner in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
  - 2. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
  - 3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.
- D. If Owner terminates the contract for convenience and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in the Contract Documents.

**16.04** *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 180 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 60 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 60 days to pay Contractor any sum finally determined to be due, Contractor may, seven (7) days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17 – FINAL RESOLUTION OF DISPUTES**

### **17.01** *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
  - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
  - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
  - 3. Reserved claims of Owner or Contractor under these Control Documents, including Article 12.
- B. *Final Resolution of Disputes:*
  - 1. For any disputes subject to this article, Owner and Contractor shall endeavor to resolve their Claims by mediation. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction. Mediation is a condition precedent to litigation before a court of competent jurisdiction.
  - 2. For any claim not resolved by mediation, the parties agree to submit such claims to the jurisdiction of the District Court of El Paso County, Texas for final dispute resolution.

## **ARTICLE 18 – MISCELLANEOUS**

### **18.01** *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
  - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended;
  - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice; or
  - 3. delivered by electronic means with a corresponding confirmation of delivery or read receipt.

**18.02** *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday, Sunday or a legal holiday, the computation of time will conclude on the next business day.

**18.03** *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available, by special warranty or guarantee, or by other provisions of the Contract.

**18.04** *Limitation of Damages*

- A. The Contractor and Owner waive claims against each other for the following damages arising out of or relating to this Contract. This mutual waiver includes:
  - 1. damages incurred by the Owner for loss of financing, business opportunity and reputation, and for loss of management or employee productivity or of the services of such persons; and
  - 2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, bonding capacity, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.
- B. The damages limitation set forth in Paragraph 18.04.A above is not intended to affect the payment of liquidated damages, if applicable, or delay damages which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be incidental to the Work.

**18.05** *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

**18.06** *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state of Texas. However, the laws of the state in which Project is located, including applicable federal laws and governmental authorizations and permits issued with respect to the Work pursuant to state or federal law, shall pertain as to the duty of Contractor to construct the Work in compliance with legal requirements.

18.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions, and shall not in any way be construed to limit or alter the meaning of any provision.

18.09 *Prevailing Wage*

- A. Contractor shall provide and pay for labor in accordance with the prevailing wage in the locality and shall not pay less than the prevailing wage.

18.10 *Right to Audit:*

- A. Whenever the Owner enters into any type of contractual arrangement with the Contractor, then the Contractor's "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. The Owner's representative, or an outside representative engaged by the Owner, may perform such audits. The Contractor shall maintain all records relating to this Agreement for four (4) years from the date of final payment under this Agreement.
- B. The Owner shall have the exclusive right to examine the records of the Contractor. The term "records" as referred to herein shall include any and all information, materials and data of every kind and character, including without limitation records, books, papers, documents, contracts, schedules, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may, in the Owner's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any contract document. Such records shall include (hard copy, as well as computer-readable data if it can be made available), written policies and procedures, time sheets, payroll registers, cancelled checks, personnel file data, correspondence, general ledger entries, and any other record in the Contractor's possession which may have a bearing on matters of interest to the Owner in connection with the Contractor's dealings with the Owner (all of the foregoing are hereinafter referred to as "records"). In addition, the Contractor shall permit interviews of employees as well as agents, representatives, vendors, subcontractors and other third parties paid by the Contractor to the extent necessary to adequately permit evaluation and verification of the following:
  - 1. The Contractor's compliance with contract requirements;
  - 2. The Contractor's compliance with the Owner's business ethics policies; and
  - 3. If necessary, the extent of the Work performed by the Contractor at the time of contract termination.
- C. The Contractor shall require all payees (examples of payees include subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this Article

18.10 by securing the requirements hereof in a written agreement between the Contractor and payee. Such requirements include a flow-down right of audit provision in contracts with payees that also apply to subcontractors and sub-subcontractors, material suppliers, etc. The Contractor shall cooperate fully and shall require Related Parties and all of the Contractor's subcontractors to cooperate fully in furnishing or in making available to the Owner from time to time whenever requested, in an expeditious manner, any and all such information, materials, and data.

- D. The Owner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement, and shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article 18.10.
- E. If an audit inspection or examination in accordance with this Article 18.10 discloses overpricing or overcharges of any nature by the Contractor to the Owner in excess of one-half of one percent (.5%) of the total contract billings, then the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments, which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records, shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the Owner's findings to the Contractor.

#### 18.11 *Trust Funds*

- A. This Project is subject to the Texas Trust Fund Statute, chapter 162 of the Texas Property Code, and the Parties acknowledge that the payment obligations contained herein for the Contractor to receive funds from the Owner and then use those funds to pay such Subcontractors, Suppliers, Vendors, Consultants, and the like, are subject to the Trust Fund Statute and the Owner's audit rights outline in this article 18.

#### 18.12 *Severability*

- A. If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

#### 18.13 *Amendments*

- A. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

#### 18.14 *Assignment*

- A. Contractor shall not, without the written consent of the Owner assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents, other than to an affiliate. An assignment to an affiliate shall not relieve the assignor of its obligations under this Agreement.

18.15 *Confidential Information*

- A. Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (a) the transmitting party identifies as either confidential or proprietary; (b) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (c) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.
- B. A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

18.16 *Public Art Component*

- A. This Project is subject to the Owner's Public Art initiative and, as such, two percent (2%) of the Project budget, through separate funds, are devoted to the commission or acquisition and installation of a public art work. The Contractor expressly acknowledges that the Public Art component is part of the Work. The Contractor agrees to coordinate with the Owner and the artist for installation of the art work at the direction of the artist and the Owner. The cost of such coordination, direction and installation shall be born by Contractor and are part of the Contract Price.

18.17 *Open Records Act/Texas Public Information Act Requests*

- A. The Contractor recognizes that this Project is publicly owned and the Owner is subject to the disclosure requirements of the Texas Public Information Act ("TPIA"). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to the Owner, to cooperate with the Owner for any particular needs or obligations arising out of the Owner's obligations under the TPIA. This acknowledgement and obligation are in addition to and complimentary to the Owner's audit rights in section 18.10.



# DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with [Title 2, Chapter 2.92, Section 2.92.080](#)

## Introduction:

Individuals or entities benefiting by a City Council Agenda item must disclose contributions or donations made to current members of Council under the City's Ethics Code. The information on this form is being captured for transparency purposes and will be noted on the relevant City Council Agenda. **Contributions and Donations do NOT disqualify an applicant from doing business with the City.**

## Definitions:

- "Contribution" A direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit.
- "Contributor" A person making a contribution, including the contributor's spouse.
- "Donation" Cash and the value of any in-kind contributions or gifts to the council member for use by their office or in their district.
- "Donor" An individual and spouse, a business entity, or an individual who owns a business entity in whole or in part, or is operated by the individual, that is the subject of a council agenda item.
- "Benefiting" Shall include but not be limited to any contract, bid award, franchise, permit, zoning or rezoning, and other award that council will vote on.

**Instructions:** Please read and complete this form carefully. If you have made campaign contributions or donations to any current City Council member(s) totaling an aggregate of \$500 or more during their campaign(s) or term(s) of City office, you are required to disclose the information as specified below. If you have not made such contributions or donations past the limit specified in the ordinance, you are required to affirm your compliance with the municipal code. Please submit this completed form along with your application or proposal to the relevant city department. Failure to disclose campaign contributions or donations as required by the ordinance may result in a violation of the City's Ethics Code requirements, and sanctions under the Ethics Code 2.92.

## Contributor / Donor Information:

Full Name

Business Name

Jordan Foster Construction, LLC

Agenda Item Type

Contract Award - 2023-0576R George Perry Boulevard Extension

Relevant Department

Capital Improvement / Aviation

**Disclosure Affirmation:** Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.

☒

I have **NOT** made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office, as specified in Section 2.92.080 of the El Paso Municipal Code.

OR

☐

I have made campaign contributions or donations totaling an aggregate of \$500 or more to the following City Council member(s) during their campaign(s) or term(s) of City office:

OFFICE	CURRENT COUNCIL MEMBER NAME	AMOUNT (\$)
Mayor		
District 1		
District 2		
District 3		
District 4		
District 5		
District 6		
District 7		
District 8		

**Declaration:** I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, **I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.**

Signature:   
John Goodrich, PE

Date: May 20, 2024



Legislation Text

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File #: 24-771, Version: 1

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**CITY OF EL PASO, TEXAS**  
**LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Purchasing and Strategic Sourcing, K. Nicole Cote, (915) 212-1092

Streets and Maintenance, Richard J. Bristol, (915) 212-7000

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

The linkage to the Strategic Plan is subsection: 7.5 - Set one standard for infrastructure across the city.

**Award Summary:**

Discussion and action that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue Purchase Order(s) for Solicitation 2024-0265 Bobcat Proprietary Parts & Services to Total Equipment & Rental of El Paso, LLC dba Bobcat of El Paso, the sole and authorized distributor for a term of three (3) years for an estimated amount of \$450,000.00. Supplier will be required to provide an updated sole source letter and affidavit each year. This contract will allow Streets & Maintenance to purchase parts and services for the Bobcat Proprietary Parts & Services.

**Contract Variance:**

The difference based in comparison to the previous contract is as follows: An increase of \$360,000.00 for the initial term, which represents a 400.00% increase due price increases and additional contract capacity to maintain parts inventory.

Department:	Streets & Maintenance
Award to:	Total Equipment & Rental of El Paso, LLC dba Bobcat of El Paso
City & State:	El Paso, TX
Item(s):	All
Initial Term:	3 Years
Option Term:	N/A
Total Contract Time:	3 Years
Annual Estimated Award:	\$150,000.00
Initial Term Estimated Award:	\$450,000.00
Option Term Estimated Award:	N/A
Total Estimated Award:	\$450,000.00

Account(s):	532-3600-531250-37020-P3701 (Service) 532-3600-531210-37020-P3701 (Parts)
Funding Source(s):	Internal Service Fund
District(s):	All

Non-Competitive Procurement under Local Government General Exemption: Section 252.022 - (7) a procurement of items that are available from only one source - (D) captive replacement parts or components for equipment.

The Purchasing & Strategic Sourcing and Streets & Maintenance Departments recommend award as indicated to Total Equipment & Rental of El Paso, LLC dba Bobcat of El Paso under the exemption listed above.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

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

**AGENDA DATE:** June 11, 2024  
**PUBLIC HEARING DATE:** Not Applicable

**CONTACT PERSON(S) NAME AND PHONE NUMBER:**

Richard J. Bristol, Streets & Maintenance Director, (915) 212-7000  
K. Nicole Cote, Managing Director (915) 212-1092

**DISTRICT(S) AFFECTED:** All

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

**SUBGOAL:** 7.5 – Set one standard for infrastructure across the city

**SUBJECT:**

Discussion and action that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue Purchase Order(s) for solicitation 2024-0265 Bobcat Proprietary Parts & Services to Total Equipment & Rental of El Paso, LLC dba Bobcat of El Paso, the sole and authorized distributor for a term of three (3) years for an estimated amount of \$450,000.00. Supplier will be required to provide an updated sole source letter and affidavit each year.

**BACKGROUND / DISCUSSION:**

This contract will allow Streets & Maintenance to purchase parts and service for the Bobcat Proprietary Parts & Services.

**SELECTION SUMMARY:**

General Exemption under Texas Local Government Code Section 252.022 Part 7 (D) captive replacement parts or components for equipment. Total Equipment & Rental of El Paso, LLC dba Bobcat of El Paso is the sole and authorized distributor of Bobcat Proprietary Parts & Services.

**CONTRACT VARIANCE:**

The difference based in comparison to the previous contract is as follows: An increase of \$360,000.00 for the initial term, which represents a 400.00% increase due to additional contract capacity to maintain parts inventory and service.

**PROTEST**

N/A

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

Amount: \$450,000.00

Funding Source: Internal Service Fund

Account: 532-3600-531250-37020-P3701 (Service)  
532-3600-531210-37020-P3701 (Parts)

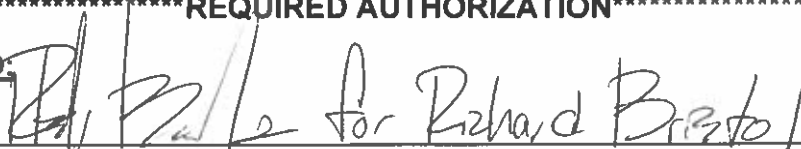
HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Streets & Maintenance

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

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

DEPARTMENT HEAD:

 for Richard Bristol

Richard J. Bristol, Director of Streets & Maintenance

Project Form  
Non-Competitive

\*\*\*\*\*Posting Language Below\*\*\*\*\*

Please place the following item on the Regular Agenda for the City Council Meeting of June 11, 2024

Strategic Goal 7 - Enhance and Sustain El Paso's Infrastructure Network

The linkage to the Strategic Plan is subsection: 7.5 - Set one standard for infrastructure across the city

**Award Summary:**

Discussion and action that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue Purchase Order(s) for solicitation 2024-0265 Bobcat Proprietary Parts & Services to Total Equipment & Rental of El Paso, LLC dba Bobcat of El Paso, the sole and authorized distributor for a term of three (3) years for an estimated amount of \$450,000.00. Supplier will be required to provide an updated sole source letter and affidavit each year. This contract will allow Streets & Maintenance to purchase parts and service for the Bobcat Proprietary Parts & Services.

**Contract Variance:**

The difference based in comparison to the previous contract is as follows: An increase of \$360,000.00 for the initial term, which represents a 400.00% increase due price increases and additional contract capacity to maintain parts inventory.

Department:	Streets & Maintenance
Award to:	Total Equipment & Rental of El Paso, LLC dba Bobcat of El Paso
City & State:	El Paso, TX
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Initial Term:	3 Years
Option Term:	N/A
Total Contract Time:	3 Years
Annual Estimated Award:	\$150,000.00
Initial Term Estimated Award:	\$450,000.00
Option Term Estimated Award:	N/A
Total Estimated Award:	\$450,000.00
Account(s):	532-3600-531250-37020-P3701 (Service) 532-3600-531210-37020-P3701 (Parts)
Funding Source(s):	Internal Service Fund
District(s):	All

Non-Competitive Procurement under Local Government General Exemption: Section 252.022 - (7) a procurement of items that are available from only one source – (D) captive replacement parts or components for equipment;

The Purchasing & Strategic Sourcing and Streets & Maintenance Departments recommend award as indicated to Total Equipment & Rental of El Paso, LLC dba Bobcat of El Paso under the exemption listed above.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.





## PURCHASING & STRATEGIC SOURCING DEPARTMENT

### SOLE SOURCE AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT-RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned official, on this day, personally appeared \_\_\_\_\_ a person known to me to be the person whose signature appears below, whom after being duly sworn upon his/her oath deposed and said:

1. My name is David Kofoed. I am over the age of 18, have never been of a convicted crime and am competent to make this affidavit.
2. I am an authorized representative of the following company or firm: Total Equipment & Rental of El Paso LLC dba Bobcat of El Paso
3. The above named company or firm is the sole source for the following item(s), product(s) or service(s):  
Bobcat Equipment
4. Competition in providing the above named item(s) product(s), service(s) is precluded by the existence of a patent, copyright, secret process or monopoly as stated under Section 252.022, Subchapter A of the Local Governmental Code 7A or as provided for under 7B-F of the same section. Also, attached hereto is a sole source letter, which sets forth the reasons why this Vendor is a sole source provider (dated and signed).
5. There is/are no other like item(s) or product(s) available for purchase that would serve the same purpose or function.
6. **Note: This Vendor understands that by providing false information on this Sole Source Affidavit, it may be considered a non-responsible Vendor on this and future purchases and may result in discontinuation of any/all business with the City of El Paso.**

\_\_\_\_\_  
Signature

SUBSCRIBED AND SWORN to before me on this 12 day of October, 2023



\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
MY COMMISSION EXPIRES

COMPANY NAME: Total Equipment & Rental of El Paso LLC dba Bobcat of El Paso

ADDRESS, CITY, STATE & ZIP CODE 11179 Rojas Drive, El Paso, Texas 79935

PHONE: 915-860-1145

FAX NUMBER: \_\_\_\_\_

CONTACT NAME AND TITLE: David Kofoed Controller

WEB ADDRESS: https://www.totalequipmentandrental.com

EMAIL: Forms@totalbobcat.com

FEDERAL TAX ID NUMBER: 46-2816650

TEXAS SALES TAX NUMBER: 32051088501



# Bobcat

250 East Beaton Drive  
West Fargo, ND 58078

November 14, 2023

To Whom It May Concern:

Bobcat Company authorizes and acknowledges Total Equipment (Bobcat of El Paso) as the sole source authorized dealer for Bobcat® Compact Construction Equipment, Parts, and Accessories for the territory of El Paso, TX. If you have further questions or concerns regarding this, please don't hesitate to call me at 701-241-8746 or email at [randy.fuss@doosan.com](mailto:randy.fuss@doosan.com).

Best Regards,

*Randy L. Fuss*

**Randy L. Fuss**  
**Director, Government Accounts**  
**Doosan Bobcat North America**  
**Bobcat Company**

# DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with Title 2, Chapter 2.92, Section 2.92.080

## Introduction:

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- "Contributor" A person making a contribution, including the contributor's spouse.
- "Donation" Cash and the value of any in-kind contributions or gifts to the council member for use by their office or in their district.
- "Donor" An individual and spouse, a business entity, or an individual who owns a business entity in whole or in part, or is operated by the individual, that is the subject of a council agenda item.
- "Benefiting" Shall include but not be limited to any contract, bid award, franchise, permit, zoning or rezoning, and other award that council will vote on.

**Instructions:** Please read and complete this form carefully. If you have made campaign contributions or donations to any current City Council member(s) totaling an aggregate of \$500 or more during their campaign(s) or term(s) of City office, you are required to disclose the information as specified below. If you have not made such contributions or donations past the limit specified in the ordinance, you are required to affirm your compliance with the municipal code. Please submit this completed form along with your application or proposal to the relevant city department. Failure to disclose campaign contributions or donations as required by the ordinance may result in a violation of the City's Ethics Code requirements, and sanctions under the Ethics Code 2.92. Contributor / Donor Information:

Full Name Richard Jimenez

Business Name Bobcat of EL Paso Tx

Agenda Item Type NA

Relevant Department NA



**Disclosure Affirmation:** Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.

☒

I have **NOT** made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office, as specified in Section 2.92.080 of the El Paso Municipal Code.

OR

☐

I have made campaign contributions or donations totaling an aggregate of \$500 or more to the following City Council member(s) during their campaign(s) or term(s) of City office:

OFFICE	CURRENT COUNCIL MEMBER NAME	AMOUNT (\$)
Mayor		
District 1		
District 2		
District 3		
District 4		
District 5		
District 6		
District 7		
District 8		

**Declaration:** I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, **I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.**

Signature: Richard Jimenez Date: 5-2-2024

2024-0265 Bobcat Proprietary Parts and Service

Supplier Name: Bobcat of El Paso (Parent Name; Total Equipment & Rental)

Form 034 (Rev. 2) - 9/27/2021

Previous versions obsolete

7



Legislation Text

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**File #: 24-733, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822

Municipal Courts, Annabelle Casas, (915) 212-5205

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

An Ordinance amending Title 5 (Business License and Permit Regulations); Chapter 5.12 (Dealers in Secondhand goods, dealers in crafted precious metals, coin dealers and pawnbrokers); Section 5.12.080 (License-Denial, Appeal) to amend "Hearing Officer" to "Municipal Associate Judge" of the El Paso City Code.

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

**AGENDA DATE:** June 4, 2024

**PUBLIC HEARING DATE:** June 11, 2024

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Lilia Worrell. (915) 212-5822  
Annabelle Casas (915) 212-5205

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** 2 – Set the Standard for a Safe and Secure City

**SUBJECT:**

An Ordinance amending TITLE 5 (Business License and Permit Regulations); Chapter 5.12 (Dealers in Secondhand goods, dealers in crafted precious metals, coin dealers and pawnbrokers); Section 5.12.080 (License-Denial, Appeal ) to replace "Hearing Officer" to "Municipal Associate Judge" of the El Paso City Code.

**BACKGROUND / DISCUSSION:**

This ordinance amendment is to increase efficiency and allow substitute Municipal Associate Judges to preside over Secondhand Dealer License: Denials and Appeals.

**PRIOR COUNCIL ACTION:**

July 28 2015; December 15, 2015

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?   X   YES    NO**

**PRIMARY DEPARTMENT:** Municipal Court

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

**DEPARTMENT HEAD:**



\_\_\_\_\_  
Lilia Worrell, Municipal Court

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

**AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.12 (DEALERS IN SECONDHAND GOODS, DEALERS IN CRAFTED PRECIOUS METALS, COIN DEALERS AND PAWNBROKERS), SECTION 5.12.080 (LICENSE—DENIAL; APPEAL) TO AMEND ‘HEARING OFFICER’ TO ‘MUNICIPAL ASSOCIATE JUDGE’ OF THE EL PASO CITY CODE.**

**WHEREAS**, the City of El Paso wishes to amend Title 5, Chapter 5.12, Section 5.12.080 License—Denial; Appeal to amend who hears appeals in this section from ‘hearing officer’ to ‘municipal associate judge;’ and

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

**SECTION 1.** That Title 5 (Business License and Permit Regulations), Chapter 5.12 (Dealers in Secondhand Goods, Dealers in Crafted Precious Metals, Coin Dealers and Pawnbrokers), Section 5.12.080 (License—Denial; Appeal), is hereby amended to read as follows:

**5.12.080 License—Denial; appeal.**

- A. The chief of police or the license official may deny a secondhand dealer license for the violation of any provision of this chapter by providing the applicant with a statement indicating the reason(s) for the denial.
- B. The license official will issue a written statement notifying the applicant of denial of the secondhand dealer license if the investigation reveals one or more of the following:
  - 1. The applicant's place of business is not in compliance with applicable state laws or local ordinances; or
  - 2. An individual applicant or any employee of an entity applicant, whose duties include the purchase or sale of regulated merchandise, has been convicted of a criminal offense involving theft, burglary, robbery, fraud, or tampering with or falsification of evidence or official records, unless:
    - a. The applicant or employee has been pardoned; or
    - b. One year has elapsed since the applicant or employee has been fully discharged from the sentence imposed for the offense, including any term of incarceration, parole, supervision, or probation ordered by any court; or
    - c. The criminal proceedings were deferred without a final adjudication of guilt; or
  - 3. Fraud, misrepresentation or false statement of facts of material consequence in the application; or
  - 4. Six or more violations of this chapter within twelve months immediately preceding the current application by the applicant, any employee of the applicant, whose duties include the purchase of regulated merchandise, or the combined violations of both the applicant and the employee.

- C. When the license official issues a written notice of denial of a license to the applicant, the license official will include, in the notice, the specific grounds under this chapter for such action. The notice will be sent to the applicant by personal delivery or certified mail. The notice will be directed to the most current business address or other mailing address on file with the license official for the applicant.
- D. The written notice of denial of a license will include a notice provision informing the applicant of his or her right to appeal the license official's decision by submitting a written notice requesting an administrative hearing before a municipal associate judge. The applicant, referred to as the respondent for purposes of the appeal, will submit the written statement to the license official not later than the 15th city business day after the date of the written notice of denial of the license. The respondent's written statement requesting the appeal shall clearly state why the respondent contends that there is not a valid basis for the denial of the license.

If the respondent submits a written statement appealing the denial of the license, the chief of police or license official, or their designee(s), will immediately contact the city attorney's office in order to coordinate the retention of a municipal associate judge and to schedule a hearing. The notice of the hearing will specify a hearing date, not less than fifteen city business days nor more than thirty city business days after the date the applicant files the written notice requesting an administrative hearing. The municipal associate judge will conduct a hearing on the license official's denial of the license. The hearing may be continued to a sooner or later date by agreement of the parties, and with the municipal associate judge's approval, or upon the finding of good cause by the municipal associate judge for the granting of an earlier or later hearing date.

At the hearing, the respondent will have the opportunity to present all of the respondent's arguments and to be represented by counsel at respondent's expense, present evidence and witnesses on his or her behalf, and cross-examine any of the license official's witnesses. The license official, who may also be represented by counsel, bears the burden of proving the grounds for denying the license by a preponderance of the evidence. The hearing will take no longer than one business day, unless extended by agreement of the parties or at the request of either party, and with approval of the municipal associate judge, to meet the requirements of due process and the proper administration of justice.

The municipal associate judge will issue a written decision, including findings of fact and conclusions of law, to the respondent within five city business days from the completion of the hearing. The municipal associate judge's decision is final.

If the decision is to deny the license, the decision will become effective on the fourteenth calendar day after it is rendered. If the municipal associate judge's decision finds that no grounds exist for the denial of the license, the municipal associate judge will, contemporaneously with the issuance of the decision, order the license official to immediately withdraw the denial of the license and notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the license official will contemporaneously therewith issue the license to the applicant.

If the respondent's application is for the renewal of a license, the existing license will remain valid and in effect during the pendency of the appeal and until such time as the decision of the municipal associate judge becomes final.

If the municipal associate judge's final decision upholds the denial of the license, the license official may grant the respondent a provisional license for a period of six months to begin from



the date of the municipal associate judge's final decision. The provisional license will require the applicant to pay a non-refundable enhanced fee.

If during the six-month period, corrective action has been satisfactorily completed by the respondent as directed by the license official, and no other violations are committed under this chapter, or if no corrective action was required of the respondent by the license official, but no other violations are committed under this chapter, then the license official will issue the standard license to the applicant.

**SECTION 2.** Except as herein amended, Title 5 of the El Paso City Code shall remain in full force and effect.

*(Signatures begin on following page)*

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

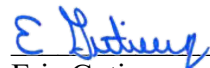
**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leaser  
Mayor

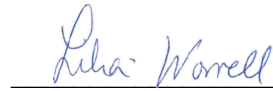
**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Eric Gutierrez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Lilia A. Worrell, Director  
El Paso Municipal Court

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

**AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.12 (DEALERS IN SECONDHAND GOODS, DEALERS IN CRAFTED PRECIOUS METALS, COIN DEALERS AND PAWNBROKERS), SECTION 5.12.080 (LICENSE—DENIAL; APPEAL) TO AMEND ‘HEARING OFFICER’ TO ‘MUNICIPAL ASSOCIATE JUDGE’ OF THE EL PASO CITY CODE.**

**WHEREAS**, the City of El Paso wishes to amend Title 5, Chapter 5.12, Section 5.12.080 License—Denial; Appeal to amend who hears appeals in this section from ‘hearing officer’ to ‘municipal associate judge;’ and

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

**SECTION 1.** That Title 5 (Business License and Permit Regulations), Chapter 5.12 (Dealers in Secondhand Goods, Dealers in Crafted Precious Metals, Coin Dealers and Pawnbrokers), Section 5.12.080 (License—Denial; Appeal), is hereby amended to read as follows:

**5.12.080 License—Denial; appeal.**

- A. The chief of police or the license official may deny a secondhand dealer license for the violation of any provision of this chapter by providing the applicant with a statement indicating the reason(s) for the denial.
- B. The license official will issue a written statement notifying the applicant of denial of the secondhand dealer license if the investigation reveals one or more of the following:
  - 1. The applicant's place of business is not in compliance with applicable state laws or local ordinances; or
  - 2. An individual applicant or any employee of an entity applicant, whose duties include the purchase or sale of regulated merchandise, has been convicted of a criminal offense involving theft, burglary, robbery, fraud, or tampering with or falsification of evidence or official records, unless:
    - a. The applicant or employee has been pardoned; or
    - b. One year has elapsed since the applicant or employee has been fully discharged from the sentence imposed for the offense, including any term of incarceration, parole, supervision, or probation ordered by any court; or
    - c. The criminal proceedings were deferred without a final adjudication of guilt; or
  - 3. Fraud, misrepresentation or false statement of facts of material consequence in the application; or
  - 4. Six or more violations of this chapter within twelve months immediately preceding the current application by the applicant, any employee of the applicant, whose duties include the purchase of regulated merchandise, or the combined violations of both the applicant and the employee.

Page 1 of 4

- C. When the license official issues a written notice of denial of a license to the applicant, the license official will include, in the notice, the specific grounds under this chapter for such action. The notice will be sent to the applicant by personal delivery or certified mail. The notice will be directed to the most current business address or other mailing address on file with the license official for the applicant.
- D. The written notice of denial of a license will include a notice provision informing the applicant of his or her right to appeal the license official's decision by submitting a written notice requesting an administrative hearing before a ~~hearing officer~~municipal associate judge. The applicant, referred to as the respondent for purposes of the appeal, will submit the written statement to the license official not later than the 15th city business day after the date of the written notice of denial of the license. The respondent's written statement requesting the appeal shall clearly state why the respondent contends that there is not a valid basis for the denial of the license.

If the respondent submits a written statement appealing the denial of the license, the chief of police or license official, or their designee(s), will immediately contact the city attorney's office in order to coordinate the retention of a ~~hearing officer~~municipal associate judge and to schedule a hearing. The notice of the hearing will specify a hearing date, not less than fifteen city business days nor more than thirty city business days after the date the applicant files the written notice requesting an administrative hearing. The ~~hearing officer~~municipal associate judge will conduct a hearing on the license official's denial of the license. The hearing may be continued to a sooner or later date by agreement of the parties, and with the ~~hearing officer~~municipal associate judge's approval, or upon the finding of good cause by the ~~hearing officer~~municipal associate judge for the granting of an earlier or later hearing date.

At the hearing, the respondent will have the opportunity to present all of the respondent's arguments and to be represented by counsel at respondent's expense, present evidence and witnesses on his or her behalf, and cross-examine any of the license official's witnesses. The license official, who may also be represented by counsel, bears the burden of proving the grounds for denying the license by a preponderance of the evidence. The hearing will take no longer than one business day, unless extended by agreement of the parties or at the request of either party, and with approval of the ~~hearing officer~~municipal associate judge, to meet the requirements of due process and the proper administration of justice.

The ~~hearing officer~~municipal associate judge will issue a written decision, including findings of fact and conclusions of law, to the respondent within five city business days from the completion of the hearing. The ~~hearing officer~~municipal associate judge's decision is final.

If the decision is to deny the license, the decision will become effective on the fourteenth calendar day after it is rendered. If the ~~hearing officer~~municipal associate judge's decision finds that no grounds exist for the denial of the license, the ~~hearing officer~~municipal associate judge will, contemporaneously with the issuance of the decision, order the license official to immediately withdraw the denial of the license and notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the license official will contemporaneously therewith issue the license to the applicant.

If the respondent's application is for the renewal of a license, the existing license will remain valid and in effect during the pendency of the appeal and until such time as the decision of the ~~hearing officer~~municipal associate judge becomes final.

If the ~~hearing officer~~municipal associate judge's final decision upholds the denial of the license, the license official may grant the respondent a provisional license for a period of six months to begin from the date of the ~~hearing officer~~municipal associate judge's final decision. The provisional license will require the applicant to pay a non-refundable enhanced fee.

If during the six-month period, corrective action has been satisfactorily completed by the respondent as directed by the license official, and no other violations are committed under this chapter, or if no corrective action was required of the respondent by the license official, but no other violations are committed under this chapter, then the license official will issue the standard license to the applicant.

**SECTION 2.** Except as herein amended, Title 5 of the El Paso City Code shall remain in full force and effect.

*(Signatures begin on following page)*

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF EL PASO:**

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Eric Gutierrez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Lilia A. Worrell, Director  
El Paso Municipal Court



El Paso, TX

300 N. Campbell  
El Paso, TX

## Legislation Text

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**File #: 24-734, Version: 1**

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### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

##### **All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822

Municipal Courts, Annabelle Casas, (915) 212-5205

#### **AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

An Ordinance amending Title 5 (Business License and Permit Regulations); Chapter 5.13 (Security Alarm Systems); Section 5.13.120 (Appeal from assessment of civil penalty) and Section 5.13.130 (Reinstatement of Permit ) to amend "Hearing Officer" to "Municipal Associate Judge" of the El Paso City Code.



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

**AGENDA DATE:** June 4, 2024

**PUBLIC HEARING DATE:** June 11, 2024

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Lilia Worrell. (915) 212-5822  
Annabelle Casas (915) 212-5205

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** 2 – Set the Standard for a Safe and Secure City

**SUBJECT:**

An Ordinance amending TITLE 5 (Business License and Permit Regulations); Chapter 5.13 (Security Alarm Systems); Section 5.13.120 (Appeal from assessment of the civil penalty) and Section 5.13.130 (Reinstatement of Permit ) to replace "Hearing Officer" to "Municipal Associate Judge" of the El Paso City Code.

**BACKGROUND / DISCUSSION:**

This ordinance amendment is to increase efficiency and allow substitute Municipal Associate Judges to preside over Security Alarm Systems: appeals and reinstatements of the permit.

**PRIOR COUNCIL ACTION:**

December 6, 2011; February 29, 2012

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?**  X  YES   NO

**PRIMARY DEPARTMENT:** Municipal Court

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

**DEPARTMENT HEAD:**



\_\_\_\_\_  
Lilia Worrell, Municipal Court



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

**AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.13 (SECURITY ALARM SYSTEMS), SECTION 5.13.120 (APPEAL FROM ASSESSMENT OF CIVIL PENALTY) AND SECTION 5.13.130 (REINSTATEMENT OF PERMIT) TO AMEND ‘HEARING OFFICER’ TO ‘MUNICIPAL ASSOCIATE JUDGE’ OF THE EL PASO CITY CODE.**

**WHEREAS**, the City of El Paso wishes to amend Title 5, Chapter 5.13, Section 5.13.120 Appeal from assessment of civil penalty and Section 5.13.130 Reinstatement of permit to amend who hears appeals in this section from ‘hearing officer’ to ‘municipal associate judge.’

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

**SECTION 1.** That Title 5 (Business License and Permit Regulations), Chapter 5.13 (Security Alarm Systems), Section 5.13.120 (Appeal from assessment of civil penalty), is hereby amended to read as follows:

**5.12.080 License—Denial; appeal.**

- A. A permit holder or other person assessed a civil penalty may appeal the assessment of a civil penalty by requesting a hearing to be held before a municipal associate judge in municipal court.
- B. The request for an appeal must be made in writing and delivered to the clerk of the municipal court not more than ten days after the bill for the assessment of the civil penalty is issued. A copy of the written appeal shall be sent by the appealing party to the police chief.
- C. A municipal associate judge shall, as soon as practicable, hear such appeal, after reasonable notice to the appealing party and to the police chief.
- D. The appealing party and the police chief shall have opportunities to present evidence and make argument on their behalf. The formal rules of evidence do not apply to an appeal under this section.
- E. A municipal associate judge shall make his ruling on the basis of substantial evidence presented at the hearing. A municipal associate judge shall affirm, reverse or modify the assessment of the civil penalty, except, that a municipal associate judge may not reduce or increase the amount designated in Section 5.13.070 for a civil penalty that is assessed for a false alarm notification determined by a municipal associate judge to have occurred. The decision of a municipal associate judge is final.

**SECTION 2.** That Title 5 (Business License and Permit Regulations), Chapter 5.13 (Security Alarm Systems), Section 5.13.130 (Reinstatement of permit), subsection C. is hereby amended to read as follows:

- C. An appeal of the decision of the police chief to refuse to reinstate a permit under subsection

B. of this section may be made to a municipal associate judge in the same manner as an appeal from the assessment of a civil penalty in Section 5.13.120. A municipal associate judge shall affirm or reverse the decision of the police chief. The decision of a municipal associate judge is final.

**SECTION 3.** Except as herein amended, Title 5 of the El Paso City Code shall remain in full force and effect.

*(Signatures begin on following page)*

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

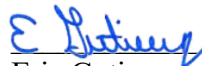
**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leaser  
Mayor


**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Eric Gutierrez  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Lilia A. Worrell, Director  
El Paso Municipal Court

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

AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.13 (SECURITY ALARM SYSTEMS), SECTION 5.13.120 (APPEAL FROM ASSESSMENT OF CIVIL PENALTY) AND SECTION 5.13.130 (REINSTATEMENT OF PERMIT) TO AMEND 'HEARING OFFICER' TO 'MUNICIPAL ASSOCIATE JUDGE' OF THE EL PASO CITY CODE.

WHEREAS, the City of El Paso wishes to amend Title 5, Chapter 5.13, Section 5.13.120 Appeal from assessment of civil penalty and Section 5.13.130 Reinstatement of permit to amend who hears appeals in this section from 'hearing officer' to 'municipal associate judge.'

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

**SECTION 1.** That Title 5 (Business License and Permit Regulations), Chapter 5.13 (Security Alarm Systems), Section 5.13.120 (Appeal from assessment of civil penalty), is hereby amended to read as follows:

**5.12.080 License—Denial; appeal.**

- A. A permit holder or other person assessed a civil penalty may appeal the assessment of a civil penalty by requesting a hearing to be held before a ~~hearing officer~~municipal associate judge in municipal court.
- B. The request for an appeal must be made in writing and delivered to the clerk of the municipal court not more than ten days after the bill for the assessment of the civil penalty is issued. A copy of the written appeal shall be sent by the appealing party to the police chief.
- C. A ~~hearing officer~~municipal associate judge shall, as soon as practicable, hear such appeal, after reasonable notice to the appealing party and to the police chief.
- D. The appealing party and the police chief shall have opportunities to present evidence and make argument on their behalf. The formal rules of evidence do not apply to an appeal under this section.
- E. A ~~hearing officer~~municipal associate judge shall make his ruling on the basis of substantial evidence presented at the hearing. A ~~hearing officer~~municipal associate judge shall affirm, reverse or modify the assessment of the civil penalty, except, that a ~~hearing officer~~municipal associate judge may not reduce or increase the amount designated in Section 5.13.070 for a civil penalty that is assessed for a false alarm notification determined by a ~~hearing officer~~municipal associate judge to have occurred. The decision of a ~~hearing officer~~municipal associate judge is final.

**SECTION 2.** That Title 5 (Business License and Permit Regulations), Chapter 5.13 (Security Alarm Systems), Section 5.13.130 (Reinstatement of permit), subsection C. is hereby amended to read as follows:

- C. An appeal of the decision of the police chief to refuse to reinstate a permit under subsection B. of this section may be made to a ~~hearing officer~~municipal associate judge in the same manner as an appeal from the assessment of a civil penalty in Section 5.13.120. A municipal associate judge~~hearing officer~~ shall affirm or reverse the decision of the police chief. The decision of a municipal associate judge~~hearing officer~~ is final.

**SECTION 3.** Except as herein amended, Title 5 of the El Paso City Code shall remain in full force and effect.

*(Signatures begin on following page)*

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leaser  
Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Eric Gutierrez  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Lilia A. Worrell, Director  
El Paso Municipal Court



Legislation Text

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File #: 24-735, Version: 1

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**CITY OF EL PASO, TEXAS**  
**LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822

Municipal Courts, Annabelle Casas, (915) 212-5205

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

An Ordinance amending Title 6 (Transportation for Hire), Chapter 6.04 (Transportation for Hire), to amend Section 6.04.140 (Operating Authority to Permit and Taxicab Zone Permit Denial, Suspension, Revocation - Appeal) to amend "Hearing Officer" to "Municipal Associate Judge" of the El Paso City Code.

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

**AGENDA DATE:** June 4, 2024

**PUBLIC HEARING DATE:** June 11, 2024

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Lilia Worrell. (915) 212-5822  
Annabelle Casas (915) 212-5205

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** 2 – Set the Standard for a Safe and Secure City

**SUBJECT:**

An Ordinance amending TITLE 6 (Transportation for Hire), Chapter 6.04 (Transportation for Hire), to amend Section 6.04.140 (Operating Authority to Permit and Taxicab Zone Permit Denial, Suspension, Revocation - Appeal) to replace "Hearing Officer" to "Municipal Associate Judge" of the El Paso City Code.

**BACKGROUND / DISCUSSION:**

This ordinance amendment is to increase efficiency and allow Municipal Associate Judges to preside over Taxicab Zone Permit Suspension, Revocation- Appeal hearings .

**PRIOR COUNCIL ACTION:**

August 9, 2016; January 8, 2019

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?   X   YES    NO**

**PRIMARY DEPARTMENT:** Municipal Court

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

**DEPARTMENT HEAD:**



\_\_\_\_\_  
Lilia Worrell, Municipal Court



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

**AN ORDINANCE AMENDING TITLE 6 (TRANSPORTATION FOR HIRE), CHAPTER 6.04 (TRANSPORTATION FOR HIRE), SECTION 6.04.140 (OPERATING AUTHORITY TO PERMIT AND TAXICAB ZONE PERMIT DENIAL, SUSPENSION, REVOCATION – APPEAL) TO AMEND ‘HEARING OFFICER’ TO ‘MUNICIPAL ASSOCIATE JUDGE’ OF THE EL PASO CITY CODE.**

**WHEREAS**, the City of El Paso wishes to amend Title 6, Chapter 6.04, Section 6.04.140 Operating Authority to Permit and Taxicab Zone Permit, Suspension, Revocation –Appeal to amend who hears appeals in this section from ‘hearing officer’ to ‘municipal associate judge.’

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

**SECTION 1.** That Title 6 (Transportation for Hire), Chapter 6.04 (Transportation for Hire), Section 6.04.140 (Operating Authority to Permit and Taxicab Zone Permit, Suspension, Revocation - Appeal), is hereby amended to read as follows:

- A. The chief of police shall notify an applicant for an operating authority permit or a taxicab zone permit of a denial, suspension or revocation of a permit. Such notice shall be made in writing via certified U.S. Mail. The notification shall include a statement as to the reason(s) for denial, suspension or revocation and the option and process for appeal, including a notice provision in forming the applicant of his or her right to appeal the decision of the chief of police by submitting a written notice requesting an administrative hearing before a municipal associate judge. The applicant, referred to as the respondent for purposes of the appeal, will submit the written statement to the chief of police not later than the fifteenth city business day after the date of the written notice of denial, suspension or revocation of a permit. The respondent's written statement requesting the appeal shall clearly state why the respondent contends that there is not a valid basis for the denial, suspension or revocation of a permit.
- B. During the pendency of an appeal for a denial, suspension or revocation of an operating authority permit or taxicab zone permit, the action by the chief of police shall remain in effect. However, if the denial is for the respondent's renewal application for an operating authority permit, and such denial is not for a reason that could result in the suspension or revocation of that permit pursuant to Section 6.04.130, the existing permit will remain valid and in effect during the pendency of the appeal and until such time as the decision of the municipal associate judge becomes final.
- C. If the respondent submits a written statement appealing the denial, suspension or revocation of a permit, the chief of police will immediately contact the city attorney's office in order to coordinate the retention of a municipal associate judge and to schedule a hearing. The notice of the hearing will specify a hearing date, not less than fifteen city business days nor more than thirty city business days after the date the applicant or permit holder files the written notice requesting an administrative hearing. The municipal associate judge will

conduct a hearing on the denial, suspension or revocation of the permit. The hearing may be continued to a sooner or later date by agreement of the parties, and with the municipal associate judge's approval, or upon the finding of good cause by the municipal associate judge for the granting of an earlier or later hearing date.

- D. At the hearing, the respondent will have the opportunity to present all of the respondent's arguments and to be represented by counsel at respondent's expense, present evidence and witnesses on his or her behalf, and cross-examine any of the witnesses for the chief of police. The chief of police, who may also be represented by counsel, bears the burden of proving the grounds for denying, suspending or revoking the permit by a preponderance of the evidence. The hearing will take no longer than one business day, unless extended by agreement of the parties or at the request of either party, and with approval of the municipal associate judge, to meet the requirements of due process and the proper administration of justice.
- E. The municipal associate judge will issue a written decision, including findings of fact and conclusions of law, to the respondent within five city business days from the completion of the hearing. The municipal associate judge's decision is final.
- F. If the decision is to affirm denial, suspension or revocation of a permit, the effective date of the denial, suspension or revocation remains the date of the action by the chief of police. If the municipal associate judge's decision finds that no grounds exist for the denial of a permit, the municipal associate judge will, contemporaneously with the issuance of the decision, order the chief of police to immediately withdraw the denial of the permit and notify the respondent in writing by certified mail of such action. If the respondent is not yet permitted, the license official will contemporaneously therewith issue the permit to the applicant. If the municipal associate judge's decision finds that no grounds exist for suspension or revocation of a permit, the municipal associate judge will, contemporaneously with the issuance of the decision, order the chief of police to immediately withdraw the suspension or revocation of the permit and notify the respondent in writing by certified U.S. Mail of such action.
- G. If a person whose operating authority permit or taxicab zone permit is suspended or revoked and the person opts to not appeal, or the suspension or revocation is affirmed by the municipal associate judge, the person is not eligible to apply for a subsequent permit for a period of three years from the date of suspension or revocation. Such application shall be considered a new application and shall be processed accordingly.

**SECTION 2.** Except as herein amended, Title 6 of the El Paso City Code shall remain in full force and effect.

*(Signatures begin on following page)*

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

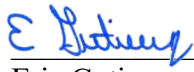
**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leaser  
Mayor


**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Eric Gutierrez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Lilia A. Worrell, Director  
El Paso Municipal Court

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

**AN ORDINANCE AMENDING TITLE 6 (TRANSPORTATION FOR HIRE), CHAPTER 6.04 (TRANSPORTATION FOR HIRE), SECTION 6.04.140 (OPERATING AUTHORITY TO PERMIT AND TAXICAB ZONE PERMIT DENIAL, SUSPENSION, REVOCATION – APPEAL) TO AMEND ‘HEARING OFFICER’ TO ‘MUNICIPAL ASSOCIATE JUDGE’ OF THE EL PASO CITY CODE.**

**WHEREAS**, the City of El Paso wishes to amend Title 6, Chapter 6.04, Section 6.04.140 Operating Authority to Permit and Taxicab Zone Permit, Suspension, Revocation –Appeal to amend who hears appeals in this section from ‘hearing officer’ to ‘municipal associate judge.’

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

**SECTION 1.** That Title 6 (Transportation for Hire), Chapter 6.04 (Transportation for Hire), Section 6.04.140 (Operating Authority to Permit and Taxicab Zone Permit, Suspension, Revocation - Appeal), is hereby amended to read as follows:

- A. The chief of police shall notify an applicant for an operating authority permit or a taxicab zone permit of a denial, suspension or revocation of a permit. Such notice shall be made in writing via certified U.S. Mail. The notification shall include a statement as to the reason(s) for denial, suspension or revocation and the option and process for appeal, including a notice provision in informing the applicant of his or her right to appeal the decision of the chief of police by submitting a written notice requesting an administrative hearing before a ~~hearing officer~~municipal associate judge. The applicant, referred to as the respondent for purposes of the appeal, will submit the written statement to the chief of police not later than the fifteenth city business day after the date of the written notice of denial, suspension or revocation of a permit. The respondent's written statement requesting the appeal shall clearly state why the respondent contends that there is not a valid basis for the denial, suspension or revocation of a permit.
- B. During the pendency of an appeal for a denial, suspension or revocation of an operating authority permit or taxicab zone permit, the action by the chief of police shall remain in effect. However, if the denial is for the respondent's renewal application for an operating authority permit, and such denial is not for a reason that could result in the suspension or revocation of that permit pursuant to Section 6.04.130, the existing permit will remain valid and in effect during the pendency of the appeal and until such time as the decision of the ~~municipal associate judge~~hearing officer becomes final.
- C. If the respondent submits a written statement appealing the denial, suspension or revocation of a permit, the chief of police will immediately contact the city attorney's office in order to coordinate the retention of a ~~hearing officer~~municipal associate judge and to schedule a hearing. The notice of the hearing will specify a hearing date, not less than fifteen city business days nor more than thirty city business days after the date the applicant or permit holder files the written notice requesting an administrative hearing. The ~~hearing~~



~~hearing officer~~municipal associate judge -will conduct a hearing on the denial, suspension or revocation of the permit. The hearing may be continued to a sooner or later date by agreement of the parties, and with the ~~hearing officer~~municipal associate judge's approval, or upon the finding of good cause by the ~~hearing officer~~municipal associate judge for the granting of an earlier or later hearing date.

- D. At the hearing, the respondent will have the opportunity to present all of the respondent's arguments and to be represented by counsel at respondent's expense, present evidence and witnesses on his or her behalf, and cross-examine any of the witnesses for the chief of police. The chief of police, who may also be represented by counsel, bears the burden of proving the grounds for denying, suspending or revoking the permit by a preponderance of the evidence. The hearing will take no longer than one business day, unless extended by agreement of the parties or at the request of either party, and with approval of the ~~hearing officer~~municipal associate judge, to meet the requirements of due process and the proper administration of justice.
- E. The ~~hearing officer~~municipal associate judge will issue a written decision, including findings of fact and conclusions of law, to the respondent within five city business days from the completion of the hearing. The ~~hearing officer~~municipal associate judge's decision is final.
- F. If the decision is to affirm denial, suspension or revocation of a permit, the effective date of the denial, suspension or revocation remains the date of the action by the chief of police. If the ~~hearing officer~~municipal associate judge's decision finds that no grounds exist for the denial of a permit, the ~~hearing officer~~municipal associate judge will, contemporaneously with the issuance of the decision, order the chief of police to immediately withdraw the denial of the permit and notify the respondent in writing by certified mail of such action. If the respondent is not yet permitted, the license official will contemporaneously therewith issue the permit to the applicant. If the ~~hearing officer~~municipal associate judge's decision finds that no grounds exist for suspension or revocation of a permit, the ~~hearing officer~~municipal associate judge will, contemporaneously with the issuance of the decision, order the chief of police to immediately withdraw the suspension or revocation of the permit and notify the respondent in writing by certified U.S. Mail of such action.
- G. If a person whose operating authority permit or taxicab zone permit is suspended or revoked and the person opts to not appeal, or the suspension or revocation is affirmed by the ~~hearing officer~~municipal associate judge, the person is not eligible to apply for a subsequent permit for a period of three years from the date of suspension or revocation. Such application shall be considered a new application and shall be processed accordingly.

**SECTION 2.** Except as herein amended, Title 6 of the El Paso City Code shall remain in full force and effect.

*(Signatures begin on following page)*

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leaser  
Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Eric Gutierrez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Lilia A. Worrell, Director  
El Paso Municipal Court



El Paso, TX

300 N. Campbell  
El Paso, TX

## Legislation Text

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**File #: 24-757, Version: 1**

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### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

##### **All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822

Municipal Courts, Annabelle Casas, (915) 212-5205

#### **AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

An Ordinance amending Title 9 (Health and Safety), Chapter 9.20 (Social Host Accountability Ordinance), Section 9.20.100 (Hearings on the Imposition of Civil Penalty - Appeals) to amend "Administrative Hearing Officer" to "Municipal Associate Judge" of the El Paso City Code.

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

**AGENDA DATE:** June 4, 2024

**PUBLIC HEARING DATE:** June 11, 2024

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Lilia Worrell. (915) 212-5822  
Annabelle Casas (915) 212-5205

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** 2 – Set the Standard for a Safe and Secure City

**SUBJECT:**

An Ordinance amending Title 9 ( Health and Safety ) Chapter 9.20 (Social Host Accountability Ordinance), Section 9.20.100 (Hearings on the Imposition of Civil Penalty- Appeals) to amend "Administrative Hearing officer" with " Municipal Associate Judge" of the El Paso City Code.

**BACKGROUND / DISCUSSION:**

This ordinance amendment is to increase efficiency and allow Municipal Associate Judges to preside over social host hearings under Title 9 - Transportation for Hire, Chapter 9.2 – Social Host Accountability, Section 9.20.100 -Hearings on the imposition of civil penalty appeals.

**PRIOR COUNCIL ACTION:**

December 6, 2016

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?**  X  YES   NO

**PRIMARY DEPARTMENT:** Municipal Court

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

**DEPARTMENT HEAD:**

*Lilia Worrell*

---

Lilia Worrell, Municipal Court



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

**AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.20 (SOCIAL HOST ACCOUNTABILITY ORDINANCE), SECTION 9.20.100 (HEARINGS ON THE IMPOSITION OF CIVIL PENALTY—APPEALS) TO AMEND ‘ADMINISTRATIVE HEARING OFFICER’ TO ‘MUNICIPAL ASSOCIATE JUDGE’ OF THE EL PASO CITY CODE.**

**WHEREAS**, the City of El Paso wishes to amend Title 9, Chapter 9.20, Section 9.20.100 Hearings on the Imposition of Civil Penalty—Appeals to amend who hears appeals in this section from ‘administrative hearing officer’ to ‘municipal associate judge.’

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

**SECTION 1.** That Title 9 (Health and Safety), Chapter 9.20 (Social Host Accountability Ordinance), Section 9.20.100 (Hearings on the Imposition of Civil Penalty—Appeals), is hereby amended to read as follows:

- A. Appointment of an Administrative Hearing Officer. The city council hereby appoints the municipal ~~associate judge~~~~court administrative hearing officer~~ to act as the administrative hearing officer (~~"hearing officer"~~).
- B. When the police department issues a written notice of violation pursuant to this chapter, said notice shall include the information required by Section 9.20.080 under this chapter. In the case of a person present at a gathering involving underage drinking, the notice will be directly given to the person who commits the violation. In the case of a person who was not present at the gathering, the notice will be given to the person by depositing it in the United States Postal Service mail to the address as identified by the police department. In the case of the parent of a juvenile receiving a notice of violation, the notice will be given to the parent by personal delivery or by depositing it in the United States Postal Service mail to the address provided by the juvenile at the time of the incident or other address as identified by the police department.
- C. The written notice of violation will include a notice provision informing the person responsible for the gathering of his right to appeal the notice of violation by submitting a written notice requesting an administrative hearing before the ~~administrative-municipal associate judge~~~~hearing officer~~. The applicant, referred to as the appellant for purposes of the appeal, will submit the written statement to the police chief not later than the twentieth city business day after the date of the written notice of violation. The appellant's written statement requesting the appeal shall clearly state why the appellant contends that there is not a valid basis for the issuance of the notice of violation pursuant to this chapter.
- D. If the appellant submits a written statement appealing the notice of violation, the police chief, or designee(s), will immediately contact the ~~administrative hearing officer~~~~municipal associate judge~~ in order to schedule a hearing. The notice of the hearing will specify a hearing date, not less than fifteen city business days nor more than thirty city business days

after the date the appellant submits the written request for an administrative hearing. The ~~administrative hearing officer~~municipal associate judge will conduct a hearing on the notice of violation. The hearing may be continued to a sooner or later date by agreement of the parties, and with the ~~administrative hearing officer~~municipal associate judge's approval, or upon the finding of good cause by the ~~administrative hearing officer~~municipal associate judge for the granting of an earlier or later hearing date.

- E. At the hearing, the appellant will have the opportunity to present all of the appellant's arguments and to be represented by counsel at appellant's expense, present evidence and witnesses on his behalf, and cross-examine any of the police department's witnesses. The police chief, or designee, who may also be represented by counsel, bears the burden of proving the grounds for the notice of violation by a preponderance of the evidence. The hearing will take no longer than one business day, unless extended by agreement of the parties or at the request of either party, and with approval of the ~~municipal associate judge~~hearing officer, to meet the requirements of due process and the proper administration of justice.
- F. The ~~administrative hearing officer~~municipal associate judge will issue a written decision, to the respondent within five city business days from the completion of the hearing. The ~~administrative hearing officer~~municipal associate judge's decision is final.
- G. If the ~~administrative hearing officer~~municipal associate judge's decision finds that no grounds exist for the notice of violation, the ~~administrative hearing officer~~municipal associate judge will, contemporaneously with the issuance of the decision, order the police chief to immediately withdraw the notice of violation and notify the appellant in writing by mail of such action. If the decision is to uphold the notice of violation, the decision will become effective on the fourteenth calendar day after it is rendered. If the ~~administrative hearing officer~~municipal associate judge upholds a notice of violation, the appellant has the following three options:
  - 1. The appellant may pay the civil penalty.
  - 2. The appellant may request the option to attend an alcohol education class as identified or approved by the director of the department of public health.
    - a. If the appellant requests the option to attend an alcohol education class, the final decision of the ~~municipal associate judge~~ ~~administrative hearing officer~~ shall be abated for ninety days to allow the appellant to complete said class. Upon the appellant's timely completion of said class and provision of proof of same to the ~~municipal associate judge~~administrative hearing officer, the notice of violation which led to appellant attending the class shall be satisfied.
    - b. If the appellant fails to complete the alcohol education class within said ninety days, a civil penalty in lieu of said class shall be assessed upon the appellant, which civil penalty shall be paid within ten days.
  - 3. The appellant may request the option to perform community service, and the final decision of the ~~municipal associate judge~~administrative hearing officer shall be abated for ninety days to allow the appellant to fulfill their community service under the following criteria:

- a. For a first violation, the person responsible for the gathering shall perform six hours of community service;
  - b. For a second violation, the person responsible for the gathering shall perform twelve hours of community service; and
  - c. For a third or subsequent violation, the person responsible for the gathering shall perform eighteen hours of community service.
  - d. Upon the appellant's timely completion of said community service and provision of proof of same to the ~~administrative hearing officer~~ municipal associate judge, the notice of violation which led to appellant providing the community service shall be satisfied.
  - e. If the appellant fails to complete the community service within said ninety days, a civil penalty in lieu of said class shall be assessed upon the appellant, which civil penalty shall be paid within ten days.
- H. If the decision results in the withdrawal of a notice of violation as to a civil penalty, the withdrawal shall be effective only as to that specific violation, and any other violations of this chapter shall remain intact.
- I. If the ~~hearing officer~~ municipal associate judge's final decision upholds the notice of violation, the appellant must pay the applicable civil penalty within thirty days of the decision.

**SECTION 2.** Except as herein amended, Title 9 of the El Paso City Code shall remain in full force and effect.

*(Signatures begin on following page)*

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.


**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leaser  
Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Eric Gutierrez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Lilia A. Worrell, Director  
El Paso Municipal Court

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

**AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.20 (SOCIAL HOST ACCOUNTABILITY ORDINANCE), SECTION 9.20.100 (HEARINGS ON THE IMPOSITION OF CIVIL PENALTY—APPEALS) TO AMEND ‘ADMINISTRATIVE HEARING OFFICER’ TO ‘MUNICIPAL ASSOCIATE JUDGE’ OF THE EL PASO CITY CODE.**

**WHEREAS**, the City of El Paso wishes to amend Title 9, Chapter 9.20, Section 9.20.100 Hearings on the Imposition of Civil Penalty—Appeals to amend who hears appeals in this section from ‘administrative hearing officer’ to ‘municipal associate judge.’

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

**SECTION 1.** That Title 9 (Health and Safety), Chapter 9.20 (Social Host Accountability Ordinance), Section 9.20.100 (Hearings on the Imposition of Civil Penalty—Appeals), is hereby amended to read as follows:

- A. Appointment of an Administrative Hearing Officer. The city council hereby appoints the municipal associate judge to act as the administrative hearing officer.
- B. When the police department issues a written notice of violation pursuant to this chapter, said notice shall include the information required by Section 9.20.080 under this chapter. In the case of a person present at a gathering involving underage drinking, the notice will be directly given to the person who commits the violation. In the case of a person who was not present at the gathering, the notice will be given to the person by depositing it in the United States Postal Service mail to the address as identified by the police department. In the case of the parent of a juvenile receiving a notice of violation, the notice will be given to the parent by personal delivery or by depositing it in the United States Postal Service mail to the address provided by the juvenile at the time of the incident or other address as identified by the police department.
- C. The written notice of violation will include a notice provision informing the person responsible for the gathering of his right to appeal the notice of violation by submitting a written notice requesting an administrative hearing before the municipal associate judge. The applicant, referred to as the appellant for purposes of the appeal, will submit the written statement to the police chief not later than the twentieth city business day after the date of the written notice of violation. The appellant's written statement requesting the appeal shall clearly state why the appellant contends that there is not a valid basis for the issuance of the notice of violation pursuant to this chapter.
- D. If the appellant submits a written statement appealing the notice of violation, the police chief, or designee(s), will immediately contact the municipal associate judge in order to schedule a hearing. The notice of the hearing will specify a hearing date, not less than fifteen city business days nor more than thirty city business days

after the date the appellant submits the written request for an administrative hearing. The municipal associate judge will conduct a hearing on the notice of violation. The hearing may be continued to a sooner or later date by agreement of the parties, and with the municipal associate judge's approval, or upon the finding of good cause by the municipal associate judge for the granting of an earlier or later hearing date.

- E. At the hearing, the appellant will have the opportunity to present all of the appellant's arguments and to be represented by counsel at appellant's expense, present evidence and witnesses on his behalf, and cross-examine any of the police department's witnesses. The police chief, or designee, who may also be represented by counsel, bears the burden of proving the grounds for the notice of violation by a preponderance of the evidence. The hearing will take no longer than one business day, unless extended by agreement of the parties or at the request of either party, and with approval of the municipal associate judge, to meet the requirements of due process and the proper administration of justice.
  
- F. The municipal associate judge will issue a written decision, to the respondent within five city business days from the completion of the hearing. The municipal associate judge's decision is final.
  
- G. If the municipal associate judge's decision finds that no grounds exist for the notice of violation, the municipal associate judge will, contemporaneously with the issuance of the decision, order the police chief to immediately withdraw the notice of violation and notify the appellant in writing by mail of such action. If the decision is to uphold the notice of violation, the decision will become effective on the fourteenth calendar day after it is rendered. If the municipal associate judge upholds a notice of violation, the appellant has the following three options:
  - 1. The appellant may pay the civil penalty.
  - 2. The appellant may request the option to attend an alcohol education class as identified or approved by the director of the department of public health.
    - a. If the appellant requests the option to attend an alcohol education class, the final decision of the municipal associate judge shall be abated for ninety days to allow the appellant to complete said class. Upon the appellant's timely completion of said class and provision of proof of same to the municipal associate judge, the notice of violation which led to appellant attending the class shall be satisfied.
    - b. If the appellant fails to complete the alcohol education class within said ninety days, a civil penalty in lieu of said class shall be assessed upon the appellant, which civil penalty shall be paid within ten days.
  - 3. The appellant may request the option to perform community service, and the final decision of the municipal associate judge shall be abated for ninety days to allow the appellant to fulfill their community service under the following criteria:

- a. For a first violation, the person responsible for the gathering shall perform six hours of community service;
  - b. For a second violation, the person responsible for the gathering shall perform twelve hours of community service; and
  - c. For a third or subsequent violation, the person responsible for the gathering shall perform eighteen hours of community service.
  - d. Upon the appellant's timely completion of said community service and provision of proof of same to the municipal associate judge, the notice of violation which led to appellant providing the community service shall be satisfied.
  - e. If the appellant fails to complete the community service within said ninety days, a civil penalty in lieu of said class shall be assessed upon the appellant, which civil penalty shall be paid within ten days.
- H. If the decision results in the withdrawal of a notice of violation as to a civil penalty, the withdrawal shall be effective only as to that specific violation, and any other violations of this chapter shall remain intact.
- I. If the municipal associate judge's final decision upholds the notice of violation, the appellant must pay the applicable civil penalty within thirty days of the decision.

**SECTION 2.** Except as herein amended, Title 9 of the El Paso City Code shall remain in full force and effect.

*(Signatures begin on following page)*

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.


**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leaser  
Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Eric Gutierrez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Lilia A. Worrell, Director  
El Paso Municipal Court





Legislation Text

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File #: 24-737, Version: 1

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**CITY OF EL PASO, TEXAS**  
**LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822

Municipal Courts, Annabelle Casas, (915) 212-5205

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

An Ordinance amending Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.020 (Hearing Officers), Section 12.85.030 (Parking Citations), Section 12.85.050 (Hearings), Section 12.85.060 (Appeal); Section 12.85.065 (Final Judgments), and Section 12.85.100 (Boot Hearing) to amend 'Hearing Officer' to 'Municipal Associate Judge' and 'Municipal Associate Judge' to 'El Paso Municipal Court of Appeals' of the El Paso City Code.

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

**AGENDA DATE:** June 4, 2024

**PUBLIC HEARING DATE:** June 11, 2024

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Lilia Worrell. (915) 212-5822  
Annabelle Casas (915) 212-5205

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** 2 – Set the Standard for a Safe and Secure City

**SUBJECT:**

An Ordinance amending TITLE 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.020 (Hearing Officers), Section 12.85.030 (Parking Citations), Section 12.85.050 (Hearings), Section 12.85.060 (Appeal); Section 12.85.065 (Final Judgments), and Section 12.85.100 (Boot Hearing) to amend 'Hearing Officer' to 'Municipal Associate Judge' and 'Municipal Associate Judge' to 'El Paso Municipal Court of Appeals' of the El Paso City Code.

**BACKGROUND / DISCUSSION:**

This ordinance amendment is to increase efficiency and allow substitute Associate Municipal Judges to preside over parking hearings under Title 12 – Vehicle and Traffic. All appeals would be heard by the Municipal Court of Appeals.

**PRIOR COUNCIL ACTION:**

April 14, 1992; March 22, 1994; April 8, 2008, August 15, 2023

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?**  X  YES   NO

**PRIMARY DEPARTMENT:** Municipal Court

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

**DEPARTMENT HEAD:**



---

Lilia Worrell, Municipal Court

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

**AN ORDINANCE AMENDING TITLE 12 (VEHICLES AND TRAFFIC), CHAPTER 12.85 (PARKING VIOLATIONS BUREAU), SECTION 12.85.020 (HEARING OFFICERS), SECTION 12.85.030 (PARKING CITATIONS), SECTION 12.85.050 (HEARINGS), SECTION 12.85.060 (APPEAL), SECTION 12.85.065 (FINAL JUDGMENTS), AND SECTION 12.85.100 (BOOT HEARING) TO AMEND ‘HEARING OFFICER’ TO ‘MUNICIPAL ASSOCIATE JUDGE’ AND ‘MUNICIPAL ASSOCIATE JUDGE’ TO ‘EL PASO MUNICIPAL COURT OF APPEALS’ OF THE EL PASO CITY CODE.**

**WHEREAS**, the City of El Paso wishes to amend Title 12, Chapter 12.85, Section 12.85.020 Hearing Officers, Section 12.85.030 Parking Citations, Section 12.85.050 Hearings, Section 12.85.060 Appeal, Section 12.85.065 Final Judgments, and Section 12.85.100 Boot Hearing to amend who hears appeals in this section from ‘hearing officer’ to ‘municipal associate judge’ and ‘municipal associate judge’ to ‘El Paso Municipal Court of Appeals.’

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

**SECTION 1.** That Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.020 (Hearing Officers), is hereby amended to read as follows:

- A. The parking violations division shall have one or more municipal associate judges who are employed in the position of municipal court hearing officer or are otherwise assigned the duties and responsibilities of such position. A substitute associate municipal judge may substitute as a hearing officer when needed.
- B. Municipal associate judges shall have the authority to administer oaths and to issue orders compelling the attendance of witnesses and the production of documents.
- C. An order compelling the attendance of witnesses or the production of documents may be enforced by the municipal courts.

**SECTION 2.** That Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.030 (Parking Citations), subsection C. is hereby amended to read as follows:

- C. The citation shall provide that the person charged with a parking, standing or stopping offense shall have the right to an instant hearing for the purpose of determining the issue of liability for the charged offense. Such right to a hearing shall be exercised by appearing in person before a municipal associate judge within fourteen days from the date of the citation on a day of the week established by the municipal court for the routine operation of the courts. During such times that Monday through Thursday are established as the court's operation days and the court is open, hearings will be held between the hours of 7:30 a.m. to 12:45 p.m. and 2:00 p.m. to 5:45 p.m. During such times that Monday through Friday are established as the court's operation days and the court is open, hearings will be held between the hours of 8:30 a.m. to 12:45 p.m. and 2:00 p.m. to 5:15 p.m. The municipal clerk shall post the schedule of days of operation at the court and on the city's website.

**SECTION 3.** That Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.050 (Hearings), is hereby amended to read as follows:

- A. At the hearing before the municipal associate judge, the defendant may either admit, admit with explanation, or deny the alleged infraction.
- B. The issuing peace officer or other authorized parking enforcement agent shall not be required to attend the hearing.
- C. It is not required that the city be represented by counsel at the hearing; provided, however, that if the defendant is represented by counsel at the hearing, the municipal associate judge shall notify the municipal court clerk, who shall have the right to arrange for the city to be represented by an assistant city attorney.
- D. Neither a complaint nor any other charging instrument is required. The municipal associate judge shall examine the contents of the citation and the evidence related to ownership of the vehicle in question, and shall hear and review the testimony and evidence presented by the defendant. The formal rule of evidence do not apply to a hearing under this section, and the municipal associate judge shall make his decision based upon a preponderance of the evidence presented at the hearing, after giving due weight to all presumptions and prima facie evidence established by this chapter or other applicable law.
- E. At the conclusion of the hearing, the municipal associate judge shall issue an order stating whether or not the person charged is liable for violation of the parking or stopping ordinance and the amount of the fine, costs or fees assessed against him. The order shall be filed with the municipal court clerk. All such orders shall be kept in a separate index or file by the municipal court clerk using appropriate data processing techniques.
- F. Failure of a person charged with the offense to appear at a hearing within the aforesaid fourteen-day period shall be considered an admission of liability for the charged offense.
- G. In accordance with Article 102.014(b), Texas Code of Criminal Procedure, a municipal associate judge shall impose a court cost of two dollars on each parking violation in which a fine, costs or fee is paid or assessed. This court cost may be enforced in the manner set forth in Section 12.85.070.

**SECTION 4.** That Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.060 (Appeal), is hereby amended to read as follows:

- A. A person determined by the municipal associate judge to be in violation of a parking or stopping ordinance may appeal this determination to the El Paso Municipal Court of Appeals.
- B. The appeal is initiated by filing, not later than the thirtieth day after the filing of the municipal associate judge's order, a petition with the clerk of the court along with payment of the costs required by law for the municipal court. Additionally, a filing fee in the amount of ten dollars must be paid at the time the petition is filed. This ten dollar filing fee will be refunded in the

event the municipal associate judge's order is reversed by the El Paso Municipal Court of Appeals.

- C. After filing a petition of appeal, the municipal court clerk shall schedule a hearing and notify all parties of the date, time and place of the hearing.
- D. The appeal hearing must be before the El Paso Municipal Court of Appeals and is a civil proceeding for the purpose of affirming or reversing the municipal associate judge's order based upon a review of a record of the evidence presented to the municipal associate judge. The El Paso Municipal Court of Appeals shall affirm the municipal associate judge's order if there is substantial evidence in the record to support the order. The decision of the El Paso Municipal Court of Appeals is final.
- E. The filing of an appeal under this section does not stay the enforcement and collection of the judgment unless the person who files the appeal posts a cash bond before filing notice of appeal with the municipal court clerk. The cash bond shall be in the amount of all fines, costs and fees assessed by the municipal associate judge.

**SECTION 5.** That Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.065 (Final Judgments), Subsection A.2. is hereby amended to read as follows:

- A.2. A municipal associate judge's order finding a person to be in violation of a provision of this code regarding the stopping, standing or parking of a vehicle as set forth in Section 12.84.010 A. of this Code, upon the passage of thirty days from the filing of the municipal associate judge's order, without that person filing a petition of appeal together with all required costs and fees and without said fine having been paid; or

**SECTION 6.** That Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.100 (Boot Hearing) is hereby amended to read as follows:

- A. The registered owner of an immobilized or impounded vehicle shall have the right to a prompt post-immobilization hearing ("boot hearing") before the municipal associate judge.
- B. The request for a boot hearing shall be made in writing on a form supplied by the city.
- C. The boot hearing shall be held within twenty-four hours following the written request therefor, excluding Saturdays, Sundays, and city holidays, at the municipal courts building, or at such other convenient and reasonable place as the municipal associate judge may direct.
- D. The issue to be determined at the boot hearing is whether the immobilization was authorized by law.
- E. The immobilization of a vehicle is valid if it complies with the requirements of this chapter, unless the owner of the subject vehicle can establish by a preponderance of the evidence that an unauthorized person operated such vehicle at the time and place in question.

F. The determination of the municipal associate judge at the boot hearing is final and shall not be subject to appeal.

**SECTION 7.** Except as herein amended, Title 12 of the El Paso City Code shall remain in full force and effect.

*(Signatures begin on following page)*

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF EL PASO:**

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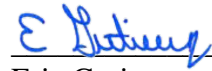
Oscar Leaser  
Mayor

**ATTEST:**

---

Laura D. Prine  
City Clerk

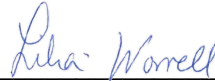
**APPROVED AS TO FORM:**



---

Eric Gutierrez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**



---

Lilia A. Worrell, Director  
El Paso Municipal Court

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

**AN ORDINANCE AMENDING TITLE 12 (VEHICLES AND TRAFFIC), CHAPTER 12.85 (PARKING VIOLATIONS BUREAU), SECTION 12.85.020 (HEARING OFFICERS), SECTION 12.85.030 (PARKING CITATIONS), SECTION 12.85.050 (HEARINGS) TO INCREASE CHILD SAFETY FUND FINE TO FIVE DOLLARS, SECTION 12.85.060 (APPEAL), SECTION 12.85.065 (FINAL JUDGMENTS), AND SECTION 12.85.100 (BOOT HEARING) TO AMEND ‘HEARING OFFICER’ TO ‘MUNICIPAL ASSOCIATE JUDGE’ AND ‘MUNICIPAL ASSOCIATE JUDGE’ TO ‘EL PASO MUNICIPAL COURT OF APPEALS’ OF THE EL PASO CITY CODE.**

**WHEREAS**, the City of El Paso wishes to amend Title 12, Chapter 12.85, Section 12.85.020 Hearing Officers, Section 12.85.030 Parking Citations, Section 12.85.050 Hearings, Section 12.85.060 Appeal, Section 12.85.065 Final Judgments, and Section 12.85.100 Boot Hearing to amend who hears appeals in this section from ‘hearing officer’ to ‘municipal associate judge;’ and

**WHEREAS**, the City of El Paso wishes to further amend Title 12, Chapter 12.85, Section 12.85.050 Hearings to increase the Child Safety Fund fine to no more than five dollars, pursuant to Texas Code of Criminal Procedure Art. 102.014. Fines for Child Safety Fund.

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

**SECTION 1.** That Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.020 (Hearing Officers), is hereby amended to read as follows:

- A. The parking violations division shall have one or more ~~hearing officers~~ municipal associate judges who are employed in the position of municipal court hearing officer or are otherwise assigned the duties and responsibilities of such position. A substitute associate municipal judge may substitute as a hearing officer when needed.
- B. ~~Hearing officers~~ Municipal associate judges shall have the authority to administer oaths and to issue orders compelling the attendance of witnesses and the production of documents.
- C. An order compelling the attendance of witnesses or the production of documents may be enforced by the municipal courts.

**SECTION 2.** That Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.030 (Parking Citations), subsection C. is hereby amended to read as follows:

- C. The citation shall provide that the person charged with a parking, standing or stopping offense shall have the right to an instant hearing for the purpose of determining the issue of liability for the charged offense. Such right to a hearing shall be exercised by appearing in person before a municipal associate judge ~~hearing officer~~ within fourteen days from the date of the citation on a day of the week established by the municipal court for the routine operation of the courts. During such times that Monday through Thursday are established as the court's operation days and the court is open, hearings will be held between the hours of 7:30 a.m. to



12:45 p.m. and 2:00 p.m. to 5:45 p.m. During such times that Monday through Friday are established as the court's operation days and the court is open, hearings will be held between the hours of 8:30 a.m. to 12:45 p.m. and 2:00 p.m. to 5:15 p.m. The municipal clerk shall post the schedule of days of operation at the court and on the city's website.

**SECTION 3.** That Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.050 (Hearings), is hereby amended to read as follows:

- A. At the hearing before the ~~hearing officer~~municipal associate judge, the defendant may either admit, admit with explanation, or deny the alleged infraction.
- B. The issuing peace officer or other authorized parking enforcement agent shall not be required to attend the hearing.
- C. It is not required that the city be represented by counsel at the hearing; provided, however, that if the defendant is represented by counsel at the hearing, the ~~hearing officer~~municipal associate judge shall notify the municipal court clerk, who shall have the right to arrange for the city to be represented by an assistant city attorney.
- D. Neither a complaint nor any other charging instrument is required. The ~~hearing officer~~municipal associate judge shall examine the contents of the citation and the evidence related to ownership of the vehicle in question, and shall hear and review the testimony and evidence presented by the defendant. The formal rule of evidence do not apply to a hearing under this section, and the ~~hearing officer~~municipal associate judge shall make his decision based upon a preponderance of the evidence presented at the hearing, after giving due weight to all presumptions and prima facie evidence established by this chapter or other applicable law.
- E. At the conclusion of the hearing, the ~~hearing officer~~municipal associate judge shall issue an order stating whether or not the person charged is liable for violation of the parking or stopping ordinance and the amount of the fine, costs or fees assessed against him. The order shall be filed with the municipal court clerk. All such orders shall be kept in a separate index or file by the municipal court clerk using appropriate data processing techniques.
- F. Failure of a person charged with the offense to appear at a hearing within the aforesaid fourteen-day period shall be considered an admission of liability for the charged offense.
- G. In accordance with Article 102.014(b), Texas Code of Criminal Procedure, a ~~hearing officer~~municipal associate judge shall impose a court cost of ~~two-five~~ dollars on each parking violation in which a fine, costs or fee is paid or assessed. This court cost may be enforced in the manner set forth in Section 12.85.070.

**SECTION 4.** That Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.060 (Appeal), is hereby amended to read as follows:

- A. A person determined by the ~~hearing officer~~municipal associate judge to be in violation of a parking or stopping ordinance may appeal this determination to the El Paso Municipal Court of Appeals~~municipal courts~~.
- B. The appeal is initiated by filing, not later than the thirtieth day after the filing of the ~~hearing officer~~municipal associate judge's order, a petition with the clerk of the court along with payment of the costs required by law for the municipal court. Additionally, a filing fee in the amount of ten dollars must be paid at the time the petition is filed. This ten dollar filing fee will be refunded in the event the ~~hearing officer~~municipal associate judge's order is reversed by the El Paso Municipal Court of Appeals~~municipal court~~.
- C. After filing a petition of appeal, the municipal court clerk shall schedule a hearing and notify all parties of the date, time and place of the hearing.
- D. The appeal hearing must be before ~~the El Paso Municipal Court of Appeals~~a municipal court judge and is a civil proceeding for the purpose of affirming or reversing the ~~hearing officer~~municipal associate judge's order based upon a review of a record of the evidence presented to the ~~hearing officer~~municipal associate judge. The El Paso Municipal Court of Appeals~~municipal court judge~~ shall affirm the ~~hearing officer~~municipal associate judge's order if there is substantial evidence in the record to support the order. The decision of the EL Paso Municipal Court of Appeals~~municipal court judge~~ is final.
- E. The filing of an appeal under this section does not stay the enforcement and collection of the judgment unless the person who files the appeal posts a cash bond before filing notice of appeal with the municipal court clerk. The cash bond shall be in the amount of all fines, costs and fees assessed by the ~~hearing officer~~municipal associate judge.

**SECTION 5.** That Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.065 (Final Judgments), Subsection A.2. is hereby amended to read as follows:

- A.2. A ~~hearing officer~~municipal associate judge's order finding a person to be in violation of a provision of this code regarding the stopping, standing or parking of a vehicle as set forth in Section 12.84.010 A. of this Code, upon the passage of thirty days from the filing of the ~~hearing officer~~municipal associate judge's order, without that person filing a petition of appeal together with all required costs and fees and without said fine having been paid; or

**SECTION 6.** That Title 12 (Vehicles and Traffic), Chapter 12.85 (Parking Violations Bureau), Section 12.85.100 (Boot Hearing) is hereby amended to read as follows:

- A. The registered owner of an immobilized or impounded vehicle shall have the right to a prompt post-immobilization hearing ("boot hearing") before the ~~hearing officer~~municipal associate judge.
- B. The request for a boot hearing shall be made in writing on a form supplied by the city.



- C. The boot hearing shall be held within twenty-four hours following the written request therefor, excluding Saturdays, Sundays, and city holidays, at the municipal courts building, or at such other convenient and reasonable place as the ~~hearing officer~~municipal associate judge may direct.
- D. The issue to be determined at the boot hearing is whether the immobilization was authorized by law.
- E. The immobilization of a vehicle is valid if it complies with the requirements of this chapter, unless the owner of the subject vehicle can establish by a preponderance of the evidence that an unauthorized person operated such vehicle at the time and place in question.
- F. The determination of the ~~hearing officer~~municipal associate judge at the boot hearing is final and shall not be subject to appeal.

**SECTION 7.** Except as herein amended, Title 12 of the El Paso City Code shall remain in full force and effect.

*(Signatures begin on following page)*

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF EL PASO:**

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Eric Gutierrez  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Lilia A. Worrell, Director  
El Paso Municipal Court



Legislation Text

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**File #: 24-685, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**District 6**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553

Planning and Inspections, Andrew Salloum, (915) 212-1603

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

An Ordinance changing the zoning of a 17.444 acre Tract of land situated in the O.A. Danielson Survey, Number 316, being a portion of that certain 32.412-acre Tract, and 4.806 acre Tract of land situated in Ysleta Grant Block 56, being a portion of Tract 8 and 9, of said Block 56, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) and R-3 (Residential) to C-4 (Commercial), and imposing a condition. The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: Gateway East and Southeast of Americas

Applicant: David Ballard, PZRZ23-00041

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

**AGENDA DATE:** May 21, 2024  
**PUBLIC HEARING DATE:** June 11, 2024

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Philip F. Etiwe, (915) 212-1553  
Andrew Salloum, (915) 212-1603

**DISTRICT(S) AFFECTED:** District 6

**STRATEGIC GOAL:** #3 Promote the Visual Image of El Paso

**SUBGOAL:** 3.2 Set one standard for infrastructure across the city

**SUBJECT:**

An Ordinance changing the zoning of a 17.444 acre Tract of land situated in the O.A. Danielson Survey, Number 316, being a portion of that certain 32.412-acre Tract, and 4.806 acre Tract of land situated in Ysleta Grant Block 56, being a portion of Tract 8 and 9, of said Block 56, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) and R-3 (Residential) to C-4 (Commercial), and imposing a condition. The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with *Plan El Paso*, the City's Comprehensive Plan.

Subject Property: Gateway East and Southeast of Americas  
Applicant: David Ballard, PZRZ23-00041

**BACKGROUND / DISCUSSION:**

The applicant is requesting to rezone from R-F (Ranch and Farm) and R-3 (Residential) to C-4 (Commercial) to allow for a proposed general warehouse. City Plan Commission recommended 8-0 to approve with a condition of the proposed rezoning on April 4, 2024. As of May 6, 2024, the Planning Division has not received any communication in support or opposition to the rezoning request. See attached staff report for additional information.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?** ☒ YES ☐ NO

**PRIMARY DEPARTMENT:** Planning & Inspections, Planning Division

**SECONDARY DEPARTMENT:** N/A

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

**DEPARTMENT HEAD:**

*Philip Etiwe*

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

AN ORDINANCE CHANGING THE ZONING OF A 17.444 ACRE TRACT OF LAND, SITUATED IN THE O.A. DANIELSON SURVEY, NUMBER 316, BEING A PORTION OF THAT CERTAIN 32.412-ACRE TRACT, AND 4.806 ACRE TRACT OF LAND SITUATED IN YSLETA GRANT BLOCK 56, BEING A PORTION OF TRACT 8 AND 9, OF SAID BLOCK 56, CITY OF EL PASO, EL PASO COUNTY, TEXAS FROM R-F (RANCH AND FARM) AND R-3 (RESIDENTIAL) TO C-4 (COMMERCIAL, AND IMPOSING A CONDITION. THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.

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

Pursuant to Section 20.04.360 of the El Paso City Code, that the zoning of a *17.444 Acre Tract of land situated in the O.A. Danielson Survey, Number. 316, being a portion of that certain 32.412-acre Tract, and 4.806 Acre Tract of Land Situated in Ysleta Grant Block 56, being a portion of Tract 8 and 9, of said Block 56, located in the City of El Paso, El Paso County, Texas, and as more particularly described by metes and bounds on the attached Exhibit "A", incorporated by reference, be changed from R-F (Ranch and Farm) and R-3 (Residential) to C-4 (Commercial), as defined in Section 20.06.020, and that the zoning map of the City of El Paso be revised accordingly.*

Further, that the property described above be subject to the following a condition which is necessitated by and attributable to the increased intensity generated by the change of zoning in order to protect the health, safety and welfare of the adjacent property owners and the residents of this City:

*That within twenty feet (20') from the front property line abutting Gateway East Boulevard, no parking or vehicular storage or display shall be allowed.*

The penalties for violating the standards imposed through this rezoning ordinance are found in Section 20.24 of the El Paso City Code.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE CITY OF EL PASO

\_\_\_\_\_  
Oscar Leaser  
Mayor

*(Additional signatures on following page)*

ORDINANCE NO. \_\_\_\_\_  
HQ24-2649|Trans#523542|P&I  
Rezoning Ordinance Partial Gateway East  
JAQ

Zoning Case No: PZRZ23-00041

**ATTEST:**

---

Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**



---

Jesus A. Quintanilla  
Assistant City Attorney

**APPROVED AS TO CONTENT:**



---

Philip F. Etiwe, Director  
Planning & Inspections Department

**ORDINANCE NO.** \_\_\_\_\_  
HQ24-2649|Trans#523542|P&I  
Rezoning Ordinance Partial Gateway East  
JAQ

**Zoning Case No: PZRZ23-00041**



**LEGAL DESCRIPTION**

DESCRIPTION OF A 17.444 ACRE TRACT OF LAND SITUATED IN O.A. DANIELSON SURVEY, NUMBER 316, BEING A PORTION OF THAT CERTAIN 32.412 ACRE TRACT, DESCRIBED AS PARCEL 1, CONVEYED TO ASHLEIGH REALTY L.P., IN A WARRANTY DEED DATED APRIL 1, 2005 AND RECORDED IN DOCUMENT NO. 20050028334 OF THE OFFICIAL PUBLIC RECORDS, EL PASO COUNTY, SAID 17.444 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a 1-1/2" iron pipe found for a common corner of Block 5 Socorro Grant, Block 56 Yelesta Grant and the O.A. Danielson Survey, No. 316, being also on the north line of a tract of land conveyed to, D.L.A. and M. Properties, LLC, recorded in Document No. 20080013291 of the Official Public Records of El Paso County, Texas, being also the southwest corner of said Ashleigh Realty L.P. tract, and being the southwest corner hereof;

**THENCE, N 38°23'21" W**, with the common line of said Block 56 Yelesta Grant and O.A. Danielson Survey, No. 316, for a distance of **1933.66** feet to 5/8" iron rod found on said common line of Block 56 Yelesta Grant and O.A. Danielson Survey, No. 316, being also the northwest corner of said Ashleigh Realty L.P. tract, being also the southwest corner of a 9.995-acre tract conveyed to El Paso Electric Company in a Special Warranty Deed dated May 24, 2023, recorded in Document No. 20230039393 of the Official Public Records of El Paso County, Texas, and being the northwest corner hereof;

**THENCE, N 17°45'19" E**, for a distance of **364.94** feet to a 5/8" iron rod found on the southwest line of Interstate Highway No. 10, a variable width right of way at this point, being also the northeast corner of Ashleigh Realty L.P. tract, being also the southeast corner of said El Paso Electric Company tract, and being the northeast corner hereof;

**THENCE, S 40°55'36" E**, with the southwest line of said Interstate Highway No. 10 for a distance of **2354.46** feet to 5/8" inch iron rod with cap stamped "ZWA" set on the southwest line of said Interstate Highway No. 10, being also the northeast corner of a 27.853-acre tract conveyed to Baba, L.P. in a Warranty Deed dated April 1, 2005, recorded in Document No. 20050028333 of the Official Public Records of El Paso County, Texas, being also the southeast corner of said Ashleigh Realty L.P. tract, and being the southeast corner hereof;

**THENCE, S 80°01'42" W**, with the north line of said Baba, L.P. tract, the south line of said Ashleigh Realty L.P. tract, being also the south line hereof, for a distance of **408.79** feet to a 5/8" inch iron rod found on the west line of said O.A. Danielson Survey, No. 316, being also the northeast corner of Block 5 Socorro Grant, and being the northwest corner of said Baba, L.P. tract;

**THENCE, S 74°59'11" W, for a distance of 52.04 feet to the POINT OF BEGINNING and containing 17.444 acres of land.**

**BEARING BASIS**

THE COORDINATES SHOWN HEREON ARE BASED ON THE TEXAS COORDINATE SYSTEM, TEXAS CENTRAL ZONE, NAD83 (93) HARN U.S. SURVEY FEET. COMBINED SCALE FACTOR 0.99977223. ALL DISTANCE SHOWN ARE SURFACE DISTANCES.

**SURVEYORS NOTE**

THE CONSTRUCTION/LOCATION OF SURVEY BOUNDARIES AND CORNERS, WAS BASED UPON THE PRESCRIBED, ACCEPTED METHOD OF USING THE ORIGINAL OR PERPETUATED CORNER MONUMENTS FOUND AT THE NORTHWEST CORNER OF SECTION NO. 42, BLOCK 78, TOWNSHIP 3, (2-IN IRON PIPE FOUND) AND THE NORTHWEST CORNER OF SECTION NO. 18, BLOCK 80, TOWNSHIP 2, (BRASS ARMY DISK ON CONCRETE MONUMENT RECOGNIZED AS THE SURVEY CORNER) AS A BASELINE RUNNING DIAGONALLY (N 42°38'01" W, 32,405.40 VARAS ~ 90,014.99 FEET) ACROSS THE SURVEYS AS RUN BY PAUL MCCOMBS IN 1883; THE NORTH-SOUTH AND EAST-WEST SURVEY LINES ARE ORIENTED 45-DEGREES OFF THIS BASELINE AND RUN FROM FOUND, ACCEPTED SURVEY CORNERS MONUMENTS ALONG OR NEAR THE BASELINE, OR FROM PRORATED SURVEY CORNER POSTIONS ALONG THE BASELINE AT MISSING CORNERS.

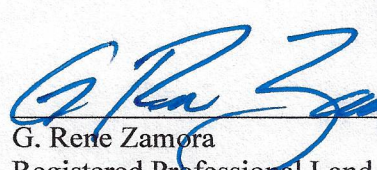
**THE STATE OF TEXAS   §  
                                     §  
COUNTY OF EL PASO   §**

**KNOW ALL MEN BY THESE PRESENTS:**

That I, G. Rene Zamora, a Registered Professional Land Surveyor, do hereby state that the above description is true and correct to the best of my knowledge and belief under my direction and supervision.

WITNESS MY HAND AND SEAL at Buda, Hays County, Texas this the 13th day of November 2023, A.D.

Zamora, LLC  
Texas Firm No. 10062700  
1435 South Loop 4  
Buda, Texas 78610

  
G. Rene Zamora  
Registered Professional Land Surveyor  
No. 5682 – State of Texas

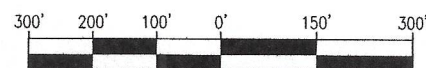
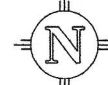




# SKETCH TO ACCOMPANY LEGAL DESCRIPTION

EL PASO ELECTRIC  
DOC. NO. 20230039393  
O.P.R.E.P.C.T.

N17°45'19"E  
364.94'



GRAPHIC SCALE

1"=300'

BILL BURNETT  
DRIVE

O.A. DANIELSON SURVEY  
NUMBER 316

BEN L. IVEY LTD  
(31.67 ACRES)  
PARCEL 1  
TRACT 7, BLOCK 56  
YSLETA GRANT  
DOCUMENT NO. 20050014942  
O.P.R.E.P.C.T.

YSLETA GRANT  
BLOCK 56

BEN L. IVEY LTD  
PARCEL 2  
TRACT 8, BLOCK 56  
YSLETA GRANT  
DOCUMENT NO. 20050014942  
O.P.R.E.P.C.T.

INTERSTATE HIGHWAY NO. 10  
(R.O.W. WIDTH VARIES)  
(R.O.W. CSJ: 2121-04-078)  
S40°55'36"E 2354.46'  
17.444 ACRES  
(759.877 S.F.)  
ASHLEY REALTY LP  
(32.412 ACRES)  
DOC. NO. 20050028334  
O.P.R.E.P.C.T.  
N38°23'21"W 1933.66'

BEN L. IVEY LTD  
PARCEL 2  
TRACT 9, BLOCK 56  
YSLETA GRANT  
DOCUMENT NO. 20050014942  
O.P.R.E.P.C.T.

COUNTY OF EL PASO  
NO RECORDING INFORMATION AT  
TIME OF SURVEY

D.L.A. & M. PROPERTIES, LLC  
DOCUMENT NO. 20080013291  
O.P.R.E.P.C.T.

SOCORRO GRANT  
BLOCK 5

S80°01'42"W  
408.79'

P.O.B.

BABA, L.P.  
(27.853 ACRES)  
DOC. NO. 20050028333  
O.P.R.E.P.C.T.

## LINE TABLE

LINE	DIRECTION	DISTANCE
L1	S74°59'11"W	52.04'

SHEET 3 OF 4

## LOCATIONS



**ZWA**

Zamora, L.L.C.  
Texas Firm No. 10062700  
Professional Land Surveyors  
1510 N. Zaragoza Road, Suite B-7, El Paso Texas 79936  
Tel (512) 295-6201

PROJECT: EXHIBIT A  
JOB NUMBER: 17.444 ACRES  
DATE: NOVEMBER 2023  
SCALE: 1"= 300'  
SURVEYOR: ZAMORA  
TECHNICIAN: DWC  
DRAWING: 2013-68C-BASE  
FIELDNOTES:  
PARTYCHIEF:  
FIELDBOOKS:

BEING A PORTION OF THAT CERTAIN 32.412 ACRE TRACT, DESCRIBED AS PARCEL 1, CONVEYED TO ASHLEIGH REALTY L.P., IN A WARRANTY DEED DATED APRIL 1, 2005 AND RECORDED IN DOCUMENT NO. 20050028334 OF THE OFFICIAL PUBLIC RECORDS, EL PASO COUNTY



## LEGEND

- 5/8" IRON ROD FOUND  
UNLESS OTHERWISE NOTED
- ⊙ 1-1/2" IRON PIPE FOUND  
UNLESS OTHERWISE NOTED
- ▲ NAIL FOUND
- ◼ TXDOT TYPE II MONUMENT
- TXDOT TYPE I MONUMENT
- ⊗ 5/8" IRON ROD W/ZWA CAP SET
- O.P.R.E.P.C.T. OFFICIAL PUBLIC RECORDS  
EL PAOS COUNTY, TEXAS
- P.O.B. POINT OF BEGINNING

### BEARING BASIS:

THE BEARINGS SHOWN HEREON ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS CENTRAL ZONE, NAD83 (93) HARN. THE BEARINGS SHOWN ARE GRID BEARINGS. COMBINED SCALE FACTOR 0.99977223. ALL DISTANCE SHOWN ARE SURFACE DISTANCES.

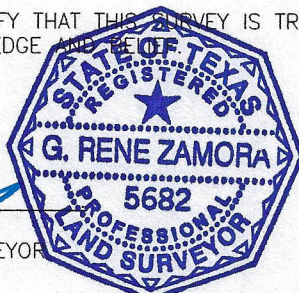
### NOTE:

THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT. RECORD INFORMATION ON THIS DRAWING IS BASED ON A PUBLIC RECORDS SEARCH BY THE SURVEYOR AND MAY NOT INCLUDE ALL EASEMENTS OR INSTRUMENTS PERTAINING TO THIS PROPERTY.

### META DATA:

ALL PROJECT COORDINATES ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(2011) (EPOCH 2010.00).

I, G. RENE ZAMORA, DO HEREBY CERTIFY THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.



G. RENE ZAMORA  
REGISTERED PROFESSIONAL LAND SURVEYOR  
TEXAS REGISTRATION NO. 5682

SHEET 4 OF 4

### LOCATIONS



**ZWA**

**Zamora, LLC.**  
**Texas Firm No. 10062700**  
**Professional Land Surveyors**  
1510 N. Zaragoza Road, Suite B-7, El Paso Texas 79936  
Tel: (512) 295-6201

PROJECT: EXHIBIT A  
JOB NUMBER: 2013-68C  
DATE: NOVEMBER 2023  
SCALE: 1" = 300'  
SURVEYOR: ZAMORA  
TECHNICIAN: DWC  
DRAWING: 2013-68C-BASE  
FIELDNOTES:  
PARTYCHIEF:  
FIELDBOOKS:

BEING A PORTION OF THAT CERTAIN 32.412 ACRE TRACT, DESCRIBED AS PARCEL 1, CONVEYED TO ASHLEIGH REALTY L.P., IN A WARRANTY DEED DATED APRIL 1, 2005 AND RECORDED IN DOCUMENT NO. 20050028334 OF THE OFFICIAL PUBLIC RECORDS, EL PASO COUNTY

**LEGAL DESCRIPTION**

DESCRIPTION OF A 4.806 ACRE TRACT OF LAND SITUATED IN YSLETA GRANT BLOCK 56, BEING A PORTION OF TRACT 8 AND 9, OF SAID BLOCK 56, DESCRIBED AS PARCEL 2, CONVEYED TO BEN L. IVEY, LTD., IN A WARRANTY DEED WITH VENDOR'S LIEN, DATED FEBRUARY 15, 2005 AND RECORDED IN DOCUMENT NO. 20050014942 OF THE OFFICIAL PUBLIC RECORDS, EL PASO COUNTY, SAID 4.806 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**COMMENCING** at a 1-1/2" iron pipe found for a common corner of Block 5 Socorro Grant, O.A. Danielson Survey, No. 316, and said Block 56 Yelesta Grant, being also on the north line of a tract of land conveyed to, D.L.A. and M. Properties, LLC, recorded in Document No. 20080013291 of the Official Public Records of El Paso County, Texas, and being the southwest corner of that certain called 32.412-acre tract conveyed to Ashleigh Reality L.P., recorded in Document No. 20050028334 of the Official Public Records of El Paso County, Texas;

**THENCE, N 38°23'21" W**, with the common line of said Block 56 Yelesta Grant and said O.A. Danielson Survey, No. 316, being also the southwest line of said Ashleigh Reality L.P. tract, a distance of **282.41** feet to a 1-1/2-inch iron pipe found, on the southwest line of said Ashleigh Reality L.P. tract, being also the northeast corner of said Tract 9, Block 56, for the southeast corner and the **Point of Beginning** of the herein described tract;

**THENCE**, over and across said Tracts 8 and 9, Block 56 the following three (3) courses and distances:

- 1) **S 19°12'16" W**, for a distance of **190.43** feet to a 5/8-inch iron rod with cap stamped "ZWA" set for the southwest corner hereof;
- 2) **N 40°55'38" W**, for a distance of **1162.26** feet to a 5/8-inch iron rod with cap stamped "ZWA" set for the northwest corner hereof;
- 3) **N 49°04'22" E**, for a distance of **212.45** feet to a 5/8-inch iron rod with cap stamped "ZWA" set on the common line of said Block 56 Yelesta Grant and said O.A. Danielson Survey, No. 316, being also the southwest line of said Ashleigh Reality L.P. tract, and being the northwest corner hereof, from which a 1/2-inch iron rod found for the west corner of said Ashleigh Reality L.P. tract bears **N 38°23'21" W** a distance of **582.78** feet;



**THENCE, S 38°23'21" E**, with the common line of said Block 56 Yelesta Grant and said O.A. Danielson Survey, No. 316, being also the southwest line of said Ashleigh Reality L.P. tract, for a distance of **1068.47** feet to the **POINT OF BEGINNING** and containing **4.806** acres of land.

**BEARING BASIS**

THE GRID COORDINATES SHOWN HEREON ARE BASED ON THE TEXAS COORDINATE SYSTEM, TEXAS CENTRAL ZONE, NAD83 (93) HARN U.S. SURVEY FEET. THE BEARINGS SHOWN ARE GRID. THESE GRID COORDINATES WERE ESTABLISHED FROM REFERENCE POINT TX04 A, HAVING VALUES 31°43'10.98688"(N), 106°14'29.61456"(W) AND TX04 B HAVING VALUES 31°43'10.70856"(N), 106°14'48.54509"(W) CONVERGENCE OF (-)03°36'00" WITH A COMBINED SCALE FACTOR 0.99977223. ALL DISTANCES SHOWN ARE SURFACE DISTANCES.

**SURVEYOR'S NOTE**

THE CONSTRUCTION/LOCATION OF SURVEY BOUNDARIES AND CORNERS, WAS BASED UPON THE PRESCRIBED, ACCEPTED METHOD OF USING THE ORIGINAL OR PERPETUATED CORNER MONUMENTS FOUND AT THE NORTHWEST CORNER OF SECTION NO. 42, BLOCK 78, TOWNSHIP 3, (2-IN IRON PIPE FOUND) AND THE NORTHWEST CORNER OF SECTION NO. 18, BLOCK 80, TOWNSHIP 2, (BRASS ARMY DISK ON CONCRETE MONUMENT RECOGNIZED AS THE SURVEY CORNER) AS A BASELINE RUNNING DIAGONALLY (N 42°38'01" W, 32,405.40 VARAS ~ 90,014.99 FEET) ACROSS THE SURVEYS AS RUN BY PAUL MCCOMBS IN 1883; THE NORTH-SOUTH AND EAST-WEST SURVEY LINES ARE ORIENTED 45-DEGREES OFF THIS BASELINE AND RUN FROM FOUND, ACCEPTED SURVEY CORNER MONUMENTS ALONG OR NEAR THE BASELINE, OR FROM PRORATED SURVEY CORNER POSTIONS ALONG THE BASELINE AT MISSING CORNERS.

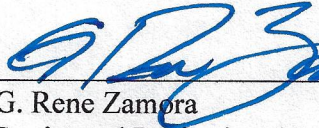
THE STATE OF TEXAS   §  
                                     §  
COUNTY OF EL PASO   §

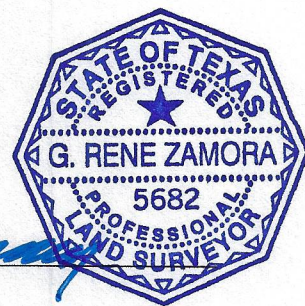
**KNOW ALL MEN BY THESE PRESENTS:**

That I, G. Rene Zamora, a Registered Professional Land Surveyor, do hereby state that the above description is true and correct to the best of my knowledge and belief under my direction and supervision.

WITNESS MY HAND AND SEAL in El Paso County, Texas this the 25th day of January, 2024, A.D.

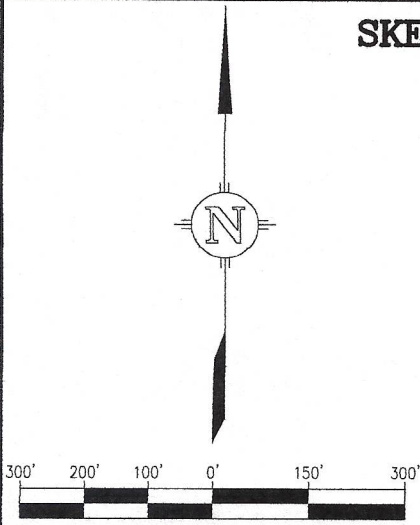
Zamora, LLC  
Texas Firm No. 10062702  
1510 Zaragoza Road, Suite B-7  
El Paso, Texas 79936

  
G. Rene Zamora  
Registered Professional Land Surveyor  
No. 5682 – State of Texas





# SKETCH TO ACCOMPANY LEGAL DESCRIPTION



EL PASO ELECTRIC  
COMPANY  
(9.995 ACRES)  
DOC. NO. 20230039393  
O.P.R.E.P.C.T.

O.A. DANIELSON SURVEY  
NUMBER 316

1/2"

N38°23'21"W 582.78'  
APPROXIMATE LOCATION  
OF SURVEY LINE

1/2"

INTERSTATE HIGHWAY NO. 10  
(R.O.W. WIDTH VARIES)  
(R.O.W. CSJ: 2121-04-078)

ASHLEIGH REALTY L.P.  
PARCEL 1  
(32.412 ACRES)  
DOC. NO. 20050028334  
O.P.R.E.P.C.T.

YSLETA GRANT BLOCK 56

BEN L. IVEY LTD  
(31.67 ACRES)  
PARCEL 1  
TRACT 7, BLOCK 56  
YSLETA GRANT  
DOCUMENT NO. 20050014942  
O.P.R.E.P.C.T.

BEN L. IVEY LTD  
PARCEL 2  
TRACT 8, BLOCK 56  
YSLETA GRANT  
DOCUMENT NO. 20050014942  
O.P.R.E.P.C.T.

N40°55'38"W 1162.28'  
S88°23'21"E 1069.47'  
4.806 ACRES  
(209.351 S.F.)

BEN L. IVEY LTD  
PARCEL 2  
TRACT 9, BLOCK 56  
YSLETA GRANT  
DOCUMENT NO. 20050014942  
O.P.R.E.P.C.T.

P.O.B.

1-1/2"

P.O.C.

1-1/2"

5/8"

5/8"

COUNTY OF EL PASO  
NO RECORDING INFORMATION AT  
TIME OF SURVEY

APPROXIMATE LOCATION  
OF SURVEY LINE

SOCORRO GRANT

D.L.A. & M. PROPERTIES, LLC  
DOCUMENT NO. 20080013291  
O.P.R.E.P.C.T.

BEN L. IVEY LTD  
PARCEL 3  
TRACT 5, BLOCK 5  
SOCORRO GRANT  
DOCUMENT NO. 20050014942  
O.P.R.E.P.C.T.

SHEET 3 OF 4

## LOCATIONS



**ZWA**

**Zamora, L.L.C.**  
Texas Firm No. 10062700  
Professional Land Surveyors  
1510 N. Zaragoza Road, Suite B-7, El Paso Texas 79936  
Tel (512) 295-6201

PROJECT: EXHIBIT 1  
4.806 ACRES  
JOB NUMBER: 2013-68D  
DATE: JANUARY 2024  
SCALE: 1"= 300'  
SURVEYOR: ZAMORA  
TECHNICIAN: DWC  
DRAWING: 2013-68D-EXHIBIT 1.dwg  
FIELDNOTES:  
PARTYCHIEF:  
FIELDBOOKS:

EXHIBIT TO ACCOMPANY LEGAL  
DESCRIPTION OF 4.806 ACRE  
TRACT OF LAND SITUATED IN THE  
YSLETA GRANT BLOCK 56,  
EL PASO COUNTY, TEXAS.



# SKETCH TO ACCOMPANY LEGAL DESCRIPTION

## LEGEND

- 1/2" IRON ROD FOUND
- ⊙ 5/8" IRON ROD W/ZWA CAP
- ▣ TYPE II CONCRETE MONUMENT
- ⊙ IRON PIPE FOUND
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT

### BEARING BASIS:

THE BEARINGS SHOWN HEREON ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS CENTRAL ZONE, NAD83 (93) HARN. THE BEARINGS SHOWN ARE GRID BEARINGS. THESE COORDINATES WERE ESTABLISHED FROM REFERENCE POINT TX04A (NGS PID NO. AB6217), HAVING VALUES 31°43'10.98688"(N), 106°14'29.61456"(W) COMBINED SCALE FACTOR 0.99977223. ALL DISTANCE SHOWN ARE SURFACE DISTANCES.

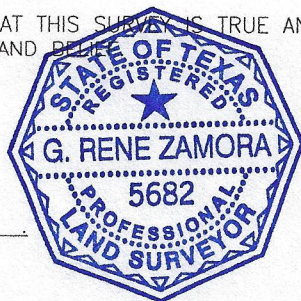
### LINE TABLE

LINE	DIRECTION	DISTANCE
L1	N38°23'21"W	282.41'
L2	S19°12'16"W	190.43'
L3	N49°04'22"E	212.45'

### NOTE:

THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT. RECORD INFORMATION ON THIS DRAWING IS BASED ON A PUBLIC RECORDS SEARCH BY THE SURVEYOR AND MAY NOT INCLUDE ALL EASEMENTS OR INSTRUMENTS PERTAINING TO THIS PROPERTY.

I, G. RENE ZAMORA, DO HEREBY CERTIFY THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.



G. RENE ZAMORA  
REGISTERED PROFESSIONAL LAND SURVEYOR  
TEXAS REGISTRATION NO. 5682

SHEET 4 OF 4

**LOCATIONS**  

EL PASO BUDA

**ZWA**  
**Zamora, L.L.C.**  
**Texas Firm No. 10062700**  
**Professional Land Surveyors**  
1510 N. Zaragoza Road, Suite B-7, El Paso Texas 79936  
Tel (512) 295-6201

PROJECT: EXHIBIT 1  
4.806 ACRES  
JOB NUMBER: 2013-68D  
DATE: JANUARY, 2024  
SCALE: 1" = 300'  
SURVEYOR: ZAMORA  
TECHNICIAN: DWC  
DRAWING: 2013-68D-EXHIBIT 1.dwg  
FIELDNOTES:  
PARTYCHIEF:  
FIELDBOOKS:

EXHIBIT TO ACCOMPANY LEGAL  
DESCRIPTION OF 4.806 ACRE  
TRACT OF LAND SITUATED IN THE  
YSLETA GRANT BLOCK 56,  
EL PASO COUNTY, TEXAS.



# Gateway East and Southeast of Americas



City Plan Commission — April 4, 2024

<b>CASE NUMBER:</b>	<b>PZRZ23-00041</b>
<b>CASE MANAGER:</b>	Andrew Salloum, (915) 212-1603, <a href="mailto:SalloumAM@elpasotexas.gov">SalloumAM@elpasotexas.gov</a>
<b>PROPERTY OWNER:</b>	David Ballard
<b>REPRESENTATIVE:</b>	TRE & Associates Engineering
<b>LOCATION:</b>	Gateway East Blvd. and Southeast of Americas (District 6)
<b>PROPERTY AREA:</b>	22.25 acres
<b>REQUEST:</b>	Rezone from R-F (Ranch and Farm) and R-3 (Residential) to C-4 (Commercial)
<b>RELATED APPLICATIONS:</b>	SUSU23-00103 - Major Combination Subdivision
<b>PUBLIC INPUT:</b>	None received as of March 28, 2024

**SUMMARY OF REQUEST:** The applicant is requesting to rezone from R-F (Ranch and Farm) and R-3 (Residential) to C-4 (Commercial) to allow for a proposed general warehouse.

**SUMMARY OF STAFF'S RECOMMENDATION:** Staff recommends **APPROVAL WITH CONDITION** of the rezoning request. The proposed zoning district is compatible with the commercial uses in the surrounding area and consistent with *Plan El Paso*, the City's Comprehensive Plan and the G-3, Post-War future land use designation. The condition is the following:

- *That within twenty feet (20') from the front property line abutting Gateway East Boulevard, no parking or vehicular storage or display shall be allowed.*

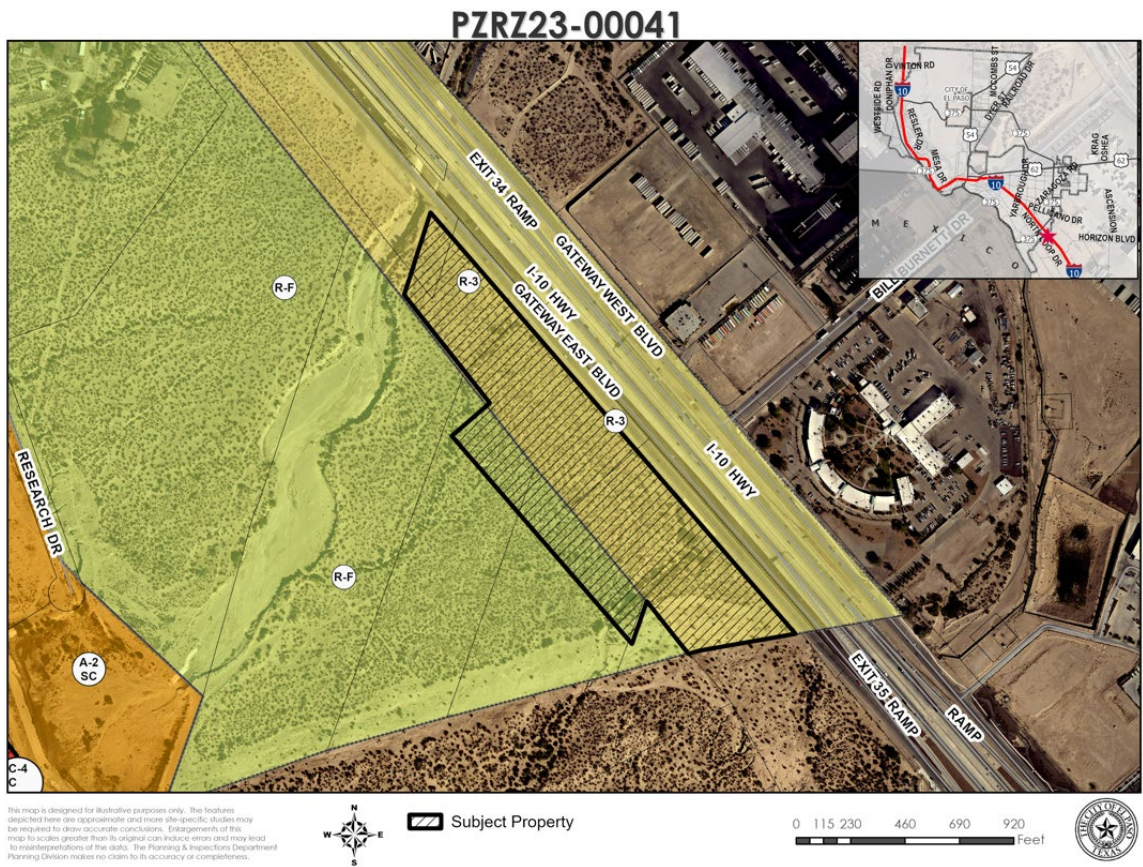


Figure A. Subject Property & Immediate Surroundings

**DESCRIPTION OF REQUEST:** The applicant is requesting to rezone from R-F (Ranch and Farm) and R-3 (Residential) to C-4 (Commercial) to allow for a proposed general warehouse. The size of the property is 22.25 acres. The property is currently vacant. The conceptual site plan shows two proposed warehouse buildings on the property. Main access to the property is proposed from Gateway East Boulevard.

**COMPATIBILITY WITH NEIGHBORHOOD CHARACTER:** To the north and east, the property is bounded by U.S. Interstate Highway 10 and on the other side of I-10 there are a trailer parking lot and nightclub/bar, a governmental use building, and a vacant lot, which fall entirely on the El Paso's 5-Mile Extraterritorial Jurisdiction (ETJ); to the south is vacant land located within Socorro's 2-mile Extraterritorial Jurisdiction (ETJ); and to the west, is vacant land zoned R-F (Ranch and Farm). The closest school is Del Valle High School located 1.83 mile away and the closest park is Emerald Pass Park located 1.48 miles away.

<b>COMPLIANCE WITH <i>PLAN EL PASO</i>/REZONING POLICY – When evaluating whether a proposed rezoning is in accordance with <i>Plan El Paso</i>, consider the following factors:</b>	
<b>Criteria</b>	<b>Does the Request Comply?</b>
<p><b>Future Land Use Map:</b> Proposed zone change is compatible with the Future Land Use designation for the property:</p> <p><b>G-3, Post-War:</b> This sector applies to transitional neighborhoods typically developed from the 1950s through the 1980s. Streets were laid out with curvilinear patterns without alleys and shopping centers are located at major intersections behind large parking lots. This sector is generally stable but would benefit from strategic suburban retrofits to supplement the limited housing stock and add missing civic and commercial uses.</p>	<p>Yes. The subject property is proposed to be developed into commercial development, which is in character with the future land use designation of <i>Plan El Paso</i>.</p>
<p><b>Compatibility with Surroundings:</b> The proposed zoning district is compatible with those surrounding the site:</p> <p><b>C-4 (Commercial) District:</b> The purpose of these districts is to provide for locations for the most intensive commercial uses intended to serve the entire city. It is intended that the district regulations permit heavy commercial uses characterized by automotive and light warehousing. The regulations of the districts are intended to provide a transition from general business areas to industrial and manufacturing uses, and to accommodate major locations of commerce, service and employment activities.</p>	<p>Yes. The proposed C-4 (Commercial) zoning district will provide for the continued commercial uses along Gateway East Boulevard and U.S. Interstate 10 which are designated as a commercial corridor, major arterial, and interstate, in the City's Major Thoroughfare Plan. The surrounding properties are zoned R-F (Ranch and Farm) and R-3 (Residential) with other property within Extraterritorial Jurisdiction (ETJ). The existing uses of the surrounding area range from vacant, trailer parking lot, and a governmental use building.</p>
<p><b>Preferred Development Locations:</b> Located along an arterial (or greater street classification) or the intersection of two collectors (or greater street classification). The site for proposed rezoning is not located mid-block, resulting in it being the only property on the block with an alternative zoning district, density, use and/or land use.</p>	<p>Yes. The subject property has access to Gateway East Boulevard, which is designated as a major arterial in the City's Major Thoroughfare Plan. The classification of these roads is appropriate for the proposed development.</p>

<b>COMPLIANCE WITH <i>PLAN EL PASO</i>/REZONING POLICY – When evaluating whether a proposed rezoning is in accordance with <i>Plan El Paso</i>, consider the following factors:</b>	
<b>THE PROPOSED ZONING DISTRICT'S EFFECT ON THE PROPERTY AND SURROUNDING PROPERTY, AFTER EVALUATING THE FOLLOWING FACTORS:</b>	
<b>Historic District or Special Designations &amp; Study Area Plans:</b> Any historic district or other special designations that may be applicable. Any adopted small areas plan, including land-use maps in those plans.	None. The proposed development is not within any historic districts or study area plan boundaries.
<b>Potential Adverse Effects:</b> Potential adverse effects that might be caused by approval or denial of the requested rezoning.	The proposed development is not anticipated to pose any adverse effects on the community.
<b>Natural Environment:</b> Anticipated effects on the natural environment.	The subject property does not involve green field or environmentally sensitive land or arroyo disturbance.
<b>Stability:</b> Whether the area is stable or in transition.	The area has been in transition within the last 10 years. The property located at 9641 North Loop Drive and 215 Sofia Place to the west was rezoned from A-2 (Apartment) to C-4 (Commercial) in 2021.
<b>Socioeconomic &amp; Physical Conditions:</b> Any changed social, economic, or physical conditions that make the existing zoning no longer suitable for the property.	The area has been in transition as is currently under commercial development. It is expected to be developed into a commercial development along Interstate 10. The R-3 (Residential) zoning designation is no longer suitable for the property.

**ADEQUACY OF PUBLIC FACILITIES, SERVICES AND INFRASTRUCTURE:** The proposed development will have access to Gateway East Boulevard which is designated as a major arterial in the City's Major Thoroughfare Plan. The subject property will need to provide adequate infrastructure at the time of development through the subdivision process. There are no bus stops within walkable distance (0.25 mile) of the subject property. The closest bus stop is 1.25 miles away along Joe Battle Boulevard and Rojas Drive.

**SUMMARY OF DEPARTMENTAL REVIEW COMMENTS:** No adverse comments were received from reviewing departments.

**PUBLIC COMMENT:** The subject property is located within the boundaries of Mission Valley Civic Association and Corridor 20 Civic Association, which were notified of the rezoning request by the applicant. As required, public notices were mailed to property owners within 300 feet on March 22, 2024. As of March 28, 2024, the Planning Division has not received any communication in support or opposition to the request from the public.

**RELATED APPLICATIONS:** A major combination subdivision application (SUSU23-00103) is currently under review for a commercial subdivision, comprising of one lot.

**CITY PLAN COMMISSION OPTIONS:** The purpose of the Zoning Ordinance is to promote the health, safety, morals and general welfare of the City. The City Plan Commission (CPC) has the authority to advise City Council on Zoning matters. In evaluating the request, the CPC may take any of the following actions:

1. **Recommend Approval** of the rezoning request, finding that the request is in conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or that the request is in conformance with other criteria that the CPC identifies from the Comprehensive Plan.
2. **Recommend Approval of the rezoning request With Modifications** to bring the request into conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan. **(Staff Recommendation)**
3. **Recommend Denial** of the rezoning request, finding that the request does not conform to the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan.

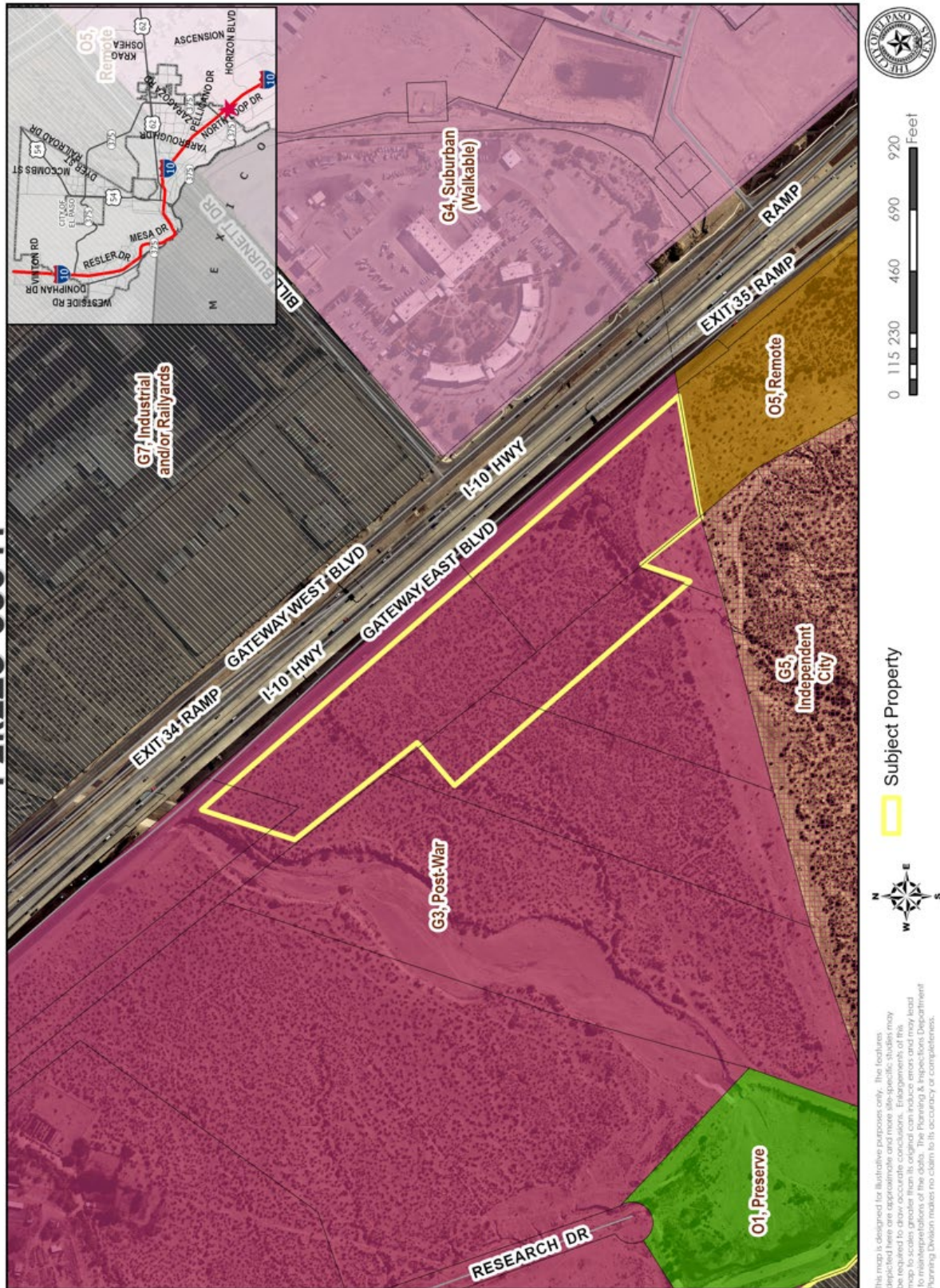
**ATTACHMENTS:**

1. Future Land Use Map
2. Conceptual Site Plan
3. Department Comments
4. Neighborhood Notification Boundary Map



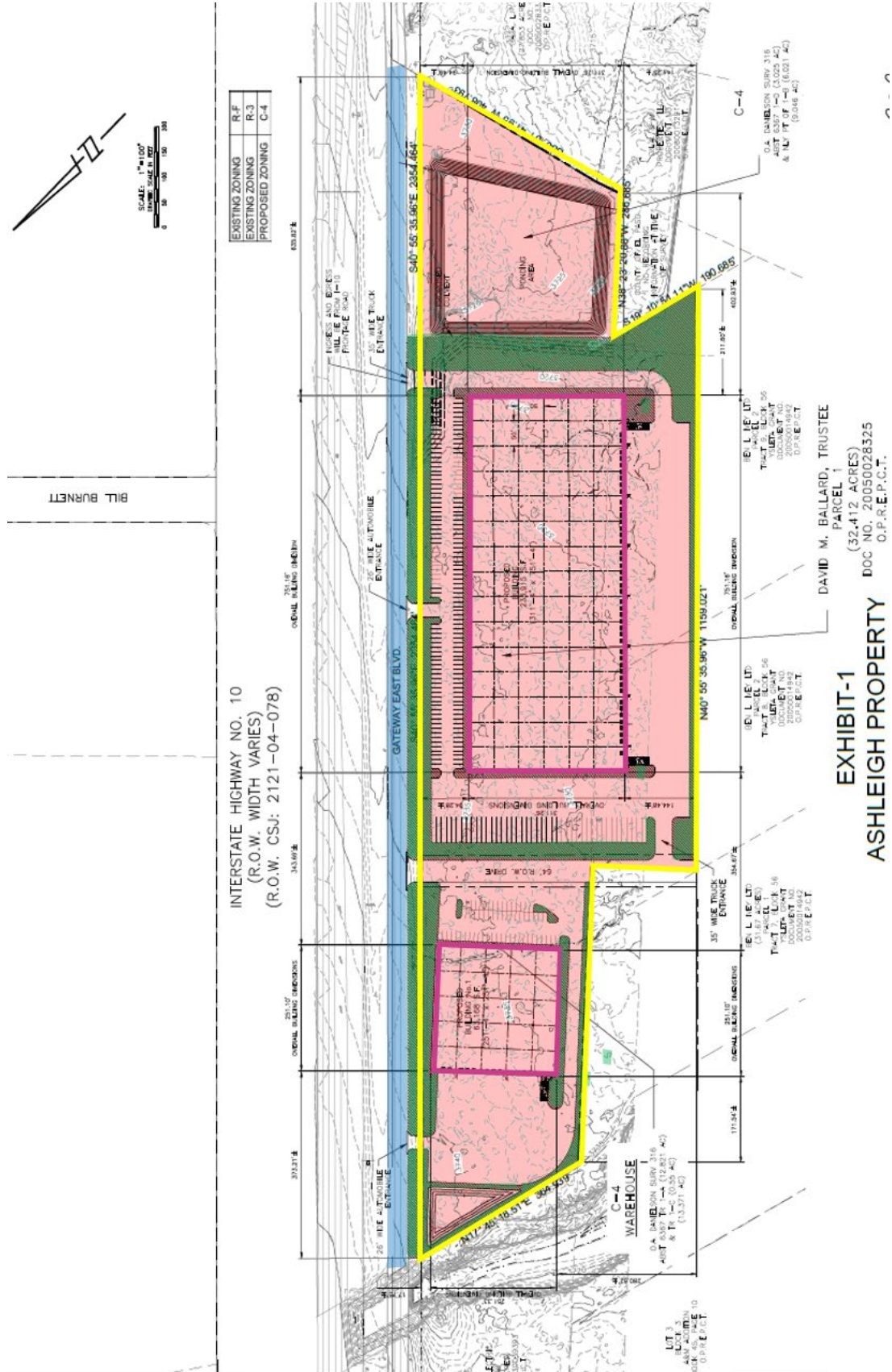
# ATTACHMENT 1

PZR723-00041





# ATTACHMENT 2



# **ATTACHMENT 3**

## **Planning and Inspections Department - Planning Division**

Staff recommends **APPROVAL WITH CONDITION** of the rezoning request. The proposed zoning district is compatible with the commercial uses in the surrounding area and consistent with Plan El Paso, the City's Comprehensive Plan and the G-3, Post-War future land use designation. The condition is the following:

- *That within twenty feet (20') from the front property line abutting Gateway East Boulevard, no parking or vehicular storage or display shall be allowed.*

## **Planning and Inspections Department – Plan Review & Landscaping Division**

The generalized site plan is not being reviewed for conformance due to conceptual nature. No objections to proposed rezoning. At the time of submittal for building permit, the project will need to comply with all applicable provisions of the ICC, TAS and Municipal Code.

## **Planning and Inspections Department – Land Development**

1. The proposed ponding area for subdivision shall have enough capacity to hold the developed runoff for a designated 100-yr. storm event.
2. TXDOT review and approval are required of the proposed area for drainage (including culverts) and access requirements (Driveways, acceleration, and deceleration lane). No storm-water is allowed into TxDOT R.O.W.
3. Delineated contour of flood zone "A" in the site plan at the time of grading permit. if the property is in the flood zone area, provide an elevation certificate.

*Note: Comments will be addressed at the permitting stage.*

## **Fire Department**

No adverse comments.

## **Police Department**

No comments received.

## **Environment Services**

No comments received.

## **Streets and Maintenance Department**

- No TIA required.
- Coordinated with TXDOT via access points.

## **Texas Department of Transportation**

TxDOT has only received a permit request for the two most eastern driveways. Please have the requestor submit a permit request for review and consideration of the two most western driveways to TXDOT. The permit request should consist of a layout with dimensions between existing and proposed access points.

*Note: Comments will be addressed at the permitting stage.*

## **Sun Metro**

No comments received.

## **El Paso Water**

EPWater-PSB does not object to this request.

Plat shall accurately show the existing PSB water meter easement location.

**Water:**

There is an existing 16-inch diameter water main that extends along Gateway East Blvd., located approximately 5-feet north of the south right-of-way line. No direct service connections are allowed to this main as per EPWater-PSB Rules and Regulations.

EPWater-PSB records indicate a master meter for the El Paso Lower Valley Water District Authority located within a PSB easement at the southeast corner of Lot 2.

**Sanitary Sewer:**

There are no sanitary sewer mains fronting the property.

**General:**

Gateway East Blvd. is a Texas Department of Transportation (TxDOT) right-of-way. All proposed water work to be performed within Gateway East Blvd. right-of-way requires written permission from TxDOT.

No building, reservoir, structure, parking stalls, or other improvement, other than asphaltic paving (HMAC), shall be constructed or maintained on the above referenced EPWater-PSB easement without the written consent of EPWater-PSB. The Developer shall refrain from constructing rock walls, signs, trees, buildings, curbs, or any structure that will interfere with the access to the PSB easement(s). There shall be at least a 5-foot setback from the easement line to any building, sign, or structure. All easements dedicated to public water and/or sanitary sewer facilities shall comply with EPWater-PSB Easement Policy. The PSB easement(s) shall be improved to allow the operation of EPWater-PSB maintenance vehicles. EPWater-PSB requires access to the proposed water facilities, sanitary sewer facilities, appurtenances, and meters within the easement 24 hours a day, seven (7) days a week.

During the site improvement work, the Owner/Developer shall safeguard all existing water mains, sanitary sewer mains, and appurtenant structures located within the subdivision. The Owner/Developer shall minimize changes in grade above or near the vicinity of the existing EPWater-PSB facilities and is responsible for the costs of setting appurtenant structures to final grade.

EPWater-PSB requires a new service application to provide service to the property. New service applications are available at 1154 Hawkins, 3rd floor and should be made 6 to 8 weeks in advance of construction to ensure water for construction work. A site plan, utility plan, grading and drainage plans, landscaping plan, the legal description of the property and a certificate-of-compliance are required at the time of application. Service will be provided in accordance with the current EPWater-PSB Rules and Regulations. The applicant is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

**Stormwater:**

No comments received.

**El Paso County Water Improvement District No. 1**

No comments received.

**Texas Gas Service**

No objections.

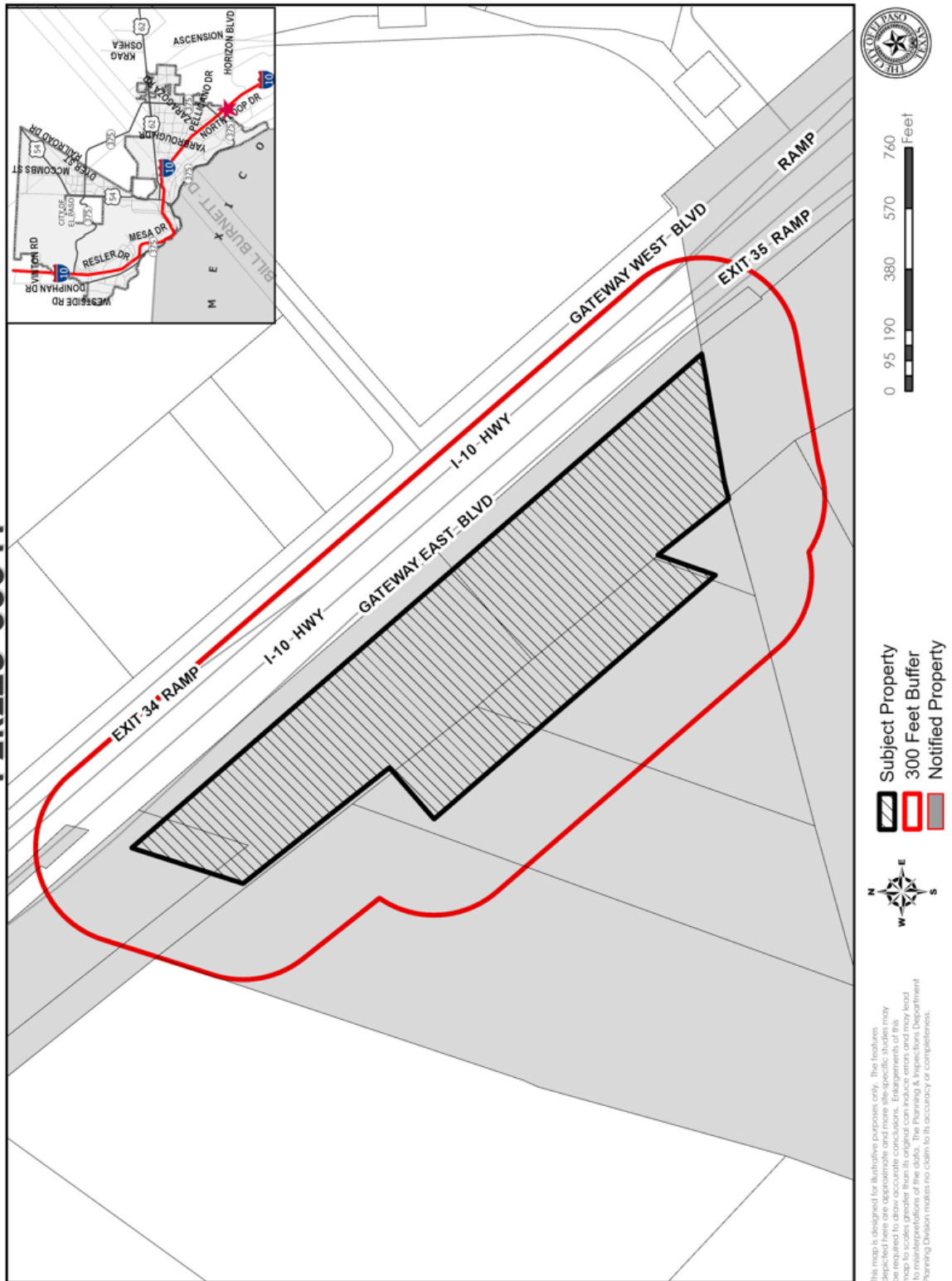
**911 District**

No comments/concerns regarding this re-zoning.



# ATTACHMENT 4

PZRZ23-00041



# DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with [Title 2, Chapter 2.92, Section 2.92.080](#)

## Introduction:

Individuals or entities benefiting by a City Council Agenda item must disclose contributions or donations made to current members of Council under the City's Ethics Code. The information on this form is being captured for transparency purposes and will be noted on the relevant City Council Agenda. **Contributions and Donations do NOT disqualify an applicant from doing business with the City.**

## Definitions:

- "Contribution" A direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit.
- "Contributor" A person making a contribution, including the contributor's spouse.
- "Donation" Cash and the value of any in-kind contributions or gifts to the council member for use by their office or in their district.
- "Donor" An individual and spouse, a business entity, or an individual who owns a business entity in whole or in part, or is operated by the individual, that is the subject of a council agenda item.
- "Benefiting" Shall include but not be limited to any contract, bid award, franchise, permit, zoning or rezoning, and other award that council will vote on.

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## Contributor / Donor Information:

Full Name \_\_\_\_\_

Business Name \_\_\_\_\_

Agenda Item Type \_\_\_\_\_

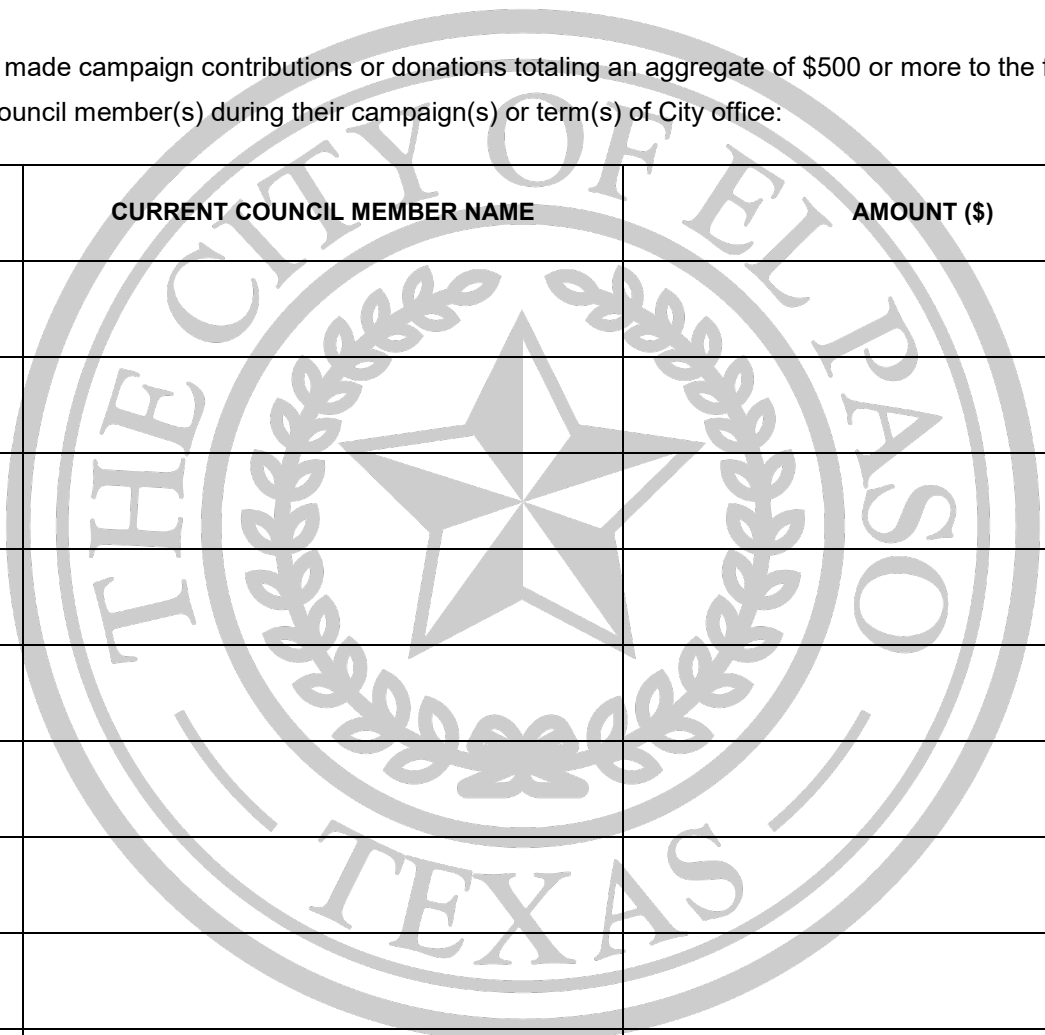
Relevant Department \_\_\_\_\_

**Disclosure Affirmation:** Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.

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OR

I have made campaign contributions or donations totaling an aggregate of \$500 or more to the following City Council member(s) during their campaign(s) or term(s) of City office:



OFFICE	CURRENT COUNCIL MEMBER NAME	AMOUNT (\$)
Mayor		
District 1		
District 2		
District 3		
District 4		
District 5		
District 6		
District 7		
District 8		

**Declaration:** I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, **I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.**

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



# DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with Title 2, Chapter 2.92, Section 2.92.080

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## Contributor / Donor Information:

Full Name	David Ballard
Business Name	D. Michaels Commercial Real Estate
Agenda Item Type	Rezoning
Relevant Department	Planning and Inspections



**Disclosure Affirmation:** Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.


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District 2		
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District 4		
District 5		
District 6		
District 7		
District 8		

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Signature:  Date: 4/30/2024





Legislation Text

---

**File #: 24-686, Version: 1**

---

**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**District 1**

Planning and Inspections, Philip F. Etiwe, (915) 212-1553

Planning and Inspections, Andrew Salloum, (915) 212-1603

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

An Ordinance changing the zoning of all of Tracts 90-A, 92, and 93, S.A. & M.G. Railroad Survey #267, City of El Paso, El Paso County, Texas from R-4 (Residential) to C-3 (Commercial), and imposing conditions. The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: North of Thorn and West of Doniphan

Applicant: David Ballard, PZRZ24-00003

# DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with Title 2, Chapter 2.92, Section 2.92.080

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## Contributor / Donor Information:

Full Name

MARTHA M SANTANA

Business Name

ABM CONSTRUCTION CO.

Agenda Item Type

Relevant Department

**Disclosure Affirmation:** Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.



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OR



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District 1		
District 2		
District 3		
District 4		
District 5		
District 6		
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District 8		

**Declaration:** I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, **I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.**

Signature: \_\_\_\_\_

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



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

**AGENDA DATE:** May 21, 2024  
**PUBLIC HEARING DATE:** June 11, 2024

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Philip F. Etiwe, (915) 212-1553  
Andrew Salloum, (915) 212-1603

**DISTRICT(S) AFFECTED:** District 1

**STRATEGIC GOAL:** #3 Promote the Visual Image of El Paso

**SUBGOAL:** 3.2 Set one standard for infrastructure across the city

**SUBJECT:**

An Ordinance changing the zoning of all of Tracts 90-A, 92, and 93, S.A. & M.G. Railroad Survey #267, City of El Paso, El Paso County, Texas from R-4 (Residential) to C-3 (Commercial), and imposing conditions. The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with *Plan El Paso*, the City's Comprehensive Plan.

Subject Property: North of Thorn and West of Doniphan  
Applicant: David Ballard, PZRZ24-00003

**BACKGROUND / DISCUSSION:**

The applicant is requesting to rezone from R-3 (Residential) to C-3 (Commercial) to allow for a proposed office and self-storage facility. City Plan Commission recommended 8-0 to approve with conditions of the proposed rezoning on April 4, 2024. As of May 6, 2024, the Planning Division has received an email in support of the rezoning request from the public. See attached staff report for additional information.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?**  X  YES \_\_\_ NO

**PRIMARY DEPARTMENT:** Planning & Inspections, Planning Division

**SECONDARY DEPARTMENT:** N/A

---

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

**DEPARTMENT HEAD:**

*Philip Etiwe*

---

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

**AN ORDINANCE CHANGING THE ZONING OF ALL OF TRACTS 90-A, 92, AND 93, S.A. & M.G. RAILROAD SURVEY #267, CITY OF EL PASO, EL PASO COUNTY, TEXAS FROM R-4 (RESIDENTIAL) TO C-3 (COMMERCIAL), AND IMPOSING CONDITIONS. THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.**

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

Pursuant to Section 20.04.360 of the El Paso City Code, that the zoning of All of Tracts 90-A, 92, and 93, S.A. & M.G. Railroad Survey #267, *located in the City of El Paso, El Paso County, Texas*, and as more particularly described by metes and bounds on the attached Exhibit “A”, incorporated by reference, be changed from **R-4 (Residential)** to **C-3 (Commercial)**, as defined in Section 20.06.020, and that the zoning map of the City of El Paso be revised accordingly.

Further, that the property described above be subject to the following conditions which are necessitated by and attributable to the increased intensity generated by the change of zoning in order to protect the health, safety and welfare of the adjacent property owners and the residents of this City:

1. *That a ten-foot (10') landscaped buffer with high-profile native or naturalized trees of at least two-inch (2") caliper and ten feet (10') in height shall be placed at fifteen feet (15') on center along the property line abutting residential districts or uses. The landscaped buffer shall be irrigated and maintained by the property owner at all times and shall be installed prior to the issuance of any certificates of occupancy.*
2. *That semi-truck parking area shall be located no closer than 20 ft. to any residential lots.*
3. *That major motor vehicle repair and car sale lot uses be prohibited on the subject property.*
4. *That a detailed site development plan be reviewed and approved per City Code prior to the issuance of certificates of occupancy or certificates of completion. At the time of the detailed site development plan review, the traffic engineer shall review and determine if a Traffic Impact Analysis (TIA) will be required. If required, the TIA shall be approved prior to the issuance of any certificates of occupancy or certificates of completion.*

The penalties for violating the standards imposed through this rezoning ordinance are found in Section 20.24 of the El Paso City Code.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, **2024.**

**THE CITY OF EL PASO**

\_\_\_\_\_  
Oscar Leoser  
Mayor

*(Additional Signatures following page)*

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

**Zoning Case No: PZRZ24-00003**

**ATTEST:**

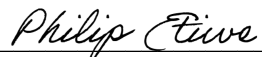
\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Jesus A. Quintanilla  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Philip F. Etiwe, Director  
Planning & Inspections Department

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

**Zoning Case No: PZRZ24-00003**

# EXHIBIT "A"

## PROPERTY DESCRIPTION

### 5313-5317 MACE STREET

Description of a parcel of land being all of Tracts 90-A, 92 and 93, S.A. & M.G. Railroad Survey #267, City of El Paso, El Paso County, Texas, being those same parcels recorded in Clerk's File #20220046226 (and individually: Tract 90-A in book 1193, page 605; Tract 92 in book 455, page 273; Tract 93 in book 590, page 281), El Paso County Clerks Records, and described as follows;

Commencing for reference at a chiseled "V" on concrete, found at the corner of Tract 72-B-1, said "V" also lying on the easterly R.O.W. of Doniphan Drive (80' wide); Thence, with said easterly R.O.W. of said Doniphan Drive, North 18°16'00" West a distance of 164.04' to the most westerly corner of Tract 94 (also described in said book 455, page 273), also being the most southerly corner of Tract 89 (recorded in clerk's file #20210053659); Thence, with the common line between said Tracts 89 and 94, North 71°44'00" East a distance of 403.00' (381.00' shown on tax map in error) to a 1/2" rebar found at the most easterly corner of said Tract 89, also being the most southerly corner of said Tract 90-A, and being the "Point Of Beginning";

Thence, along the common boundary between said Tracts 89 and Tract 90-A, North 18°16'00" West a distance of 125.00' to a 5/8" rebar with cap stamped "5372" found at the most westerly corner of said Tract 90-A, and also lying on the southeasterly boundary line of Selden Place (recorded in clerk's file #20200022308);

Thence, with said southeasterly boundary line of Selden Place, North 71°44'00" East a distance of 299.90' to a 5/8" rebar with cap stamped "5372" found at the most northerly corner of said Tract 90-A and also being the most easterly corner of Tract 85 (recorded in volume 3385, page 186), and lying on the southwesterly R.O.W. of Mace Street (dedicated in book 43, page 18, Plat Records of El Paso County);

Thence, with said southwesterly R.O.W. of Mace Street, the following three courses:

- South 18°16'00" East a distance of 66.40' to a 5/8" rebar with cap stamped "5372" found for an angle point of said ROW;
- with the boundary line of that parcel recorded in book 427, page 336, South 71°44'00" West a distance of 17.34' to a 5/8" rebar with cap stamped "5372" found for an angle point of said ROW;
- continuing with said boundary line of that parcel recorded in book 427, page 336, South 18°16'00" East a distance of 58.60' to a 5/8" rebar with cap stamped "5372" found at the most easterly corner of said Tract 90-A, and also lying on the northwesterly boundary line of Tract 91 (recorded in book 673, page 300);

Thence, with the common boundary line between said Tracts 90-A and 91, South 71°44'00" West a distance of 99.76' to a 5/8" rebar with cap stamped "5372" found at the most westerly corner of said Tract 91, and also being the most northerly corner of said Tract 92;

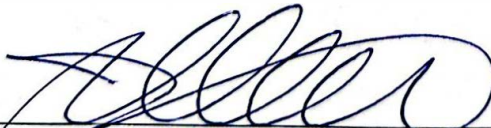
Thence, with the common boundary line between said Tracts 91 and 92, South 18°16'00" East a distance of 53.00' to a 5/8" rebar with cap stamped "5372" found at the most easterly corner of said Tract 92, and also being the most southerly corner of said Tract 91;

Thence, with the southeasterly boundary line of said Tract 92, South 71°44'00" West a distance of 177.00' (178.50' shown on tax map in error) to a 5/8" rebar with cap stamped "5372" found at the most southerly corner of said Tract 93, also being the most easterly corner of said Tract 94;

Thence, with the common boundary line between said Tracts 93 and 94, North 18°16'00" West a distance of 53.00' to a 5/8" rebar with cap stamped "5372" found for the most westerly corner of said Tract 93, and also being the most northerly corner of said Tract 94;

Thence, with the northwesterly boundary line of said Tract 94, South 71°44'00" West a distance of 5.80' to the "Point Of Beginning" and containing 45,852 sq. ft. or 1.0526 acres.

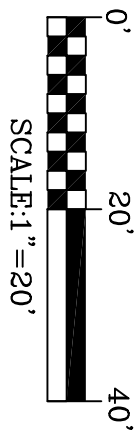
Based on a field survey performed under my supervision and dated 08/16/2022 and updated on 12/06/2023

  
John A Eby, Texas R.P.L.S. 5372 NM PLS 17779

Paso Del Norte Surveying Inc.  
13998 Bradley Road  
El Paso, TX. 79938  
915-241-1841  
TBPELS FIRM #10001200















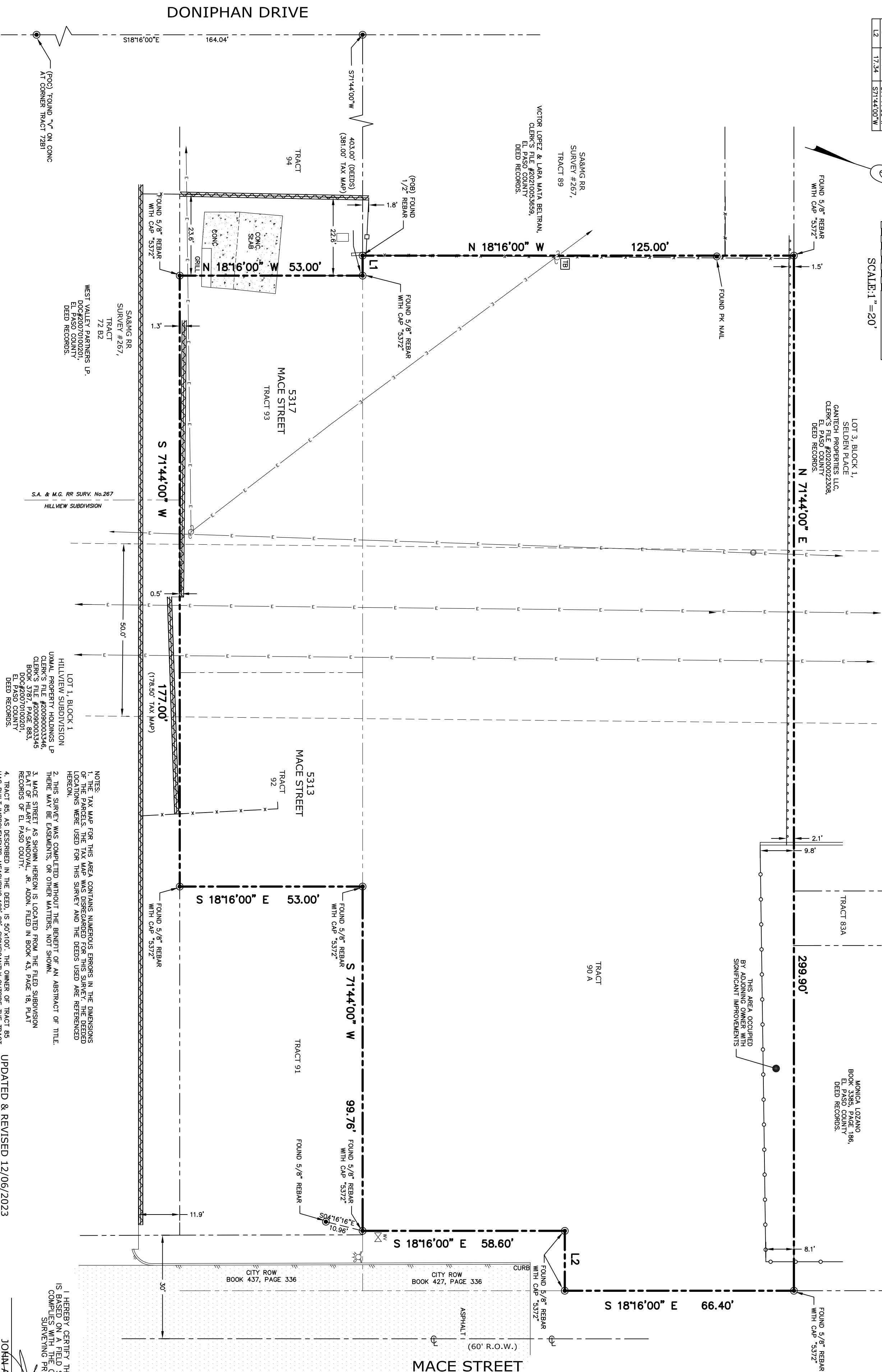
LINE TABLE		
LINE	LENGTH	BEARING
L1	5.80	S71°44'00"W
L2	17.34	S71°44'00"W



FOUND 5/8" REBAR  
WITH CAP "5372" —

### IMPROVEMENTS LEGEND

	POWER POLE
	OVERHEAD ELEC LINE
	DROP POLE
	ROCK WALL
	CONCRETE WALL
	CHAINLINK FENCE
	WIRE FENCE
	WOOD FENCE
	ALUMINUM FENCE
	TELEPHONE BOX
	HYDRANT
	WATER VALVE



I HEREBY CERTIFY THAT THIS BOUNDARY AND IMPROVEMENT SURVEY IS BASED ON A FIELD SURVEY PERFORMED UNDER MY SUPERVISION AND COMPLIES WITH THE CURRENT TEXAS BOARD OF PROFESSIONAL LAND SURVEYING PROFESSIONAL AND TECHNICAL STANDARDS

~~JOHN A EBY~~ TX-5372 NM-17779

UPDATED & REVISED 12/06/2023

TRACT 95 DEEDS  
(NOT SHOWN HERON)

BOOK 455, PAGE 273  
BOOK 491, PAGE 572

TRACT 93 DEEDS

BOOK 455, PAGE 273,  
BOOK 485, PAGE 530,  
BOOK 485, PAGE 530,

TRACT 92 DEEDS

BOOK 455, PAGE 273,  
BOOK 485, PAGE 530,  
BOOK 590, PAGE 281.

TRACT 91 DEEDS

BOOK 673, PAGE 30  
RK'S FILE #2023002

TRACT 90A DEEDS

BOOK 1193, PAGE 605  
BOOK 791, PAGE 90,  
BOOK 1193, PAGE 605

DOOR 1079, 1st FLOOR, 300,  
CLERK'S FILE #20210113110,  
CLERK'S FILE #20220095401

CLERK'S FILE #20170013738  
CLERK'S FILE #20170069915  
CLERK'S FILE #20220046226

CLERK'S FILE #20170013738  
CLERK'S FILE #20170069915  
CLERK'S FILE #20220046226

CLERK'S FILE #20030083582  
CLERK'S FILE #20130006402  
CLERK'S FILE #20220046226

CLERK'S FILE #20030083582  
CLERK'S FILE #20130006402  
CLERK'S FILE #20220046226

1. THE TAX MAP FOR THIS AREA CONTAINS NUMEROUS ERRORS IN THE DIMENSIONS OF THE PARCELS. THE TAX MAP IS DISREGARDED FOR THIS SURVEY. THE DEEDED RECORDS WERE USED FOR THIS SURVEY AND THE DEEDS USED ARE REFERENCED HEREON.

2. THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE. THERE MAY BE EASEMENTS, OR OTHER MATTERS, NOT SHOWN.

3. WAGE STREET AS SHOWN HEREON IS LOCATED FROM THE FILED SUBDIVISION RECORDS OF EL PASO COUNTY.

4. TRACT 85, AS DESCRIBED IN THE DEED, IS 50'X100'. THE OWNER OF TRACT 85 HAS NO PROCEEDINGS, MESSAGING 120 X80, SIGNIFICANTLY OUTSIDE THE TRACT'S BOUNDARIES.

5. EASEMENT IN BOOK 447, PAGE 175, EL PASO COUNTY CLERK'S DEED RECORDS, GRANTED 78 WIDE PLAT TO THE NORTH GRANTED 65'.

6. EASEMENT IN BOOK 447, PAGE 175, EL PASO COUNTY CLERK'S DEED RECORDS, GRANTED 78 WIDE PLAT TO THE NORTH GRANTED 65'.

SPECIAL NOTE FOR ELECTRONIC FILES:

THIS SURVEY WAS COMPLETED ONLY FOR THE INTENDED PURPOSE OF THE SURVEY AND FOR USE BY THE PARTIES WITHIN THAT TRANSACTION. NO LICENSE OR USE IS GRANTED FOR PURPOSES OUTSIDE THAT TRANSACTION.



TBPELS FIRM #10001200

TITLE CO: NONE PROVIDED

FIRM ZONE: C PANEL# 480214-0021 -D DATED: 1/03/1997

DATE OF SURVEY: 8/11/2022 OFFICE: EA FIELD: JAE, AG

**PASO DEL NORTE SURVEYING INC.** PH. 915-241-1841  
3398 BRADLEY ROAD, EL PASO, TEXAS 79938 FAX 915-855-6925  
© COPYRIGHT

13998 BRADLEY ROAD, EL PASO, TEXAS 79938

PH. 915-241-1841  
FAX 915-855-6925  
© COPYRIGHT



# North of Thorn and West of Doniphan

City Plan Commission — April 4, 2024



**CASE NUMBER:** PZRZ24-00003  
**CASE MANAGER:** Andrew Salloum, (915) 212-1603, [SalloumAM@elpasotexas.gov](mailto:SalloumAM@elpasotexas.gov)  
**PROPERTY OWNER:** Martha M. Santana  
**REPRESENTATIVE:** TJ Karam  
**LOCATION:** Generally North of Thorn Ave. and West of Doniphan Dr. (District 1)  
**PROPERTY AREA:** 1.05 acres  
**REQUEST:** Rezone from R-4 (Residential) to C-3 (Commercial)  
**RELATED APPLICATIONS:** None  
**PUBLIC INPUT:** Received an email in support as of March 28, 2024

**SUMMARY OF REQUEST:** The applicant is requesting to rezone from R-4 (Residential) to C-3 (Commercial) to allow for proposed office and self-storage warehouse.

**SUMMARY OF STAFF'S RECOMMENDATION:** Staff recommends **APPROVAL WITH CONDITIONS** of the rezoning request. The proposed zoning district is compatible with the commercial uses in the surrounding area and consistent with *Plan El Paso*, the City's Comprehensive Plan, and the G-3, Post-War future land use designation. The recommended conditions are the following:

1. *That a ten-foot (10') landscaped buffer with high-profile native or naturalized trees of at least two-inch (2") caliper and ten feet (10') in height shall be placed at fifteen feet (15') on center along the property line abutting residential districts or uses. The landscaped buffer shall be irrigated and maintained by the property owner at all times and shall be installed prior to the issuance of any certificates of occupancy.*
2. *That commercial truck loading and unloading area for deliveries shall be located no closer than 20 feet to any residential lots.*
3. *That major motor vehicle repair and car sale lot uses be prohibited on the subject property.*
4. *That a detailed site development plan be reviewed and approved per City Code prior to the issuance of certificates of occupancy or certificates of completion. At the time of the detailed site development plan review, the traffic engineer shall review and determine if a Traffic Impact Analysis (TIA) will be required. If required, the TIA shall be approved prior to the issuance of any certificates of occupancy or certificates of completion.*

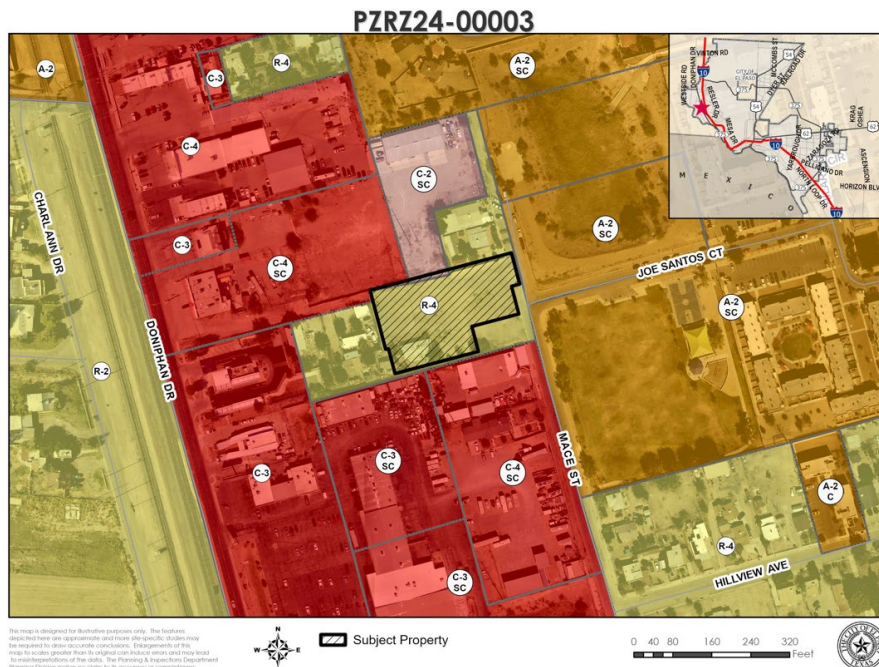


Figure A. Subject Property & Immediate Surroundings

**DESCRIPTION OF REQUEST:** The applicant is requesting to rezone from R-4 (Residential) to C-3 (Commercial) to allow for proposed office and self-storage warehouse. The size of the property is 1.05 acres. The property is currently vacant. The conceptual site plan shows a proposed building on the property. Main access to the property is proposed from Mace Street.

**COMPATIBILITY WITH NEIGHBORHOOD CHARACTER:** The proposed development is permitted by right in the C-3 (Commercial) zoning district. Properties to the north are zoned R-4 (Residential), C-2 (Commercial), and C-4 (Commercial). The existing uses consist of multi-family dwelling, office warehouse, and a vacant lot; to the south are zoned R-4 (Residential) and C-4 (Commercial) and consist of vacant lot, contractor's yard, and major motor vehicle repair; to the east is zoned A-2 (Apartment) and consist of ponding area and park; and to the west is zoned R-4 (Residential) and consist of single-family dwellings. The closest school is St. Mark's Middle School located 0.51 mile away and the closest park is Thorn Park located 0.01 mile away.

<b>COMPLIANCE WITH <i>PLAN EL PASO</i>/REZONING POLICY – When evaluating whether a proposed rezoning is in accordance with <i>Plan El Paso</i>, consider the following factors:</b>	
<b>Criteria</b>	<b>Does the Request Comply?</b>
<p><b>Future Land Use Map:</b> Proposed zone change is compatible with the Future Land Use designation for the property:</p> <p><b>G-3, Post-War:</b> This sector applies to transitional neighborhoods typically developed from the 1950s through the 1980s. Streets were laid out with curvilinear patterns without alleys and shopping centers are located at major intersections behind large parking lots. This sector is generally stable but would benefit from strategic suburban retrofits to supplement the limited housing stock and add missing civic and commercial uses.</p>	<p>Yes. The subject property is proposed to be developed into commercial development, which is in character with the future land use designation of <i>Plan El Paso</i>.</p>
<p><b>Compatibility with Surroundings:</b> The proposed zoning district is compatible with those surrounding the site:</p> <p><b>C-3 (Commercial) District:</b> The purpose of these districts is to accommodate establishments providing goods or rendering services which are used in support of the community's trade and service establishments and serving multi-neighborhoods within a planning area of the city. The regulations of the districts will permit intensities designed to be compatible with each other and to provide for a wide range of types of commercial activity, including light automobile related uses.</p>	<p>Yes. The proposed C-3 (Commercial) zoning district will provide for the integration of commercial uses with adjacent C-2, C-3, and C-4 (Commercial) zoning districts in the surrounding area. Conditions are recommended to safeguard single-family uses allowed in the proximity.</p>
<p><b>Preferred Development Locations:</b> Located along an arterial (or greater street classification) or the intersection of two collectors (or greater street classification). The site for proposed rezoning is not located mid-block, resulting in it being the only property on the block with an alternative zoning district, density, use and/or land use.</p>	<p>Yes. The subject property has access to Mace Street, which is designated as local street in the City's Major Thoroughfare Plan. In addition, it is close to Doniphan Drive to the west and Thorn Avenue to the south, which are designated as freeway and collector, respectively.</p>

<b>COMPLIANCE WITH <i>PLAN EL PASO</i>/REZONING POLICY – When evaluating whether a proposed rezoning is in accordance with <i>Plan El Paso</i>, consider the following factors:</b>	
<b>THE PROPOSED ZONING DISTRICT'S EFFECT ON THE PROPERTY AND SURROUNDING PROPERTY, AFTER EVALUATING THE FOLLOWING FACTORS:</b>	
<b>Historic District or Special Designations &amp; Study Area Plans:</b> Any historic district or other special designations that may be applicable. Any adopted small areas plan, including land-use maps in those plans.	None. The proposed development is not within any historic districts or study area plan boundaries.
<b>Potential Adverse Effects:</b> Potential adverse effects that might be caused by approval or denial of the requested rezoning.	The proposed development is not anticipated to pose any adverse effects on the community.
<b>Natural Environment:</b> Anticipated effects on the natural environment.	The subject property does not involve green field or environmentally sensitive land or arroyo disturbance.
<b>Stability:</b> Whether the area is stable or in transition.	The area is stable with no rezonings within the last 10 years.
<b>Socioeconomic &amp; Physical Conditions:</b> Any changed social, economic, or physical conditions that make the existing zoning no longer suitable for the property.	None.

**ADEQUACY OF PUBLIC FACILITIES, SERVICES AND INFRASTRUCTURE:** The proposed development will have access to Mace Street which is designated as local street in the City's Major Thoroughfare Plan. Mace Street connects to Thorn Avenue to the south designated as a collector located 0.18 miles. Additionally, Doniphan to the west is also designated as a freeway located 0.13 miles. The classification of these roads is appropriate for the proposed development. Although pursuant to requirements for this rezoning request, a Traffic Impact Analysis deferral letter has been submitted and is under review by the City of El Paso's Streets and Maintenance Department as well as by the Texas Department of Transportation at the time of the subdivision platting stage. Prior to development, the subject property will need to be formally subdivided and necessary infrastructure will be addressed at that time. There are at least five (5) bus stops within walkable distance (0.25 mile) of the subject property. The closest bus stop is 0.20 miles away along Doniphan Drive.

**SUMMARY OF DEPARTMENTAL REVIEW COMMENTS:** No adverse comments were received from reviewing departments.

**PUBLIC COMMENT:** The subject property is located within the boundary of Upper Valley Neighborhood Association, which were notified of the rezoning request by the applicant. As required, public notices were mailed to property owners within 300 feet on March 21, 2024. As of March 28, 2024, the Planning Division has received an email in support of the request from the public.

**RELATED APPLICATIONS:** None.

**CITY PLAN COMMISSION OPTIONS:** The purpose of the Zoning Ordinance is to promote the health, safety, morals and general welfare of the City. The City Plan Commission (CPC) has the authority to advise City Council on Zoning matters. In evaluating the request, the CPC may take any of the following actions:

1. **Recommend Approval** of the rezoning request, finding that the request is in conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or that the request is in conformance with other criteria that the CPC identifies from the Comprehensive Plan.



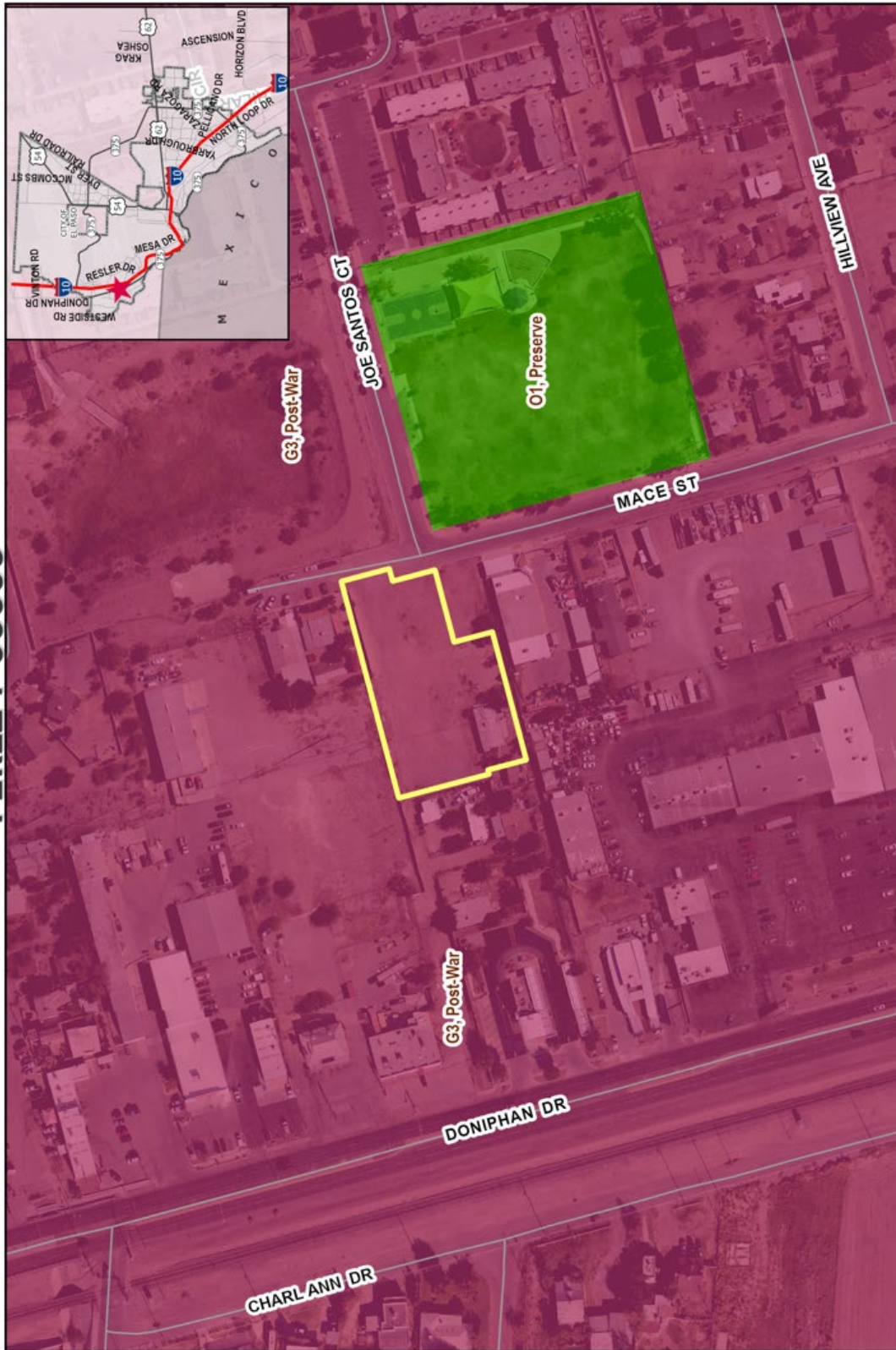
2. **Recommend Approval of the rezoning request With Modifications** to bring the request into conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan. **(Staff Recommendation)**
3. **Recommend Denial** of the rezoning request, finding that the request does not conform to the review criteria of *Plan El Paso* as reflected in the Staff Report, or other criteria that the CPC identifies from the Comprehensive Plan.

**ATTACHMENTS:**

1. Future Land Use Map
2. Conceptual Site Plan
3. Department Comments
4. Neighborhood Notification Boundary Map
5. Email in Support

# ATTACHMENT 1

PZR24-00003

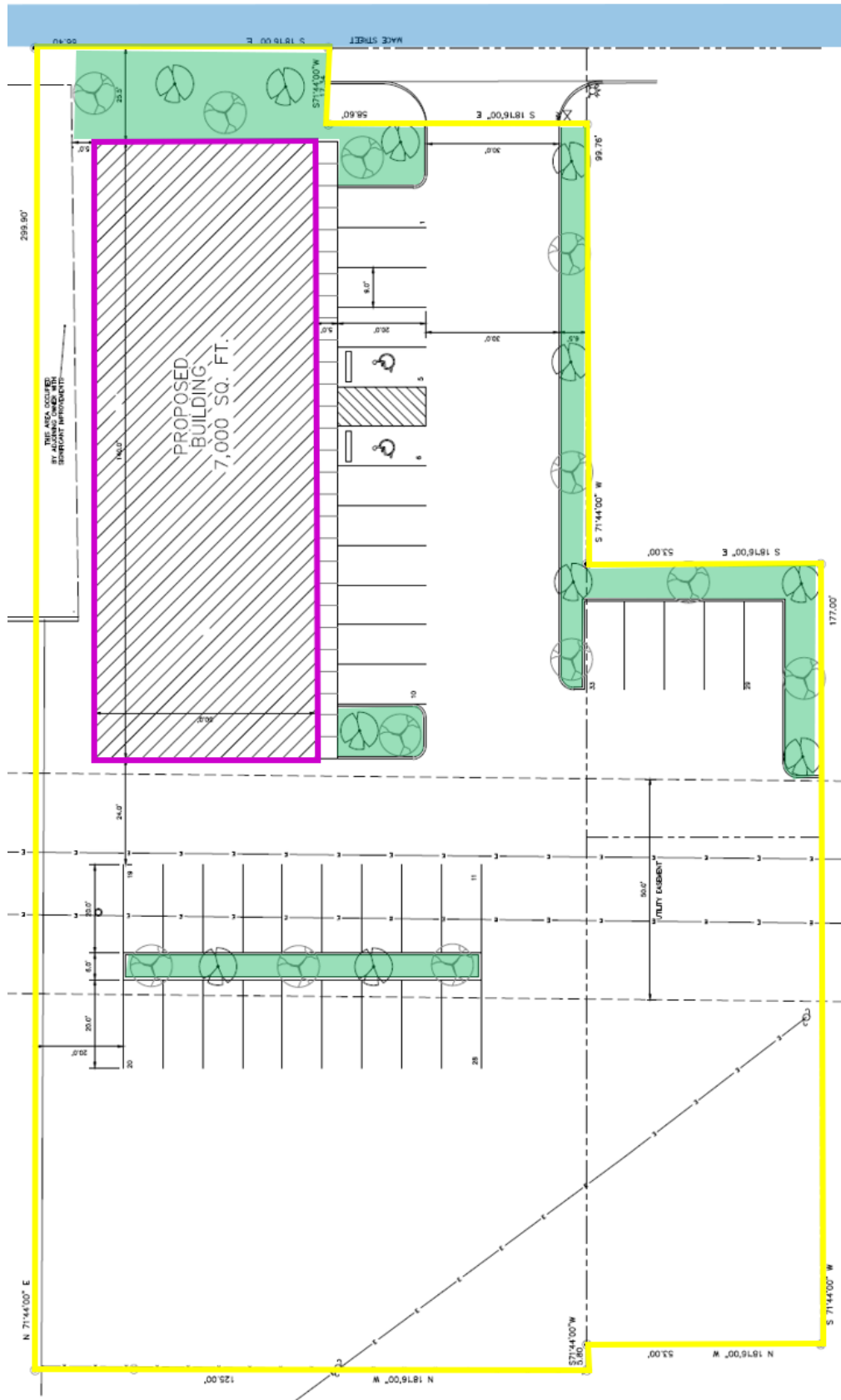


Subject Property



This map is designed for illustrative purposes only. The features depicted here are approximate and more site-specific studies may be required to draw accurate conclusions. Enlargements of this map may be used for other purposes without the consent of the Planning Division. The Planning & Inspection Department Planning Division makes no claim to its accuracy or completeness.

# ATTACHMENT 2



# **ATTACHMENT 3**

## **Planning and Inspections Department - Planning Division**

Staff recommends approval of the rezoning request from R-4 to C-3 with the following conditions:

The conditions are the following:

1. *That a ten-foot (10') landscaped buffer with high-profile native or naturalized trees of at least two-inch (2") caliper and ten feet (10') in height shall be placed at fifteen feet (15') on center along the property line abutting residential districts or uses. The landscaped buffer shall be irrigated and maintained by the property owner at all times and shall be installed prior to the issuance of any certificates of occupancy.*
2. *That commercial truck loading and unloading area for deliveries shall be located no closer than 20 feet to any residential lots.*
3. *That major motor vehicle repair and car sale lot uses be prohibited on the subject property.*
4. *That a detailed site development plan be reviewed and approved per City Code prior to the issuance of certificates of occupancy or certificates of completion. At the time of the detailed site development plan review, the traffic engineer shall review and determine if a Traffic Impact Analysis (TIA) will be required. If required, the TIA shall be approved prior to the issuance of any certificates of occupancy or certificates of completion.*

## **Planning and Inspections Department – Plan Review & Landscaping Division**

The generalized site plan is not being reviewed for conformance due to conceptual nature. No objections to proposed rezoning. At the time of submittal for building permit, the project will need to comply with all applicable provisions of the ICC, TAS and Municipal Code.

## **Planning and Inspections Department – Land Development**

1. A portion of the property area will be in the Flood zone according to the preliminary future FEMA maps. Meaning; that according to current maps from FEMA, the property is not in the flood zone area, but the property will be in the flood zone area in the future when new maps become effective. It is recommended to build 1 foot above the preliminary BFE for the affected lots.
2. There are three separate properties in this project, coordinate with planning to comply.
3. The properties 5317, 5313, 5325, 5329, and 5321 are landlocked, provide access, utilities, and drainage easements if required.
4. A portion of Mace St. is not completed (paving, curb and gutter, and sidewalk), they have to complete their portion of the property at the time of Building permit .

*Note: Comments will be addressed at the subdivision platting stage.*

## **Fire Department**

No adverse comments.

## **Police Department**

No comments received.

## **Environment Services**

No comments received.

## **Streets and Maintenance Department**

Streets and Maintenance traffic engineering has no objections to the rezoning request. Traffic Impact Analysis (TIA) is required. Your request for TIA deferment for the subject application is approved.

*Note: TIA is deferred to Subdivision platting stage.*

## **Sun Metro**

No comments received.

## **El Paso Water**

EPWater-PSB does not object to this request.

The site plan shall show the existing 20-foot PSB easement and the existing 6-inch diameter water main within the property, described below.

**Water:**

There is an existing 6-inch diameter water main that extends within the property in a 20-foot PSB easement. The alignment of the line varies. First, the line extends 270-feet west of Mace St. The line then extends 105-feet north. Finally, the line extends 225-feet west. This main is available for service.

There is an existing 8-inch diameter water main that extends along Mace St., located approximately 19-feet west of the east right-of-way line. This main is available for service.

EPWater-PSB records indicate two vacant ¾-inch water service connections (inactive meters) serving the subject property. The address for these services is 5313 Mace St. and 5317 Mace St., respectively.

Previous water pressure readings from fire hydrant #7573, located at the intersection of Mace St. and Joe Santos Ct., have yielded a static pressure of 70 (psi), a residual pressure of 62 (psi), and a discharge flow of 1,061 (gpm).

**Sanitary Sewer:**

There is an existing 8-inch diameter sanitary sewer main that extends within a 20-foot PSB easement. The main extends east of Doniphan Dr. and dead ends at the northwestern corner of the property. This main is available for service.

There is an existing 8-inch diameter sanitary sewer main that extends along Mace St., located approximately 10-feet east of the west right-of-way line. This main is available for service.

There is an existing 24-inch diameter dual force main that extends along Mace St., located approximately 20-feet east of the west right-of-way line. No direct service connections are allowed to this main.

**General:**

No building, reservoir, structure, parking stalls, or other improvement, other than asphaltic paving (HMAC), shall be constructed or maintained on the above referenced EPWater-PSB easement without the written consent of EPWater-PSB. The Developer shall refrain from constructing rock walls, signs, trees, buildings, curbs, or any structure that will interfere with the access to the PSB easement(s). There shall be at least a 5-foot setback from the easement line to any building, sign, or structure. All easements dedicated to public water and/or sanitary sewer facilities shall comply with EPWater-PSB Easement Policy. The PSB easement(s) shall be improved to allow the operation of EPWater-PSB maintenance vehicles. EPWater-PSB requires access to the proposed water facilities, sanitary sewer facilities, appurtenances, and meters within the easement 24 hours a day, seven (7) days a week.

During the site improvement work, the Owner/Developer shall safeguard all existing water mains, sanitary sewer mains, and appurtenant structures located within the subdivision. The Owner/Developer shall minimize changes in grade above or near the vicinity of the existing EPWater-PSB facilities and is responsible for the costs of setting appurtenant structures to final grade.

EPWater-PSB requires a new service application to provide service to the property. New service applications are available at 1154 Hawkins, 3rd floor and should be made 6 to 8 weeks in advance of construction to ensure water for construction work. A site plan, utility plan, grading and drainage plans, landscaping plan, the legal description of the property and a certificate-of-compliance are required at the time of application. Service will be provided in accordance with the current EPWater-PSB Rules and Regulations. The applicant is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

**Stormwater:**

No comments received.

**Texas Department of Transportation**

Not abutting on TXDOT ROW.

**El Paso County Water Improvement District No. 1**

No comments received.

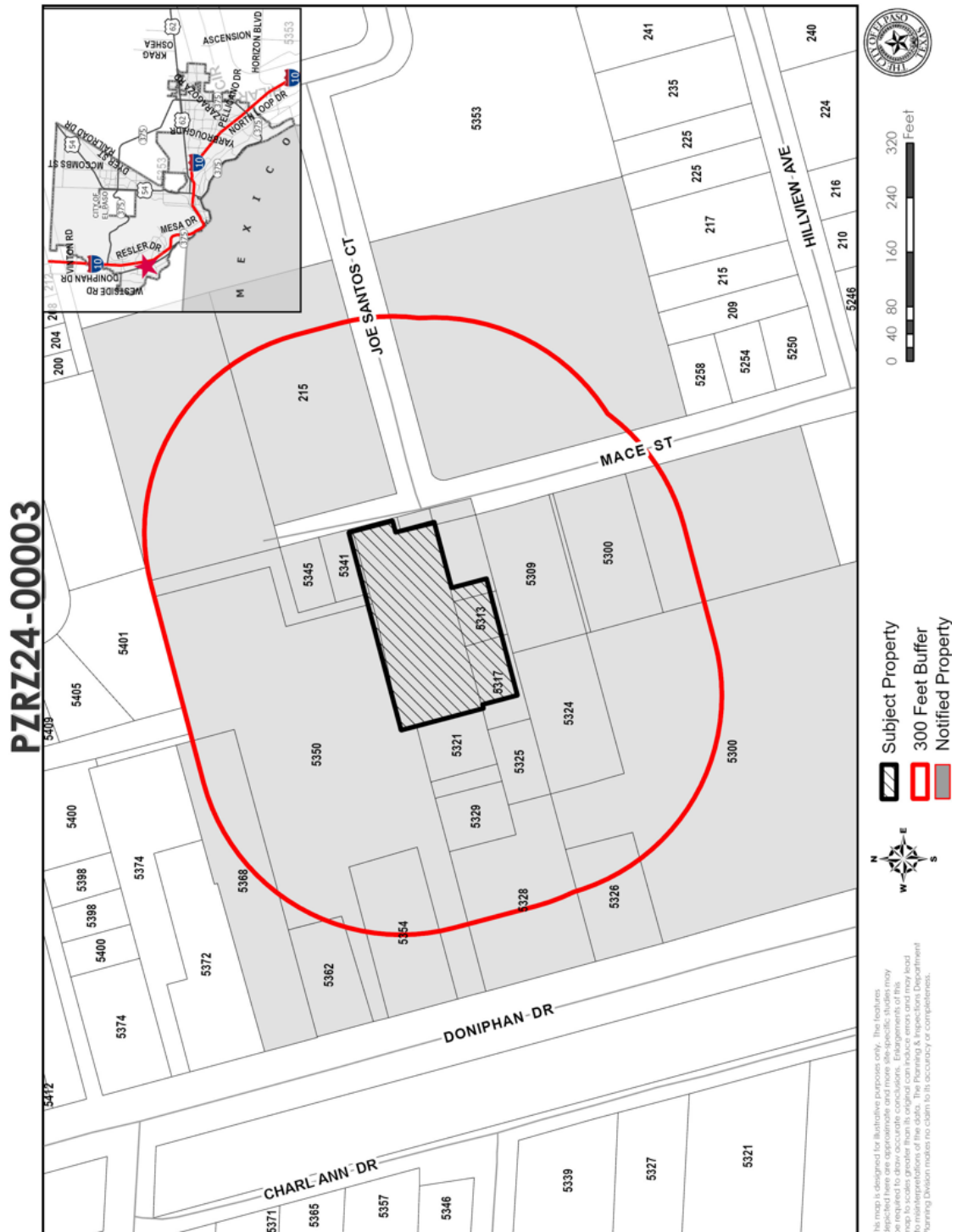
**Texas Gas Service**

No objections.

**911 District**

No comments/concerns regarding this re-zoning.

## **ATTACHMENT 4**





# ATTACHMENT 5

3/20/24, 8:02 AM

Gmail - MACE STREET IMPROVEMENTS



TJ Karam <tjkaram1@gmail.com>

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## MACE STREET IMPROVEMENTS

2 messages

---

Luis Munoz <munozluis5345@yahoo.com>  
To: "tjkaram1@gmail.com" <tjkaram1@gmail.com>

Tue, Mar 19, 2024 at 8:53 PM

Dear Mr. Karam, I am writing this email to inform your office that I am in favor of the proposed zone changes to Mace street properties as posted. I am the owner of the house located at 5345 Mace street. I have resided on this property since 1994. It is my opinion that this change will improve our neighborhood in many ways. You can count on me for support in favor of a zone change. Sincerely, Luis Munoz.

---

TJ Karam <tjkaram1@gmail.com>  
To: Luis Munoz <munozluis5345@yahoo.com>

Wed, Mar 20, 2024 at 8:40 AM

Thank you Luis. I appreciate your support.

Thank you,

TJ Karam  
Karam Development  
915-204-0095

This e-mail including any attachments is confidential and may be legally privileged. If you have received it in error please advise the sender immediately by return email and then delete it from your system. The unauthorized use, distribution, copying or alteration of this email is strictly forbidden.

On Mar 19, 2024, at 8:53 PM, Luis Munoz <munozluis5345@yahoo.com> wrote:

[Quoted text hidden]

<https://mail.google.com/mail/u/0/?ik=32e108fcf3&view=pt&search=all&permthid=thread-f:1794012049702989592&simpl=msg-f:1794012049702989592&simpl=...> 1/1





Legislation Text

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File #: 24-707, Version: 1

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**CITY OF EL PASO, TEXAS**  
**LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**District 1**

Streets and Maintenance, Mary Lou Espinoza, (915) 867-2629

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

An Ordinance authorizing the City Manager to sign a purchase and sale agreement, a deed, and any other documents necessary to convey approximately 0.17 acres of land described as a portion of Tract 5D-1, Block 1, Upper Valley Surveys, in the City of El Paso, El Paso County, Texas.

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

**AGENDA DATE:** June 4, 2024  
**PUBLIC HEARING DATE:** June 11, 2024

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Mary Lou Espinoza, Capital Assets Manager,  
(915) 867-2629

**DISTRICT(S) AFFECTED:** 1

**STRATEGIC GOAL:** No. 6: Set the Standard for Sound Governance and Fiscal Management

**SUBGOAL:** No. 6.6: Ensure continued financial stability and accountability through sound financial management, budgeting and reporting

**SUBJECT:**

An ordinance authorizing the City Manager to sign a purchase and sale agreement, a deed, and any other documents necessary to convey approximately 0.17 acres of land described as a portion of Tract 5D-1, Block 1, Upper Valley Surveys, in the City of El Paso, El Paso County, Texas.

**BACKGROUND / DISCUSSION:**

The City of El Paso desires to sell the real property parcel identified as PID 22967, consisting of approximately 0.17 acres of vacant land, that is proposed to be conveyed to Francisco E. and Lorena Molinar.

The property is located near Emory Road and Sunland Park Drive and abuts the Montoya Main Lateral to the south. The City of El Paso desires to sell the land-locked property to the applicants, Francisco E. and Lorena Molinar, as lawful access can only be obtained by combining with the applicant's abutting parcel to the north. Future access to the property would be through Emory Road.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A: This is a revenue generating item

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?** ☒ YES ☐ NO

**PRIMARY DEPARTMENT:** Streets & Maintenance

**SECONDARY DEPARTMENT:** Real Estate

**DISCLOSURE OF CONTRIBUTIONS AS PER TITLE 2 REQUESTED ON 5/15/2024**

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

**DEPARTMENT HEAD:** Richard J. Bristol - Streets and Maintenance Director

  
(If Department Head Summary Form is initiated by Purchasing, client department should sign also) 5-8-24

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

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A PURCHASE AND SALE AGREEMENT, A DEED, AND ANY OTHER DOCUMENTS NECESSARY TO CONVEY APPROXIMATELY 0.17 ACRES OF LAND DESCRIBED AS A PORTION OF TRACT 5D-1, BLOCK 1, UPPER VALLEY SURVEYS, IN THE CITY OF EL PASO, EL PASO COUNTY, TEXAS.**

**WHEREAS**, pursuant to Section 272.001 (b) of the Texas Local Government Code, notice and bidding requirements are not applicable to certain properties, including property that is narrow or, because of its shape, lack of access to public roads, or small area, cannot be used independently under current zoning or other developmental control ordinances; and

**WHEREAS**, the property that is the subject of this Ordinance is small and land-locked and being sold to the abutting property owner; and

**WHEREAS**, the City of El Paso obtained an appraisal for the property that is the subject of this Ordinance and is selling the property for its appraised value of \$11,000.00.

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

**THAT** the City Manager is authorized to sign a Purchase and Sale Agreement, a Deed, and any other necessary documents, in a form approved by the City Attorney's Office, for the sale of the following real property: Approximately 0.17 acres described as A Portion of Tract 5D-1, Block 1, UPPER VALLEY SURVEYS, in the City of El Paso, El Paso County, Texas, being more specifically described in Exhibit "A", attached hereto and made a part hereof for all purposes.

**ADOPTED** 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:**

  
\_\_\_\_\_  
Mary Lou Espinoza  
Capital Assets Manager

THE STATE OF TEXAS    )  
  )  
COUNTY OF EL PASO    )

**CONTRACT OF SALE**  
**(Emory Road 0.17 acres)**

This Contract of Sale (“**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2024 (“**Effective Date**”) between the City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas (“**Seller**”) and Francisco E. and Lorena Molinar (“**Buyer**”). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

The parties agree as follows:

**SECTION 1. SALE AND PURCHASE AND CONVEYANCE OF THE PROPERTY.**

- A. Subject to the terms of this Agreement, the Seller will sell to the Buyer and the Buyer will purchase from the Seller the property described as follows:
  - 1. A portion of Tract 5D-1, Block 1, UPPER VALLEY SURVEYS, in the City of El Paso, El Paso County, Texas according to the resurvey of said UPPER VALLEY SURVEYS made by El Paso County, Texas , as further described in **Attachment “A”**, the “**Property**”.

**SECTION 2. PURCHASE PRICE AND TITLE COMPANY.**

- A. The Buyer will pay the Seller a total amount of \$11,00.00 for the Property (“**Purchase Price**”). The Purchase Price above is to be paid by the Buyer to the Seller through the Title Company selected by the Seller (“**Title Company**”) at the Closing of this Agreement.
- B. The Buyer will submit a check to the Title Company in the amount of \$5,000.00 (“**Deposit**”), within 15 calendar days of the Effective Date. The Title Company will hold the Deposit in an escrow to be applied as provided by this Agreement. If the sale of the Property is in accordance with the provisions in this Agreement, then the Title Company will apply the Deposit to the Purchase Price of the Property at Closing.
- C. The Title Company will act as the escrow holder in this transaction. The Seller will deliver signed copies of this Agreement to the Title Company which will serve as instructions for the closing of this transaction.

**SECTION 3. SELLER’S WARRANTIES, OBLIGATIONS, AND RIGHTS.**

- A. **WARRANTIES.** To the best of the Seller’s knowledge the Seller warrants to the Buyer that:
  - 1. The Seller has the full right to convey the Property, as such the Buyer’s rights to the Property conveyed through this Agreement will not be adversely affected by a superior title;
  - 2. No leasehold rights or interests have been granted and are currently in effect involving the Property;

3. 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;
4. There are no pending claims of damage to property or injury to person occurring on the Property;
5. The Seller has not received any notices of condemnation regarding the Property; and
6. There are no unpaid utility bills or unfulfilled maintenance contracts regarding the Property.
7. **Property Sold "As Is"**. THIS CONTRACT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS", "WHERE IS" TRANSACTION. BUYER ACKNOWLEDGES AND AGREES THAT (A) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY CLOSING DOCUMENTS EXECUTED AND DELIVERED BY SELLER TO BUYER AT CLOSING, THE PURCHASE OF THE PROPERTY SHALL BE ON AN "AS IS", "WHERE IS", "WITH ALL FAULTS" BASIS, SUBJECT TO ORDINARY WEAR AND TEAR FROM THE EFFECTIVE DATE UNTIL CLOSING, AND (B) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY CLOSING DOCUMENTS EXECUTED AND DELIVERED BY SELLER TO BUYER AT CLOSING, SELLER HAS NO OBLIGATION TO REPAIR ANY DAMAGE TO OR DEFECT IN THE PROPERTY, REPLACE ANY OF THE PROPERTY OR OTHERWISE REMEDY ANY MATTER AFFECTING THE CONDITION OF THE PROPERTY. THIS PROVISION SHALL BE DEEMED TO SURVIVE THE CLOSING.

**B. OBLIGATIONS.** The Seller will comply with the following obligations:

1. Within 15 business days of the Effective Date, the Seller will deliver the following documents to the Buyer, if such documents exist:
  - a. Any "as-built" plans for any improvements on the Property, if any;
  - b. Tax bills showing the amount of the current real property tax and the assessed value of the land; and
  - c. All environmental reports of the Property and the improvements on the Property.
2. If the Seller has contracted a real estate broker or agent to represent the Seller in the transaction of this Agreement, then the Seller is responsible for the payments of that contract.

**C. RIGHTS.**

1. The Seller may select the Title Company that will assist with the sale of the Property.

The Seller will forward this Agreement to the Title Company to be used at escrow instructions.

#### SECTION 4. BUYER'S WARRANTIES, OBLIGATIONS, AND RIGHTS.

A. WARRANTIES. The Buyer warrants that:

1. There will be no unpaid bills or claims in connection with the inspection of the Property;

B. OBLIGATIONS. The Buyer will comply with the following obligations:

1. **AFTER THE CLOSING, THE BUYER WILL BE RESPONSIBLE FOR ALL ENVIRONMENTAL MATTERS THAT ARISE, EVEN IF SUCH ENVIRONMENTAL MATTERS WERE KNOWN BEFORE THE CLOSING. AFTER THE CLOSING, THE BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM LIABILITY FROM ENVIRONMENTAL PROBLEMS THAT AFFECT THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. THE BUYER INDEMNIFIES, HOLDS HARMLESS AND RELEASES THE SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE SELLER'S OWN NEGLIGENCE OR THE NEGLIGENCE OF THE SELLER'S REPRESENTATIVES. THE BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON THE SELLER IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.**
2. If the Buyer has contracted a real estate broker, agent, finder, or other party for the transaction of this Agreement, then the Buyer is responsible for the payments of that contract.

C. RIGHTS. The Buyer is responsible for all costs associated with exercising the following rights:

1. INSPECTION. The Buyer may inspect the Property within 15 business days of the Effective Date of this Agreement ("**Inspection Period**"). The Buyer will be responsible for all expenses related to the inspection or any other examination of the Property. The Buyer will ensure that its representatives, agents, consultants, or any other persons related to the inspection of the Property, if any, have general liability insurance of at least \$500,000.00 and property damage insurance of at least \$500,000.00 during the

Inspection Period. The Buyer will ensure the insurance policies are with an insurance provider that is licensed in the State of Texas and are acceptable to the Seller. The Seller disclaims any warranties regarding the condition of the Property and/or the suitability of the Property. The Buyer may terminate this Agreement during the Inspection Period in accordance to Section 5(A)(1). The Buyer acknowledges that the Buyer was given an opportunity to inspect the Property, and is relying on information gathered during the inspection and not information provided to the Buyer by the Seller. The Buyer acknowledges that the information the Buyer has obtained about the Property has been from a variety of sources and that the Seller makes no representation as to the accuracy of that information. **THE BUYER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE CITY'S OFFICER'S AND EMPLOYEES FROM ANY THIRD-PARTY CLAIMS RELATED TO ANY INSPECTIONS PERFORMED BY THE BUYER OR THE BUYER'S EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS. SUCH INDEMNIFICATION RESPONSIBILITY ON BUYER INCLUDES THE OBLIGATION TO PAY FOR ALL ATTORNEY'S FEES AND COURT COSTS INCURRED BY THE SELLER.**

2. **TITLE INSURANCE.** The Buyer will, at the Buyer's sole expense, order a current commitment for Title Insurance for the Property within 15 business days of the Effective Date of this Agreement. The Buyer will send a copy of the title commitment and any documents related to title insurance to the Seller.
3. **SURVEY.** The Buyer may obtain a new survey or update an existing survey at the Buyer's expense within 15 business days of the Effective Date of this Agreement. If the metes and bounds description of the Property in the survey obtained by the Buyer are different from the ones described in Attachment "A", then the parties may use the new survey to describe the Property in this Agreement.
4. **TITLE REVIEW PERIOD.** The Buyer may review the commitment for title insurance and the survey within 15 business days of receiving the commitment for title insurance ("**Title Review Period**") and send a written notice to the Seller, before the expiration of the Title Review Period, listing the Buyer's objections, if any. If the Buyer does not send the Seller a written notice with the Buyer's objections within the Title Review Period, then the parties will proceed with the purchase and sale of the Property in accordance with the provisions of this Agreement. If the Seller receives objections from the Buyer, then the Seller will perform one of the following within 15 calendar days of receiving Buyer's objections:
  - a. Notify the Buyer that the Seller will cure the Buyer's objections before the Closing Date. If the Seller elects this option, then the Seller will cure the Buyer's objections before the Closing Date;
  - b. Notify the Buyer that the Seller will cure the Buyer's objections, however the Seller and the Buyer must agree to postpone the Closing Date to allow the Seller enough time to cure the Buyer's objections. The Seller or the Buyer may terminate this Agreement in accordance to Section 5(A)(3) if the Buyer refuses to postpone the Closing Date; or

- c. Notify the Buyer that the Seller will not cure the Buyer's objections and that the Seller will terminate this Agreement in accordance with Section 5(A)(3).

## **SECTION 5. TERMINATION.**

A. This Agreement may be terminated as provided in this Section.

1. **TERMINATION DURING INSPECTION PERIOD.** The Buyer may terminate this Agreement for any reason at any time only during the Inspection Period by providing written notice to the Seller. The Buyer may afford the Seller a certain time to cure any defects on the Property that are discovered and notified to the Seller during the Inspection Period. The Seller may cure the defects notified by the Buyer or choose to terminate this Agreement if the Seller refuses to cure the defects. If the Buyer affords the Seller the opportunity to cure any defects, then the Seller will notify the Buyer whether it will cure the defects or terminate this Agreement. If the Agreement is terminated under this provision, then the Seller will refund, or direct the Title Company to refund, the full deposit to the Buyer.
2. **TERMINATION FOR CAUSE.** Either party may terminate this Agreement before or on the Closing Date if the other party fails to fulfill the obligations of this Agreement following written notice allowing for 14 calendar day opportunity to cure. If the Seller terminates this Agreement pursuant to this provision, then the Seller may keep the Deposit made by the Buyer. If the Buyer terminates this Agreement for cause, then the Seller will refund the deposit to the Buyer and such will be the Buyer's sole remedy under this Agreement.
3. **TERMINATION DURING TITLE REVIEW PERIOD.** If during the Title Review Period, the parties decide to terminate this Agreement in accordance with Section 4(C)(4), then the terminating party will send a written termination notice to the nonterminating party. The Buyer may terminate this Agreement if the Seller fails to perform the obligations under Section 4(C)(4) of this Agreement. If the Agreement is terminated under this provision, then the Seller will refund, or direct the Title Company to refund, the full deposit to the Buyer.
4. **TERMINATION FOR CASUALTY.** If any damages occur to the Property before the Closing Date due to fire or another casualty, then the parties may mutually agree to postpone the Closing Date to allow the Seller time to repair the damages. The Buyer may only terminate this Agreement if the repairs to the Property by the Seller will lead to the Closing Date being postponed. If the Buyer does not want to postpone the Closing Date to allow the Seller to remedy the damages, then the Buyer may terminate this Agreement by sending a termination notice to the Seller after becoming aware of the damages to the Property. If the Buyer terminates this Agreement under this provision, then the Seller will refund, or direct the Title Company to refund, the full deposit to the Buyer.

## **SECTION 6. CLOSING.**

- A. Provided that the parties have not terminated this Agreement, the parties will meet all the obligations of this Agreement, including finalizing the sale and transfer of the Property



(“**Closing**”) within 14 calendar days following the expiration of the Title Review Period or such earlier date as may be specified by the Buyer by not less than five calendar days advance written notice to the Seller (“**Closing Date**”). A party’s failure to meet all the obligations of this Agreement by or on the Closing Date is a breach of this Agreement.

B. SELLER’S OBLIGATIONS. Before or on the Closing Date the Seller will deliver the following to the Buyer through the Title Company:

1. A fully executed deed (“**Deed**”) conveying title to the Property in a form substantially similar to the form included in this Agreement as **Attachment “B”**;
2. The environmental reports, test results and disposal documentation with regard to the demolition and removal of asbestos from the site, if any;
3. All keys or other access devices in the possession of the Seller or its agents to the locks located on the Property, if any; and
4. Any other items requested by the Title Company reasonably necessary to finalize the closing of this Agreement.

C. BUYER’S OBLIGATIONS. At the closing of this Agreement the Buyer will deliver the following to the Seller through the Title Company:

1. The Purchase Price minus the Deposit that is being held by the Title Company.
2. All Closing Costs. The Buyer is responsible for paying all fees associated with the closing of this Agreement, including any Title Company escrow fees. The Buyer will be responsible for paying any fees related to recording the Deed.
3. Any other items requested by the Title Company to finalize the closing of this Agreement.

D. TAXES. General real estate taxes, if any, for the then current year relating to the Property will be prorated on midnight before the Closing Date. If the Closing occurs before the tax rate is fixed for the then current year, the apportionment of taxes shall be made upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation of the Land and Improvements. Within 30 Business Days after the actual taxes for the year in which the Closing occurs are determined, Seller and Buyer shall adjust the proration of such taxes and Seller and Buyer, as the case may be, shall pay to the other any amount required as a result of such adjustment and this covenant shall not merge with the Deed delivered hereunder but shall survive the Closing. All special taxes or assessments assessed prior to the Closing Date shall be paid by Seller.

E. POSSESSION. Possession of the Property will be transferred to the Buyer from the Seller at the Closing of this Agreement, as such the Buyer acknowledges that the risk of loss transfers along with the possession of the Property.

## SECTION 7. GENERAL PROVISIONS.

- A. NO WAIVER. Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- B. INDEPENDENT CONTRACTOR RELATIONSHIP. This Agreement does not create an employee-employer relationship between the Buyer and the Seller. As such, the Seller is not subject to the liabilities or obligations the Buyer obtains under the performance of this Agreement.
- C. TIME IS OF THE ESSENCE. The times and dates specified in this contract are material to this Agreement. For the purpose of this agreement "**business days**" means Monday through Friday excluding City of El Paso holidays and "**calendar days**" means Monday through Sunday excluding City of El Paso holidays.
- D. NOTICES. The parties will send all notices required by this Agreement in writing both postmarked and delivered by certified mail. All mailed notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

Seller: The City of El Paso  
Attn: City Manager  
P. O. Box 1890  
El Paso, Texas 79950-1890

Copy: City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

Copy: City of El Paso  
Director of CID  
P.O. Box 1890  
El Paso, Texas 79950-1890

To the Buyer: Francisco E. and Lorena Molinar  
3909 Emory Rd.  
El Paso, Texas 79922

- E. **CONFIDENTIALITY.** The Buyer acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).

- F. **GOVERNING LAW.** This Agreement is governed by Texas law.
- G. **VENUE.** The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- H. **SEVERABILITY.** A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- I. **HEADINGS.** The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- J. **GOVERNMENTAL FUNCTIONS.** The parties agree that the Seller is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the Seller is entering into this Agreement as a governmental entity performing a governmental function.
- K. **COMPLIANCE WITH THE LAWS.** The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement.
- L. **FORCE MAJEURE.** There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.
- M. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the Seller and the Buyer, and the Buyer's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- N. **THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries for this Agreement.
- O. **REPRESENTATIONS AND WARRANTIES.** The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- P. **COUNTERPARTS.** The parties may execute this Agreement in counterparts.
- Q. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties.

(Signatures begin on the following pages)

EXECUTED by City the \_\_\_\_ day of \_\_\_\_\_, 2024.

**SELLER:**

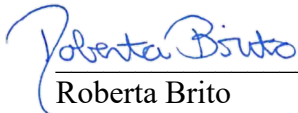
**CITY OF EL PASO, TEXAS**

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

Cary Westin  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Roberta Brito  
Senior Assistant City Attorney



Mary Lou Espinoza  
Capital Assets Manager

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

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2024,  
by Cary Westin, as City Manager of the City of El Paso, Texas.

\_\_\_\_\_  
**Notary Public, State of Texas**

**My commission expires:**

\_\_\_\_\_

EXECUTED by Buyer the \_\_\_\_ day of \_\_\_\_\_, 2024.

BUYER:

Francisco Molinar  
Francisco E. Molinar

Lorena Molinar  
Lorena Molinar

THE STATE OF TEXAS §  
§  
COUNTY OF EL PASO §

This instrument was acknowledged before me on this 17 day of April, 2024,  
by **Francisco E. Molinar**.

[Signature]

Notary Public, State of Texas

My commission expires:

4.14.2027

THE STATE OF TEXAS §  
§  
COUNTY OF EL PASO §

This instrument was acknowledged before me on this 17 day of April, 2024,  
by **Lorena Molinar**.

[Signature]

Notary Public, State of Texas

My commission expires:

4.14.2027



**ATTACHMENT “A”  
PROPERTY DESCRIPTION**



ROMAN BUSTILLOS, P.E.  
President  
SERGIO J. ADAME, P.E.  
Vice President - Engineering  
AARON ALVARADO, R.P.L.S.  
Vice President - Surveying  
HECTOR MARTINEZ, P.E.  
Associate Partner  
TBPE Reg. No. F-737  
TBPLS Reg. No. 101314-00

## **METES AND BOUNDS DESCRIPTION**

*A 0.1700 acres parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Tract 5D1, Block 1, Upper Valley Surveys and being more particularly described by metes and bounds as follows:*

**COMMENCING** at a Texas/New Mexico State Line Concrete Monument No. 96 found; **WHENCE**, a Texas/New Mexico State Line Concrete Monument No. 97 found, bears South 79°36'56" East, a distance of 1,431.50 feet (1,430.19 feet~record); **THENCE**, leaving said Texas/New Mexico State Line, North 67°43'32" East, a distance of 499.44 feet to a 1/2-inch rebar found on the easterly right-of-way line of the Montoya Main Lateral (60 feet wide) for the northwesterly corner and the **POINT OF BEGINNING** of the parcel herein described, identical to the southwesterly corner of Tract 5A1, Block 1, Upper Valley Surveys;

**THENCE**, leaving the easterly right-of-way line of said Montoya Main Lateral and following the boundary line common to said Tracts 5D1 and 5A1, North 50°10'19" East, a distance of 135.65 feet to a 1/2-inch rebar with survey cap No. "TX 6223" found for the northeasterly corner of the parcel herein described, identical to the southeasterly corner of said Tract 5A1;

**THENCE**, leaving the boundary line common to said Tracts 5D1 and 5A1 and following the boundary line common to said Tract 5D1 and Tract 5D, Block 1, Upper Valley Surveys, South 39°48'18" East a distance of 56.44 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set for southeasterly corner of the parcel herein described;

**THENCE**, leaving the boundary line common to said Tracts 5D1 and 5D, South 51°50'03" West, a distance of 136.30 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set on the easterly right-of-way line of said Montoya Lateral for the southwesterly corner of the parcel herein described,

**THENCE**, following the easterly right-of-way line of said Montoya Lateral, North 39°09'41" West, a distance of 52.49 feet to the **POINT OF BEGINNING**.

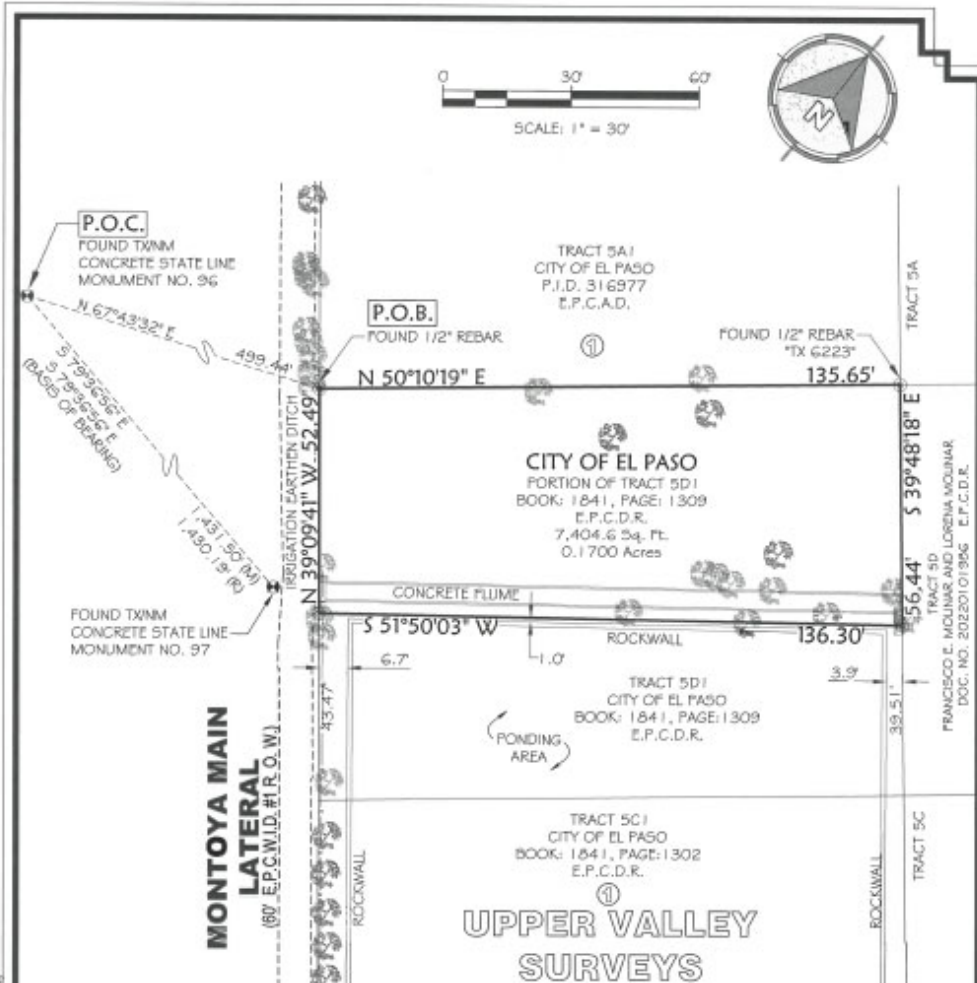
*Said parcel containing 0.1700 acres (7,404.6 square feet), more or less, and being subject to all easements, restrictions and covenants of record.*

  
Aaron Alvarado, TX. R. P. L. S. No. 6223

Date: January 10, 2024

05100-135-PID 22967 SUBDIVIDE-DESC.doc





#### LEGEND

PROJECT BOUNDARY	---
TRACT/LOT/RIGHT-OF-WAY LINE	---
SUBDIVISION LINE	---
WIRE FENCE	---
TREE	⊗
SET 1/2" REBAR WITH SURVEY CAP NO. TX 6223	⊗
EL PASO COUNTY APPRAISAL DISTRICT	E.P.C.A.D.
EL PASO COUNTY DEED RECORDS	E.P.C.D.R.

#### REFERENCE NOTES

1. FIRST AMERICAN TITLE GUARANTY COMPANY/COMMITMENT FOR TITLE INSURANCE, G.F. NO. 230304-COM, ISSUED FEBRUARY 27, 2023, EFFECTIVE DATE FEBRUARY 13, 2023 WAS USED FOR THIS SURVEY.

#### SUPPLEMENTAL NOTES

1. SUBJECT PROPERTY IS LOCATED IN ZONE "A5" (AREAS OF 100-YEAR FLOOD-BASE FLOOD ELEVATIONS AND FLOOD HAZARD FACTORS DETERMINED) AS DETAILED ON CITY OF EL PASO FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 480214-00270, DATED JANUARY 3, 1997.
2. SUBJECT PROPERTY IS ZONED "R-S" (RESIDENTIAL DISTRICT) AS DESIGNATED AT THE CITY OF EL PASO G.U.S. WEBSITE WWW.PONMAPA.COM. SETBACKS FOR ZONE "R-S" (SINGLE-FAMILY): FRONT: 20' REAR: 20' SIDE: 5' SIDE STREET: 10'
3. THE PARTITION OF SUBJECT TRACT 5D1 SHOWN HEREON DID NOT REQUIRE TO BE PLATTED UNDER THE CITY OF EL PASO SUBDIVISION ORDINANCE AND WAS EXEMPTED BY CHAPTER 19.01.030-EXEMPTIONS VIA A PLATTING DETERMINATION LETTER DATED 10/19/2023, PROVIDED HOWEVER, THAT PRIOR TO CONSTRUCTION OF IMPROVEMENTS, A PLAT MEETING THE REQUIREMENTS OF THE ORDINANCE CODIFIED IN THIS TITLE SHALL BE COMPLETED AND RECORDED.

#### CERTIFICATION

I HEREBY CERTIFY THAT THIS BOUNDARY SURVEY IS BASED ON AN ACTUAL SURVEY PERFORMED ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THE INFORMATION CONTAINED HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

*Aaron Alvarado* 01/10/24  
AARON ALVARADO, TX R.F.L.S. NO. 6223

#### BOUNDARY & IMPROVEMENT SURVEY (TRACT 5D1 SPLIT)

DRAWN BY: A.G. CHECKED BY: A.A. DATE: 01-10-2024 SCALE: 1" = 30'

PORTION OF TRACT 5D1, BLOCK 1, UPPER VALLEY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS.



FILE NO: 05100-135A



**BROCK & BUSTILLOS INC.**

CONSULTING CIVIL ENGINEERS  
LAND SURVEYORS  
TYPE REG. NO. P-737  
TXPLS REG. NO. 101314-00

417 EXECUTIVE CENTER-EL PASO, TX 79902-PH (915) 542-4800  
FAX (915) 542-2567-WWW.BROCKBUSTILLOS.COM



## ATTACHMENT “B”

**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.**

### SPECIAL WARRANTY DEED

Effective Date: \_\_\_\_\_, 2024

Grantor: **City of El Paso**

Grantor's Mailing Address: PO Box 1890, El Paso, Texas 79950-1890

Grantee: **Francisco E. and Lorena Molinar**

Grantee's Mailing Address: 3909 Emory Rd., El Paso, Texas 79922

### PROPERTY (INCLUDING ANY IMPROVEMENTS):

A portion of Tract 5D-1, Block 1, UPPER VALLEY SURVEYS, in the City of El Paso, El Paso County, Texas according to the resurvey of said UPPER VALLEY SURVEYS made by El Paso County, Texas, as more particularly described in **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”**

None

### RESERVATIONS TO CONVEYANCE

None

The purchase of this Property is on an “AS IS”, “WHERE IS”, “WITH ALL FAULTS” basis. Grantee shall be responsible, at its own cost, to conduct any necessary surveys, inspections, or studies. Any Remediation required of Grantee shall be at Grantee's sole cost.

## WARRANTY AND CONVEYANCE

The GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance and exceptions to warranty, GRANTS, SELLS, and CONVEYS to the GRANTEE the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to the GRANTEE, the GRANTEE'S administrators, successors and assigns forever. The GRANTOR binds the GRANTOR and the GRANTOR'S successors and assigns to warrant and forever defend all and singular the Property to the GRANTEE and the GRANTEE'S administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof by through or under Grantor and Grantee, but not otherwise.

IN WITNESS WHEREOF this Special Warranty Deed is executed this \_\_\_\_ day of \_\_\_\_\_, 2024.

**GRANTOR:**

**CITY OF EL PASO**

By: \_\_\_\_\_  
Cary Westin, Interim City Manager

## ACKNOWLEDGEMENT

STATE OF TEXAS            )

COUNTY OF EL PASO        )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2024, by Cary Westin, Interim City Manager, City of El Paso.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
Notary's Printed Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

AFTER RECORDING, RETURN TO:

# DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with [Title 2, Chapter 2.92, Section 2.92.080](#)

## Introduction:

Individuals or entities benefiting by a City Council Agenda item must disclose contributions or donations made to current members of Council under the City's Ethics Code. The information on this form is being captured for transparency purposes and will be noted on the relevant City Council Agenda. **Contributions and Donations do NOT disqualify an applicant from doing business with the City.**

## Definitions:

- "Contribution" A direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit.
- "Contributor" A person making a contribution, including the contributor's spouse.
- "Donation" Cash and the value of any in-kind contributions or gifts to the council member for use by their office or in their district.
- "Donor" An individual and spouse, a business entity, or an individual who owns a business entity in whole or in part, or is operated by the individual, that is the subject of a council agenda item.
- "Benefiting" Shall include but not be limited to any contract, bid award, franchise, permit, zoning or rezoning, and other award that council will vote on.

**Instructions:** Please read and complete this form carefully. If you have made campaign contributions or donations to any current City Council member(s) totaling an aggregate of \$500 or more during their campaign(s) or term(s) of City office, you are required to disclose the information as specified below. If you have not made such contributions or donations past the limit specified in the ordinance, you are required to affirm your compliance with the municipal code. Please submit this completed form along with your application or proposal to the relevant city department. Failure to disclose campaign contributions or donations as required by the ordinance may result in a violation of the City's Ethics Code requirements, and sanctions under the Ethics Code 2.92.

## Contributor / Donor Information:

Full Name \_\_\_\_\_

Business Name \_\_\_\_\_

Agenda Item Type \_\_\_\_\_

Relevant Department \_\_\_\_\_

**Disclosure Affirmation:** Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.

I have **NOT** made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office, as specified in Section 2.92.080 of the El Paso Municipal Code.

OR

I have made campaign contributions or donations totaling an aggregate of \$500 or more to the following City Council member(s) during their campaign(s) or term(s) of City office:

OFFICE	CURRENT COUNCIL MEMBER NAME	AMOUNT (\$)
Mayor		
District 1		
District 2		
District 3		
District 4		
District 5		
District 6		
District 7		
District 8		

**Declaration:** I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, **I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.**

Signature: Lorena Molina Date: \_\_\_\_\_



# Property Sale Agreement for Emory Road: PID 22967

Upper Valley | El Paso, Texas | 79922

Goal 6 Set the Standard for Sound Governance and Fiscal Management



June 11, 2024

# HISTORY



- February 2023: Application received to purchase a City-owned parcel near Emory Rd. & Sunland Park Dr. (District 1).
- The COEP-owned parcel is landlocked (El Paso City Code 19.50.030) by residential parcels to the north, east, west and abuts the Montoya Main Lateral to the south.
- Applicants propose to combine the parcel with their abutting property - with future access from Emory Rd.
- February 13, 2024: City Council approved the sale, to Enrique Escobar, of two abutting parcels to the immediate northwest of the subject property.

# PROPERTY AERIAL WITH OWNERSHIP INFO

- Subject Property
- Enrique Escobar
- Francisco & Lorena Molinar (buyer)
- Hugo Silex
- Catholic Diocese
- COEP
- COEP – EP Water Managed Pond
- EPCWID1



# PROPERTY OVERVIEW



**PID:** 22967

**Size:** 0.17 acres

**Zoning:** R-3 (Residential)

**Area of Town:** Upper Valley

**Appraised Value:**  
\$11,000 (January 2024)

**Owner of Record:**  
09/2/1987 – City of El Paso

**Current Use:** Vacant Land



# PROPOSED TERMS



- **Buyers** – Francisco E. & Lorena Molinar
- **Purchase Price** – \$11,000
- **Earnest Money** – \$5,000 non-refundable
- **Earnest Money Deadline** – 15 calendar days after the effective date
- **Title Objections** – 15 days after the delivery of the Title Commitment & Survey
- **Inspection Period** – 15 business days from the effective date
- **Closing Date** – 14 days after the end of Title Review Period

# CARE COMMITTEE COMMENTS



## Planning:

- Property is landlocked as it does not abut a public or private street.
- The parcel does not meet 19.23.040(B)(1) – Lots – Determination and Regulation of Size:

B.) Lot Frontage: All lots shall have at least one boundary abutting either a private or public street.

1. Each residential lot in the subdivision shall have a minimum frontage on a public or private street as required by the applicable zoning unless other provisions have been authorized through planned development approval.

# CARE COMMITTEE COMMENTS



## Legal:

The land-locked parcel meets the State of Texas code for Exception to Bid notice, Sec. 272.001.(b):

- (1) narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development control ordinances;

# CARE Review Criteria



## Property review metrics:

- Can the property be utilized for future City of El Paso or El Paso Water projects? No
- Is the property suitable for development? No
- Does the property meet City of El Paso zoning, density, and dimensional standards? No
- Does the property have legal access? No
- Is there a liability/risk to the City in keeping the property: maintenance, environmental, degradation of neighborhood character? Yes

**RECOMMENDATION: Sell property at Market Value**



## Mission

Deliver exceptional services to support a high quality of life and place for our community



## Vision

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government



## Values

Integrity, Respect, Excellence, Accountability, People



El Paso, TX

300 N. Campbell  
El Paso, TX

## Legislation Text

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**File #: 24-763, Version: 1**

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### **CITY OF EL PASO, TEXAS LEGISTAR AGENDA ITEM SUMMARY FORM**

#### **DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

##### **All Districts**

City Manager's Office, Robert Cortinas, (915) 212-1067

#### **AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Discussion and action on the Resolution that the City reviewed and approves the issuance of the Unlimited Tax Bonds, Series 2024 by Paseo Del Este Municipal Utility District No. 4 with the acknowledgement that the issuance of such bonds does not constitute debt issuance by the City of El Paso.

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

**DEPARTMENT:** City Manager's Office

**AGENDA DATE:** June 11, 2024

**PUBLIC HEARING DATE:** N/A

**CONTACT PERSON NAME AND PHONE NUMBER:** Robert Cortinas, Chief Financial Officer (915) 212-1067

**DISTRICT(S) AFFECTED:** All Districts

**STRATEGIC GOAL:** Goal 6: Set the Standard for Sound Governance and Fiscal Management

**SUBGOAL:** 6.5

**SUBJECT:**

Discussion and action on the resolution that the City reviewed and approves the issuance of the Unlimited Tax Bonds, Series 2024 by Paseo Del Este Municipal Utility District No. 4 with the acknowledgement that the issuance of such bonds does not constitute debt issuance by the City of El Paso.

**BACKGROUND/ DISCUSSION:**

On December 3, 2002 the City Council of the City of **El Paso** ('City') consented to the creation of Paseo Del Este Municipal Utility Districts Nos. 1 through 9 ("Districts") in the City of **El Paso's** Extraterritorial Jurisdiction. The City's conditions for the creation of the Districts was that the City is to review and approve the Districts' bonds and notes prior to issuance and may place restrictions on the terms and provisions of each of the District's bonds and notes issued to provide service to the land and conditions on the sale of the District's bonds and notes to the extent such restrictions and conditions do not generally render the bonds and notes of the Districts unmarketable.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:** N/A

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

**DEPARTMENT HEAD:**



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

## RESOLUTION

**WHEREAS**, on December 3, 2002 the City Council of the City of El Paso ("City") consented to the creation of Paseo Del Este Municipal Utility Districts Nos. 1 through 9 ("Districts") in the City of El Paso's Extraterritorial Jurisdiction; and

**WHEREAS**, the City's consent to the creation of the Districts was subject to several conditions; and

**WHEREAS**, one of the City's conditions for the creation of the Districts was that the City is to review and approve the Districts' bonds and notes prior to issuance and may place restrictions on the terms and provisions of each of the District's bonds and notes issued to provide service to the land and conditions on the sale of the District's bonds and notes to the extent such restrictions and conditions do not generally render the bonds and notes of the Districts unmarketable; and

**WHEREAS**, Paseo Del Este Municipal Utility District No. Four ("M.U.D. No. 4") requested review and approval of the issuance of the Unlimited Tax Bonds, Series 2024 Bonds by M.U.D. No. 4 (the "Series 2024 Bonds"); and

**WHEREAS**, the City reviewed the proposed issuance of Series 2024 Bonds by M.U.D. No. 4 and desires to approve the issuance of the bonds.

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

That the City reviewed and approves the issuance of the Unlimited Tax Bonds, Series 2024 Bonds in the estimated amount of \$2,895,000, by Paseo Del Este Municipal Utility District No. 4, with the acknowledgement that the issuance of such bonds does not constitute debt issuance by the City of El Paso.

**APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2024.**


### CITY OF EL PASO:

\_\_\_\_\_  
Oscar Lesser  
Mayor


### ATTEST:

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

### APPROVED AS TO FORM:

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

### APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Robert Cortinas, Chief Financial Officer



This Preliminary Official Statement and the information contained herein are subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

**PRELIMINARY OFFICIAL STATEMENT DATED JULY 1, 2024**

THE DELIVERY OF THE BONDS IS SUBJECT TO THE OPINION OF BOND COUNSEL AS TO THE VALIDITY OF THE BONDS AND TO THE EFFECT THAT INTEREST ON THE BONDS IS EXCLUDABLE FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES UNDER STATUTES, REGULATIONS, COURT DECISIONS, AND PUBLISHED RULINGS EXISTING ON THE DATE THEREOF, SUBJECT TO THE MATTERS DESCRIBED UNDER "TAX EXEMPTION" HEREIN, INCLUDING THE ALTERNATIVE MINIMUM TAX ON CERTAIN CORPORATIONS.

THE DISTRICT EXPECTS TO DESIGNATE THE BONDS AS "QUALIFIED TAX-EXEMPT OBLIGATIONS" FOR FINANCIAL INSTITUTIONS

**NEW ISSUE - Book Entry Only**

**\$2,895,000**

**PASEO DEL ESTE MUNICIPAL UTILITY DISTRICT NO. 4**

*(A political subdivision of the State of Texas located within El Paso County)*

**UNLIMITED TAX BONDS, SERIES 2024**

**Dated: August 1, 2024**

**Due: August 15, as shown below**

Principal of the Bonds will be payable at stated maturity or redemption upon presentation of the Bonds at the principal payment office of the paying agent/registrar, initially BOKF, NA (the "Paying Agent/Registrar"), Dallas, Texas. Interest on the Bonds will accrue from the date of delivery of the Bonds (expected to be August 13, 2024), and is payable on February 15, 2025 and on each August 15 and February 15 thereafter until the earlier of maturity or redemption. The Bonds will be issued only in fully registered form in denominations of \$5,000 each or integral multiples thereof. Interest will be calculated on the basis of a 360 day year of twelve 30 day months. The Bonds are subject to redemption prior to maturity as shown below.

The Bonds will be registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Bonds. Beneficial owners of the Bonds will not receive physical certificates representing the Bonds, but will receive a credit balance on the books of the nominees of such beneficial owners. So long as Cede & Co. is the registered owner of the Bonds, the principal of and interest on the Bonds will be paid by the Paying Agent/Registrar directly to DTC, which will, in turn, remit such principal and interest to its participants for subsequent disbursement to the beneficial owners of the Bonds as described herein. See "BOOK-ENTRY-ONLY SYSTEM."

**MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES AND INITIAL REOFFERING YIELDS**

Due Aug. 15	Principal Amount <sup>(a)</sup>	Interest Rate	Initial Reoffering Yield <sup>(b)</sup>	CUSIP Number <sup>(d)</sup>	Due Aug. 15	Principal Amount <sup>(a)</sup>	Interest Rate	Initial Reoffering Yield <sup>(b)</sup>	CUSIP Number <sup>(d)</sup>
2026	\$ 45,000				2038	\$ 80,000			
2027	45,000				2039	85,000			
2028	50,000				2040	85,000			
2029	50,000				2041	95,000			
2030	55,000				2042	100,000			
2031	55,000				2043	105,000			
2032	60,000				2044	110,000			
2033	60,000				2045	115,000			
2034	65,000				2046	120,000			
2035	65,000				2047	125,000			
2036	75,000				2048	475,000			
2037	75,000				2049	700,000			

- (a) The Initial Purchasers (as defined herein) may designate one or more maturities as term bonds. See accompanying "OFFICIAL NOTICE OF SALE" and "OFFICIAL BID FORM."
- (b) Initial reoffering yield represents the initial offering yield to the public which has been established by the Initial Purchaser (as herein defined) for offers to the public and which may be subsequently changed by the Initial Purchaser and is the sole responsibility of the Initial Purchaser.
- (c) Bonds maturing on or after August 15, 202\_ are subject to redemption prior to maturity at the option of the District, in whole or, from time to time in part, on August 15, 202\_, or on any date thereafter, at a price equal to the par value thereof plus accrued interest from the most recent interest payment date to the date fixed for redemption. See "THE BONDS – Redemption Provisions."
- (d) CUSIP Numbers have been assigned to the Bonds by CUSIP Global Services and are included solely for the convenience of the purchasers of the Bonds. Neither the District nor the Initial Purchaser shall be responsible for the selection or correctness of the CUSIP Numbers set forth herein.

**INSURANCE.** . . Application has been made to municipal bond insurance companies for the qualification of the Bonds for municipal bond insurance. If qualified, such insurance will be available at the option and expense of the Initial Purchaser. The rating fees, if any, associated with the insurance will be the responsibility of the Initial Purchaser. See "BOND INSURANCE."

The Bonds, when issued, will constitute valid and legally binding obligations of Paseo del Este Municipal Utility District No. 4 (the "District") and will be payable from the proceeds of an annual ad valorem tax, without legal limitation as to rate or amount, levied against all taxable property located within the District. The Bonds are obligations solely of the District and are not obligations of the State of Texas, El Paso County, the City of El Paso or any entity other than the District. Investment in the Bonds is subject to special considerations described herein. See "RISK FACTORS."

The Bonds are offered by the Initial Purchaser subject to prior sale, when, as and if issued by the District and accepted by the Initial Purchaser, subject, among other things, to the approval of the Bonds by the Attorney General of Texas and the approval of certain legal matters by McCall, Parkhurst & Horton L.L.P., Austin, Texas, Bond Counsel. Certain legal matters will be passed upon for the District by Locke Lord LLP, Dallas, Texas as Disclosure Counsel. Delivery of the Bonds through the facilities of DTC is expected on or about August 13, 2024.

**BIDS DUE: July 12, 2024 at 8:00 A.M., Mountain Time in El Paso, Texas**  
**BID AWARD: July 12, 2024 at 11:30 A.M., Mountain Time in El Paso, Texas**

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The cover page hereof, this page, the appendices included herein and any addenda, supplement or amendment hereto, are part of the Official Statement.

## USE OF INFORMATION IN OFFICIAL STATEMENT

No dealer, broker, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representation must not be relied upon as having been authorized by the District.

This Official Statement is not to be used in an offer to sell or the solicitation of an offer to buy in any state in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

All of the summaries of the statutes, resolutions, contracts, audited financial statements, engineering and other related reports set forth in this Official Statement are made subject to all of the provisions of such documents. These summaries do not purport to be complete statements of such provisions, and reference is made to such documents, copies of which are available from Gordon Davis Johnson & Shane P.C., the District's General Counsel, 4695 North Mesa Street, El Paso, Texas 79912 upon payment of duplication costs.

This Official Statement contains, in part, estimates, assumptions and matters of opinion which are not intended as statements of fact, and no representation is made as to the correctness of such estimates, assumptions or matters of opinion, or as to the likelihood that they will be realized. Any information and expressions of opinion herein contained are subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the District or other matters described herein since the date hereof. However, the District has agreed to keep this Official Statement current by amendment or sticker to reflect material changes in the affairs of the District and, to the extent that information actually comes to its attention, the other matters described in this Official Statement until delivery of the Bonds to the Initial Purchaser and thereafter only as specified in "PREPARATION OF OFFICIAL STATEMENT-Updating the Official Statement."

## OFFICIAL STATEMENT SUMMARY

The following information is qualified in its entirety by the detailed information appearing elsewhere in this Official Statement.

### THE FINANCING

<i>The Issuer</i> .....	Paseo del Este Municipal Utility District No. 4 (the “District”), a political subdivision of the State of Texas (the “State”), is located in El Paso County, Texas (the “County”). See “THE DISTRICT.”
<i>The Issue</i> .....	The District’s \$2,895,000 Unlimited Tax Bonds, Series 2024 (the “Bonds”) are issued pursuant to a resolution (the “Bond Resolution”) of the District’s Board of Directors. The Bonds will be issued as fully registered bonds in denominations of \$5,000 each or integral multiples thereof, maturing on August 15 in each of the years and in the amounts set forth on the cover hereof. Interest on the Bonds accrues from the date of initial delivery of the Bonds (expected to be August 13, 2024), and is payable on February 15, 2025 and on each August 15 and February 15 thereafter until the earlier of maturity or prior redemption.
<i>Redemption</i> .....	The Bonds maturing on and after August 15, 202_, are subject to redemption, in whole or in part, at the option of the District, prior to their maturity dates, on August 15, 202_, or on any date thereafter. Upon redemption, the Bonds will be payable at a price of par plus accrued interest to the date of redemption. See “THE BONDS - Redemption Provisions.”
<i>Source of Payment</i> .....	The Bonds are payable from an annual ad valorem tax, without legal limitation as to rate or amount, levied upon all taxable property within the District (see “TAX PROCEDURES”). The Bonds are obligations of the District and are not obligations of the State, the County, the City of El Paso (the “City”) or any other political subdivision or agency other than the District. See “THE BONDS – Source of and Security for Payment.”
<i>Use of Proceeds</i> .....	Proceeds from sale of the Bonds will be used to reimburse the Developer (as hereinafter defined) for funds advanced on behalf of the District for the District’s pro rata share of costs relating to facilities constructed by or on behalf of Paseo del Este Municipal Utility District No. 1 (the “Master District”) being a portion of costs of certain regional water and sanitary sewer facilities serving the District and the other “Participant Districts” as hereafter defined, including engineering costs (the “Regional Facilities”), and the cost of certain internal water, wastewater and drainage facilities serving the District (the “Internal Facilities”). Bond proceeds will also be used to pay interest to the Developer (hereinafter defined) on funds expended for the foregoing, including engineering costs, to pay 12 months of capitalized interest on the Bonds, to pay administrative advances and creation costs, and to pay certain costs associated with the issuance of the Bonds. See “THE SYSTEM - Use and Distribution of Bond Proceeds.”
<i>Payment Record</i> .....	The District has previously issued two series of unlimited tax bonds, of which \$7,390,000 remains outstanding. The District has never defaulted in payments of principal of or interest on its unlimited tax debt. The bonds issued in October 2022 included 24 months of capitalized interest and the bonds issued in November 2023 included 12 months of capitalized interest.
<i>Qualified Tax-Exempt Obligations</i> .....	The District expects to designate the Bonds as “qualified tax-exempt obligations for financial institutions.” See “TAX EXEMPTION - Qualified Tax-Exempt Obligations for Financial Institutions.”
<i>Rating and Municipal Bond Insurance</i> .....	No application for a rating on the Bonds has been made. See “SALE AND DISTRIBUTION OF THE BONDS – Municipal Bond Rating and Municipal Bond Insurance.” An application has been made to municipal bond insurance companies for the qualification of the Bonds for municipal bond insurance. If qualified, such insurance will be available at the option and expense of the Initial Purchaser (as defined herein). The rating fees, if any, associated with the insurance will be the responsibility of the Initial Purchaser. See “BOND INSURANCE – Bond Insurance.”
<i>General Counsel</i> .....	Gordon Davis Johnson & Shane P.C., El Paso, Texas.
<i>Bond Counsel</i> .....	McCall, Parkhurst & Horton L.L.P., Austin, Texas.

<i>Disclosure Counsel</i> .....	Locke Lord LLP, Dallas, Texas.
<i>Financial Advisor</i> .....	Hilltop Securities, Inc., El Paso, Texas and Dallas, Texas.
<i>Engineer</i> .....	TRE & Associates, LLC, Austin, Texas and El Paso, Texas.
<i>Risk Factors</i> .....	The purchase and ownership of the Bonds are subject to special risk factors, and all prospective purchasers are urged to examine carefully the entire Official Statement for a discussion of investment risks, including particularly the section captioned “RISK FACTORS.”

## THE DISTRICT

<i>Description</i> .....	The District was created by division of Paseo del Este Municipal Utility District (the “Original District”) pursuant to a division order adopted by the Original District on March 27, 2003, and operates pursuant to Chapter 443, Acts of the Texas Legislature, Regular Session, 1997 (the “Act”) and Chapters 49 and 54, Texas Water Code. Prior to division, Paseo del Este Municipal Utility District was created as a Conservation and Reclamation District on May 29, 1997 by the Act. The District presently contains approximately 318.342 acres of land located in the southeast portion of the County approximately 15 miles east of the central area of the City. The District is located north of Interstate Highway 10 and east of Loop 375. Eastlake Boulevard provides access to the District. From Interstate Highway 10, exit Eastlake Boulevard and proceed north approximately 1.4 miles to the intersection of Eastlake Boulevard and Mission Ridge Boulevard, then north along Mission Ridge Boulevard and approximately one mile. The District lies within the exclusive extraterritorial jurisdiction of the City. See “AERIAL PHOTOGRAPH” herein.
<i>Master District Contract</i> .....	The District and nine other districts in the Paseo del Este development in eastern El Paso County known as Paseo del Este Municipal Utility District Nos. 2, 3, 5, 6, 7, 8, 9, 10 and 11 (those ten districts and the Master District being collectively referred to as the “Participant Districts” and individually as “Participant District No. –”) have each entered into a “Master District Contract” with the Master District to coordinate the development of the water, sanitary sewer and drainage facilities to serve the area within all eleven Participant Districts. Under the Master District Contract, the Master District will acquire, construct, own and operate the Regional Facilities to serve the area within all eleven Participant Districts; each Participant District will acquire, construct and own its Internal Facilities serving only area within it and lease the Internal Facilities to the Master District for operation; and the Master District will provide retail water and wastewater service to all retail customers in all of the Participant Districts.
<i>Status of Development</i> .....	<p>The Participant Districts are being developed primarily for single family residential, commercial and industrial purposes, and are within the Paseo del Este development (“Paseo del Este”). Paseo del Este is being developed primarily by Hunt Communities Group, Inc. (“Hunt”), and certain affiliates thereof, and B&amp;G/Sunrise Joint Venture (“B&amp;G”) and is planned to include approximately 4,300 acres of land. The land in Paseo del Este was purchased from the Texas General Land Office by Hunt and affiliates thereof and B&amp;G in varying positions in a series of transactions between 1998 and 2020. As of March 31, 2024 approximately 9,823 single family residential lots have been developed within Paseo del Este, and approximately 9,246 homes are completed or are in various stages of construction in Paseo del Este. Within the District, there are currently 452 homes completed or in various stages of construction and 327 lots completed but construction of homes has not begun.</p> <p>The development within the District includes Hillside Park at Mission Ridge Unit One; and a portion of Hillside Park at Mission Ridge Unit Two, Hillside Park at Mission Ridge Unit Three, Hillside Park at Mission Ridge Unit Four, Hillside Park at Mission Ridge Unit 5, Hillside Park Unit 6, and Painted Sky at Mission Ridge Unit 3 Subdivision.</p> <p>All 222.174 acres of developable land in the District have been furnished with water, sanitary sewer and storm drainage facilities. There are 96.168 undevelopable acres within the District. See “THE DISTRICT – Status of Development.”</p>
<i>The Developer</i> .....	Major water, sewer, drainage facilities and streets to serve land within the District have been developed by Hunt Mission Ridge, LLC, an affiliate of Hunt (hereinafter referred to as the “Developer”). The activities of Hunt and its affiliates include development, construction, consulting and advisory. Water, sewer and drainage facilities to serve specific sections within the District have been acquired or constructed by the Developer. See “THE DEVELOPER.”

## SELECTED FINANCIAL INFORMATION

Tax Year 2024 Preliminary Assessed Valuation . . . . .	\$ 112,776,327 <sup>(a)</sup>
District Debt:	
Gross Debt Outstanding (after the issuance of the Bonds) ("Gross Debt Outstanding") . . . . .	\$ 10,285,000
Estimated Overlapping Debt . . . . .	<u>3,589,285</u> <sup>(b)</sup>
Gross Debt Outstanding and Estimated Overlapping Debt . . . . .	\$ 13,874,285
Ratio of Gross Debt Outstanding to Tax Year 2024 Preliminary Assessed Valuation . . . . .	9.12%
Ratio of Gross Debt Outstanding and Estimated Overlapping Debt to Tax Year 2024 Preliminary Assessed Valuation . . . . .	12.30% <sup>(a)</sup>
Debt Service Funds Available, as of May 10, 2024 . . . . .	\$ 935,375.61 <sup>(c)</sup>
Capital Projects Funds Available, as of May 10, 2024. . . . .	\$ 32,694.71
Operating Funds Available, as of May 10, 2024 . . . . .	\$ 144,864.86
Tax Year 2023 Tax Rates:	
Debt Service . . . . .	\$ 0.4349 <sup>(d)</sup>
Contract . . . . .	0.2900
Maintenance and Operations . . . . .	<u>0.0251</u>
Total . . . . .	\$ 0.7500 /\$100 A.V.
Average Annual Debt Service Requirements (2024 - 2049) of the Outstanding Bonds and the Bonds ("Average Requirement"). . . . .	\$ 669,438 <sup>(c)</sup>
Tax rate required to pay Average Requirement based upon Tax Year 2023 Preliminary Assessed Valuation at a 98% collection rate . . . . .	0.6057 /\$100 A.V.
Status of Water Connections as of March 31, 2024:	
Single-family residential - completed and occupied . . . . .	335
Single-family residential - completed and vacant . . . . .	1
Single-family residential - under construction - builder . . . . .	116
Other (Irrigation) . . . . .	<u>14</u>
Total Connections . . . . .	466

- (a) Preliminary Assessed Valuation by the El Paso Central Appraisal District (the "Appraisal District"). Represents the preliminary assessed taxable valuation within the District as of January 1, 2024. No assurance can be given as to the final assessed valuation in the District. The District will not levy taxes on such valuation until it is certified by the Appraisal District. See "TAX PROCEDURES."
- (b) See "ESTIMATED OVERLAPPING DEBT STATEMENT" herein.
- (c) The District expects to capitalize twelve (12) months of interest from Bond proceeds (estimated to be \$151,988 at an assumed interest rate of 5.25%) to be deposited into the Debt Service Fund from Bond proceeds upon closing and delivery of the Bonds. Neither the Bond Resolution nor State law requires that the District maintain any particular balance in the Debt Service Fund. See "PRO-FORMA DEBT SERVICE REQUIREMENTS."
- (d) In connection with its approval of the Bonds, the Texas Commission on Environmental Quality has approved an initial debt service tax rate after issuance of the Bonds of at most \$0. \_\_ per \$100 assessed valuation.

## PRELIMINARY OFFICIAL STATEMENT

**\$2,895,000**

### **PASEO DEL ESTE MUNICIPAL UTILITY DISTRICT NO. 4**

*(A political subdivision of the State of Texas located within El Paso County)*

### **UNLIMITED TAX BONDS, SERIES 2024**

This Official Statement provides certain information in connection with the issuance by Paseo del Este Municipal Utility District No. 4 (the “District”) of its \$2,895,000 Unlimited Tax Bonds, Series 2024 (the “Bonds”).

The Bonds are issued pursuant to the Texas Constitution, Chapter 443, Acts of the Texas Legislature, Regular Session, 1997 (the “Act”) and Chapters 49 and 54 of the Texas Water Code, as amended, a resolution authorizing the issuance of the Bonds (the “Bond Resolution”) adopted by the Board of Directors of the District (the “Board”), and an order of the Texas Commission on Environmental Quality (the “TCEQ”).

This Official Statement includes descriptions, among others, of the Bonds and the Bond Resolution, and certain other information about the District and the Developer of land within the District. All descriptions of documents contained herein are only summaries and are qualified in their entirety by reference to each document. Copies of documents may be obtained from Gordon Davis Johnson & Shane P.C., the District’s General Counsel, 4695 North Mesa Street, El Paso, Texas 79912 upon payment of the costs of duplication therefor.

## **RISK FACTORS**

### **General**

The Bonds, which are obligations of the District and not obligations of the State of Texas (the “State”), El Paso County (the “County”), the City of El Paso (the “City”), or any other political entity other than the District, will be secured by a continuing, direct, annual ad valorem tax levied, without legal limitation as to rate or amount, on all taxable property within the District. The ultimate security for payment of the principal of and interest on the Bonds depends on the ability of the District to collect from the property owners within the District all taxes levied against the property or, in the event of foreclosure, on the value of the taxable property with respect to taxes levied by the District and by other taxing authorities. See “THE BONDS – Source of and Security for Payment.” The collection by the District of delinquent taxes owed to it and the enforcement by the Registered Owners of the District’s obligation to collect sufficient taxes may be a costly and lengthy process. Furthermore, the District cannot and does not make any representations that continued development of taxable property within the District will accumulate or maintain taxable values sufficient to justify continued payment of taxes by property owners or that there will be a market for the property in the District or that owners of the property in the District will have the ability to pay taxes. See “Registered Owners’ Remedies and Bankruptcy Limitations” below.

### **Factors Affecting Taxable Values and Tax Payments**

*Economic Factors and Interest Rates:* A substantial percentage of the taxable value of the District results from the current market value of single-family residences, undeveloped land and developed lots which are currently being marketed by the Developer (as defined herein) to builders for the construction of primary residences. The market value of such homes and lots is related to general economic conditions affecting the demand for residences. Demand for lots of this type and the construction of residential dwellings thereon can be significantly affected by factors such as interest rates, credit availability (see “*Credit Markets and Liquidity in the Financial Markets*” below), construction costs, energy availability and the prosperity and demographic characteristics of the urban center toward which the marketing of lots is directed. Decreased levels of construction activity would tend to restrict the growth of property values in the District or could adversely impact such values. See “THE DISTRICT – Status of Development.”

Future development and construction in the District are highly dependent on the availability of financing. Lenders generally have become more selective in making real estate loans throughout the nation, including in Texas. Because of the numerous and changing factors affecting the availability of funds, the District is unable to assess the future availability of such funds to potential home builders and home purchasers.

*Credit Markets and Liquidity in the Financial Markets:* Interest rates and the availability of mortgage and development funding have a direct impact on the construction activity, particularly short-term interest rates at which Developer are able to obtain financing for development costs. Interest rate levels may affect the ability of a landowner with undeveloped property to undertake and complete construction activities within the District. Because of the numerous and changing factors affecting the availability of funds, the

District is unable to assess the future availability of such funds for continued construction within the District. In addition, since the District is located approximately 15 miles east of the central downtown business district of the City, the success of development within the District and growth of District taxable property values are, to a great extent, a function of the El Paso metropolitan and regional economies and national credit and financial markets. A downturn in the economic conditions in the El Paso area and/or decline in the nation's real estate and financial markets could continue to adversely affect development and home-building plans in the District and restrain the growth of the District's property tax base.

*Competition:* The demand for and construction of single-family homes in the District, which is 15 miles east from downtown El Paso, could be affected by competition from other residential developments, including other residential developments located in the northwestern, northeastern and far eastern portion of the El Paso area market. In addition to competition for new home sales from other developments, there are numerous previously-owned homes in the area of the District. Such homes could represent additional competition for new homes proposed to be sold within the District.

The competitive position of the builders in the sale of single-family residential homes within the District is affected by most of the factors discussed in this section. Such a competitive position directly affects the growth and maintenance of taxable values in the District and tax revenues to be received by the District. The District can give no assurance that building and marketing programs in the District by the Developer will be implemented or, if implemented, will be successful.

*Landowner Obligation to the District:* There are no commitments from or obligations of any developer or any landowner to the District to proceed at any particular rate or according to any specified plan with the construction of improvements in the District, and there is no restriction on any landowner's right to sell its land. Failure to construct taxable improvements on developed lots or developed tracts of land would restrict the rate of growth of taxable values in the District. The District cannot and does not make any representations that over the life of the Bonds, taxable property within the District will increase or maintain its taxable value.

*Dependence on Principal Taxpayers:* The ability of any principal taxpayer to make full and timely payments of taxes levied against its property by the District and similar taxing authorities will directly affect the District's ability to meet its debt service obligations. If, for any reason, any one or more principal taxpayers do not pay taxes due or do not pay in a timely manner, the District may need to levy additional taxes or use other funds available for debt service purposes. However, the District has not covenanted in the Bond Resolution, nor is it required by State law, to maintain any particular balance in its Debt Service Fund or any other funds to allow for any such delinquencies. Therefore, failure by one or more principal taxpayers to pay their taxes on a timely basis in amounts in excess of the District's available funds could have a material adverse effect upon the District's ability to pay debt service on the Bonds on a current basis. See "TAX DATA – Principal Taxpayers."

*Impact on District Tax Rates:* Assuming no further development, the value of the land and improvements currently within the District will be the major determinant of the ability or willingness of District property owners to pay their taxes. The 2024 preliminary assessed valuation of the District (the "2024 Preliminary Assessed Valuation") (see "SELECTED FINANCIAL INFORMATION") is \$112,776,327.00. After issuance of the Bonds, the projected maximum annual debt service (the "Projected Maximum Annual Debt Service") requirement will be \$737,070 (2026) and the projected average annual debt service (the "Projected Average Annual Debt Service") requirement will be \$669,438 (2024-2049). Assuming no increase or decrease from the 2024 Preliminary Assessed Valuation and no use of funds other than tax collections, a tax rate of \$0.6669 per \$100 assessed valuation at a 98% collection rate would be necessary to pay the Projected Maximum Annual Debt Service requirement of \$737,070 and a tax rate of \$0.6057 per \$100 assessed valuation at a 98% collection rate would be necessary to pay the Projected Average Annual Debt Service requirement of \$669,438 (see "SELECTED FINANCIAL INFORMATION" and "TAX DATA – Projected Tax Adequacy for Debt Service"). The preceding information relating to tax rates and collections is calculated based on the 2024 Preliminary Assessed Valuation for the District. No assurance can be given as to the final assessed valuation in the District, and no taxes will be levied, and no tax rate will be set, until the assessed valuation in the District is certified. The 2024 Preliminary Assessed Valuation is subject to change. Such calculated rates may be higher than tax rates presently being levied in utility districts in the general vicinity of the District. Although calculations have been made regarding average and maximum tax rates necessary to pay the debt service on the Bonds based upon the 2024 Preliminary Assessed Valuation, the District can make no representations regarding the future level of assessed valuation within the District. Increases in the tax rate may be required in the event the District's assessed valuation does not continue to increase or in the event major taxpayers do not pay their District taxes timely. Increases in taxable values depend primarily on the continuing construction and sale of homes and other taxable improvements within the District. See "TAX PROCEDURES," "FINANCIAL STATEMENT," and "TAX DATA – Tax Adequacy for Debt Service."

### **District Operations and Contract Tax**

The Master District Contract (as defined below) between the District and the Paseo del Este Municipal Utility District No. 1 (the "Master District") provides that, as partial consideration for the District allowing the Master District to provide retail water and wastewater service to retail customers inside the District's boundaries, the Master District will pay the District's administrative expenses to manage the District pursuant to a budget process outlined below. The Master District Contracts between the other Paseo del Este Municipal Utility District Nos. 2, 3, 5, 6, 7, 8, 9, 10 and 11 (the "Participant Districts"), and the Master District have similar

provisions regarding those other Participant Districts. The Master District Contract provides that the District will submit annually a budget for its administrative expenses to the Master District for review and approval by the Master District. Once approved, all such expenses will be paid by the Master District. The District's budget must be approved by the Master District if it is no more than 10% higher than the average of the annual budgets of the Participant Districts Nos. 2-11. To date, the District's annual budgets have all been approved by the Master District.

The Master District Contract also provides that the Master District will pay its own operation and administrative expenses and the approved administrative expenses of the Participant Districts from the revenues from the Master District's water and wastewater system. If the Master District's water and wastewater system revenues are insufficient to pay all of those costs, the resulting deficit will be paid by all Participant Districts (including the Master District) from the proceeds of an annual ad valorem contract tax levied by each Participant District on all taxable property within its boundaries in an amount sufficient to pay each Participant District's pro rata share of the deficit. A Participant District's pro rata share of the deficit each year is determined by multiplying the deficit by a fraction, the numerator of which is the Participant District's taxable assessed valuation for the year and the denominator of which is the total of the taxable assessed valuations in all the Participant Districts (including the Master District). See "THE SYSTEM - The Master District Contract."

For the 2023 fiscal year, the District paid its pro rata share of the Master District's budgeted operating deficit from the \$0.29/\$100 assessed value contract tax levied by the District on September 15, 2023. The District has levied a contract tax of \$0.29/\$100 assessed value for Tax Year 2023.

### **Future Debt**

At an election held May 10, 2014, the District authorized the issuance of up to \$30,000,000 of unlimited tax debt. The District reserves in the Bond Resolution the right to issue the remaining \$19,715,000 principal amount of unlimited tax debt authorized but unissued after the issuance of the Bonds for the purpose of acquiring or constructing water, sanitary sewer and drainage facilities and the District may issue additional bonds which may be voted hereafter. The District may also issue revenue bonds and refunding bonds. See "THE BONDS— Issuance of Additional Debt" and "THE SYSTEM – Future Debt." The issuance of such future obligations may dilute and adversely affect the investment security of the Bonds. The District does not employ any formula with regard to assessed valuations or tax collections or otherwise to limit the amount of bonds which may be issued. Any bonds issued by the District, however, must be approved by the Board of the District, the Attorney General of Texas and, with respect to bonds for water, sewer and drainage improvements, the TCEQ. After sale of the Bonds and reimbursement to the Developer of a portion of the proceeds therefrom, the District will still owe not less than approximately \$974,600 to the Developer for the costs of facilities for which the Developer has not yet been reimbursed. The District expects to sell additional bonds to reimburse the Developer for such costs. See "THE SYSTEM – Future Debt," "THE BONDS – Issuance of Additional Debt," and "UNLIMITED TAX BONDS AUTHORIZED BUT UNISSUED."

### **Environmental Regulation**

Wastewater treatment and water supply facilities are subject to stringent and complex environmental laws and regulations. The Master District currently receives wholesale water and wastewater services from the El Paso Water Utilities Public Service Board ("EPWU") for the areas within the Participant Districts. Facilities must comply with environmental laws at the federal, state, and local levels. These laws and regulations can restrict or prohibit certain activities that affect the environment in many ways such as:

- Requiring permits for construction and operation of water supply wells and wastewater treatment facilities;
- Restricting the manner in which wastes are released into the air, water, or soils;
- Restricting or regulating the use of wetlands or other property;
- Requiring action to prevent or mitigate pollution; and
- Imposing substantial liabilities for pollution resulting from facility operations.

Compliance with environmental laws and regulations can increase the cost of planning, designing, constructing and operating water production and wastewater treatment facilities. Sanctions against a municipal utility district or other type of district ("Utility Districts") for failure to comply with environmental laws and regulations may include a variety of civil and criminal enforcement measures, including assessment of monetary penalties, imposition of remedial requirements, and injunctive relief as to future compliance of and the ability to operate the Utility District's water supply, wastewater treatment, and drainage facilities. Environmental laws and regulations can also impact an area's ability to grow and develop. It should be noted that changes in environmental laws and regulations occur frequently, and any changes that result in more stringent and costly requirements could materially impact the District.

### **Tax Collection Limitations**

The District's ability to make debt service payments may be adversely affected by its inability to collect ad valorem taxes. Under State law, the levy of ad valorem taxes by the District constitutes a lien in favor of the District on a parity with the liens of all other state and local taxing authorities on the property against which taxes are levied, and such lien may be enforced by foreclosure. The



District's ability to collect ad valorem taxes through such foreclosure may be impaired by (i) cumbersome, time-consuming and expensive collection procedures, (ii) a bankruptcy court's stay of tax collection procedures against a taxpayer, or (iii) market conditions affecting the marketability of taxable property within the District and limiting the proceeds from a foreclosure sale of such property. While the District has a lien on taxable property within the District for taxes levied against such property, such lien can be foreclosed only in a judicial proceeding. The costs of collecting any such taxpayer's delinquencies could substantially reduce the net proceeds to the District from a tax foreclosure sale. Finally, a bankruptcy court with jurisdiction over bankruptcy proceedings initiated by or against a taxpayer within the District pursuant to the Federal Bankruptcy Code could stay any attempt by the District to collect delinquent ad valorem taxes against such taxpayer. In addition to the automatic stay against collection of delinquent taxes afforded a taxpayer during the pendency of a bankruptcy, a bankruptcy could affect payment of taxes in two other ways: first, a debtor's confirmation plan may allow a debtor to make installment payments on delinquent taxes for up to six years; and, second, a debtor may challenge, and a bankruptcy court may reduce, the amount of any taxes assessed against the debtor, including taxes that have already been paid. See "TAX PROCEDURES— District's Rights in the Event of Tax Delinquencies."

### **Registered Owners' Remedies and Bankruptcy Limitations**

If the District defaults in the payment of principal, interest, or redemption price on the Bonds when due, or if it fails to make payments into any fund or funds created in the Bond Resolution, or defaults in the observation or performance of any other covenants, conditions, or obligations set forth in the Bond Resolution, the Registered Owners have the statutory right of a writ of mandamus issued by a court of competent jurisdiction requiring the District and its officials to observe and perform the covenants, obligations, or conditions prescribed in the Bond Resolution. Except for mandamus, the Bond Resolution does not specifically provide for remedies to protect and enforce the interests of the Registered Owners. There is no acceleration of maturity of the Bonds in the event of default and, consequently, the remedy of mandamus may have to be relied upon from year to year. Further, there is no trust indenture or trustee, and all legal actions to enforce such remedies would have to be undertaken at the initiative of, and be financed by, the Registered Owners. Statutory language authorizing local governments such as the District to sue and be sued does not waive the local government's sovereign immunity from suits for money damages, so that in the absence of other waivers of such immunity by the Texas Legislature, a default by the District in its covenants in the Bond Resolution may not be reduced to a judgment for money damages. If such a judgment against the District were obtained, it could not be enforced by direct levy and execution against the District's property. Further, the Registered Owners cannot themselves foreclose on property within the District or sell property within the District to enforce the tax lien on taxable property to pay the principal of and interest on the Bonds. The enforceability of the rights and remedies of the Registered Owners may further be limited by a State statute reasonably required to attain an important public purpose or by laws relating to bankruptcy, reorganization or other similar laws of general application affecting the rights of creditors of political subdivisions, such as the District.

The enforceability of the rights and remedies of Registered Owners may be limited by laws relating to bankruptcy, reorganization or other similar laws of general application affecting the rights of creditors of political subdivisions such as the District. State law requires municipal utility districts such as the District to obtain the approval of the TCEQ as a condition to seeking relief under Chapter 9 of the Federal Bankruptcy Code.

If a petitioning district were allowed to proceed voluntarily under Chapter 9 of the Federal Bankruptcy Code, it could file a plan for an adjustment of its debts. If such a plan were confirmed by the bankruptcy court, it could, among other things, affect Registered Owners by reducing or eliminating the amount of indebtedness, deferring or rearranging the debt service schedule, reducing or eliminating the interest rate, modifying or abrogating the collateral or security arrangements, substituting (in whole or in part) other securities, and otherwise compromising and modifying the rights and remedies of the Registered Owners' claims against a district.

A district such as the District may not be forced into bankruptcy involuntarily.

### **Continuing Compliance with Certain Covenants**

The Bond Resolution contains covenants by the District intended to preserve the exclusion from gross income of interest on the Bonds. Failure by the District to comply with such covenants in the Bond Resolution on a continuous basis prior to maturity of the Bonds could result in interest on the Bonds becoming taxable retroactively to the date of original issuance. See "TAX EXEMPTION— Opinion."

### **Marketability**

The District has no agreement with the Initial Purchaser (as defined herein) regarding the reoffering yields or prices of the Bonds and has no control over trading of the Bonds in the secondary market. Moreover, there is no assurance that a secondary market will be made in the Bonds. If there is a secondary market, the difference between the bid and asked price of the Bonds may be greater than the difference between the bid and asked price of bonds of comparable maturity and quality issued by more traditional issuers as such bonds are generally bought, sold or traded in the secondary market. Additionally, there are no assurances that if a secondary market for the Bonds were to develop, that any such secondary market would not be disrupted by other economic events.

The failure by the District to comply with its agreement to provide the information and notices required by Rule 15c(2)-12 of the Securities and Exchange Commission (“Rule 15c2-12”) could possibly inhibit the sale of the Bonds in the secondary market. See “CONTINUING DISCLOSURE OF INFORMATION.”

### **The Effect of FIRREA on Tax Collections of the District**

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“FIRREA”) contains certain provisions which affect the time for protesting property valuations, the fixing of tax liens and the collection of penalties and interest on delinquent taxes on real property owned by the Federal Deposit Insurance Corporation (“FDIC”) when the FDIC is acting as the conservator or receiver of an insolvent financial institution.

Under FIRREA, real property held by the FDIC is still subject to ad valorem taxation, but such act states that (i) no real property of the FDIC shall be subject to foreclosure or sale without the consent of the FDIC and no involuntary liens shall attach to such property, (ii) the FDIC shall not be liable for any penalties, interest, or fines, including those arising from the failure to pay any real or personal property tax when due, and (iii) notwithstanding failure of a person to challenge an appraisal in accordance with State law, such value shall be determined as of the period for which such tax is imposed.

To the extent that the FDIC attempts to enforce the same, these provisions may affect the timeliness of collection of taxes on property, if any, owned by the FDIC in the District and may prevent the collection of penalties and interest on such taxes or may affect the valuation of such property.

### **Changes in Tax Legislation**

Certain tax legislation, whether currently proposed or proposed in the future, may directly or indirectly reduce or eliminate the benefit of the exclusion of interest on the Bonds from gross income for federal income tax purposes. Any proposed legislation, whether or not enacted, may also affect the value and liquidity of the Bonds. Prospective purchasers of the Bonds should consult with their own tax advisors with respect to any proposed, pending or future legislation.

## **THE BONDS**

### **General**

Following is a description of some of the terms and conditions of the Bonds, which description is qualified in its entirety by reference to the Bond Resolution of the Board authorizing the issuance and sale of the Bonds. The Bond Resolution authorizes the issuance and sale of the Bonds and prescribes the terms, conditions, and provisions for the payment of the principal of and interest on the Bonds by the District.

The Bonds will be dated August 1, 2024, and will accrue interest from the date of initial delivery of the Bonds (expected to be August 13, 2024). Interest is payable on each February 15 and August 15 commencing February 15, 2025, until the earlier of maturity or prior redemption. The Bonds mature on August 15 in the amounts and years shown on the cover page of this Official Statement. Interest calculations are based on a 360-day year comprised of twelve 30-day months. The Bonds will be issued only in fully registered form in denominations of \$5,000 each or integral multiples thereof.

### **Authority for Issuance**

At a bond election held within the District on May 10, 2014, the voters of the District authorized the issuance of a total of \$30,000,000 principal amount of unlimited tax bonds for water, wastewater and drainage facilities. See “Issuance of Additional Debt” below and “UNLIMITED TAX BONDS AUTHORIZED BUT UNISSUED.” The Bonds are the second issuance of debt by the District. The TCEQ has authorized the District to sell the Bonds for the purposes described in “THE SYSTEM— Use and Distribution of Bond Proceeds.”

The Bonds are issued by the District pursuant to the terms and provisions of the Bond Resolution, an Order of the TCEQ, Article XVI, Section 59 of the Texas Constitution, the Act and Chapters 49 and 54 of the Texas Water Code, as amended.

### **Source of and Security for Payment**

While the Bonds or any part of the principal thereof or interest thereon remain outstanding and unpaid, the District covenants in the Bond Resolution to levy an annual ad valorem tax, without legal limitation as to rate or amount, upon all taxable property in the District sufficient to pay the principal of and interest on the Bonds, with full allowance being made for delinquencies and costs of collection.

The Bonds are obligations of the District and are not the obligations of the State, the County, the City or any entity other than the District.

### **Record Date**

The record date for the interest payable on the Bonds on any interest payment date means the close of business on the last day of the preceding month whether or not a business day.

### **Funds**

In the Bond Resolution, the Debt Service Fund is created, and the proceeds from all taxes levied, assessed and collected for and on account of the Bonds authorized by the Bond Resolution shall be deposited, as collected, in such fund.

Proceeds from sale of the Bonds, including interest earnings thereon, shall be deposited into the Capital Projects Fund, to pay the costs of acquiring or constructing Internal Facilities (as defined herein) or the District's pro rata share of capacity in Regional Facilities (as defined herein), for paying the District's pro rata share of creation and administrative costs of all Participant Districts and for paying the costs of issuing the Bonds. See "THE SYSTEM— Use and Distribution of Bond Proceeds" for a more complete description of the use of Bond proceeds.

### **No Arbitrage**

The District will certify as of the date the Bonds are delivered and paid for that, based upon all facts and estimates now known or reasonably expected to be in existence on the date the Bonds are delivered and paid for, the District reasonably expects that the proceeds of the Bonds will not be used in a manner that would cause the Bonds, or any portion of the Bonds, to be "arbitrage bonds" under the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations prescribed thereunder. Furthermore, all officers, employees, and agents of the District have been authorized and directed to provide certifications of facts and estimates that are material to the reasonable expectations of the District as of the date the Bonds are delivered and paid for. In particular, all or any officers of the District are authorized to certify to the facts and circumstances and reasonable expectations of the District on the date the Bonds are delivered and paid for regarding the amount and use of the proceeds of the Bonds. Moreover, the District covenants in the Bond Resolution that it shall make such use of the proceeds of the Bonds, regulate investment of proceeds of the Bonds, and take such other and further actions and follow such procedures, including, without limitation, calculating the yield on the Bonds, as may be required so that the Bonds shall not become "arbitrage bonds" under the Code and the regulations prescribed from time to time thereunder.

### **Redemption Provisions**

**Optional Redemption:** The District reserves the right, at its option, to redeem Bonds having stated maturities on and after August 15, 202\_, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof, on August 15, 202\_, or any date thereafter, at the par value thereof plus accrued thereon to the date fixed for redemption.

If fewer than all of the Bonds are redeemed at any time, the particular maturities of Bonds to be redeemed shall be selected by the District. If less than all the Bonds of any maturity are redeemed at any time, the particular Bonds within a maturity to be redeemed shall be selected by the Paying Agent/Registrar by lot or other customary method of selection (or by DTC in accordance with its procedures while the Bonds are in book-entry-only form).

**Mandatory Sinking Fund Redemption:** In the event the Bonds are structured as "term" bonds, such term bonds will be subject to mandatory sinking fund redemption in accordance with the applicable provisions of the Bond Resolution and will be described in the final Official Statement.

**Notice of Redemption:** Notice of any optional redemption identifying the Bonds to be redeemed in whole or in part shall be given by the Paying Agent/Registrar at least thirty (30) days prior to the date fixed for optional redemption by sending written notice by first class mail to the Registered Owner of each Bond to be redeemed in whole or in part at the address shown on the register. Such notices shall state the redemption date, the redemption price, and the place at which the Bonds are to be surrendered for payment and, if fewer than all the Bonds outstanding within any one maturity are to be redeemed, the numbers of the Bonds or the portions thereof to be redeemed. Any notice given shall be conclusively presumed to have been duly given, whether or not the Registered Owner receives such notice. By the date fixed for redemption, due provision shall be made with the Paying Agent/Registrar for payment of the redemption price of the Bonds or portions thereof to be redeemed, plus accrued interest to the date fixed for redemption. When Bonds have been called for redemption in whole or in part and due provision has been made to redeem the same as herein provided, the Bonds or portions thereof so redeemed shall no longer be regarded as outstanding except for the purpose of receiving payment solely from the funds so provided for redemption, and the rights of the Registered Owners to collect interest that would otherwise accrue after the redemption date on any Bond or portion thereof called for redemption shall terminate on the date fixed for redemption.

### **Paying Agent/Registrar**

The Board has appointed BOKF, NA, Dallas, Texas, as the initial Paying Agent/Registrar (the “Paying Agent/Registrar”) for the Bonds. The principal of and interest on the Bonds shall be paid to DTC, which will make distribution of the amounts so paid to the beneficial owners of the Bonds. See “BOOK-ENTRY-ONLY SYSTEM.”

### **Registration and Transfer**

So long as any Bonds remain outstanding, the Paying Agent/Registrar shall keep the register at its principal payment office and, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with the terms of the Bond Resolution. While the Bonds are in the Book-Entry-Only System, the Bonds will be registered in the name of Cede & Co. and will not be transferred. See “BOOK-ENTRY-ONLY SYSTEM.”

### **Replacement of Paying Agent/Registrar**

Provision is made in the Bond Resolution for replacement of the Paying Agent/Registrar. If the Paying Agent/Registrar is replaced by the District, the new paying agent/registrar shall act in the same capacity as the previous Paying Agent/Registrar. Any paying agent/registrar selected by the District shall be a national or state banking institution, a corporation organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise trust powers, and subject to supervision or examination by federal or state authority, to act as Paying Agent/Registrar for the Bonds.

### **Issuance of Additional Debt**

The District may issue additional bonds, with the approval of the TCEQ in the case of bonds issued for water, sewer and drainage purposes, necessary to provide and maintain improvements and facilities consistent with the purposes for which the District was created. After issuance of the Bonds, the District will have \$19,715,000 of unlimited tax bonds authorized but unissued for water, sanitary sewer and drainage purposes. The Bond Resolution imposes no limitation on the amount of additional parity bonds which may be authorized for issuance by the District’s voters or the amount of bonds ultimately issued by the District. See “THE SYSTEM - Future Debt” and “UNLIMITED TAX BONDS AUTHORIZED BUT UNISSUED.”

The District is empowered, among other things, to purchase, construct, operate and maintain all works, improvements, facilities and plants necessary for the supply and distribution of water; the collection, transportation, and treatment of wastewater; and the control and diversion of storm water. The District may issue bonds and other forms of indebtedness to purchase or construct such facilities or acquire contract rights therefor. The District is also empowered to establish, operate, and maintain fire-fighting facilities, independently or with one or more conservation and reclamation districts after approval by the City, the TCEQ and the voters of the District.

### **Annexation by the City of El Paso**

The District lies wholly within the extraterritorial jurisdiction of the City, and may be annexed by the City in accordance with existing State law. Under prior State law, a municipality could annex and dissolve a municipal utility district located within its extraterritorial jurisdiction without consent of the district or its residents. Under House Bill 347 approved during the 86th Regular Legislative Session (“HB 34”), (a) a municipality may annex a district with a population of less than 200 residents only if: (i) the municipality obtains consent to annex the area through a petition signed by more than 50% of the registered voters of the district, and (ii) if the registered voters in the area to be annexed do not own more than 50% of the land in the area, a petition has been signed by more than 50% of the landowners consenting to the annexation; and (b) a municipality may annex a district with a population of 200 residents or more only if: (i) such annexation has been approved by a majority of those voting in an election held for that purpose within the area to be annexed, and (ii) if the registered voters in the area to be annexed do not own more than 50% of the land in the area, a petition has been signed by more than 50% of the landowners consenting to the annexation. Notwithstanding the foregoing, a municipality may annex an area if each owner of land in the area requests the annexation. As of March 31, 2024, the District had an estimated population of 1,273, thus triggering the voter approval and/or landowner consent requirements discussed in clause (b) above. The described election and petition process does not apply, however, during the term of a strategic partnership agreement between a municipality and a district specifying the procedures for annexation of all or a portion of the District. At present, the District and the City have not entered into (and do not currently have plans to enter into) any such strategic partnership agreement.

If the District is annexed, the City must assume the District’s assets and obligations (including the Bonds) and dissolve the District within ninety (90) days. Annexation of territory by the City and dissolution of the District is a policy-making matter within the discretion of the Mayor and City Council of the City, subject to HB 347, and therefore, the District makes no representation that the City will ever annex the District and assume its debt, nor does the District make any representation concerning the ability of the City to pay debt service on the District’s bonds if annexation were to occur.

## **Remedies in Event of Default**

Other than a writ of mandamus, the Bond Resolution does not provide a specific remedy for a default. If the District defaults, a Registered Owner could petition for a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the District and the District's officials to observe and perform the covenants, obligations or conditions prescribed in the Bond Resolution. Such remedy might need to be enforced on a periodic basis. Based on recent Texas court decisions, it is unclear whether §49.066, Texas Water Code, effectively waives governmental immunity of a municipal utility district for suits for money damages. Even if a judgment against the District for money damages could be obtained, it could not be enforced by direct levy and execution against the District's property. Further, the Registered Owners cannot themselves foreclose on property within the District or sell property within the District to enforce the tax lien on taxable property to pay the principal of and interest on the Bonds. The enforcement of a claim for payment on the Bonds would be subject to the applicable provisions of the federal bankruptcy laws, any other similar laws affecting the rights of creditors of political subdivisions, and general principles of equity which permit the exercise of judicial discretion. Certain traditional legal remedies also may not be available. See "RISK FACTORS—Registered Owners' Remedies and Bankruptcy Limitations."

## **Legal Investment and Eligibility to Secure Public Funds in Texas**

Pursuant to Section 49.186, Texas Water Code, the Bonds, whether rated or unrated, are (a) legal investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees and (b) legal investments for the public funds of cities, towns, villages, school districts, and other political subdivisions or public agencies of the State. The Bonds are also eligible under the Public Funds Collateral Act, Chapter 2257, Texas Government Code, to secure deposits of public funds of the State or any political subdivision or public agency of the State and are lawful and sufficient security for those deposits to the extent of their market value. Most political subdivisions in the State are required to adopt investment guidelines under the Public Funds Investment Act, Chapter 2256, Texas Government Code, and such political subdivisions may impose other, more stringent requirements in order for the Bonds to be legal investments for such entity's funds or to be eligible to serve as collateral for their funds.

No representation is made that the Bonds will be suitable for or acceptable to financial or public entities for investment purposes. No representation is made concerning other laws, rules, regulations, or investment criteria which might apply to or which might be utilized by any of such persons or entities to limit the acceptability or suitability of the Bonds for any of the foregoing purposes. Prospective purchasers are urged to carefully evaluate the investment quality of the Bonds as to the suitability or acceptability of the Bonds for investment or collateral purposes.

## **Defeasance**

The Bond Resolution provides that the District may discharge its obligations to the Registered Owners of any or all of the Bonds to pay principal, interest and redemption price thereon in any manner permitted by law. Under current State law, such discharge may be accomplished either (i) by depositing with the Comptroller of Public Accounts of the State a sum of money equal to the principal of, premium, if any, and all interest to accrue on the Bonds to maturity or redemption or (ii) by depositing with any place of payment (paying agent) of the Bonds or other obligations of the District payable from revenues or from ad valorem taxes or both, or with a commercial bank or trust company designated in the proceedings authorizing such discharge, amounts sufficient to provide for the payment and/or redemption of the Bonds; provided that such deposits may be invested and reinvested only in (a) direct obligations of the United States of America, (b) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the District adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (c) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the District adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and which mature and/or bear interest payable at such times and in such amounts as will be sufficient to provide for the scheduled payment and/or redemption of the Bonds.

Upon such deposit as described above, such bonds shall no longer be regarded as outstanding or unpaid. After firm banking and financial arrangements for the discharge and final payment or redemption of the Bonds have been made as described above, all rights of the District to initiate proceedings to call the Bonds for redemption or take any other action amending the terms of the Bonds are extinguished; provided, however, that the right to call the Bonds for redemption is not extinguished if the District: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Bonds for redemption; (ii) gives notice of the reservation of that right to the owners of the Bonds immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

There is no assurance that the current law will not be changed in the future in a manner which would permit investments other than those described above to be made with amounts deposited to defease the Bonds.

## BOOK-ENTRY-ONLY SYSTEM

*This section describes how ownership of the Bonds is to be transferred and how the principal of and interest on the Bonds are to be paid to and credited by The Depository Trust Company, New York, New York, ("DTC") while the Bonds are registered in its nominee name. The information in this section concerning DTC and the Book-Entry-Only System has been provided by DTC for use in disclosure documents such as this Official Statement. The District and the Financial Advisor believe the source of such information to be reliable, but neither of the District nor the Financial Advisor takes any responsibility for the accuracy or completeness thereof.*

*The District cannot and does not give any assurance that (1) DTC will distribute payments of debt service on the Bonds, or redemption or other notices, to DTC Participants, (2) DTC Participants or others will distribute debt service payments paid to DTC or its nominee (as the registered owner of the Bonds), or redemption or other notices, to the Beneficial Owners, or that they will do so on a timely basis, or (3) DTC will serve and act in the manner described in this Official Statement. The current rules applicable to DTC are on file with the Securities and Exchange Commission, and the current procedures of DTC to be followed in dealing with DTC Participants are on file with DTC.*

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for each maturity of the Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 2.2 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation, and Emerging Markets Clearing Corporation (NSCC, FICC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a rating of: "AA+" from S&P Global Ratings, a business unit of Standard & Poor's Financial Services, LLC ("S&P"). The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the Paying Agent/Registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

The District may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered to DTC.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the District as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, interest and redemption payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the District or the Paying Agent/Registrar, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Paying Agent/Registrar, or the District, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, interest and redemption payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the District or the Paying Agent/Registrar, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the District or the Paying Agent/Registrar. Under such circumstances, in the event that a successor depository is not obtained, printed certificates for the Bonds are required to be printed and delivered.

*Use of Certain Terms in Other Sections of this Official Statement.* In reading this Official Statement it should be understood that while the Bonds are in the Book-Entry-Only System, references in other sections of this Official Statement to registered owners should be read to include the person for which the Participant acquires an interest in the Bonds, but (i) all rights of ownership must be exercised through DTC and the Book-Entry-Only System, and (ii) except as described above, notices that are to be given to registered owners under the Bond Resolution will be given only to DTC.

Information concerning DTC and the Book-Entry-Only System has been obtained from DTC and is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation by, the District or the Financial Advisor.

## **BOND INSURANCE**

### **Bond Insurance**

Application for municipal bond insurance has been made by the District. Upon the determination of which entity, if any, the District will provide such insurance, information relating to the issuer of the municipal bond insurance policy applicable to the Bonds which will be set forth in the final Official Statement. The purchase of such insurance, if available and the payment of all associated costs will be at the option and expense of the Initial Purchaser. If bond insurance is purchased, purchasers of the Bonds should be aware of the risks described below.

### **Bond Insurance Risks**

The District has applied for a bond insurance policy to guarantee the scheduled payment of principal and interest on the Bonds. The District has yet to determine whether an insurance policy will be purchased with respect to the Bonds. If an insurance policy is purchased, the following are risk factors relating to bond insurance.

In the event of default of the payment of principal or interest with respect to the Bonds when all or some becomes due, any owner of the Bond shall have a claim under the applicable Bond Insurance Policy (the "Policy") for such payments. The payment of principal and interest in connection with mandatory or optional prepayment of the Bonds by the District which is recovered by the District from the Bond owner as a voidable preference under applicable bankruptcy law is covered by the Policy, however, such payments will be made by the insurer at such time and in such amounts as would have been due absent such prepayment by the District unless the bond insurer chooses to pay such amounts at an earlier date.

Under no circumstances does default of payment of principal and interest obligate acceleration of the obligations of the bond insurer without their consent, so long as the bond insurer performs its obligations under the applicable Policy. In the event the bond insurer

is unable to make payment of principal and interest as such payments become due under the Policy, the Bonds are payable solely from the revenues pledged in the Bond Resolution. In the event the bond insurer becomes obligated to make payments with respect to the Bonds, no assurance is given that such event will not adversely affect the market price of the Bonds or the marketability (liquidity) for the Bonds.

In the event bond insurance is purchased, the long-term rating on the Bonds, if any, will be dependent in part on the financial strength of the bond insurer and its claims paying ability. The bond insurer's financial strength and claims paying ability are predicated upon a number of factors which could change over time. No assurance is given that the long-term ratings of the bond insurer or of the Bonds, if any, insured by the bond insurer will not be subject to downgrade and such event could adversely affect the market price of the Bonds or the marketability (liquidity) for the Bonds.

The obligations of the bond insurer are general obligations of the bond insurer and in an event of default by the bond insurer the remedies may be limited by applicable bankruptcy law. Neither the District nor the Financial Advisor have made an independent of any potential bond insurer and no assurance or representation regarding the financial strength or projected financial strength of any potential bond insurer is given.

## **THE DISTRICT**

### **General**

The District is a conservation and reclamation district created by division of Paseo del Este Municipal Utility District pursuant to a division order adopted by the Original District on March 27, 2003, and operates pursuant to the Act and Chapters 49 and 54, Texas Water Code. Prior to division, Paseo del Este Municipal Utility District was created as a Conservation and Reclamation District by the Act. The District is located wholly within the extraterritorial jurisdiction of the City.

The District is empowered, among other things, to purchase, construct, operate and maintain all works, improvements, facilities and plants, and contract rights therefore, necessary for the supply and distribution of water; the collection, transportation, and treatment of wastewater; and the control and diversion of storm water. The District may issue bonds and other forms of indebtedness to purchase or construct such facilities or contract rights therefor. The District is also empowered to establish, operate, and maintain fire-fighting facilities, independently or with one or more conservation and reclamation districts after approval by the City, the TCEQ and the voters of the District.

The TCEQ exercises continuing supervisory jurisdiction over the District. The District is required to observe certain requirements of the City which limit the purposes for which the District may sell bonds to the acquisition, construction, and improvement of waterworks, wastewater, and drainage facilities or contract rights therefor, and the refunding of outstanding debt obligations; place restrictions on the terms and provisions and conditions on the sale of the District's bonds so long as such restraints and conditions do not render the bonds unmarketable; require approval by the City of District construction plans; and permit connections only to platted lots and reserves which have been approved by the City. Construction and operation of the District's drainage system are subject to the regulatory jurisdiction of additional government agencies. See "THE SYSTEM."

The District presently contains approximately 318,342 acres of land located in the Southeast portion of the County approximately 15 miles east of the central area of the City. The District is located north of Interstate Highway 10 and east of Loop 375. Eastlake Boulevard provides access to the District. From Interstate Highway 10, exit Eastlake Boulevard and proceed north approximately 1.4 miles to the intersection of Eastlake Boulevard and Mission Ridge Boulevard, then north along Mission Ridge Boulevard and approximately one mile. See "AERIAL PHOTOGRAPH" herein.

### **Validation of Creation of Participant Districts**

The creation of the Original District and its division into Participant District Nos. 1-9 has been validated by a final judgment of the County Court-at-Law of El Paso County, Texas. Likewise, creation of Participant District Nos. 10 and 11 has been validated by a final judgment of the District Court of El Paso County, Texas. Each of the Participant Districts, including the District, has held a confirmation, bond, refunding bond, maintenance tax and contract tax election. All such election propositions have been approved by voters of the Participant Districts, including the District.

### **Status of Development**

The District is being developed primarily for single family residential purposes, and is within Paseo del Este. Paseo del Este is being developed primarily by Hunt Communities Group, Inc. ("Hunt"), and certain affiliates thereof, and B&G/Sunrise Joint Venture ("B&G"), and is planned to include approximately 4,300 acres of land. The land in Paseo del Este was purchased from the Texas General Land Office by Hunt and affiliates thereof and B&G in varying positions in a series of transactions between 1998 and 2020. As of March 31, 2024 approximately 9,823 single family residential lots have been developed within Paseo del Este, and approximately 9,246 homes are completed or are in various stages of construction in Paseo del Este. Within the District, there are currently 452 homes completed or are in various stages of construction and 327 lots completed but construction of homes has not begun.



The development within the District includes Hillside Park at Mission Ridge Unit One; and a portion of Hillside Park at Mission Ridge Unit Two, Hillside Park at Mission Ridge Unit Three, Hillside Park at Mission Ridge Unit Four, Hillside Park at Mission Ridge Unit 5, Hillside Park Unit 6, and Painted Sky at Mission Ridge Unit 3 Subdivision.

All 222.174 acres of developable land in the District have been furnished with water, sanitary sewer and storm drainage facilities. There are 96.168 undevelopable acres within the District.

### **Community Facilities**

Community facilities are located in the general vicinity of the District. Neighborhood shopping facilities, including supermarkets, pharmacies, cleaners, restaurants, banking facilities and other retail and service establishments are located within five miles of the District along areas adjacent to Loop 375. Fire protection for residents of the District is provided by the El Paso County Emergency Services District No. 1. Police protection is provided by the El Paso County Sheriff. Medical care for District residents is available from various facilities in the City within 15 miles of the District. The land within the District is located within the boundaries of Socorro Independent School District, and children within the District attend elementary and middle schools of Socorro Independent School District located within two (2) miles of the District.

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## MANAGEMENT

### **Board of Directors**

The District is governed by the Board of Directors, consisting of five directors, which has control over and management supervision of all affairs of the District. None of the Directors listed below reside within the District; however, each Director owns a small parcel of land in the District. Directors are elected by the voters within the District for four-year staggered terms. Director elections are held in May in odd numbered years. The Directors and Officers of the District are listed below:

<u>Name</u>	<u>Title</u>	<u>Term Expires</u>
Carlos Lascurain	President	2025
Joanne Campbell	Vice-President	2027
Maria Eileen Taylor	Secretary	2025
Judith Franco	Assistant Secretary	2027
Irasema Gonzalez	Assistant Secretary	2027

While the District does not employ any full time employees, it has contracted for certain services as follows:

### **Tax Assessor/Collector**

Land and improvements within the District are appraised for ad valorem taxation purposes by the Appraisal District. The District's Tax Assessor/Collector is agreed upon by virtue of the interlocal agreement between the City and the District, and the District has appointed the City Tax Assessor/Collector to serve in this capacity for the District.

### **Operations**

The District contracts with Inframark, LLC for maintenance and operation of the District's System. Inframark, LLC also serves as the operator of the Master District's System.

### **Bookkeeper**

The District has engaged Municipal Accounts & Consulting, L.P., to serve as the District's bookkeeper.

### **Engineer**

The consulting engineer for the District is TRE & Associates, LLC (the "Engineer").

### **General Counsel**

The District engages Gordon Davis Johnson & Shane P.C., El Paso, Texas, ("General Counsel"). The fees payable to General Counsel are not contingent upon the issuance sale and delivery of the Bonds.

### **Bond Counsel**

The District has engaged McCall, Parkhurst & Horton L.L.P., Austin, Texas ("Bond Counsel"). The fees payable to Bond Counsel are contingent upon the issuance, sale and delivery of the Bonds.

### **Disclosure Counsel**

The District has engaged Locke Lord LLP, Dallas, Texas, as Disclosure Counsel. The fees payable to Disclosure Counsel are contingent upon the sale, issuance and delivery of the Bonds.

### **Financial Advisor**

Hilltop Securities, Inc., El Paso, Texas and Dallas, Texas (the "Financial Advisor") serves as financial advisor to the District. The fee to be paid the Financial Advisor is contingent upon sale and delivery of the Bonds.

### **Auditor**

The District's financial statements for the fiscal year ending September 30, 2023 have been audited by West, Davis & Company, LLP.

## THE DEVELOPER

### **Role of a Developer**

In general, the activities of a landowner or developer in a district such as the District include designing the project, defining a marketing program and setting building schedules; securing necessary governmental approvals and permits for development; arranging for the construction of roads and the installation of utilities; and selling or leasing improved tracts or commercial reserves to other Developer or third parties. In most instances, a landowner or developer will be required by the TCEQ to pay thirty percent (30%) of the cost of placing the water distribution, wastewater collection, and storm drainage facilities in a district, exclusive of water supply and storage and wastewater treatment plants of which the district incurs one hundred percent (100%) of the cost. While a developer is required by the TCEQ to pave streets, a developer is under no obligation to a district to undertake development activities according to any particular plan or schedule. Furthermore, there is no restriction on a developer's right to sell any or all of the land which the developer owns within a district. In addition, the developer is ordinarily the major taxpayer within the district during the early stages of development. The relative success or failure of a developer to perform in the above-described capacities may affect the ability of a district to collect sufficient taxes to pay debt service and retire bonds.

Neither the Developer (as hereinafter defined) nor any of its affiliates, is obligated to pay principal of or interest on the Bonds. See “RISK FACTORS - Factors Affecting Taxable Values and Tax Payments.” Furthermore, neither the Developer nor any of its affiliates has any binding commitment to the District to carry out any plan of development, and the furnishing of information relating to the proposed development by the Developer should not be interpreted as such a commitment. Prospective purchasers are encouraged to inspect the District in order to acquaint themselves with the nature of development that has occurred or is occurring within the boundaries of the District.

### **The Developer**

Water, sewer and drainage facilities to serve specific sections within the District have been acquired or constructed by the Developer. Major water, sewer and drainage facilities and streets to serve land within the District are being developed by the Developer an affiliate of Hunt. The activities of Hunt and its affiliates include investment management, mortgage banking, direct lending, loan servicing, asset management, property management, development, construction, consulting and advisory.

Land within the District is a portion of the development known as Paseo del Este. The Master District and the Participant Districts have been formed and include approximately 4,300 acres of land in and adjacent to the District. See “THE DISTRICT - Status of Development.”

The Developer is not responsible for, liable for, and has made no commitment for payment of the Bonds or other obligations of the District. The Developer may sell or otherwise dispose of its property within the District, or any other assets, at any time. See “RISK FACTORS - Factors Affecting Taxable Values and Tax Payments - Landowner Obligation to the District.”

### **Developer Reimbursement Agreements**

Each Participant District, including the District, has entered into reimbursement agreements with the Developer of the regional water and sanitary sewer facilities serving the District and the other Participant Districts, including engineering costs (the “Regional Facilities”) serving all Participant Districts pursuant to which the Participant District agrees to reimburse the Developer for the Participant District’s pro rata share of the costs of the Regional Facilities based on the Participant District’s total ultimate estimated connections as compared to the total connections in all eleven Participant Districts. In addition, such reimbursement agreements contemplate the Participant District will reimburse the Developer for the Participant District’s pro rata share of (i) the Developer costs for creation of all eleven Participant Districts and (ii) the administrative and operation advances to all eleven Participant Districts by the Developer, with each Participant District’s pro rata share of such expenses based on the ratio of 1 to 11. Finally, each Participant District, including the District, has entered into reimbursement agreements with the Developer of the Internal Facilities serving the specific Participant District pursuant to which the Participant District agrees to reimburse the Developer for the Internal Facilities serving only the specific Participant District. Before such Internal Facilities are purchased by a Participant District, the developer leases them to the Master District for its use in serving the retail customers within the Participant District. After purchase of such Internal Facilities by a Participant District, the Master District will continue to lease the Internal Facilities from the Participant District.

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## THE SYSTEM

### **Regulation**

According to the Engineer, the District's water supply and distribution, wastewater collection, and storm drainage facilities (collectively, the "System") have been designed in accordance with accepted engineering practices and the then current requirements of various entities having regulatory or supervisory jurisdiction over the construction and operation of such facilities. The construction of the System was required to be accomplished in accordance with the standards and specifications of the District, the TCEQ and EPWU and is subject to inspection by each such entity. Operation of the System is conducted by the Master District; however, EPWU operates the water treatment and storage and sewer treatment facilities providing wholesale service to the Master District. The regulations and requirements of entities exercising regulatory jurisdiction over the System are subject to further development and revision which, in turn, could require additional expenditures by the District in order to achieve compliance. In particular, additional or revised requirements in the future in connection with any permit held by the EPWU for the wastewater treatment plant from which the District receives service could result in the need to construct additional facilities in the future.

### **The Master District Contract**

The District and the remaining Participant Districts have each entered into a "Master District Contract" with the Master District to coordinate the development of the water, sanitary sewer and drainage facilities to serve the area within all eleven Participant Districts. Under the Master District Contract, the Master District will acquire, construct, own and operate the Regional Facilities to serve the area within all eleven Participant Districts; each Participant District will acquire, construct and own its Internal Facilities serving only area within it and lease the Internal Facilities to the Master District for operation; and the Master District will provide retail water and wastewater service to all retail customers in all of the Participant Districts.

### **Master District Facilities**

*Source of Water Supply:* The District receives its water supply pursuant to the Paseo del Este Wholesale Potable Water Supply and Wastewater Treatment and Transportation Contract (the "Water Supply and Wastewater Agreement") between the Master District and EPWU. Pursuant to terms of the Water Supply and Wastewater Agreement, which expires in 2063, EPWU is obligated to provide wholesale water to meet the needs of the area served by the Master District, including land within the boundaries of the District. EPWU currently supplies water to the Master District facilities from its existing three million gallon elevated storage tank and 12.3 MGD booster pump station. The major components of the EPWU's system serving the Master District's water supply system will serve the anticipated 16,995 equivalent single-family connections and contractually up to 20,000 equivalent single-family connections committed to the Master District, of which 1,239 are allocated to the District. As of March 31, 2024, the Master District is serving approximately 9,993 active water connections across its entire service area, of which 466 are within the District (as a Participant District). According to the Engineer, the District's currently allocated water supply capacity (1,239 equivalent single family connections) is sufficient to serve the District at ultimate build-out.

In order to fully provide water supply to all of the Participant Districts in Paseo del Este, the Master District facilities will need to be expanded from time to time to meet the demand for such facilities.

*Source of Wastewater Treatment:* The District is provided wastewater treatment capacity by EPWU through the Water Supply and Wastewater Agreement. Pursuant to the terms of the Water Supply and Wastewater Agreement, EPWU is obligated to provide wholesale wastewater service to meet the needs of the area served by the Master District, including land within the boundaries of the District. The agreement expires in 2063. Wastewater flows are routed to EPWU's Bustamante plant, which has a current permitted capacity of 39 MGD. Current wastewater treatment capacity can serve the anticipated 16,995 equivalent single-family connections and contractually up to 20,000 equivalent single-family connections committed to the Master District. As of March 31, 2024, the Master District is serving approximately 9,823 active wastewater connections across its entire service area, of which 452 are within the District. The Master District currently receives wholesale water and wastewater services from the EPWU for the areas within Participant Districts. According to the Engineer, the District's currently allocated wastewater treatment capacity (1,239 single family equivalent connections) is sufficient to serve the District at ultimate build-out.

*Distribution and Wastewater Collection:* Water distribution facilities consist of waterlines ranging in size from 8-inch to 16-inch, generally located within the rights-of-way. These water distribution facilities supply water from the EPWU to each Participant District's internal facilities.

The current wastewater collection facilities include sanitary sewer lines ranging in size from 8-inch to 27-inch generally located within the rights-of-way of collector roads. These collection lines collect wastewater from each Participant District and transport it to an EPWU wastewater interceptor.

*Drainage:* The Master District will provide the Participant Districts with drainage facilities when it is determined that the facilities benefit two or more Participant Districts. These Regional Facilities will be capable of handling a 100-year storm event and will include storm sewers, drainage channels and retention ponds.

**Internal Water Distribution, Wastewater Collection and Storm Drainage Facilities**

Internal water distribution, wastewater collection and storm drainage facilities (“Internal Facilities”) have been constructed by the District with funds advanced by the Developer to serve all development, which are single family residential subdivisions containing approximately 779 single family lots and encompassing 222.174 acres of developable land.

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## **Use and Distribution of Bond Proceeds**

The estimated use and distribution of Bond proceeds is shown below. Of proceeds to be received from sale of the Bonds, \$2,394,880 is estimated for construction costs, and \$500,120 is estimated for non-construction costs. The actual amounts to be reimbursed by the District and the non-construction costs, including Developer Interest, will be finalized after sale of the Bonds and review by an independent auditor.

<u>Construction Costs</u>	<u>District's Share</u>
A. District Facilities	
1. Hillside Park at Mission Ridge Unit 5 Drainage, Water, and Wastewater Improvements...	\$ 2,394,880
Total Developer Contribution Items	\$ 2,394,880
<b>TOTAL CONSTRUCTION COSTS (83% of BIR)</b>	<b>\$ 2,394,880</b>
<u>Non-Construction Costs</u>	
A. Administrative Advances.....	\$ 34,091
B. Legal Fees .....	57,900
C. Fiscal Fees .....	36,188
D. Interest	
1. Capitalized Interest (12 months) <sup>(a)</sup> .....	151,988
2. Developer Interest.....	24,072
E. Bond Discount .....	86,850
F. Bond Issuance Expenses.....	38,900
G. Bond Application Report.....	60,000
H. Attorney General Fee (0.10%).....	2,895
I. TCEQ Bond Issuance Fee (0.25%).....	7,238
<b>TOTAL NON-CONSTRUCTION COSTS (17% of BIR)</b>	<b>\$ 500,120</b>
<b>TOTAL BOND ISSUE REQUIREMENT</b>	<b>\$ 2,895,000</b>

(a) TCEQ approved maximum amount of 12 months capitalized interest.

In the event approved estimated amounts exceed actual costs, the difference comprises a surplus which may be expended for uses in accordance with the rules of the TCEQ. In the event actual costs exceed previously approved estimated amounts and contingencies, additional TCEQ approval and the issuance of additional bonds may be required.

## **Future Debt**

In addition to the costs of facilities being financed with proceeds from sale of the Bonds, the Developer has financed the engineering and construction of certain other Internal (District) Facilities and Regional Facilities. After reimbursement from sale of the Bonds, the Developer will have expended approximately \$974,600 (as of March 31, 2024) for design, construction and acquisition of the District Facilities and the District's share of Regional Facilities not yet reimbursed. It is anticipated that proceeds from future issues of District bonds will be used, in part, to reimburse the Developer for the District's pro rata share of the costs of the Regional Facilities and all of the costs of the District Facilities and future costs of developing currently undeveloped land, to the extent allowed by the TCEQ.

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## UNLIMITED TAX BONDS AUTHORIZED BUT UNISSUED

<u>Date of Authorization</u>	<u>Purpose</u>	<u>Amount Authorized</u>	<u>Issued to Date</u>	<u>Amount Unissued</u>
5/10/2014	Water, Sanitary Sewer and Drainage	\$30,000,000	\$10,285,000*	\$19,715,000

\* Includes the Bonds.

## FINANCIAL STATEMENT

Tax Year 2024 Preliminary Assessed Valuation.....	\$112,776,327 <sup>(a)</sup>
District Debt:	
Currently Outstanding Bonds .....	\$ 7,390,000
The Bonds .....	<u>\$ 2,895,000</u>
Gross Debt Outstanding (after issuance of the Bonds) .....	\$10,285,000
Ratio of Gross Debt Outstanding to 2024 Preliminary Assessed Valuation.....	9.12% <sup>(a)</sup>

Approximate Area of District – 318.342 acres

(a) 2024 Preliminary Assessed Valuation. Represents the preliminary taxable assessed valuation within the District as of January 1, 2024. No assurance can be given as to the final assessed valuation in the District. The District will not levy taxes on such valuation until it is certified by the Appraisal District. See “TAX PROCEDURES.”

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**Cash and Investment Balances** (as of May 10, 2024)

Operating Fund	Cash and Temporary Investments	\$144,864.86
Capital Projects	Cash and Temporary Investments	\$32,694.71
Debt Service Fund	Cash and Temporary Investments	\$935,375.61 <sup>(a)</sup>

See "SELECTED FINANCIAL INFORMATION."

(a) Balance as of delivery of Bonds. Twelve (12) months of capitalized interest will be deposited into such fund from Bond proceeds (estimated to be \$151,988 at an interest rate of 5.25%). Neither the Bond Resolution nor State law requires that the District maintain any particular balance in the Debt Service Fund.

**ESTIMATED OVERLAPPING DEBT STATEMENT**

Expenditures of the various taxing entities within the territory of the District are paid out of ad valorem taxes levied by such entities on properties within the District. Such entities are independent of the District and may incur borrowings to finance their expenditures. This statement of direct and estimated overlapping ad valorem tax bonds ("Tax Debt") was developed from information contained in the "Texas Municipal Reports" published by the Municipal Advisory Council of Texas. Except for the amounts relating to the District, the District has not independently verified the accuracy or completeness of such information, and no person should rely upon such information as being accurate or complete. Furthermore, certain of the entities listed may have issued additional bonds since the date hereof, and such entities may have programs requiring the issuance of substantial amounts of additional bonds, the amount of which cannot be determined. The following table reflects the estimated share of the overlapping Tax Debt of the District.

Taxing Jurisdiction	Outstanding Bonds	As of	Overlapping	
			Percent	Amount
El Paso County	\$ 238,897,284	4/30/2024	0.12%	\$ 286,677
El Paso County Hospital District	301,115,000	4/30/2024	0.12%	361,338
Socorro Independent School District	735,317,573	4/30/2024	0.40%	2,941,270
Total Estimated Overlapping Debt.....				\$ 3,589,285
The District.....				\$ 10,285,000 <sup>(a)</sup>
Total Direct and Estimated Overlapping Debt.....				\$ 13,874,285
Ratio of Total Direct and Estimated Overlapping Debt to 2024 Preliminary Assessed Valuation <sup>(b)</sup> .....				12.30%

(a) Includes the Bonds.

(b) Preliminary assessed valuation subject to change. Represents the preliminary taxable assessed valuation within the District as of January 1, 2024. No assurance can be given as to the final assessed valuation in the District. The District will not levy taxes on such valuation until it is certified by the Appraisal District.

**Overlapping Tax Rates for Year 2023**

Taxing Jurisdiction	2023 Tax Rate per \$100 Assessed Valuation
The District	\$ 0.750000
El Paso County	0.458889
El Paso County Emergency Services District No. 1	0.100000
El Paso Community College District	0.115717
Socorro Independent School District	1.249712
University Medical Center	0.235650
Total Overlapping Tax Rate	\$ 2.909968



## TAX DATA

### Tax Collections

The following statement of tax collections sets forth in condensed form the historical tax collection experience of the District. This summary has been prepared for inclusion herein, based upon information from District records. Reference is made to these records for further and more complete information.

Tax Year	Assessed Valuation	Tax Rate	Tax Levy	Current Collections		Total Collections		Fiscal Year Ending
				Amount	Percent	Amount	Percent	
2020	3,421,108	0.7500	25,658	26,490	103.24%	26,490	103.24%	9/30/2021
2021	17,946,624	0.7500	134,600	132,638	98.54%	132,638	98.54%	9/30/2022
2022	52,956,174	0.7500	397,171	397,766	100.15%	397,682	100.13%	9/30/2023
2023	81,933,639	0.7500	614,502	603,919	98.28%	605,753	98.58%	9/30/2024 <sup>(a)</sup>
2024	112,776,327 <sup>(b)</sup>	0.7500 <sup>(c)</sup>	845,822 <sup>(d)</sup>	N/A	N/A	N/A	N/A	9/30/2025

(a) Tax Collections billed on October 1. Collections are as of April 30, 2024.

(b) Tax Year 2024 Preliminary Assessed Valuation as reported by the Appraisal District. Represents the preliminary assessed taxable valuation within the District as of January 1, 2024. No assurance can be given as to the final assessed valuation in the District. The District will not levy taxes on such valuation until it is certified by the Appraisal District. Tax Year 2024 Certified Assessed Valuation is expected to be delivered by the Appraisal District to the District in July 2024.

(c) Based on Tax Year 2023 final tax rate for the District. The District anticipates levying a \$\_.\_\_ per \$100 ad valorem property tax rate in Tax Year 2024 by September 2024. Tax levy calculation is preliminary for discussion purposes only.

(d) Calculated tax levy is based on 2024 Preliminary Assessed Valuation and Tax Year 2023 tax rate for the District. The actual Tax Year 2024 tax levy will be based on the certified taxable assessed valuation of the District (expected to be available in July 2024) and the actual tax rate expected to be levied in September 2024. No assurance can be given as to the final tax levy.

Taxes are due October 1 and become delinquent if not paid before February 1 of the year following the year in which imposed. No split payments are allowed and no discounts are allowed.

### Tax Rate Distribution

	2023	2022	2021	2020	2019
Debt Service	\$0.4349	\$0.4349	\$0.0000	\$0.0000	\$0.0000
Contract <sup>(a)</sup>	0.2900	0.2900	0.2900	0.2900	0.2900
Maintenance and Operations	0.0251	0.0251	0.4600	0.4600	0.4600
Total	\$0.7500	\$0.7500	\$0.7500	\$0.7500	\$0.7500

(a) See “RISK FACTORS – District Operations and Contract Tax” and “– Contract Tax” below.

### Tax Rate Limitations

Debt Service: Unlimited (no legal limit as to rate or amount). Maintenance and Operations: \$1.00 per \$100 assessed valuation.

### Debt Service Tax

The Board covenants in the Bond Resolution to levy and assess, for each year that all or any part of the Bonds remain outstanding and unpaid, a tax adequate to provide funds to pay the principal of and interest on the Bonds. In connection with the approval of the Bonds, the TCEQ has approved an initial debt service rate of up to \$0.\_\_ per \$100 assessed valuation.

### Contract Tax

Under the Master District Contract, each Participant District has agreed to levy and collect a tax (the “Contract Tax”) to make payments to the Master District for (i) the Participant District’s pro rata share of any operating deficits incurred by the Master District and (ii) the debt service on any bonds issued by the Master District for Regional Facilities payable from the Contract Tax (“Master District Bonds”), with the Participant District’s pro rata share based on the Participant District’s total taxable assessed valuation as compared to the total taxable assessed valuation in all eleven Participant Districts. However, the Master District Contract contemplates that the Master District would not issue Master District Bonds for purposes of reimbursing the Developer for the initial construction of the Regional Facilities. Thus, for the foreseeable future, the District contemplates levying a Contract Tax only for its pro rata share of the operating deficits of the Master District. The District has approved a total tax rate of \$0.7500 per \$100 of assessed valuation for Tax Year 2023, as follows: \$0.4349 for debt service tax, \$0.2900 for contract tax and \$0.0251 for maintenance and operations tax. The District expects to set its Tax Year 2024 rate in September 2024. No assurance can be given regarding the District’s adopted 2024 tax rate.

### **Maintenance Tax**

The Board of Directors of the District has the statutory authority to levy and collect an annual ad valorem tax for maintenance of the District's improvements, if such maintenance tax is authorized by vote of the District's electors. On May 10, 2014, the Board was authorized to levy such a maintenance tax in an amount not to exceed \$1.00 per \$100 of assessed valuation. For the 2023 tax year, the Board levied a maintenance tax in the amount of \$0.0251 per \$100 assessed valuation. Such tax is in addition to taxes which the District is authorized to levy for paying principal and interest on the District's bonds.

### **Tax Exemptions**

As discussed in the section titled "TAX PROCEDURES" herein, certain property in the District may be exempt from taxation by the District. The District does not exempt any percentage of the market value of any residential homesteads from taxation.

### **Additional Penalties**

The District has contracted with a delinquent tax attorney to collect delinquent taxes. Pursuant to the contract and in accordance with the Texas Property Tax Code, the District recovers certain costs, expenses and fees associated with tax collection suits, including reasonable attorney's fees in the amount of twenty percent (20%) of the total amount of taxes, penalties, and interest due to the District.

### **Principal Taxpayers**

The following list of principal taxpayers is based upon the 2023 tax roll, which reflects ownership as of January 1, 2023.

Name of Taxpayer	Nature of Property	2023 Taxable Assessed Valuation	% of Taxable Assessed Valuation
Hunt Mission Ridge LLC	Developer	\$ 3,243,441	4.02%
Cullers Home LLC	Real Estate	1,142,746	0.52%
Bowling Construction LLC	Developer	802,537	0.47%
EPT Bella Custom Dream Homes LLC	Real Estate	793,641	0.98%
Pointe Homes	Real Estate	761,378	0.94%
Maravilla Homes	Real Estate	664,328	0.82%
Ithaca Development	Developer	611,238	0.76%
Valdes Luis	Individual	599,447	0.74%
Ruiz Denisse	Individual	489,638	0.61%
El Paso Dream Home Properties LLC	Individual	479,423	0.59%
		<u>\$ 9,587,817</u>	<u>10.47%</u>

### **Summary of Assessed Valuation**

The following summary of the District's assessed valuation is provided by the District's Tax Assessor/Collector based on information contained in the 2020-2024 tax rolls of the District. Differences in totals may vary slightly from other information herein due to differences in dates of data.

	2024 <sup>(1)</sup>	2023	2022	2021	2020
Land and Improvements	\$ 129,615,920	\$ 94,833,046	\$ 59,663,158	\$ 18,696,624	\$ 3,487,898
Personal Property	36,787	26,587	44,507	-	-
Exemptions	(16,876,380)	(12,925,994)	(6,751,491)	(750,000)	(66,790)
Total Assessed Valuation	<u>\$ 112,776,327</u>	<u>\$ 81,933,639</u>	<u>\$ 52,956,174</u>	<u>\$ 17,946,624</u>	<u>\$ 3,421,108</u>

<sup>(1)</sup> 2024 Preliminary Assessed Valuation. Represents the preliminary taxable assessed valuation within the District as of January 1, 2024. No assurance can be given to the final 2024 assessed valuation in the District. The District will not levy taxes on such valuation until it is certified by the Appraisal District.

**Projected Tax Adequacy for Debt Service**

Assuming (i) a tax collection rate similar to the collection rate of the District in years past, (ii) no increase or decrease in assessed valuation over the 2024 Preliminary Assessed Valuation, (iii) no use of available funds, and (iv) utilization of a tax rate necessary to pay the District’s Projected Average Annual Debt Service requirements on the Bonds, the District expects that sufficient funds will be generated to pay both the Projected Average Annual Debt Service and Projected Maximum Annual Debt Service shown below.

Projected Average Annual Debt Service (2024-2049) .....	\$ 669,438
Projected Maximum Annual Debt Service (2026) .....	\$ 737,070

**TAX PROCEDURES**

**Authority to Levy Taxes**

The Board is authorized to levy an annual ad valorem tax, without legal limitation as to rate or amount, on all taxable property within the District in an amount sufficient to pay the principal of and interest on the Bonds, and any additional bonds payable from taxes which the District may hereafter issue (see “RISK FACTORS - Future Debt”) and to pay the expenses of assessing and collecting such taxes. The District agrees in the Bond Resolution to levy such a tax from year to year as described more fully herein under “THE BONDS - Source of and Security for Payment.” Under State law, the Board may also levy and collect an annual ad valorem tax for the operation and maintenance of the District and its water and wastewater system and for the payment of certain contractual obligations. See “TAX DATA.”

**Property Tax Code and County-Wide Appraisal District**

The Texas Property Tax Code (the “Property Tax Code”) specifies the taxing procedures of all political subdivisions of the State, including the District. The District must also follow tax procedures found in the Texas Water Code. These statutory provisions are complex and are not fully summarized here.

The Property Tax Code requires, among other matters, county-wide appraisal and equalization of taxable property values and establishes in each county of the State an appraisal district with the responsibility for recording and appraising property for all taxing units within a county and an appraisal review board with responsibility for reviewing and equalizing the values established by such appraisal district. The Appraisal District has the responsibility for appraising property for all taxing units within the County, including the District. Such appraisal values are subject to review and change by the El Paso County Appraisal Review Board (the “Appraisal Review Board”).

**Property Subject to Taxation by the District**

*General:* Except for certain exemptions provided by State law, all real property, tangible personal property held or used for the production of income, mobile homes, and certain categories of intangible personal property with a tax situs in the District are subject to taxation by the District; however, no effort is expected to be made by the Appraisal District to include on a tax roll tangible or intangible personal property not devoted to commercial or industrial use. Principal categories of exempt property include, but are not limited to: property owned by the State or its political subdivisions if the property is used for public purposes; property exempt from ad valorem taxation by federal law; income producing tangible personal property or mineral interest with a taxable value of less than \$500; certain property used for the control of air, water or land pollution; solar and wind powered energy devices; certain non-profit cemeteries, farm products owned by the producer; and certain property owned by qualified charitable, religious, veterans, youth development, fraternal organizations, designated historical sites, travel trailers, and most individually owned automobiles. Goods, wares, ores and merchandise (other than oil, gas, or petroleum products) that are acquired in or imported into the state and forwarded out of state within 175 days thereafter are also exempt. Article VIII, Section 1-a of the Texas Constitution grants a \$3,000 homestead exemption for all homesteads taxed by counties for farm-to-market roads and flood control purposes. Property owned by a disabled veteran or by the spouse of certain children of a deceased disabled veteran or a veteran who died while on active duty is partially exempt to between \$5,000 and \$12,000 of assessed value depending upon the disability rating of the veteran. A veteran who receives a disability rating of 100% is entitled to an exemption for the full value of the veteran’s residence homestead. Additionally, subject to certain conditions, the surviving spouse or a disabled veteran who is entitled to an exemption for the full value of the veteran's residence homestead is also entitled to an exemption from taxation of the total appraised value of the same property to which the disabled veteran's exemption applied. The surviving spouse of a member of the armed services who was killed in action is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead where certain condition are met and, subject to certain conditions, an exemption up to the same amount may be transferred to a subsequent residence homestead of the surviving spouse.

The surviving spouse of a first responder who was killed or fatally injured in the line of duty is, subject to certain conditions, entitled to an exemption of the total appraised value of the surviving spouse's residence homestead, and, subject to certain conditions, an exemption up to the same amount may be transferred to a subsequent residence homestead of the surviving spouse. Also partially exempt are residence homesteads of certain persons who are disabled or at least 65 years old, not less than \$3,000 of appraised value or such higher amount as the Board or the District's voters may approve. Subject to certain conditions, the surviving spouse of a person 65 or older is entitled to an exemption for the same property in an amount equal to that which the deceased spouse was qualified. The District's tax assessor is authorized by statute to disregard exemptions for the disabled and elderly if granting the exemption would impair the District's obligation to pay tax-supported debt incurred prior to adoption of the exemption by the District. The District's tax assessor/collector is authorized by statute to disregard such exemptions for the elderly and disabled if granting the exemptions would impair the District's obligation to pay tax supported debt incurred prior to adoption of the exemptions by the District. See "TAX DATA."

*Residential Homestead Exemptions:* The Property Tax Code authorizes the governing body of each political subdivision in the State to exempt up to twenty percent (20%) (not less than \$5,000) of the appraised value of residential homesteads from ad valorem taxation. Where ad valorem taxes have previously been pledged for the payment of debt, the governing body of a political subdivision may continue to levy and collect taxes against the exempt value of the homesteads until the debt is discharged, if the cessation of the levy would impair the obligations of the contract by which the debt was created. The adoption of a homestead exemption may be considered each year, but must be adopted before July 1. The District has not adopted a general residential homestead exemption. See "TAX DATA."

*Freeport Goods Exemption:* Freeport goods are goods, wares, merchandise, other tangible personal property and ores, other than oil, natural gas and other petroleum products, which have been acquired or brought into the state for assembling, storing, manufacturing, repair, maintenance, processing or fabricating purposes, or used to repair or maintain aircraft of a certified air carrier, and shipped out of the state within one hundred seventy-five (175) days. Freeport goods are exempt from taxation by the District.

*Goods-in-Transit Exemptions:* A "Goods-in-Transit Exemption" may apply to certain tangible personal property that is acquired in or imported into Texas for assembling, storing, manufacturing or fabrication purposes which is destined to be forwarded to another location in Texas not later than 175 days after acquisition or importation, so long as the location where said goods are detained is not directly or indirectly owned by the owner of the goods. The District has not taken action to allow taxation of goods-in-transit, and accordingly, the exemption is available within the District. However, the District may determine in the future to take action to tax exempt goods-in-transit personal property. A taxpayer may not claim both a Freeport Goods Exemption and a Goods-in-Transit Exemption on the same property.

### **Tax Abatement**

The County may designate all or part of the area within the District as a reinvestment zone. Thereafter, the County, Socorro Independent School District, the District, and, if the District is annexed and dissolved, the City, at the option and discretion of each entity, may enter into tax abatement agreements with owners of property within the zone. Prior to entering into a tax abatement agreement, each entity must adopt guidelines and criteria for establishing tax abatement, which each entity will follow in granting tax abatement to owners of property. The tax abatement agreements may exempt from ad valorem taxation by each of the applicable taxing jurisdictions, including the District, for a period of up to ten (10) years, all or any part of any increase in the assessed valuation of property covered by the agreement over its assessed valuation in the year in which the agreement is executed, on the condition that the property owner make specified improvements or repairs to the property in conformity with the terms of the tax abatement. Each taxing jurisdiction has discretion to determine terms for its tax abatement agreements without regard to the terms approved by the other taxing jurisdictions.

### **Temporary Exemption for Qualified Property Damaged by a Disaster**

The Property Tax Code provides for a temporary exemption from ad valorem taxation of a portion of the appraised value of certain property that is at least 15% damaged by a disaster and located within an area declared to be a disaster area by the governor of the State of Texas. This temporary exemption is automatic if the disaster is declared prior to a taxing unit, such as the District, adopting its tax rate for the tax year. A taxing unit, such as the District, may authorize the exemption at its discretion if the disaster is declared after the taxing unit has adopted its tax rate for the tax year. The amount of the exemption is based on the percentage of damage and is prorated based on the date of the disaster. Upon receipt of an application submitted within the eligible timeframe by a person who qualifies for a temporary exemption under the Property Tax Code, the Appraisal District is required to complete a damage assessment and assign a damage assessment rating to determine the amount of the exemption. The temporary exemption amounts established under the Property Tax Code range from 15% for property less than 30% damaged to 100% for property that is a total loss. Any such temporary exemption granted for disaster-damaged property expires on January 1 of the first year in which the property is reappraised.

## **Valuation of Property for Taxation**

Generally, property in the District must be appraised by the Appraisal District at market value as of January 1 of each year. Once an appraisal roll is prepared and finally approved by the Appraisal Review Board, it is used by the District in establishing its tax rolls and tax rate. Generally, assessments under the Property Tax Code are to be based on one hundred percent (100%) of market value, as such is defined in the Property Tax Code. In determining market value, either the replacement cost or the income or the market data method of valuation may be used, whichever is appropriate. Nevertheless, certain land may be appraised at less than market value under the Property Tax Code. Increases in the appraised value of residence homesteads are limited by the Texas Constitution to 10 percent annually regardless of the market value of the property.

The Property Tax Code permits land designated for agricultural use, open space or timberland to be appraised at its value based on the land's capacity to produce agricultural or timber products rather than at its market value. Substantially all of the undeveloped land in the District is valued based on agricultural use. The Property Tax Code permits under certain circumstances that residential real property inventory held by a person in the trade or business be valued at the price all such property would bring if sold as a unit to a purchaser who would continue the business. Provisions of the Property Tax Code are complex and are not fully summarized here. Landowners wishing to avail themselves of the agricultural use, open space or timberland designation or residential real property inventory designation must apply for the designation and the appraiser is required by the Property Tax Code to act on each claimant's right to the designation individually. A claimant may waive the special valuation as to taxation by some political subdivisions while claiming it as to another. If a claimant receives the agricultural use designation and later loses it by changing the use of the property or selling it to an unqualified owner, the District can collect taxes based on the new use, including taxes for the previous three (3) years for agricultural use and taxes for the previous five (5) years for open space land and timberland.

The Property Tax Code requires the Appraisal District to implement a plan for periodic reappraisal of property to update appraisal values. The plan must provide for appraisal of all real property in the Appraisal District at least once every three (3) years. It is not known what frequency of reappraisal will be utilized by the Appraisal District or whether reappraisals will be conducted on a zone or county-wide basis. The District, however, at its expense has the right to obtain from the Appraisal District a current estimate of appraised values within the District or an estimate of any new property or improvements within the District. While such current estimate of appraised values may serve to indicate the rate and extent of growth of taxable values within the District, it cannot be used for establishing a tax rate within the District until such time as the Appraisal District chooses formally to include such values on its appraisal roll.

## **District and Taxpayer Remedies**

Under certain circumstances taxpayers and taxing units (such as the District) may appeal the orders of the Appraisal Review Board by filing a timely petition for review in State district court. In such event, the value of the property in question will be determined by the court or by a jury if requested by any party. Additionally, taxing units may bring suit against the Appraisal District to compel compliance with the Property Tax Code. The Property Tax Code also establishes a procedure for notice to property owners of reappraisals reflecting increased property value, appraisals which are higher than renditions, and appraisals of property not previously on an appraisal roll.

## **Rollback of Operation and Maintenance Tax Rate**

During the 86th Regular Legislative Session, Senate Bill 2 ("SB 2") was passed and signed by the Governor, with an effective date (as to those provisions discussed herein) of January 1, 2020, and the provisions described herein are effective beginning with the 2020 tax year. See "SELECTED FINANCIAL INFORMATION" for a description of the District's current total tax rate. Debt service and contract tax rates cannot be reduced by a rollback election held within any of the districts described below.

SB 2 classifies municipal utility districts differently based on their current operation and maintenance tax rate or on the percentage of projected build-out that a district has completed. Districts that have adopted an operation and maintenance tax rate for the current year that is 2.5 cents or less per \$100 of taxable value are classified herein as "Special Taxing Units." Districts that have financed, completed, and issued bonds to pay for all land, improvements and facilities necessary to serve at least 95% of the projected build-out of the district are classified as "Developed Districts." Districts that do not meet either of the classifications previously discussed can be classified herein as "Developing Districts." The impact each classification has on the ability of a district to increase its maintenance and operations tax rate pursuant to SB 2 is described for each classification below.

### *Special Taxing Units*

Special Taxing Units that adopt a total tax rate that would impose more than 1.08 times the amount of the total tax imposed by such district in the preceding tax year on a residence homestead appraised at the average appraised value of a residence homestead in the district, subject to certain homestead exemptions, are required to hold an election within the district to determine whether to approve the adopted total tax rate. If the adopted total tax rate is not approved at the election, the total tax rate for a Special Taxing Unit is the current year's debt service and contract tax rate plus the operation and maintenance tax rate that would impose 1.08 times the

amount of operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, subject to certain homestead exemptions.

#### *Developed Districts*

Developed Districts that adopt a total tax rate that would impose more than 1.035 times the amount of the total tax imposed by the district in the preceding tax year on a residence homestead appraised at the average appraised value of a residence homestead in the district, subject to certain homestead exemptions, plus any unused increment rates, as calculated and described in Section 26.013 of the Tax Code, are required to hold an election within the district to determine whether to approve the adopted total tax rate. If the adopted total tax rate is not approved at the election, the total tax rate for a Developed District is the current year's debt service and contract tax rate plus the operation and maintenance tax rate that would impose 1.035 times the amount of operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, subject to certain homestead exemptions, plus any unused increment rates. In addition, if any part of a Developed District lies within an area declared for disaster by the Governor of Texas or President of the United States, alternative procedures and rate limitations may apply for a temporary period. If a district qualifies as both a Special Taxing Unit and a Developed District, the district will be subject to the operation and maintenance tax threshold applicable to Special Taxing Units.

#### *Developing Districts*

Districts that do not meet the classification of a Special Taxing Unit or a Developed District can be classified as Developing Districts. The qualified voters of these districts, upon the Developing District's adoption of a total tax rate that would impose more than 1.08 times the amount of the total tax imposed by such district in the preceding tax year on a residence homestead appraised at the average appraised value of a residence homestead in the district, subject to certain homestead exemptions, are authorized to petition for an election to reduce the operation and maintenance tax rate. If an election is called and passes, the total tax rate for Developing Districts is the current year's debt service and contract tax rate plus the operation and maintenance tax rate that would impose 1.08 times the amount of operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, subject to certain homestead exemptions.

#### *The District*

A determination as to a district's status as a Special Taxing Unit, Developed District or Developing District will be made by the Board of Directors on an annual basis. With respect to the District's 2022 and 2023 tax rates, the District has been classified as a Developing District. The District cannot give any assurances as to what its classification will be at any point in time or whether the District's future tax rates will result in a total tax rate that will reclassify the District into a new classification and new election calculation.

#### **Levy and Collection of Taxes**

The District is responsible for the levy and, unless it elects to transfer such functions to another governmental entity, collection of its taxes. By September 1 of each year, or as soon thereafter as practicable, the rate of taxation is set by the Board of Directors based upon: a) the valuation of property within the District as of the preceding January 1, and b) the amount required to be raised for debt service, maintenance purposes and authorized contractual obligations. Taxes are due October 1, or when billed, whichever comes later, and become delinquent if not paid before February 1 of the year following the year in which imposed. A delinquent tax incurs a penalty of six percent (6%) of the amount of the tax for the first calendar month it is delinquent, plus one percent (1%) for each additional month or portion of a month the tax remains unpaid prior to July 1 of the year in which it becomes delinquent. If the tax is not paid by July 1 of the year in which it becomes delinquent, the tax incurs a total penalty of twelve percent (12%) regardless of the number of months the tax has been delinquent and incurs an additional penalty for collection costs of an amount established by the District and a delinquent tax attorney. For those taxes billed at a later date and that become delinquent on or after June 1, they will also incur an additional penalty for collection costs of an amount established by the District and a delinquent tax attorney. The delinquent tax accrues interest at a rate of one percent (1%) for each month or portion of a month it remains unpaid. The Property Tax Code makes provisions for the split payment of taxes, discounts for early payment and the postponement of the delinquency date of taxes under certain circumstances which, at the option of the District, may be rejected.

The District's tax collector is required to enter into an installment payment agreement with any person who is delinquent on the payment of tax on a residence homestead for payment of tax, penalties and interest, if the person requests an installment agreement and has not entered into an installment agreement with the collector in the preceding 24 months. The installment agreement must provide for payments to be made in monthly installments and must extend for a period of at least 12 months and no more than 36 months. Additionally, the owner of a residential homestead property who is (i) sixty-five (65) years of age or older, (ii) disabled, or (iii) a disabled veteran, is entitled by law to pay current taxes on a residential homestead in installments without penalty or to defer the payment of taxes during the time of ownership. In the instance of tax deferral, a tax lien remains on the property and interest continue to accrue during the period of deferral.

#### **District's Rights in the Event of Tax Delinquencies**

Taxes levied by the District are a personal obligation of the owner of the property as of January 1 of the year for which the tax is imposed. On January 1 of each year, a tax lien attaches to property to secure the payment of all state and local taxes, penalties, and interest ultimately imposed for the year on the property. The lien exists in favor of the State and each local taxing unit, including the District, having power to tax the property. The District's tax lien is on a parity with tax liens of such other taxing units (see "ESTIMATED OVERLAPPING DEBT STATEMENT - Overlapping Tax Rates for Year 2023"). A tax lien on real property takes priority over the claim of most creditors and other holders of liens on the property encumbered by the tax lien, whether or not the debt or lien existed before the attachment of the tax lien; however, whether a lien of the United States is on a parity with or takes priority over a tax lien of the District is determined by applicable federal law. Personal property under certain circumstances is subject to seizure and sale for the payment of delinquent taxes, penalty, and interest.

At any time after taxes on property become delinquent, the District may file suit to foreclose the lien securing payment of the tax, to enforce personal liability for the tax, or both. In filing a suit to foreclose a tax lien on real property, the District must join other taxing units that have claims for delinquent taxes against all or part of the same property. Collection of delinquent taxes may be adversely affected by the cost of suit and sale, by the amount of taxes owed to other taxing units, by the effects of market conditions on the foreclosure sale price, by taxpayer redemption rights (a taxpayer may redeem property within six (6) months for commercial property and two (2) years for residential and all other types of property after the purchaser's deed issued at the foreclosure sale is filed in the county records) or by bankruptcy proceedings which restrict the collection of taxpayer debts. The District's ability to foreclose its tax lien or collect penalties or interest on delinquent taxes may be limited on property owned by a financial institution which is under receivership or conservatorship by the FDIC. See "RISK FACTORS – The Effect of FIRREA on Tax Collections of the District."

### **2023 Legislative Session**

On July 13, 2023, during the Second Special Session, the Texas Legislature passed Senate Bill 2, which, among other things, includes provisions that prohibit an appraisal district from increasing the appraised value of real property during the 2024 tax year on non-homestead properties (the "subjected property") whose appraised values are not more than \$5 million dollars (the "maximum property value") to an amount not to exceed the lesser of: (1) the market value of the subjected property for the most recent tax year that the market value was determined by the appraisal office or (2) the sum of: (a) 20 percent of the appraised value of the subjected property for the preceding tax year; (b) the appraised value of the subjected property for the preceding tax year; and (c) the market value of all new improvements to the subjected property (collectively, the "appraisal cap"). After the 2024 tax year, through December 31, 2026, maximum property value may be increased or decreased by the product of the preceding state fiscal year's increase or decrease in the consumer price index, as applicable, to the maximum property value. The appraisal cap took effect on January 1, 2024.

## **GENERAL FUND OPERATIONS**

### **General**

The Bonds are payable from the levy of an ad valorem tax, without legal limitation as to rate or amount, upon all taxable property in the District. Surplus revenues, if any, of the District's general fund are not pledged to the payment of the Bonds but are available for any lawful purpose including payment of debt service on the Bonds, at the discretion and upon action of the Board. It is not expected that significant net revenue, if any, will be available for payment of debt service on the Bonds.

### **Contract Tax**

Under the Master District Contract, each Participant District has agreed to levy and collect the Contract Tax to make payments to the Master District for (i) the Participant District's pro rata share of any operating deficits incurred by the Master District and (ii) the debt service on any Master District Bonds, with the Participant District's pro rata share based on the Participant District's total taxable assessed valuation as compared to the total taxable assessed valuation in all eleven Participant Districts. However, the Master District Contract contemplates that the Master District would not issue Master District Bonds for purposes of reimbursing the Developer for the initial construction of the Regional Facilities. Thus, for the foreseeable future, the District contemplates levying a Contract Tax only for its pro rata share of the operating deficits of the Master District. The District approved the following tax rates and levied such rates as final at its September 15, 2023 Board meeting: \$0.7500 per \$100 of Assessed Valuation for Tax Year 2023, as follows: \$0.4349 for debt service tax, \$0.2900 for contract tax and \$0.0251 for maintenance tax.

### **District Operation and Maintenance Expense**

Because the Master District provides retail water and sanitary sewer service to all customers in the area within all eleven Participant Districts, including the District, the District does not expect to incur significant operating expenses; rather it expects to mainly incur administrative expenses. The Master District Contract provides that the Master District will pay each Participant District's ordinary administrative expenses, including the District's, if approved by the Master District as part of an annual budget. The Master District Contract provides an annual budget process where each Participant District submits its budget for approval by the Master District.

So long as a Participant District's expenses are no more than ten percent higher than the average of the budgets for Participant Districts Nos. 2-11, the budget must be approved by the Master District. In addition, the District may levy its own maintenance tax to pay such expenses. However, because the Master District provides retail water and sanitary sewer service to all customers in the area within all eleven Participant Districts, including the District, the District does not expect to have any revenues from water and sanitary sewer operations to pay its operation and expenses.

### **No Water and Sanitary Sewer Revenues**

Because the Master District provides retail water and sanitary sewer service to all customers in the area within all eleven Participant Districts, including the District, the District does not expect to have any revenues from water and sanitary sewer operations to pay its operation and maintenance expenses.

### **Operating Statement**

The following statement sets forth in condensed form the historical results of operation of the District's General Fund. Accounting principles customarily employed in the determination of net revenues have been observed and in all instances exclude depreciation. Such summary is based upon information obtained from the District's audited financial statements and the District's bookkeeping records. Reference is made to such statements and records for further and more complete information.

	<b>Fiscal Year Ended September 30,</b>			
	<b>2023</b>	<b>2022</b>	<b>2021</b>	<b>2020</b>
Revenues:				
Transfer From Master District	\$ 83,978	\$ 66,905	\$ 59,507	\$ 59,121
Property Taxes	13,336	81,739	16,250	9,632
Contract Taxes	154,638	51,531	10,245	6,072
Interest	4,862	535	11	157
Total Revenues	<u>\$256,814</u>	<u>\$ 200,710</u>	<u>\$ 86,013</u>	<u>\$ 74,982</u>
Expenditures:				
Tax Transfer to Master District	\$ 154,638	\$ 51,531	\$ 10,245	\$ 6,072
Legal Fees	14,203	15,594	14,771	13,592
Audit Fees	5,500	4,000	4,000	-
Accounting Fees	31,763	21,843	19,457	19,432
Engineering Fees	3,928	3,289	2,605	4,876
Management Fees	10,324	9,910	9,287	8,918
Fiscal Agent Fees	1,500	-	-	-
Director Salaries and Payroll Taxes	7,589	5,652	5,813	7,266
Insurance	949	948	885	1,479
Tax Assessor/Collector	6,351	2,263	493	186
Printing and Office Supplies	638	559	328	562
Postage and Delivery	243	116	265	298
Legal Notices	1,360	1,510	1,040	1,457
Travel	1,130	1,221	563	1,055
Total Expenditures	<u>\$240,116</u>	<u>\$ 118,436</u>	<u>\$ 69,752</u>	<u>\$ 65,193</u>
Transfer (to) Other Funds	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Change in Net Position	<u>\$ 16,698</u>	<u>\$ 82,274</u>	<u>\$ 16,261</u>	<u>\$ 9,789</u>
Fund Balance/Net Position - Beginning	<u>124,350</u>	<u>42,076</u>	<u>25,815</u>	<u>16,026</u>
Fund Balance/Net Position - Ending	<u><u>\$141,048</u></u>	<u><u>\$ 124,350</u></u>	<u><u>\$ 42,076</u></u>	<u><u>\$ 25,815</u></u>



# **PRO-FORMA DEBT SERVICE REQUIREMENTS**

Fiscal Year Ending, 30-Sep	Outstanding Debt Service	The Bonds <sup>(1)</sup>			Total Debt Service
		Principal	Interest	Total	
2024	\$ 436,668	\$ -	\$ -	\$ -	\$ 436,668
2025	537,983	-	137,633	137,633	675,616
2026	540,083	45,000	151,988	196,988	737,070
2027	541,708	45,000	149,625	194,625	736,333
2028	537,858	50,000	147,263	197,263	735,120
2029	538,808	50,000	144,638	194,638	733,445
2030	539,114	55,000	142,013	197,013	736,126
2031	538,826	55,000	139,125	194,125	732,951
2032	538,051	60,000	136,238	196,238	734,289
2033	541,651	60,000	133,088	193,088	734,739
2034	539,276	65,000	129,938	194,938	734,214
2035	541,451	65,000	126,525	191,525	732,976
2036	537,716	75,000	123,113	198,113	735,829
2037	538,521	75,000	119,175	194,175	732,696
2038	538,386	80,000	115,238	195,238	733,624
2039	537,506	85,000	111,038	196,038	733,544
2040	540,769	85,000	106,575	191,575	732,344
2041	538,006	95,000	102,113	197,113	735,119
2042	538,881	100,000	97,125	197,125	736,006
2043	538,731	105,000	91,875	196,875	735,606
2044	537,531	110,000	86,363	196,363	733,894
2045	540,306	115,000	80,588	195,588	735,894
2046	541,781	120,000	74,550	194,550	736,331
2047	541,750	125,000	68,250	193,250	735,000
2048	195,406	475,000	61,688	536,688	732,094
2049	-	700,000	36,750	736,750	736,750
Total	<u>\$ 13,036,768</u>	<u>\$ 2,895,000</u>	<u>\$ 2,812,508</u>	<u>\$ 5,707,508</u>	<u>\$ 18,744,276</u>

Average Annual Debt Service (2024-2049). . . . . \$ 669,438

Maximum Annual Debt Service (2026). . . . . \$ 737,070

(1) Preliminary, subject to change. Interest on the Bonds calculated at a rate of 5.25% for purposes of illustration only.

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## LEGAL MATTERS

### **Legal Proceedings**

Issuance of the Bonds is subject to the approving legal opinion of the Attorney General of Texas to the effect that the Bonds are valid and binding obligations of the District payable from the proceeds of an annual ad valorem tax levied, without legal limit as to rate or amount, upon all taxable property within the District. Issuance of the Bonds is also subject to the legal opinion of Bond Counsel, based upon examination of a transcript of the proceedings incident to authorization and issuance of the Bonds, to the effect that the Bonds are valid and binding obligations of the District payable from the sources and enforceable in accordance with the terms and conditions described therein, except to the extent that the enforceability thereof may be affected by governmental immunity, bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights or the exercise of judicial discretion in accordance with general principles of equity. Bond Counsel's legal opinion will also address the matters described below under "TAX EXEMPTION." Such opinions will express no opinion with respect to the sufficiency of the security for or the marketability of the Bonds. In connection with the issuance of the Bonds, Bond Counsel has been engaged by, and only represents, the District.

The legal fees to be paid Bond Counsel for services rendered in connection with the issuance of the Bonds are based upon a percentage of Bonds actually issued, sold and delivered, and therefore, such fees are contingent upon the sale and delivery of the Bonds.

The various legal opinions to be delivered concurrently with the delivery of the Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. In rendering a legal opinion, the attorney does not become an insurer or guarantor of the expression of professional judgment, of the transaction opined upon, or of the future performance of the parties to the transaction, nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

Bond Counsel has reviewed the information appearing in this Official Statement under "THE BONDS," "THE DISTRICT – General" (excluding the last paragraph thereof), "MANAGEMENT – Bond Counsel," "TAX PROCEDURES," "LEGAL MATTERS – Legal Proceedings" (insofar as such section relates to the legal opinion of Bond Counsel), "TAX EXEMPTION" (insofar as such section relates to the legal opinion of Bond Counsel) and "CONTINUING DISCLOSURE OF INFORMATION" (except under the subheading "Compliance with Prior Undertakings") solely to determine if such information, insofar as it relates to matters of law, is true and correct, and whether such information fairly summarizes the provisions of the documents referred to therein. Bond Counsel has not, however, independently verified any of the factual information contained in this Official Statement nor has it conducted an investigation of the affairs of the District for the purpose of passing upon the accuracy or completeness of this Official Statement. No person is entitled to rely upon Bond Counsel's limited participation as an assumption of responsibility for or an expression of opinion of any kind with regard to the accuracy or completeness of any information contained herein.

### **No Material Adverse Change**

The obligations of the Initial Purchaser to take and pay for the Bonds, and of the District to deliver the Bonds, are subject to the condition that, up to the time of delivery of and receipt of payment for the Bonds, there shall have been no material adverse change in the financial condition of the District from that set forth or contemplated in the Preliminary Official Statement as amended or supplemented through the date of sale.

### **No-Litigation Certificate**

The District will furnish the Initial Purchaser a certificate, executed by both the President and Secretary of the Board, and dated as of the date of delivery of the Bonds, to the effect that no litigation of any nature is pending, or to its knowledge threatened, either in state or federal courts, contesting or attacking the Bonds; restraining or enjoining the levy, assessment and collection of ad valorem taxes to pay the interest or the principal of the Bonds; in any manner questioning the authority or proceedings for the issuance, execution or delivery of the Bonds; or affecting the validity of the Bonds or the title of the present officers of the District.

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## **TAX EXEMPTION**

### **Opinion**

On the date of initial delivery of the Bonds, Bond Counsel will render its opinion that, in accordance with statutes, regulations, published rulings and court decisions existing on the date thereof (“Existing Law”), (1) interest on the Bonds for federal income tax purposes will be excludable from the “gross income” of the holders thereof and (2) the Bonds will not be treated as “specified private activity bonds” the interest on which would be included as an alternative minimum tax preference item under section 57(a)(5) of the Code. Except as stated above, Bond Counsel to the District will express no opinion as to any other federal, state or local tax consequences of the purchase, ownership or disposition of the Bonds. See “APPENDIX B – Form of Bond Counsel’s Opinion.”

In rendering its opinion, Bond Counsel to the District will rely upon (a) the District's federal tax certificate and (b) covenants of the District with respect to arbitrage, the application of the proceeds to be received from the issuance and sale of the Bonds and certain other matters. Failure of the District to comply with these representations or covenants could cause the interest on the Bonds to become includable in gross income retroactively to the date of issuance of the Bonds.

The Code and the regulations promulgated thereunder contain a number of requirements that must be satisfied subsequent to the issuance of the Bonds in order for interest on the Bonds to be, and to remain, excludable from gross income for federal income tax purposes. Failure to comply with such requirements may cause interest on the Bonds to be included in gross income retroactively to the date of issuance of the Bonds. The opinion of Bond Counsel is conditioned on compliance by the District with the covenants and the requirements described in the preceding paragraph, and Bond Counsel has not been retained to monitor compliance with these requirements subsequent to the issuance of the Bonds.

Bond Counsel's opinion represents its legal judgment based upon its review of Existing Law and the reliance on the aforementioned information, representations and covenants. Bond Counsel's opinion is not a guarantee of a result. The Existing Law is subject to change by the Congress and to subsequent judicial and administrative interpretation by the courts and the Department of the Treasury. There can be no assurance that such Existing Law or the interpretation thereof will not be changed in a manner which would adversely affect the tax treatment of the purchase, ownership or disposition of the Bonds.

A ruling was not sought from the Internal Revenue Service by the District with respect to the Bonds or the facilities financed or refinanced with the proceeds of the Bonds. Bond Counsel’s opinion represents its legal judgment based upon its review of Existing Law and the representations of the District that it deems relevant to render such opinion and is not a guarantee of a result. No assurances can be given as to whether the Internal Revenue Service will commence an audit of the Bonds, or as to whether the Internal Revenue Service would agree with the opinion of Bond Counsel. If an audit is commenced, under current procedures the Internal Revenue Service is likely to treat the District as the taxpayer and the Bondholders may have no right to participate in such procedure. No additional interest will be paid upon any determination of taxability.

### **Federal Income Tax Accounting Treatment of Original Issue Discount**

The initial public offering price to be paid for one or more maturities of the Bonds may be less than the principal amount thereof or one or more periods for the payment of interest on the Bonds may not be equal to the accrual period or be in excess of one year (the “Original Issue Discount Bonds”). In such event, the difference between (i) the “stated redemption price at maturity” of each Original Issue Discount Bond, and (ii) the initial offering price to the public of such Original Issue Discount Bond would constitute original issue discount. The “stated redemption price at maturity” means the sum of all payments to be made on the Bonds less the amount of all periodic interest payments. Periodic interest payments are payments which are made during equal accrual periods (or during any unequal period if it is the initial or final period) and which are made during accrual periods which do not exceed one year.

Under Existing Law, any owner who has purchased such Original Issue Discount Bond in the initial public offering is entitled to exclude from gross income (as defined in section 61 of the Code) an amount of income with respect to such Original Issue Discount Bond equal to that portion of the amount of such original issue discount allocable to the accrual period. For a discussion of certain collateral federal tax consequences, see discussion set forth below.

In the event of the redemption, sale or other taxable disposition of such Original Issue Discount Bond prior to stated maturity, however, the amount realized by such owner in excess of the basis of such Original Issue Discount Bond in the hands of such owner (adjusted upward by the portion of the original issue discount allocable to the period for which such Original Issue Discount Bond was held by such initial owner) is includable in gross income.

Under Existing Law, the original issue discount on each Original Issue Discount Bond is accrued daily to the stated maturity thereof (in amounts calculated as described below for each six-month period ending on the date before the semiannual anniversary dates of the date of the Bonds and ratably within each such six-month period) and the accrued amount is added to an initial owner's basis for such Original Issue Discount Bond for purposes of determining the amount of gain or loss recognized by such owner upon the redemption, sale or other disposition thereof. The amount to be added to basis for each accrual period is equal to (a) the sum of the issue price and the amount of original issue discount accrued in prior periods multiplied by the yield to stated maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period) less (b) the amounts payable as current interest during such accrual period on such Original Issue Discount Bond.

The federal income tax consequences of the purchase, ownership, redemption, sale or other disposition of Original Issue Discount Bonds which are not purchased in the initial offering at the initial offering price may be determined according to rules which differ from those described above. All owners of Original Issue Discount Bonds should consult their own tax advisors with respect to the determination for federal, state and local income tax purposes of the treatment of interest accrued upon redemption, sale or other disposition of such Original Issue Discount Bonds and with respect to the federal, state, local and foreign tax consequences of the purchase, ownership, redemption, sale or other disposition of such Original Issue Discount Bonds.

### **Collateral Federal Income Tax Consequences**

The following discussion is a summary of certain collateral federal income tax consequences resulting from the purchase, ownership or disposition of the Bonds. This discussion is based on Existing Law, which is subject to change or modification, retroactively.

The following discussion is applicable to investors, other than those who are subject to special provisions of the Code, such as financial institutions, property and casualty insurance companies, life insurance companies, individual recipients of Social Security or Railroad Retirement benefits, individuals allowed an earned income credit, certain S corporations with Subchapter C earnings and profits, foreign corporations subject to the branch profits tax, taxpayers qualifying for the health insurance premium assistance credit, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase tax-exempt obligations.

THE DISCUSSION CONTAINED HEREIN MAY NOT BE EXHAUSTIVE. INVESTORS, INCLUDING THOSE WHO ARE SUBJECT TO SPECIAL PROVISIONS OF THE CODE, SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE TAX TREATMENT WHICH MAY BE ANTICIPATED TO RESULT FROM THE PURCHASE, OWNERSHIP AND DISPOSITION OF TAX-EXEMPT OBLIGATIONS BEFORE DETERMINING WHETHER TO PURCHASE THE BONDS.

Interest on the Bonds may be includable in certain corporation's "adjusted financial statement income" determined under section 56A of the Code to calculate the alternative minimum tax imposed by the section 55 of the Code.

Under section 6012 of the Code, holders of tax-exempt obligations, such as the Bonds, may be required to disclose interest received or accrued during each taxable year on their returns of federal income taxation.

Section 1276 of the Code provides for ordinary income tax treatment of gain recognized upon the disposition of a tax-exempt obligation, such as the Bonds, if such obligation was acquired at a "market discount" and if the fixed maturity of such obligation is equal to, or exceeds, one year from the date of issue. Such treatment applies to "market discount Bonds" to the extent such gain does not exceed the accrued market discount of such Bonds; although for this purpose, a de minimis amount of market discount is ignored. A "market discount bond" is one which is acquired by the holder at a purchase price which is less than the stated redemption price at maturity or, in the case of a bond issued at an original issue discount, the "revised issue price" (i.e., the issue price plus accrued original issue discount). The "accrued market discount" is the amount which bears the same ratio to the market discount as the number of days during which the holder holds the obligation bears to the number of days between the acquisition date and the final maturity date.

### **State, Local and Foreign Taxes**

Investors should consult their own tax advisors concerning the tax implications of the purchase, ownership or disposition of the Bonds under applicable state or local laws. Foreign investors should also consult their own tax advisors regarding the tax consequences unique to investors who are not United States persons.

### **Information Reporting and Backup Withholding**

Subject to certain exceptions, information reports describing interest income, including original issue discount, with respect to the Bonds will be sent to each registered holder and to the IRS. Payments of interest and principal may be subject to backup withholding under section 3406 of the Code if a recipient of the payments fails to furnish to the payor such owner's social security number or other taxpayer identification number ("TIN"), furnishes an incorrect TIN, or otherwise fails to establish an exemption from the backup withholding tax. Any amounts so withheld would be allowed as a credit against the recipient's federal income tax. Special rules apply to partnerships, estates and trusts, and in certain circumstances, and in respect of foreign investors, certifications as to foreign status and other matters may be required to be provided by partners and beneficiaries thereof.

### **Future and Proposed Legislation**

Tax legislation, administrative actions taken by tax authorities, or court decisions, whether at the Federal or state level, may adversely affect the tax-exempt status of interest on the Bonds under Federal or state law and could affect the market price or marketability of the Bonds. Any such proposal could limit the value of certain deductions and exclusions, including the exclusion for tax-exempt interest. The likelihood of any such proposal being enacted cannot be predicted. Prospective purchasers of the Bonds should consult their own tax advisors regarding the foregoing matters.

### **Qualified Tax-Exempt Obligations for Financial Institutions**

Section 265(a) of the Code provides, in pertinent part, that interest paid or incurred by a taxpayer, including a “financial institution,” on indebtedness incurred or continued to purchase or carry tax-exempt obligations is not deductible in determining the taxpayer’s taxable income. Section 265(b) of the Code provides an exception to the disallowance of such deduction for any interest expense paid or incurred on indebtedness of a taxpayer that is a “financial institution” allocable to tax-exempt obligations, other than “private activity bonds,” that are designated by a “qualified small issuer” as “qualified tax-exempt obligations.” A “qualified small issuer” is any governmental issuer (together with any “on-behalf of” and “subordinate” issuers) who issues no more than \$10,000,000 of tax-exempt obligations during the calendar year. Section 265(b)(5) of the Code defines the term “financial institution” as any “bank” described in section 585(a)(2) of the Code, or any person accepting deposits from the public in the ordinary course of such person’s trade or business that is subject to federal or state supervision as a financial institution. Notwithstanding the exception to the disallowance of the deduction of interest on indebtedness related to “qualified tax-exempt obligations” provided by section 265(b) of the Code, section 291 of the Code provides that the allowable deduction to a “bank,” as defined in section 585(a)(2) of the Code, for interest on indebtedness incurred or continued to purchase “qualified tax-exempt obligations” shall be reduced by twenty-percent (20%) as a “financial institution preference item.”

The District expects to designate the Bonds as “qualified tax-exempt obligations” within the meaning of section 265(b) of the Code. In furtherance of that designation, the District will covenant to take such action that would assure, or to refrain from such action that would adversely affect, the treatment of the Bonds as “qualified tax-exempt obligations.” **Potential purchasers should be aware that if the issue price to the public exceeds \$10,000,000, there is a reasonable basis to conclude that the payment of a de minimis amount of premium in excess of \$10,000,000 is disregarded; however the Internal Revenue Service could take a contrary view. If the Internal Revenue Service takes the position that the amount of such premium is not disregarded, then such obligations might fail to satisfy the \$10,000,000 limitation and the Bonds would not be “qualified tax-exempt obligations.”**

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## **SALE AND DISTRIBUTION OF THE BONDS**

### **Award of the Bonds**

After requesting competitive bids for the Bonds, the District accepted the bid resulting in the lowest net interest cost, which bid was tendered by \_\_\_\_\_ (the “Initial Purchaser”) bearing the interest rates shown on the cover page hereof, at a price of \_\_\_\_% of the principal amount thereof which resulted in a net effective interest rate of \_\_\_\_% as calculated pursuant to Chapter 1204 of the Texas Government Code, as amended.

### **Prices and Marketability**

The delivery of the Bonds is conditioned upon the receipt by the District of a certificate executed and delivered by the Initial Purchaser on or before the date of delivery of the Bonds stating the prices at which the Bonds have been offered for sale to the public. For this purpose, the term “public” shall not include any person who is a bond house, broker, or similar person acting in the capacity of initial purchaser or wholesaler. Otherwise, the District has no understanding with the Initial Purchaser regarding the reoffering yields or prices of the Bonds. Information concerning reoffering yields or prices is the responsibility of the Initial Purchaser.

The prices and other terms with respect to the offering and sale of the Bonds may be changed at any time by the Initial Purchaser after the Bonds are released for sale, and the Bonds may be offered and sold at prices other than the initial offering prices, including sales to dealers who may sell the Bonds into investment accounts. In connection with the offering of the Bonds, the Initial Purchaser may over-allot or effect transactions that stabilize or maintain the market prices of the Bonds at levels above those that might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.

The District has no control over trading of the Bonds in the secondary market. Moreover, there is no guarantee that a secondary market will be made in the Bonds. In such a secondary market, the difference between the bid and asked price of utility district bonds may be greater than the difference between the bid and asked price of bonds of comparable maturity and quality issued by more traditional municipal entities, as bonds of such entities are more generally bought, sold, or traded in the secondary market. Additionally, there are no assurances that if a secondary market for the Bonds were to develop, that any such secondary market would not be disrupted by other events. See “RISK FACTORS – Marketability.”

### **Securities Laws**

No registration statement relating to the offer and sale of the Bonds has been filed with the United States Securities and Exchange Commission under the Securities Act of 1933, as amended, in reliance upon the exemptions provided thereunder. The Bonds have not been registered or qualified under the Securities Act of Texas in reliance upon various exemptions contained therein; nor have the Bonds been registered or qualified under the securities laws of any other jurisdiction. The District assumes no responsibility for registration or qualification of the Bonds under the securities laws of any other jurisdiction in which the Bonds may be offered, sold or otherwise transferred. This disclaimer of responsibility for registration or qualification for sale or other disposition of the Bonds shall not be construed as an interpretation of any kind with regard to the availability of any exemption from securities registration or qualification provisions in such other jurisdiction.

### **Municipal Bond Rating and Municipal Bond Insurance**

No application for a rating on the Bonds has been made.

Application has been made to municipal bond insurance companies for the qualification of the Bonds for municipal bond insurance. If qualified, such insurance will be available at the option and expense of the Initial Purchaser. The rating fees, if any, associated with the insurance will be the responsibility of the Initial Purchaser. See “BOND INSURANCE.”

## **PREPARATION OF OFFICIAL STATEMENT**

### **Sources and Compilation of Information**

The financial data and other information contained in this Official Statement has been obtained primarily from the District's records, the Developer, the Engineer, the Tax Assessor/Collector, the Appraisal District and information from certain other sources. All of these sources are believed to be reliable, but no guarantee is made by the District as to the accuracy or completeness of the information derived from sources other than the District, and its inclusion herein is not to be construed as a representation on the part of the District except as described below under “Certification of Official Statement.” Furthermore, there is no guarantee that any of the assumptions or estimates contained herein will be realized. The summaries of the agreements, reports, statutes, resolutions, engineering and other related information set forth in this Official Statement are included herein subject to all of the provisions of such documents. These summaries do not purport to be complete statements of such provisions, and reference is made to such documents for further information.

## **Financial Advisor**

Hilltop Securities, Inc., (“HilltopSecurities”) is employed as the Financial Advisor to the District to render certain professional services, including advising the District on a plan of financing and preparing the Official Statement. In its capacity as Financial Advisor, HilltopSecurities has compiled and edited this Official Statement. In addition to compiling and editing, the Financial Advisor has obtained the information set forth herein under the caption indicated from the following sources:

“THE DISTRICT” – the Developer; TRE & Associates, LLC (“Engineer”), and records of the District (“Records”); “THE DEVELOPER” - Developer; “THE SYSTEM” - Engineer; “UNLIMITED TAX BONDS AUTHORIZED BUT UNISSUED” - Records; “FINANCIAL STATEMENT” - District records; “ESTIMATED OVERLAPPING DEBT STATEMENT” - Municipal Advisory Council of Texas and Financial Advisor; “TAX DATA” - City of El Paso Tax Assessor/Collector; “MANAGEMENT” - District General Counsel; “PRO-FORMA DEBT SERVICE REQUIREMENTS” - Financial Advisor; “THE BONDS,” “LEGAL MATTERS,” and “TAX EXEMPTION” - McCall, Parkhurst & Horton L.L.P.

The Financial Advisor has provided the following sentence for inclusion in this official statement. The Financial Advisor has reviewed the information in this official statement in accordance with, and as part of, its responsibilities to the District and, as applicable, to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Financial Advisor does not guarantee the accuracy or completeness of such information.

## **Consultants**

In approving this Official Statement the District has relied upon the following consultants.

**Engineer:** The information contained in this Official Statement relating to engineering matters and to the description of the System and in particular that information included in the sections entitled “THE DISTRICT” and “THE SYSTEM” has been provided by TRE & Associates, LLC, Consulting Engineers, and has been included herein in reliance upon the authority of said firm as experts in the field of civil engineering.

**Appraisal District:** The information contained in this Official Statement relating to the assessed valuations has been provided by the El Paso Central Appraisal District and has been included herein in reliance upon the authority of such entity as experts in assessing the values of property in the County, including the District.

**Tax Assessor/Collector:** The information contained in this Official Statement relating to the historical breakdown of the Assessed Valuations, principal taxpayers, and certain other historical data concerning tax rates and tax collections has been provided by the Appraisal District and the City of El Paso Tax Assessor/Collector and is included herein in reliance upon their respective authority as experts in assessing and collecting taxes.

**Auditor:** The District’s financial statements for the fiscal year ending September 30, 2023, have been audited by West, Davis & Company, LLP. See “APPENDIX A” for a copy of the District’s September 30, 2023, audited financial statements.

## **Updating the Official Statement**

If, subsequent to the date of the Official Statement, the District learns, through the ordinary course of business and without undertaking any investigation or examination for such purposes, or is notified by the Initial Purchaser, of any adverse event which causes the Official Statement to be materially misleading, and unless the Initial Purchaser elects to terminate its obligation to purchase the Bonds, the District will promptly prepare and supply to the Initial Purchaser an appropriate amendment or supplement to the Official Statement satisfactory to the Initial Purchaser; provided, however, that the obligation of the District to so amend or supplement the Official Statement will terminate when the District delivers the Bonds to the Initial Purchaser, unless the Initial Purchaser notifies the District on or before such date that less than all of the Bonds have been sold to ultimate customers, in which case the District's obligations hereunder will extend for an additional period of time as required by law (but not more than 90 days after the date the District delivers the Bonds).

## **Certification of Official Statement**

The District, acting through its Board of Directors in its official capacity, hereby certifies, as of the date hereof, that the information, statements, and descriptions or any addenda, supplement and amendment thereto pertaining to the District and its affairs contained herein, to the best of its knowledge and belief, contain no untrue statement of a material fact and do not omit to state any material fact necessary to make the statements herein, in light of the circumstances under which they are made, not misleading. With respect to information included in this Official Statement other than that relating to the District, the District has no reason to believe that such information contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements

herein, in the light of the circumstances under which they are made, not misleading; however, the Board has made no independent investigation as to the accuracy or completeness of the information derived from sources other than the District. In rendering such certificate, the official executing this certificate may state that he has relied in part on his examination of records of the District relating to matters within his own area of responsibility, and his discussions with, or certificates or correspondence signed by, certain other officials, employees, consultants and representatives of the District.

### **Official Statement “Deemed Final”**

For purposes of compliance with Rule 15c2-12, this document, as the same may be supplemental or corrected by the District from time-to-time, may be treated as an official statement with respect to the Bonds described herein “deemed final” by the District as of the date hereof (or of any such supplement or correction).

The Official Statement, when further supplemented by adding information specifying the interest rates and certain other information relating to the Bonds, shall constitute a “final official statement” of the District with respect to the Bonds as that term is defined in Rule 15c2-12.

## **CONTINUING DISCLOSURE OF INFORMATION**

Pursuant to Rule 15c2-12(b)(5) of the United States Securities and Exchange Commission (“SEC”), in the Bond Resolution, the District has made the following agreement for the benefit of the holders and beneficial owners of the Bonds. Under the agreement, the District will be obligated to provide certain updated financial information and operating data annually, and timely notice of specified material events, to the Municipal Securities Rulemaking Board (the “MSRB”) or to any successor to its functions as a repository through its Electronic Municipal Market Access (“EMMA”) system. The District is required to observe the agreement for so long as it remains obligated to advance funds to pay the Bonds.

### **Annual Reports**

The District will provide certain financial information and operating data annually to the MSRB. The financial information and operating data which will be provided with respect to the District will be the District’s audited financial statements and supplemental schedules as found in “APPENDIX A - District Audited Financial Statements for Fiscal Year Ended September 30, 2023.” The District will update and provide this information within six months after the end of each of its fiscal years. The District will provide the updated information to the MSRB or any successor to its functions as a repository through the EMMA system. Any information concerning the District so provided shall be prepared in accordance with generally accepted auditing standards or other such principles as the District may be required to employ from time to time pursuant to State law or regulation, and audited if the audit report is completed within the period during which it must be provided. If the audited financial statements of the District are not complete within such period, then the District shall provide unaudited financial statements for the applicable fiscal year to the MSRB within such six month period, and audited financial statements when the audited financial statements become available.

The District’s current fiscal year end is September 30. Accordingly, it must provide updated information by March 31 in each year, unless the District changes its fiscal year. If the District changes its fiscal year, it will notify the MSRB of the change.

### **Notice of Certain Events**

The District will provide timely notices of certain events to the MSRB, but in no event will such notices be provided to the MSRB in excess of ten business days after the occurrence of an event. The District will provide notice of any of the following events with respect to the Bonds: (1) principal and interest payment delinquencies; (2) non-payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds; (7) modifications to rights of Beneficial Owners of the Bonds, if material; (8) bond calls, if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Bonds, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the District or other obligated person within the meaning of Rule 15c2-12; (13) consummation of a merger, consolidation, or acquisition involving the District or other obligated person within the meaning of the Rule or the sale of all or substantially all of the assets of the District or other obligated person within the meaning of the Rule, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of an definitive agreement relating to any such actions, other than pursuant to its terms, if material; (14) appointment of a successor or additional trustee or the change of name of a trustee, if material; (15) incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and (16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.



For these purposes, any event described in clause (12) of the immediately preceding paragraph is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer of the District in a proceeding under the United States Bankruptcy Court or in any other proceeding under state or federal law in which a court of governmental authority has assumed jurisdiction over substantially all of the assets or business of the District, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers of the District in possession but subject to the supervision and orders of a court of governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the District.

For the purposes of the events described in clauses (15) and (16) of the preceding paragraph, the term “Financial Obligation” is defined in the Bond Resolution to mean (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, and existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “Financial Obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule. The Bond Resolution further provides that the District intends the words in such clauses (15) and (16) in the preceding paragraph and in the definition of Financial Obligation to have the meanings ascribed to them in SEC Release No. 34-83885 dated August 29, 2018.

The District will provide notice of the aforementioned events to the MSRB in a timely manner (but not in excess of ten business days after the occurrence of the event). The District will also provide timely notice of any failure by the District to provide annual financial information in accordance with its agreement described above under “Annual Reports.”

#### **Availability of Information from MSRB**

The District has agreed to provide the foregoing information only to the MSRB. The MSRB makes the information available to the public without charge through its EMMA internet portal at [www.emma.msrb.org](http://www.emma.msrb.org). The address of the MSRB is 1900 Duke Street, Suite 600, Alexandria, VA 22314, and its telephone number is (703) 797-6600.

#### **Limitations and Amendments**

The District has agreed to update information and to provide notices of material events only as described above. The District has not agreed to provide other information that may be relevant or material to a complete presentation of its financial results of operations, condition, or prospects or agreed to update any information that is provided, except as described above. The District makes no representation or warranty concerning such information or concerning its usefulness to a decision to invest in or sell Bonds at any future date. The District disclaims any contractual or tort liability for damages resulting in whole or in part from any breach of its continuing disclosure agreement or from any statement made pursuant to its agreement, although holders or beneficial owners of Bonds may seek a writ of mandamus to compel the District to comply with its agreement.

The District may amend its continuing disclosure agreement from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the District, but only if the agreement, as amended, would have permitted an initial purchaser to purchase or sell Bonds in the offering made hereby in compliance with Rule 15c2-12, taking into account any amendments or interpretations of Rule 15c2-12 to the date of such amendment, as well as such changed circumstances, and either the holders of a majority in aggregate principal amount of the outstanding Bonds consent to the amendment or any person unaffiliated with the District (such as nationally recognized bond counsel) determines that the amendment will not materially impair the interests of the holders and beneficial owners of the Bonds. The District may also amend or repeal the agreement in the Bond Resolution if the SEC amends or repeals the applicable provisions of Rule 15c2-12 or a court of final jurisdiction determines that such provisions are invalid or unenforceable, but only to the extent that its right to do so would not prevent the Initial Purchaser from lawfully purchasing the Bonds in the offering described herein. If the District so amends the agreement, it has agreed to include with any financial information or operating data next provided in accordance with its agreement described above under “Annual Reports” an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information and operating data so provided.

#### **Compliance with Prior Undertakings**

The District previously entered into agreements to provide annual financial information in accordance with Rule 15c2-12 in connection with the issuance of unlimited tax bonds in 2022 and 2023. The District has complied in all material respects with such agreements.

## MISCELLANEOUS

All estimates, statements and assumptions in this Official Statement and the Appendix hereto have been made on the basis of the best information available and are believed to be reliable and accurate. Any statements in this Official Statement involving matters of opinion or estimates, whether or not expressly so stated, are intended as such and not as representations of fact, and no representation is made that any such statements will be realized.

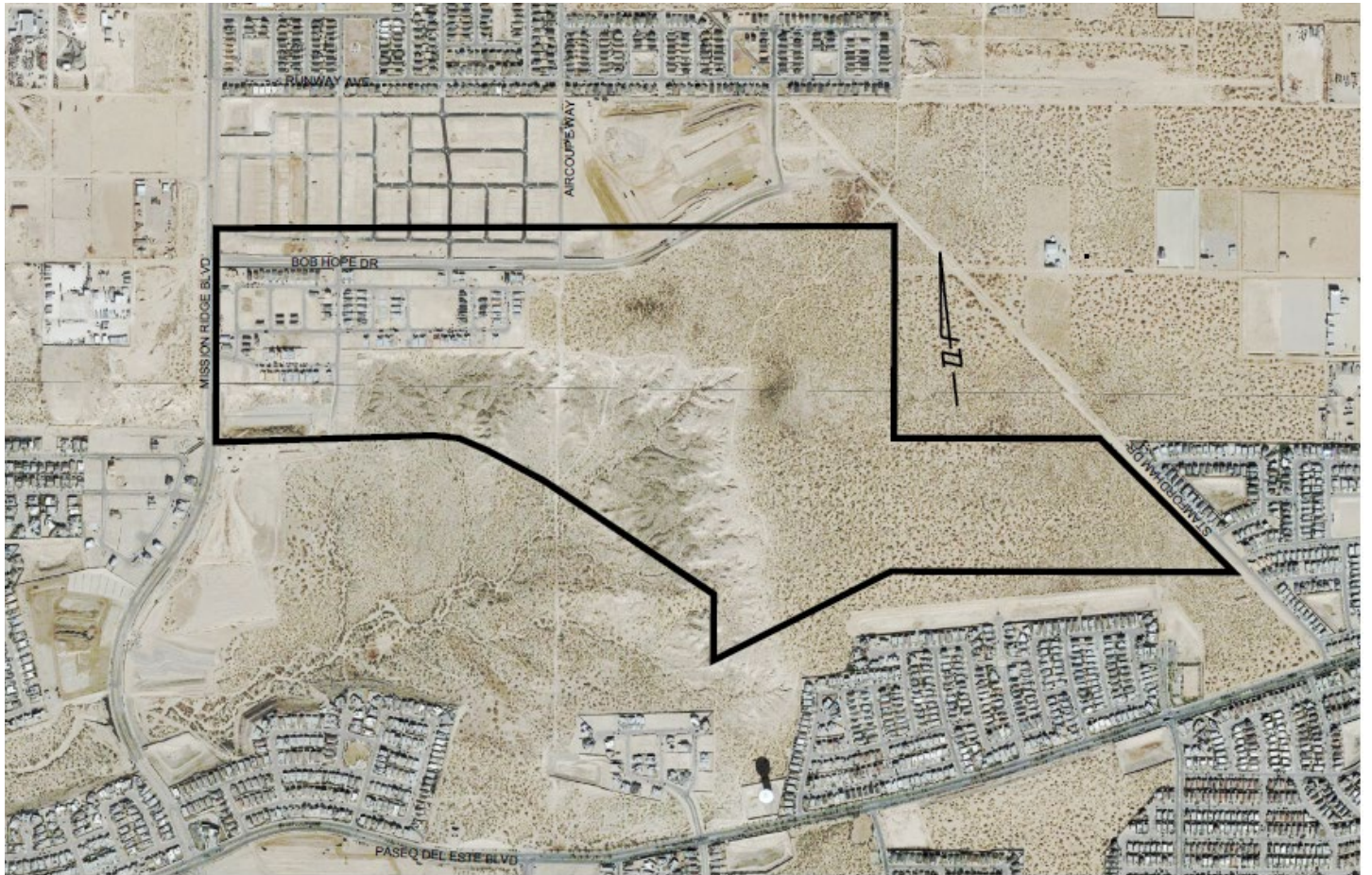
This Official Statement was approved by the Board of Directors of Paseo del Este Municipal Utility District No. 4, as of the date shown on the cover page.

/s/ \_\_\_\_\_  
President, Board of Directors  
Paseo del Este Municipal Utility District No. 4

ATTEST:

/s/ \_\_\_\_\_  
Secretary, Board of Directors  
Paseo del Este Municipal Utility District No. 4

**AERIAL PHOTOGRAPH**  
**(Approximate boundaries)**



## **PHOTOGRAPHS**

The following photographs were taken in the District on May 9, 2024, solely to illustrate the type of improvements which have been constructed in the District. The District cannot predict if any additional improvements will be constructed in the future.







## **APPENDIX A**

**District Audited Financial Statements for the fiscal year ended September 30, 2023**



## **APPENDIX B**

### **Form of Bond Counsel's Opinion**



Legislation Text

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File #: 24-769, Version: 1

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

City Manager's Office, Robert Cortinas, (915) 212-1067

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Discussion and action on the Resolution that the City reviewed and approves the issuance of the Unlimited Tax Bonds, Series 2024 by Paseo Del Este Municipal Utility District No. 2 with the acknowledgement that the issuance of such bonds does not constitute debt issuance by the City of El Paso.

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

**DEPARTMENT:** City Manager's Office

**AGENDA DATE:** June 11, 2024

**PUBLIC HEARING DATE:** N/A

**CONTACT PERSON NAME AND PHONE NUMBER:** Robert Cortinas, Chief Financial Officer (915) 212-1067

**DISTRICT(S) AFFECTED:** All Districts

**STRATEGIC GOAL:** Goal 6: Set the Standard for Sound Governance and Fiscal Management

**SUBGOAL:** 6.5

**SUBJECT:**

Discussion and action on the resolution that the City reviewed and approves the issuance of the Unlimited Tax Bonds, Series 2024 by Paseo Del Este Municipal Utility District No. 2 with the acknowledgement that the issuance of such bonds does not constitute debt issuance by the City of El Paso.

**BACKGROUND/ DISCUSSION:**

On December 3, 2002 the City Council of the City of **El Paso** ('City') consented to the creation of Paseo Del Este Municipal Utility Districts Nos. 1 through 9 ("Districts") in the City of **El Paso's** Extraterritorial Jurisdiction. The City's conditions for the creation of the Districts was that the City is to review and approve the Districts' bonds and notes prior to issuance and may place restrictions on the terms and provisions of each of the District's bonds and notes issued to provide service to the land and conditions on the sale of the District's bonds and notes to the extent such restrictions and conditions do not generally render the bonds and notes of the Districts unmarketable.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:** N/A

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

**DEPARTMENT HEAD:**



---

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

## RESOLUTION

**WHEREAS**, on December 3, 2002 the City Council of the City of El Paso ("City") consented to the creation of Paseo Del Este Municipal Utility Districts Nos. 1 through 9 ("Districts") in the City of El Paso's Extraterritorial Jurisdiction; and

**WHEREAS**, the City's consent to the creation of the Districts was subject to several conditions; and

**WHEREAS**, one of the City's conditions for the creation of the Districts was that the City is to review and approve the Districts' bonds and notes prior to issuance and may place restrictions on the terms and provisions of each of the District's bonds and notes issued to provide service to the land and conditions on the sale of the District's bonds and notes to the extent such restrictions and conditions do not generally render the bonds and notes of the Districts unmarketable; and

**WHEREAS**, Paseo Del Este Municipal Utility District No. Two ("M.U.D. No. 2") requested review and approval of the issuance of the Unlimited Tax Bonds, Series 2024 Bonds by M.U.D. No. 2 (the "Series 2024 Bonds"); and

**WHEREAS**, the City reviewed the proposed issuance of Series 2024 Bonds by M.U.D. No. 2 and desires to approve the issuance of the bonds.

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

That the City reviewed and approves the issuance of the Unlimited Tax Bonds, Series 2024 Bonds in the estimated amount of \$3,700,000, by Paseo Del Este Municipal Utility District No. 2, with the acknowledgement that the issuance of such bonds does not constitute debt issuance by the City of El Paso.

**APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2024.**


### CITY OF EL PASO:

\_\_\_\_\_  
Oscar Lesser  
Mayor


### ATTEST:

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

### APPROVED AS TO FORM:

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

### APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Robert Cortinas  
Chief Financial Officer

**PRELIMINARY OFFICIAL STATEMENT DATED JULY 1, 2024**

THE DELIVERY OF THE BONDS IS SUBJECT TO THE OPINION OF BOND COUNSEL AS TO THE VALIDITY OF THE BONDS AND TO THE EFFECT THAT INTEREST ON THE BONDS IS EXCLUDABLE FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES UNDER STATUTES, REGULATIONS, COURT DECISIONS, AND PUBLISHED RULINGS EXISTING ON THE DATE THEREOF, SUBJECT TO THE MATTERS DESCRIBED UNDER "TAX EXEMPTION" HEREIN INCLUDING THE ALTERNATIVE MINIMUM TAX ON CERTAIN CORPORATIONS.

**THE DISTRICT EXPECTS TO DESIGNATE THE BONDS AS "QUALIFIED TAX-EXEMPT OBLIGATIONS" FOR FINANCIAL INSTITUTIONS**  
**NEW ISSUE - Book Entry Only**

**\$3,700,000**  
**PASEO DEL ESTE MUNICIPAL UTILITY DISTRICT NO. 2**  
*(A political subdivision of the State of Texas located within El Paso County)*  
**UNLIMITED TAX BONDS, SERIES 2024**

**Dated: August 1, 2024**

**Due: August 15, as shown below**

Principal of the Bonds will be payable at stated maturity or redemption upon presentation of the Bonds at the principal payment office of the paying agent/registrar, initially BOKF, NA, (the "Paying Agent/Registrar") in Dallas, Texas. Interest on the Bonds will accrue from the date of delivery of the Bonds (expected to be August 13, 2024), and is payable on February 15, 2024 and on each August 15 and February 15 thereafter until the earlier of maturity or redemption. The Bonds will be issued only in fully registered form in denominations of \$5,000 each or integral multiples thereof. Interest will be calculated on the basis of a 360 day year of twelve 30 day months. The Bonds are subject to redemption prior to maturity as shown below.

The Bonds will be registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Bonds. Beneficial owners of the Bonds will not receive physical certificates representing the Bonds, but will receive a credit balance on the books of the nominees of such beneficial owners. So long as Cede & Co. is the registered owner of the Bonds, the principal of and interest on the Bonds will be paid by the Paying Agent/Registrar directly to DTC, which will, in turn, remit such principal and interest to its participants for subsequent disbursement to the beneficial owners of the Bonds as described herein. See "BOOK-ENTRY-ONLY SYSTEM."

**MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES AND INITIAL REOFFERING YIELDS\***

Due Aug. 15	Principal Amount <sup>(a)</sup>	Interest Rate	Initial Reoffering Yield <sup>(b)</sup>	CUSIP Number <sup>(d)</sup>	Due Aug. 15	Principal Amount <sup>(a)</sup>	Interest Rate	Initial Reoffering Yield <sup>(b)</sup>	CUSIP Number <sup>(d)</sup>
2025	\$ 75,000				2038	\$ 145,000			
2026	80,000				2039	155,000			
2027	85,000				2040	160,000			
2028	90,000				2041	170,000			
2029	95,000				2042	180,000			
2030	100,000				2043	185,000			
2031	105,000				2044	195,000			
2032	110,000				2045	205,000			
2033	115,000				2046	215,000			
2034	120,000				2047	225,000			
2035	125,000				2048	240,000			
2036	135,000				2049	250,000			
2037	140,000								

- (a) The Initial Purchasers (as defined herein) may designate one or more maturities as term bonds. See accompanying "OFFICIAL NOTICE OF SALE" and "OFFICIAL BID FORM."
- (b) Initial reoffering yield represents the initial offering yield to the public which has been established by the Initial Purchaser (as herein defined) for offers to the public and which may be subsequently changed by the Initial Purchaser and is the sole responsibility of the Initial Purchaser.
- (c) Bonds maturing on or after August 15, 20\_\_ are subject to redemption prior to maturity at the option of the District, in whole or, from time to time in part, on August 15, 20\_\_, or on any date thereafter, at a price equal to the par value thereof plus accrued interest from the most recent interest payment date to the date fixed for redemption. The Bonds may also be subject to mandatory sinking fund redemption if the Initial Purchaser designates one or more maturities as term bonds. See "THE BONDS - Redemption Provisions."
- (d) CUSIP Numbers have been assigned to the Bonds by CUSIP Global Services and are included solely for the convenience of the purchasers of the Bonds. Neither the District nor the Initial Purchaser shall be responsible for the selection or correctness of the CUSIP Numbers set forth herein.

**INSURANCE.** . . Application has been made to municipal bond insurance companies for the qualification of the Bonds for municipal bond insurance. If qualified, such insurance will be available at the option and expense of the Initial Purchaser. The rating fees, if any, associated with the insurance will be the responsibility of the Initial Purchaser. See "BOND INSURANCE."

The Bonds, when issued, will constitute valid and legally binding obligations of Paseo del Este Municipal Utility District No. 2 (the "District") and will be payable from the proceeds of an annual ad valorem tax, without legal limitation as to rate or amount, levied against all taxable property located within the District. The Bonds are obligations solely of the District and are not obligations of the State of Texas, El Paso County, the City of El Paso or any entity other than the District. Investment in the Bonds is subject to special considerations described herein. See "RISK FACTORS."

The Bonds are offered by the Initial Purchaser subject to prior sale, when, as and if issued by the District and accepted by the Initial Purchaser, subject, among other things, to the approval of the Bonds by the Attorney General of Texas and the approval of certain legal matters by McCall, Parkhurst & Horton L.L.P., Austin, Texas, Bond Counsel. Certain legal matters will be passed upon for the District by Locke Lord LLP, Dallas, Texas as Disclosure Counsel. Delivery of the Bonds through the facilities of DTC is expected on or about August 13, 2024.

**BIDS DUE: July 11, 2024 at 8:00 A.M., Mountain Time in El Paso, Texas**  
**BID AWARD: July 11, 2024 at 1:00 P.M., Mountain Time in El Paso, Texas**

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The cover page hereof, this page, the appendices included herein and any addenda, supplement or amendment hereto, are part of the Official Statement.

### USE OF INFORMATION IN OFFICIAL STATEMENT

No dealer, broker, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representation must not be relied upon as having been authorized by the District.

This Official Statement is not to be used in an offer to sell or the solicitation of an offer to buy in any state in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

All of the summaries of the statutes, resolutions, contracts, audited financial statements, engineering and other related reports set forth in this Official Statement are made subject to all of the provisions of such documents. These summaries do not purport to be complete statements of such provisions, and reference is made to such documents, copies of which are available from Gordon Davis Johnson & Shane P.C., the District’s General Counsel, 4695 North Mesa Street, El Paso, Texas 79912 upon payment of duplication costs.

This Official Statement contains, in part, estimates, assumptions and matters of opinion which are not intended as statements of fact, and no representation is made as to the correctness of such estimates, assumptions or matters of opinion, or as to the likelihood that they will be realized. Any information and expressions of opinion herein contained are subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the District or other matters described herein since the date hereof. However, the District has agreed to keep this Official Statement current by amendment or sticker to reflect material changes in the affairs of the District and, to the extent that information actually comes to its attention, the other matters described in this Official Statement until delivery of the Bonds to the Initial Purchaser and thereafter only as specified in “PREPARATION OF OFFICIAL STATEMENT- Updating the Official Statement.”

## OFFICIAL STATEMENT SUMMARY

The following information is qualified in its entirety by the detailed information appearing elsewhere in this Official Statement.

### THE FINANCING

<i>The Issuer</i> .....	Paseo del Este Municipal Utility District No. 2 (the “District”), a political subdivision of the State of Texas (the “State”), is located in El Paso County, Texas (the “County”). See “THE DISTRICT.”
<i>The Issue</i> .....	The \$3,700,000 Unlimited Tax Bonds, Series 2024 (the “Bonds”) are issued pursuant to a resolution (the “Bond Resolution”) of the District's Board of Directors. The Bonds will be issued as fully registered bonds in denominations of \$5,000 each or integral multiples thereof, maturing on August 15 in each of the years and in the amounts set forth on the cover hereof. Interest on the Bonds accrues from the date of initial delivery of the Bonds (expected to be August 13, 2024), and is payable on February 15, 2025, and on each August 15 and February 15 thereafter until the earlier of maturity or prior redemption.
<i>Redemption</i> .....	The Bonds maturing on and after August 15, 202_, are subject to redemption, in whole or in part, at the option of the District, prior to their maturity dates, on August 15, 202_, or on any date thereafter. Upon redemption, the Bonds will be payable at a price of par plus accrued interest to the date of redemption. See “THE BONDS - Redemption Provisions.”
<i>Source of Payment</i> .....	The Bonds are payable from an annual ad valorem tax, without legal limitation as to rate or amount, levied upon all taxable property within the District (see “TAX PROCEDURES”). The Bonds are obligations of the District and are not obligations of the State, the County, the City of El Paso (the “City”) or any other political subdivision or agency other than the District. See “THE BONDS - Source of and Security for Payment.”
<i>Use of Proceeds</i> .....	Proceeds from sale of the Bonds will be used to reimburse the Developer (as hereinafter defined) for funds advanced on behalf of the District for the District's pro rata share of costs relating to facilities constructed by or on behalf of Paseo del Este Municipal Utility District No. 1 (the “Master District”) being a portion of costs of certain regional water and sanitary sewer facilities serving the District and the other “Participant Districts” as hereafter defined, including engineering costs (the “Regional Facilities”), and the cost of certain internal water, wastewater and drainage facilities serving the District (the “Internal Facilities”). Bond proceeds will also be used to pay interest to the Developer (hereinafter defined) on funds expended for the foregoing, including engineering costs, and to pay certain costs associated with the issuance of the Bonds. See “THE SYSTEM - Use and Distribution of Bond Proceeds.”
<i>Payment Record</i> .....	The District has previously issued six series of unlimited tax bonds, including one series of unlimited tax refunding bonds, of which, five series in an aggregate of \$7,590,000 remains outstanding (the “Outstanding Bonds”). The District has never defaulted in payments of principal of or interest on its unlimited tax debt.
<i>Qualified Tax-Exempt Obligations</i> .....	The District expects to designate the Bonds as “qualified tax-exempt obligations for financial institutions.” See “TAX EXEMPTION - Qualified Tax-Exempt Obligations for Financial Institutions.”
<i>Municipal Bond Rating</i> .....	No application for a rating on the Bonds has been made. See “SALE AND DISTRIBUTION OF THE BONDS — Municipal Bond Rating and Municipal Bond Insurance.”
<i>Municipal Bond Insurance</i> .....	Application has been made to municipal bond insurance companies for the qualification of the Bonds for municipal bond insurance. If qualified, such insurance will be available at the option and expense of the Initial Purchaser. The rating fees associated with the insurance will be the responsibility of the Initial Purchaser. See “BOND INSURANCE — Bond Insurance.”
<i>General Counsel</i> .....	Gordon Davis Johnson & Shane P.C., El Paso, Texas.
<i>Bond Counsel</i> .....	McCall, Parkhurst & Horton L.L.P., Austin, Texas.
<i>Disclosure Counsel</i> .....	Locke Lord LLP, Dallas, Texas.
<i>Financial Advisor</i> .....	Hilltop Securities, Inc., El Paso, Texas and Dallas, Texas.

<i>Engineer</i> .....	TRE & Associates, LLC, Austin, Texas and El Paso, Texas.
<i>Risk Factors</i> .....	The purchase and ownership of the Bonds are subject to special risk factors, and all prospective purchasers are urged to examine carefully the entire Official Statement for a discussion of investment risks, including particularly the section captioned “RISK FACTORS.”

THE DISTRICT

<i>Description</i> .....	The District was created by division of Paseo del Este Municipal Utility District (the “Original District”) pursuant to a division order adopted by the Original District on May 15, 2003, and operates pursuant to Chapter 443, Acts of the Texas Legislature, Regular Session, 1997 (the “Act”) and Chapters 49 and 54, Texas Water Code. Prior to division, Paseo del Este Municipal Utility District was created as a Conservation and Reclamation District on May 29, 1997 by the Act. The District presently contains approximately 380 acres of land located in the east portion of the County, approximately 15 miles east of the central area of the City. The District is located just east of Loop 375 and is approximately one mile from the intersection of Interstate Highway 10, the major freeway through the City, and Eastlake Boulevard. From the intersection of I-10 and Eastlake Boulevard proceed northwest along Eastlake Boulevard approximately 1.4 miles to the intersection with Mission Ridge Boulevard. Proceed north along Mission Ridge Boulevard approximately .5 mile to the District’s southern boundary. The District lies totally within the exclusive extraterritorial jurisdiction of the City. See “AERIAL PHOTOGRAPH” herein.
<i>Master District Contract</i> .....	The District and nine other districts in the Paseo del Este development in eastern El Paso County known as Paseo del Este Municipal Utility District Nos. 3, 4, 5, 6, 7, 8, 9, 10 and 11 (those ten districts and Paseo del Este Municipal Utility District No. 1 (the “Master District”) being collectively referred to as the “Participant Districts” and individually as “Participant District No. –”) have each entered into a “Master District Contract” with the Master District to coordinate the development of the water, sanitary sewer and drainage facilities to serve the area within all eleven Participant Districts. Under the Master District Contract, the Master District will acquire, construct, own and operate the Regional Facilities to serve the area within all eleven Participant Districts; each Participant District will acquire, construct and own its Internal Facilities serving only area within it and lease the Internal Facilities to the Master District for operation; and the Master District will provide retail water and wastewater service to all retail customers in all of the Participant Districts.
<i>Status of Development</i> .....	The Participant Districts are being developed primarily for single family residential, commercial and industrial purposes, and are within the Paseo del Este development (“Paseo del Este”). Paseo del Este is being developed primarily by Hunt Communities Group, Inc. (“Hunt”) and certain affiliates thereof, and B&G/Sunrise Joint Venture (“B&G”) and is planned to include approximately 4,300 acres of land. The land in Paseo del Este was purchased from the Texas General Land Office by Hunt and affiliates thereof and B&G in varying positions in a series of transactions between 1998 and 2020. As of As of March 31, 2024, approximately 9,823 single family residential lots have been developed within Paseo del Este, and approximately 9,246 homes are completed or are in various stages of construction in Paseo del Este. Within the District, there are currently 764 homes completed or in various stages of construction and 262 additional vacant developed lots. There is a total of 1,026 single family lots in the District which encompasses 261 developed acres.

The development within the District includes the Americas Estates Unit 1, Americas Estates Unit 1 Replat A and Replat B, Americas Estates Unit 2 Phase 1, Garden Park at Mission Ridge Unit 1, Garden Park at Mission Ridge Unit Two, Garden Park at Mission Ridge Unit Three and Garden Park at Mission Ridge Unit Four, all of which are single family residential subdivisions. Initial development within the District also includes the Americas Estates Park Subdivision, a five acre park, and Paseo Del Este Boulevard Unit 1 subdivision, a 120 foot arterial that runs thru the district and Mission Ridge Boulevard, another 120 foot arterial that runs through the District. Northtowne Village Joint Venture is the developer of Americas Estates Units 1 and 2, and Americas Estates Unit 1 Replat B, and SDC, Ltd. is the developer of Americas Estates Unit 1 Replat A. Hunt is the developer of Garden Park at Mission Ridge Unit 1 through 4. The land in the Americas Estates Units 1 and 2, and Americas Estates Unit 1 Replat A and Replat B was acquired by Hunt from the GLO and subsequently sold to Northtowne Village Joint Venture and SDC Ltd.



All 261 acres of developable land within the District have been furnished with underground water, sanitary sewer and drainage facilities. There are approximately 119 acres of undevelopable land within the District contained in easements, parks and open-space land. See “THE DISTRICT — Status of Development”

*The Developer* .....Major water, sewer and drainage facilities and streets to serve land within the District are being developed by Hunt, Northtowne Village Joint Venture (“Northtowne”), SDC, Ltd and B&G. The activities of Hunt include development, construction, consulting and advisory. Water, sewer and drainage facilities to serve specific sections within the District have been acquired or constructed by SDC, Ltd. and Northtowne, which entities are unrelated to Hunt and B&G. These four entities may collectively be referred to herein as the “Developers.”

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## SELECTED FINANCIAL INFORMATION

Tax Year 2024 Preliminary Assessed Valuation . . . . .	\$	258,643,561	(a)
District Debt:			
Gross Debt Outstanding (after the issuance of the Bonds) . . . . .	\$	11,290,000	
Estimated Overlapping Debt . . . . .		8,114,952	(b)
Gross Debt and Estimated Overlapping Debt . . . . .	\$	19,404,952	
Ratio of Gross Debt to Tax Year 2024 Preliminary Assessed Valuation . . . . .		4.37%	
Ratio of Gross Debt and Estimated Overlapping Debt to Tax Year 2024 Preliminary Assessed Valuation . . . . .		7.50%	
Debt Service Funds Available, as of May 9, 2024 . . . . .	\$	1,089,368.87	
Capital Projects Funds Available, as of May 9, 2024. . . . .	\$	53,498.71	
Operating Funds Available, as of May 9, 2024 . . . . .	\$	763,365.83	
Tax Year 2023 Tax Rates:			
Debt Service . . . . .	\$	0.3577	
Contract . . . . .		0.2900	
Maintenance and Operations . . . . .		0.0862	
Total . . . . .	\$	0.7339	/\$100 A.V.
Average Annual Debt Service Requirements (2024 - 2049) of the Bonds and the Outstanding			
Bonds ("Average Requirement"). . . . .	\$	650,556	(c)
Tax rate required to pay Average Requirement based upon Tax Year 2024			
Preliminary Assessed Valuation at a 98% collection rate . . . . .	\$	0.2567	/\$100 A.V.
Status of Water Connections as of March 31, 2024: (d)			
Single-family residential - completed and occupied . . . . .	661		
Single-family residential - completed and vacant . . . . .	5		
Single-family residential - under construction - builder . . . . .	98		
Other (Irrigation connections) . . . . .	5		
Total Connections . . . . .	769		

(a) Preliminary assessed valuation by the El Paso Central Appraisal District (the "Appraisal District"). Represents the preliminary assessed taxable valuation within the District as of January 1, 2024. No assurance can be given as to the final assessed valuation in the District. The District will not levy taxes on such valuation until it is certified by the Appraisal District. See "TAX PROCEDURES."

(b) See "ESTIMATED OVERLAPPING DEBT STATEMENT" herein.

(c) See "PRO-FORMA DEBT SERVICE REQUIREMENTS."

(d) Status of Water Connections does not include the 261 completed lots in the District where home construction has not begun.

## PRELIMINARY OFFICIAL STATEMENT

**\$3,700,000**

### **PASEO DEL ESTE MUNICIPAL UTILITY DISTRICT NO. 2**

*(A political subdivision of the State of Texas located within El Paso County)*

### **UNLIMITED TAX BONDS, SERIES 2024**

This Official Statement provides certain information in connection with the issuance by Paseo del Este Municipal Utility District No. 2 (the “District”) of its \$3,700,000 Unlimited Tax Bonds, Series 2024 (the “Bonds”).

The Bonds are issued pursuant to the Texas Constitution, Chapter 443, Acts of the Texas Legislature, Regular Session, 1997 (the “Act”) and Chapters 49 and 54 of the Texas Water Code, as amended, and a resolution authorizing the issuance of the Bonds (the “Bond Resolution”) adopted by the Board of Directors of the District (the “Board”), and an order of the Texas Commission on Environmental Quality (the “TCEQ”).

This Official Statement includes descriptions, among others, of the Bonds and the Bond Resolution, and certain other information about the District and the Developer of land within the District. All descriptions of documents contained herein are only summaries and are qualified in their entirety by reference to each document. Copies of documents may be obtained from Gordon Davis Johnson & Shane P.C., the District’s General Counsel, 4695 North Mesa Street, El Paso, Texas 79912 upon payment of the costs of duplication therefor.

## **RISK FACTORS**

### **General**

The Bonds, which are obligations of the District and not obligations of the State of Texas (the “State”), El Paso County (the “County”), the City of El Paso (the “City”), or any other political entity other than the District, will be secured by a continuing, direct, annual ad valorem tax levied, without legal limitation as to rate or amount, on all taxable property within the District. The ultimate security for payment of the principal of and interest on the Bonds depends on the ability of the District to collect from the property owners within the District all taxes levied against the property or, in the event of foreclosure, on the value of the taxable property with respect to taxes levied by the District and by other taxing authorities. See “THE BONDS - Source of and Security for Payment.” The collection by the District of delinquent taxes owed to it and the enforcement by the Registered Owners of the District's obligation to collect sufficient taxes may be a costly and lengthy process. Furthermore, the District cannot and does not make any representations that continued development of taxable property within the District will accumulate or maintain taxable values sufficient to justify continued payment of taxes by property owners or that there will be a market for the property in the District or that owners of the property in the District will have the ability to pay taxes. See “Registered Owners' Remedies and Bankruptcy Limitations” below.

### **Factors Affecting Taxable Values and Tax Payments**

*Economic Factors and Interest Rates:* A substantial percentage of the taxable value of the District results from the current market value of single-family residences, undeveloped land and developed lots which are currently being marketed by the Developer (as defined herein) to builders for the construction of primary residences. The market value of such homes and lots is related to general economic conditions affecting the demand for residences. Demand for lots of this type and the construction of residential dwellings thereon can be significantly affected by factors such as interest rates, credit availability (see “Credit Markets and Liquidity in the Financial Markets” below), construction costs, energy availability and the prosperity and demographic characteristics of the urban center toward which the marketing of lots is directed. Decreased levels of construction activity would tend to restrict the growth of property values in the District or could adversely impact such values. See “THE DISTRICT - Status of Development.”

Future development and construction in the District are highly dependent on the availability of financing. Lenders generally have become more selective in making real estate loans throughout the nation, including in Texas. Because of the numerous and changing factors affecting the availability of funds, the District is unable to assess the future availability of such funds to potential home builders and home purchasers.

*Credit Markets and Liquidity in the Financial Markets:* Interest rates and the availability of mortgage and development funding have a direct impact on the construction activity, particularly short-term interest rates at which Developer are able to obtain financing for development costs. Interest rate levels may affect the ability of a landowner with undeveloped property to undertake and complete construction activities within the District. Because of the numerous and changing factors affecting the availability of

funds, the District is unable to assess the future availability of such funds for continued construction within the District. In addition, since the District is located approximately 15 miles east from the central downtown business district of the City, the success of development within the District and growth of District taxable property values are, to a great extent, a function of the El Paso metropolitan and regional economies and national credit and financial markets. A downturn in the economic conditions in the El Paso area and/or decline in the nation's real estate and financial markets could continue to adversely affect development and home-building plans in the District and restrain the growth of the District's property tax base.

*Competition:* The demand for and construction of single-family homes in the District, which is 15 miles east from downtown El Paso, could be affected by competition from other residential developments, including other residential developments located in the northwestern, northeastern and far eastern portion of the El Paso area market. In addition to competition for new home sales from other developments, there are numerous previously-owned homes in the area of the District. Such homes could represent additional competition for new homes proposed to be sold within the District.

The competitive position of the builders in the sale of single-family residential homes within the District is affected by most of the factors discussed in this section. Such a competitive position directly affects the growth and maintenance of taxable values in the District and tax revenues to be received by the District. The District can give no assurance that building and marketing programs in the District by the Developer will be implemented or, if implemented, will be successful.

*Landowner Obligation to the District:* There are no commitments from or obligations of any developer or any landowner to the District to proceed at any particular rate or according to any specified plan with the construction of improvements in the District, and there is no restriction on any landowner's right to sell its land. Failure to develop undeveloped land or construct taxable improvements on developed lots or developed tracts of land would restrict the rate of growth of taxable values in the District. The District cannot and does not make any representations that over the life of the Bonds, taxable property within the District will increase or maintain its taxable value.

*Dependence on Principal Taxpayers:* The ability of any principal taxpayer to make full and timely payments of taxes levied against its property by the District and similar taxing authorities will directly affect the District's ability to meet its debt service obligations. If, for any reason, any one or more principal taxpayers do not pay taxes due or do not pay in a timely manner, the District may need to levy additional taxes or use other funds available for debt service purposes. However, the District has not covenanted in the Bond Resolution, nor is it required by State law, to maintain any particular balance in its Debt Service Fund or any other funds to allow for any such delinquencies. Therefore, failure by one or more principal taxpayers to pay their taxes on a timely basis in amounts in excess of the District's available funds could have a material adverse effect upon the District's ability to pay debt service on the Bonds on a current basis. See "TAX DATA – Principal Taxpayers".

*Impact on District Tax Rates:* Assuming no further development, the value of the land and improvements currently within the District will be the major determinant of the ability or willingness of District property owners to pay their taxes. The 2024 preliminary assessed valuation of the District (the "2024 Preliminary Assessed Valuation") (see "SELECTED FINANCIAL INFORMATION") is \$258,643,561. After issuance of the Bonds, the projected maximum annual debt service ("Projected Maximum Annual Debt Service") requirement will be \$930,818 (2033) and the projected average annual debt service ("Projected Average Annual Debt Service") requirement will be \$650,556 (2024-2049). Assuming no increase or decrease from the 2024 Preliminary Assessed Valuation and no use of funds other than tax collections, a tax rate of \$0.3672 per \$100 assessed valuation at a 98% collection rate would be necessary to pay the Projected Maximum Annual Debt Service requirement of \$930,818 and a tax rate of \$0.2567 per \$100 assessed valuation at a 98% collection rate would be necessary to pay the Projected Average Annual Debt Service requirement of \$650,556 (see "SELECTED FINANCIAL INFORMATION" and "TAX DATA – Projected Tax Adequacy for Debt Service"). The preceding information relating to tax rates and collections is calculated based on the 2024 Preliminary Assessed Valuation for the District. No assurance can be given as to the final assessed valuation in the District, and no taxes will be levied, and no tax rate will be set, until the assessed valuation in the District is certified. The 2024 Preliminary Assessed Valuation is subject to change. Such calculated rates may be higher than tax rates presently being levied in utility districts in the general vicinity of the District. Although calculations have been made regarding average and maximum tax rates necessary to pay the debt service on the Bonds based upon the 2024 Preliminary Assessed Valuation, the District can make no representations regarding the future level of assessed valuation within the District. Increases in the tax rate may be required in the event the District's assessed valuation does not continue to increase or in the event major taxpayers do not pay their District taxes timely. Increases in taxable values depend primarily on the continuing construction and sale of homes and other taxable improvements within the District. See "TAX PROCEDURES," "FINANCIAL STATEMENT," and "TAX DATA – Projected Tax Adequacy for Debt Service."

### **District Operations and Contract Tax**

The Master District Contract (as defined below) between the District and the Master District provides that, as partial consideration for the District allowing the Master District to provide retail water and wastewater service to retail customers inside the District's

boundaries, the Master District will pay the District's administrative expenses to manage the District pursuant to a budget process outlined below. The Master District Contracts between the other Paseo del Este Municipal Utility District Nos. 3, 4, 5, 6, 7, 8, 9, 10 and 11 (the "Participant Districts") and the Master District have similar provisions regarding those other Participant Districts. The Master District Contract provides that the District will submit annually a budget for its administrative expenses to the Master District for review and approval by the Master District. Once approved, all such expenses will be paid by the Master District. The District's budget must be approved by the Master District if it is no more than 10% higher than the average of the annual budgets of the Participant Districts Nos. 2-11. To date, the District's annual budgets have all been approved by the Master District.

The Master District Contract also provides that the Master District will pay its own operation and administrative expenses and the approved administrative expenses of the Participant Districts from the revenues from the Master District's water and wastewater system. If the Master District's water and wastewater system revenues are insufficient to pay all of those costs, the resulting deficit will be paid by all Participant Districts (including the Master District) from the proceeds of an annual ad valorem contract tax levied by each Participant District on all taxable property within its boundaries in an amount sufficient to pay each Participant District's pro rata share of the deficit. A Participant District's pro rata share of the deficit each year is determined by multiplying the deficit by a fraction, the numerator of which is the Participant District's taxable assessed valuation for the year and the denominator of which is the total of the taxable assessed valuations in all the Participant Districts (including the Master District). See "THE SYSTEM - The Master District Contract."

For the 2023 fiscal year, the District paid its pro rata share of the Master District's budgeted operating deficit from the \$0.29/\$100 assessed value contract tax levied by the District on September 14, 2023. The District has levied a contract tax of \$0.29 per \$100 assessed value for Tax Year 2023.

### **Future Debt**

At an election held November 6, 2007 the District authorized the issuance of up to \$17,000,000 of unlimited tax debt for new money purposes. The District reserves in the Bond Resolution the right to issue the remaining \$3,760,000 principal amount of unlimited tax debt authorized but unissued after the issuance of the Bonds for the purpose of acquiring or constructing water, sanitary sewer and drainage facilities and the District may issue additional bonds which may be voted hereafter. The District may also issue revenue bonds and refunding bonds (including refunding bonds issued pursuant to the November 6, 2007 bond election). See "THE BONDS - Issuance of Additional Debt" and "THE SYSTEM – Future Debt." The issuance of such future obligations may dilute and adversely affect the investment security of the Bonds. The District does not employ any formula with regard to assessed valuations or tax collections or otherwise to limit the amount of bonds which may be issued. Any bonds issued by the District, however, must be approved by the Board of the District, the Attorney General of Texas and, with respect to bonds for water, sewer and drainage improvements, the TCEQ. See "THE SYSTEM" herein. After sale of the Bonds and reimbursement to the Developers of a portion of the proceeds therefrom, the District will still owe not less than approximately \$378,682 to the Developers for the costs of facilities for which the Developers have not yet been reimbursed. The District expects to sell additional bonds to reimburse the Developer for such costs. See "THE SYSTEM – Future Debt" "THE BONDS – Issuance of Additional Debt," and "UNLIMITED TAX BONDS AUTHORIZED BUT UNISSUED."

### **Environmental Regulation**

Wastewater treatment and water supply facilities are subject to stringent and complex environmental laws and regulations. The Master District currently receives wholesale water and wastewater services from the El Paso Water Utilities Public Service Board ("EPWU") for the areas within the Participant Districts. Facilities must comply with environmental laws at the federal, state, and local levels. These laws and regulations can restrict or prohibit certain activities that affect the environment in many ways such as:

- Requiring permits for construction and operation of water supply wells and wastewater treatment facilities;
- Restricting the manner in which wastes are released into the air, water, or soils;
- Restricting or regulating the use of wetlands or other property;
- Requiring action to prevent or mitigate pollution; and
- Imposing substantial liabilities for pollution resulting from facility operations.

Compliance with environmental laws and regulations can increase the cost of planning, designing, constructing and operating water production and wastewater treatment facilities. Sanctions against a municipal utility district or other type of district ("Utility Districts") for failure to comply with environmental laws and regulations may include a variety of civil and criminal enforcement measures, including assessment of monetary penalties, imposition of remedial requirements, and injunctive relief as to future compliance of and the ability to operate the Utility District's water supply, wastewater treatment, and drainage facilities. Environmental laws and regulations can also impact an area's ability to grow and develop. It should be noted that changes in environmental laws and regulations occur frequently, and any changes that result in more stringent and costly requirements could materially impact the District.

### **Tax Collection Limitations**

The District's ability to make debt service payments may be adversely affected by its inability to collect ad valorem taxes. Under State law, the levy of ad valorem taxes by the District constitutes a lien in favor of the District on a parity with the liens of all other state and local taxing authorities on the property against which taxes are levied, and such lien may be enforced by foreclosure. The District's ability to collect ad valorem taxes through such foreclosure may be impaired by (i) cumbersome, time-consuming and expensive collection procedures, (ii) a bankruptcy court's stay of tax collection procedures against a taxpayer, or (iii) market conditions affecting the marketability of taxable property within the District and limiting the proceeds from a foreclosure sale of such property. While the District has a lien on taxable property within the District for taxes levied against such property, such lien can be foreclosed only in a judicial proceeding. The costs of collecting any such taxpayer's delinquencies could substantially reduce the net proceeds to the District from a tax foreclosure sale. Finally, a bankruptcy court with jurisdiction over bankruptcy proceedings initiated by or against a taxpayer within the District pursuant to the Federal Bankruptcy Code could stay any attempt by the District to collect delinquent ad valorem taxes against such taxpayer. In addition to the automatic stay against collection of delinquent taxes afforded a taxpayer during the pendency of a bankruptcy, a bankruptcy could affect payment of taxes in two other ways: first, a debtor's confirmation plan may allow a debtor to make installment payments on delinquent taxes for up to six years; and, second, a debtor may challenge, and a bankruptcy court may reduce, the amount of any taxes assessed against the debtor, including taxes that have already been paid. See "TAX PROCEDURES - District's Rights in the Event of Tax Delinquencies."

### **Registered Owners' Remedies and Bankruptcy Limitations**

If the District defaults in the payment of principal, interest, or redemption price on the Bonds when due, or if it fails to make payments into any fund or funds created in the Bond Resolution, or defaults in the observation or performance of any other covenants, conditions, or obligations set forth in the Bond Resolution, the Registered Owners have the statutory right of a writ of mandamus issued by a court of competent jurisdiction requiring the District and its officials to observe and perform the covenants, obligations, or conditions prescribed in the Bond Resolution. Except for mandamus, the Bond Resolution does not specifically provide for remedies to protect and enforce the interests of the Registered Owners. There is no acceleration of maturity of the Bonds in the event of default and, consequently, the remedy of mandamus may have to be relied upon from year to year. Further, there is no trust indenture or trustee, and all legal actions to enforce such remedies would have to be undertaken at the initiative of, and be financed by, the Registered Owners. Statutory language authorizing local governments such as the District to sue and be sued does not waive the local government's sovereign immunity from suits for money damages, so that in the absence of other waivers of such immunity by the Texas Legislature, a default by the District in its covenants in the Bond Resolution may not be reduced to a judgment for money damages. If such a judgment against the District were obtained, it could not be enforced by direct levy and execution against the District's property. Further, the Registered Owners cannot themselves foreclose on property within the District or sell property within the District to enforce the tax lien on taxable property to pay the principal of and interest on the Bonds. The enforceability of the rights and remedies of the Registered Owners may further be limited by a State statute reasonably required to attain an important public purpose or by laws relating to bankruptcy, reorganization or other similar laws of general application affecting the rights of creditors of political subdivisions, such as the District.

The enforceability of the rights and remedies of Registered Owners may be limited by laws relating to bankruptcy, reorganization or other similar laws of general application affecting the rights of creditors of political subdivisions such as the District. State law requires municipal utility districts such as the District to obtain the approval of the TCEQ as a condition to seeking relief under Chapter 9 of the Federal Bankruptcy Code.

If a petitioning district were allowed to proceed voluntarily under Chapter 9 of the Federal Bankruptcy Code, it could file a plan for an adjustment of its debts. If such a plan were confirmed by the bankruptcy court, it could, among other things, affect Registered Owners by reducing or eliminating the amount of indebtedness, deferring or rearranging the debt service schedule, reducing or eliminating the interest rate, modifying or abrogating the collateral or security arrangements, substituting (in whole or in part) other securities, and otherwise compromising and modifying the rights and remedies of the Registered Owners' claims against a district.

A district such as the District may not be forced into bankruptcy involuntarily.

### **Continuing Compliance with Certain Covenants**

The Bond Resolution contains covenants by the District intended to preserve the exclusion from gross income of interest on the Bonds. Failure by the District to comply with such covenants in the Bond Resolution on a continuous basis prior to maturity of the Bonds could result in interest on the Bonds becoming taxable retroactively to the date of original issuance. See "TAX EXEMPTION—Opinion."

## **Marketability**

The District has no agreement with the Initial Purchaser (as defined herein) regarding the reoffering yields or prices of the Bonds and has no control over trading of the Bonds in the secondary market. Moreover, there is no assurance that a secondary market will be made in the Bonds. If there is a secondary market, the difference between the bid and asked price of the Bonds may be greater than the difference between the bid and asked price of bonds of comparable maturity and quality issued by more traditional issuers as such bonds are generally bought, sold or traded in the secondary market. Additionally, there are no assurances that if a secondary market for the Bonds were to develop, that any such secondary market would not be disrupted by other economic events.

The failure by the District to comply with its agreement to provide the information and notices required by Rule 15c(2)-12 of the Securities and Exchange Commission (“Rule 15c2-12”) could possibly inhibit the sale of the Bonds in the secondary market. See “CONTINUING DISCLOSURE OF INFORMATION.”

## **The Effect of FIRREA on Tax Collections of the District**

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“FIRREA”) contains certain provisions which affect the time for protesting property valuations, the fixing of tax liens and the collection of penalties and interest on delinquent taxes on real property owned by the Federal Deposit Insurance Corporation (“FDIC”) when the FDIC is acting as the conservator or receiver of an insolvent financial institution.

Under FIRREA, real property held by the FDIC is still subject to ad valorem taxation, but such act states that (i) no real property of the FDIC shall be subject to foreclosure or sale without the consent of the FDIC and no involuntary liens shall attach to such property, (ii) the FDIC shall not be liable for any penalties, interest, or fines, including those arising from the failure to pay any real or personal property tax when due, and (iii) notwithstanding failure of a person to challenge an appraisal in accordance with State law, such value shall be determined as of the period for which such tax is imposed.

To the extent that the FDIC attempts to enforce the same, these provisions may affect the timeliness of collection of taxes on property, if any, owned by the FDIC in the District and may prevent the collection of penalties and interest on such taxes or may affect the valuation of such property.

## **Changes in Tax Legislation**

Certain tax legislation, whether currently proposed or proposed in the future, may directly or indirectly reduce or eliminate the benefit of the exclusion of interest on the Bonds from gross income for federal income tax purposes. Any proposed legislation, whether or not enacted, may also affect the value and liquidity of the Bonds. Prospective purchasers of the Bonds should consult with their own tax advisors with respect to any proposed, pending or future legislation.

# **THE BONDS**

## **General**

Following is a description of some of the terms and conditions of the Bonds, which description is qualified in its entirety by reference to the Bond Resolution of the Board authorizing the issuance and sale of the Bonds. The Bond Resolution authorizes the issuance and sale of the Bonds and prescribes the terms, conditions, and provisions for the payment of the principal of and interest on the Bonds by the District.

The Bonds will be dated August 1, 2024, and will accrue interest from the date of initial delivery of the Bonds (expected to be August 13, 2024). Interest is payable on each February 15 and August 15 commencing February 15, 2025, until the earlier of maturity or prior redemption. The Bonds mature on August 15 in the amounts and years shown on the cover page of this Official Statement. Interest calculations are based on a 360-day year comprised of twelve 30-day months. The Bonds will be issued only in fully registered form in denominations of \$5,000 each or integral multiples thereof.

## **Authority for Issuance**

At a bond election held within the District on November 6, 2007, the voters of the District authorized the issuance of a total of \$17,000,000 principal amount of unlimited tax bonds for water, wastewater and drainage facilities. See “Issuance of Additional Debt” below and “UNLIMITED TAX BONDS AUTHORIZED BUT UNISSUED.” The Bonds are the seventh issuance of debt by the District (including one series of unlimited tax refunding bonds). The TCEQ has authorized the District to sell the Bonds for the purposes described in “THE SYSTEM - Use and Distribution of Bond Proceeds.”

The Bonds are issued by the District pursuant to the terms and provisions of the Bond Resolution, an Order of the TCEQ, Article XVI, Section 59 of the Texas Constitution, the Act and Chapters 49 and 54 of the Texas Water Code, as amended.

### **Source of and Security for Payment**

While the Bonds or any part of the principal thereof or interest thereon remain outstanding and unpaid, the District covenants in the Bond Resolution to levy an annual ad valorem tax, without legal limitation as to rate or amount, upon all taxable property in the District sufficient to pay the principal of and interest on the Bonds, with full allowance being made for delinquencies and costs of collection.

The Bonds are obligations of the District and are not the obligations of the State, the County, the City or any entity other than the District.

### **Record Date**

The record date for the interest payable on the Bonds on any interest payment date means the close of business on the last day of the preceding month whether or not a business day.

### **Funds**

In the Bond Resolution, the Debt Service Fund is created, and the proceeds from all taxes levied, assessed and collected for and on account of the Bonds authorized by the Bond Resolution shall be deposited, as collected, in such fund.

Proceeds from sale of the Bonds, including interest earnings thereon, shall be deposited into the Capital Projects Fund, to pay the costs of acquiring or constructing Internal Facilities (as defined herein) or the District's pro rata share of capacity in Regional Facilities (as defined herein), for paying the District's pro rata share of creation and administrative costs of all Participant Districts and for paying the costs of issuing the Bonds. See "THE SYSTEM - Use and Distribution of Bond Proceeds" for a more complete description of the use of Bond proceeds.

### **No Arbitrage**

The District will certify as of the date the Bonds are delivered and paid for that, based upon all facts and estimates now known or reasonably expected to be in existence on the date the Bonds are delivered and paid for, the District reasonably expects that the proceeds of the Bonds will not be used in a manner that would cause the Bonds, or any portion of the Bonds, to be "arbitrage bonds" under the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations prescribed thereunder. Furthermore, all officers, employees, and agents of the District have been authorized and directed to provide certifications of facts and estimates that are material to the reasonable expectations of the District as of the date the Bonds are delivered and paid for. In particular, all or any officers of the District are authorized to certify to the facts and circumstances and reasonable expectations of the District on the date the Bonds are delivered and paid for regarding the amount and use of the proceeds of the Bonds. Moreover, the District covenants in the Bond Resolution that it shall make such use of the proceeds of the Bonds, regulate investment of proceeds of the Bonds, and take such other and further actions and follow such procedures, including, without limitation, calculating the yield on the Bonds, as may be required so that the Bonds shall not become "arbitrage bonds" under the Code and the regulations prescribed from time to time thereunder.

### **Redemption Provisions**

Optional Redemption. The District reserves the right, at its option, to redeem Bonds having stated maturities on and after August 15, 20\_\_, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof, on August 15, 20\_\_, or any date thereafter, at the par value thereof plus accrued thereon to the date fixed for redemption.

If fewer than all of the Bonds are redeemed at any time, the particular maturities of Bonds to be redeemed shall be selected by the District. If less than all the Bonds of any maturity are redeemed at any time, the particular Bonds within a maturity to be redeemed shall be selected by the Paying Agent/Registrar by lot or other customary method of selection (or by DTC in accordance with its procedures while the Bonds are in book-entry-only form).

Mandatory Sinking Fund Redemption: In the event the Bonds are structured as "term" bonds, such term bonds will be subject to mandatory sinking fund redemption in accordance with the applicable provisions of the Bond Resolution and will be described in the final Official Statement.



**Notice of Redemption:** Notice of any optional redemption identifying the Bonds to be redeemed in whole or in part shall be given by the Paying Agent/Registrar at least thirty (30) days prior to the date fixed for optional redemption by sending written notice by first class mail to the Registered Owner of each Bond to be redeemed in whole or in part at the address shown on the register. Such notices shall state the redemption date, the redemption price, and the place at which the Bonds are to be surrendered for payment and, if fewer than all the Bonds outstanding within any one maturity are to be redeemed, the numbers of the Bonds or the portions thereof to be redeemed. Any notice given shall be conclusively presumed to have been duly given, whether or not the Registered Owner receives such notice. By the date fixed for redemption, due provision shall be made with the Paying Agent/Registrar for payment of the redemption price of the Bonds or portions thereof to be redeemed, plus accrued interest to the date fixed for redemption. When Bonds have been called for redemption in whole or in part and due provision has been made to redeem the same as herein provided, the Bonds or portions thereof so redeemed shall no longer be regarded as outstanding except for the purpose of receiving payment solely from the funds so provided for redemption, and the rights of the Registered Owners to collect interest that would otherwise accrue after the redemption date on any Bond or portion thereof called for redemption shall terminate on the date fixed for redemption.

### **Paying Agent/Registrar**

The Board has appointed BOKF, NA, (the "Paying Agent/Registrar") in Dallas, Texas, as the initial ("Paying Agent/Registrar") for the Bonds. The principal of and interest on the Bonds shall be paid to DTC, which will make distribution of the amounts so paid to the beneficial owners of the Bonds. See "BOOK-ENTRY-ONLY SYSTEM."

### **Registration and Transfer**

So long as any Bonds remain outstanding, the Paying Agent/Registrar shall keep the register at its principal payment office and, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with the terms of the Bond Resolution. While the Bonds are in the Book-Entry-Only System, the Bonds will be registered in the name of Cede & Co. and will not be transferred. See "BOOK-ENTRY-ONLY SYSTEM."

### **Replacement of Paying Agent/Registrar**

Provision is made in the Bond Resolution for replacement of the Paying Agent/Registrar. If the Paying Agent/Registrar is replaced by the District, the new paying agent/registrar shall act in the same capacity as the previous Paying Agent/Registrar. Any paying agent/registrar selected by the District shall be a national or state banking institution, a corporation organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise trust powers, and subject to supervision or examination by federal or state authority, to act as Paying Agent/Registrar for the Bonds.

### **Issuance of Additional Debt**

The District may issue additional bonds, with the approval of the TCEQ in the case of bonds issued for water, sewer and drainage purposes, necessary to provide and maintain improvements and facilities consistent with the purposes for which the District was created. After issuance of the Bonds, the District will have \$3,760,000 of unlimited tax bonds authorized but unissued for water, sanitary sewer and drainage purposes. The Bond Resolution imposes no limitation on the amount of additional parity bonds which may be authorized for issuance by the District's voters or the amount of bonds ultimately issued by the District. See "THE SYSTEM - Future Debt" and "UNLIMITED TAX BONDS AUTHORIZED BUT UNISSUED."

The District is empowered, among other things, to purchase, construct, operate and maintain all works, improvements, facilities and plants necessary for the supply and distribution of water; the collection, transportation, and treatment of wastewater; and the control and diversion of storm water. The District may issue bonds and other forms of indebtedness to purchase or construct such facilities or acquire contract rights therefor. The District is also empowered to establish, operate, and maintain fire-fighting facilities, independently or with one or more conservation and reclamation districts after approval by the City, the TCEQ and the voters of the District.

### **Annexation by the City of El Paso**

The District lies wholly within the extraterritorial jurisdiction of the City, and may be annexed by the City in accordance with existing State law. Under prior State law, a municipality could annex and dissolve a municipal utility district located within its extraterritorial jurisdiction without consent of the district or its residents. Under House Bill 347 approved during the 86th Regular Legislative Session ("HB 347"), (a) a municipality may annex a district with a population of less than 200 residents only if: (i) the municipality obtains consent to annex the area through a petition signed by more than 50% of the registered voters of the district, and (ii) if the registered voters in the area to be annexed do not own more than 50% of the land in the area, a petition has been signed by more than 50% of the landowners consenting to the annexation; and (b) a municipality may annex a district with a population of

200 residents or more only if: (i) such annexation has been approved by a majority of those voting in an election held for that purpose within the area to be annexed, and (ii) if the registered voters in the area to be annexed do not own more than 50% of the land in the area, a petition has been signed by more than 50% of the landowners consenting to the annexation. Notwithstanding the foregoing, a municipality may annex an area if each owner of land in the area requests the annexation. As of March 31, 2024, the District had an estimated population of 2,512, thus triggering the voter approval and/or landowner consent requirements discussed in clause (b) above. The described election and petition process does not apply, however, during the term of a strategic partnership agreement between a municipality and a district specifying the procedures for annexation of all or a portion of the District. At present, the District and the City have not entered into (and do not currently have plans to enter into) any such strategic partnership agreement.

If the District is annexed, the City must assume the District's assets and obligations (including the Bonds) and dissolve the District within ninety (90) days. Annexation of territory by the City and dissolution of the District is a policy-making matter within the discretion of the Mayor and City Council of the City, subject to HB 347, and therefore, the District makes no representation that the City will ever annex the District and assume its debt, nor does the District make any representation concerning the ability of the City to pay debt service on the District's bonds if annexation were to occur.

### **Remedies in Event of Default**

Other than a writ of mandamus, the Bond Resolution does not provide a specific remedy for a default. If the District defaults, a Registered Owner could petition for a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the District and the District's officials to observe and perform the covenants, obligations or conditions prescribed in the Bond Resolution. Such remedy might need to be enforced on a periodic basis. Based on recent Texas court decisions, it is unclear whether §49.066, Texas Water Code, effectively waives governmental immunity of a municipal utility district for suits for money damages. Even if a judgment against the District for money damages could be obtained, it could not be enforced by direct levy and execution against the District's property. Further, the Registered Owners cannot themselves foreclose on property within the District or sell property within the District to enforce the tax lien on taxable property to pay the principal of and interest on the Bonds. The enforcement of a claim for payment on the Bonds would be subject to the applicable provisions of the federal bankruptcy laws, any other similar laws affecting the rights of creditors of political subdivisions, and general principles of equity which permit the exercise of judicial discretion. Certain traditional legal remedies also may not be available. See "RISK FACTORS - Registered Owners' Remedies and Bankruptcy Limitations."

### **Legal Investment and Eligibility to Secure Public Funds in Texas**

Pursuant to Section 49.186, Texas Water Code, the Bonds, whether rated or unrated, are (a) legal investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees and (b) legal investments for the public funds of cities, towns, villages, school districts, and other political subdivisions or public agencies of the State. The Bonds are also eligible under the Public Funds Collateral Act, Chapter 2257, Texas Government Code, to secure deposits of public funds of the State or any political subdivision or public agency of the State and are lawful and sufficient security for those deposits to the extent of their market value. Most political subdivisions in the State are required to adopt investment guidelines under the Public Funds Investment Act, Chapter 2256, Texas Government Code, and such political subdivisions may impose other, more stringent requirements in order for the Bonds to be legal investments for such entity's funds or to be eligible to serve as collateral for their funds.

No representation is made that the Bonds will be suitable for or acceptable to financial or public entities for investment purposes. No representation is made concerning other laws, rules, regulations, or investment criteria which might apply to or which might be utilized by any of such persons or entities to limit the acceptability or suitability of the Bonds for any of the foregoing purposes. Prospective purchasers are urged to carefully evaluate the investment quality of the Bonds as to the suitability or acceptability of the Bonds for investment or collateral purposes.

### **Defeasance**

The Bond Resolution provides that the District may discharge its obligations to the Registered Owners of any or all of the Bonds to pay principal, interest and redemption price thereon in any manner permitted by law. Under current State law, such discharge may be accomplished either (i) by depositing with the Comptroller of Public Accounts of the State a sum of money equal to the principal of, premium, if any, and all interest to accrue on the Bonds to maturity or redemption or (ii) by depositing with any place of payment (paying agent) of the Bonds or other obligations of the District payable from revenues or from ad valorem taxes or both, or with a commercial bank or trust company designated in the proceedings authorizing such discharge, amounts sufficient to provide for the payment and/or redemption of the Bonds; provided that such deposits may be invested and reinvested only in (a) direct obligations of the United States of America, (b) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body

of the District adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (c) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the District adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and which mature and/or bear interest payable at such times and in such amounts as will be sufficient to provide for the scheduled payment and/or redemption of the Bonds.

Upon such deposit as described above, such bonds shall no longer be regarded as outstanding or unpaid. After firm banking and financial arrangements for the discharge and final payment or redemption of the Bonds have been made as described above, all rights of the District to initiate proceedings to call the Bonds for redemption or take any other action amending the terms of the Bonds are extinguished; provided, however, that the right to call the Bonds for redemption is not extinguished if the District: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Bonds for redemption; (ii) gives notice of the reservation of that right to the owners of the Bonds immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

There is no assurance that the current law will not be changed in the future in a manner which would permit investments other than those described above to be made with amounts deposited to defease the Bonds.

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## BOOK-ENTRY-ONLY SYSTEM

*This section describes how ownership of the Bonds is to be transferred and how the principal of and interest on the Bonds are to be paid to and credited by The Depository Trust Company, New York, New York, (“DTC”) while the Bonds are registered in its nominee name. The information in this section concerning DTC and the Book-Entry-Only System has been provided by DTC for use in disclosure documents such as this Official Statement. The District and the Financial Advisor believe the source of such information to be reliable, but neither of the District nor the Financial Advisor takes any responsibility for the accuracy or completeness thereof.*

*The District cannot and does not give any assurance that (1) DTC will distribute payments of debt service on the Bonds, or redemption or other notices, to DTC Participants, (2) DTC Participants or others will distribute debt service payments paid to DTC or its nominee (as the registered owner of the Bonds), or redemption or other notices, to the Beneficial Owners, or that they will do so on a timely basis, or (3) DTC will serve and act in the manner described in this Official Statement. The current rules applicable to DTC are on file with the Securities and Exchange Commission, and the current procedures of DTC to be followed in dealing with DTC Participants are on file with DTC.*

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for each maturity of the Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 2.2 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation, and Emerging Markets Clearing Corporation (NSCC, FICC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a rating of: “AA+” from S&P Global Ratings, a business unit of Standard & Poor’s Financial Services, LLC (“S&P”). The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that

the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the Paying Agent/Registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

The District may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered to DTC.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the District as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, interest and redemption payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the District or the Paying Agent/Registrar, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Paying Agent/Registrar, or the District, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, interest and redemption payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the District or the Paying Agent/Registrar, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the District or the Paying Agent/Registrar. Under such circumstances, in the event that a successor depository is not obtained, printed certificates for the Bonds are required to be printed and delivered.

*Use of Certain Terms in Other Sections of this Official Statement.* In reading this Official Statement it should be understood that while the Bonds are in the Book-Entry-Only System, references in other sections of this Official Statement to registered owners should be read to include the person for which the Participant acquires an interest in the Bonds, but (i) all rights of ownership must be exercised through DTC and the Book-Entry-Only System, and (ii) except as described above, notices that are to be given to registered owners under the Bond Resolution will be given only to DTC.

Information concerning DTC and the Book-Entry-Only System has been obtained from DTC and is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation by, the District or the Financial Advisor.

## **BOND INSURANCE**

### **Bond Insurance**

Application for municipal bond insurance has been made by the District. Upon the determination of which entity, if any, the District will provide such insurance, information relating to the issuer of the municipal bond insurance policy applicable to the Bonds which will be set forth in the final Official Statement. The purchase of such insurance, if available and the payment of all associated costs will be at the option and expense of the Initial Purchaser. If bond insurance is purchased, purchasers of the Bonds should be aware of the risks described below :

### **Bond Insurance Risks**

The District has applied for a bond insurance policy to guarantee the scheduled payment of principal and interest on the Bonds. The District has yet to determine whether an insurance policy will be purchased with respect to the Bonds. If an insurance policy is purchased, the following are risk factors relating to bond insurance.

In the event of default of the payment of principal or interest with respect to the Bonds when all or some becomes due, any owner of the Bond shall have a claim under the applicable Bond Insurance Policy (the "Policy") for such payments. The payment of principal and interest in connection with mandatory or optional prepayment of the Bonds by the District which is recovered by the District from the Bond owner as a voidable preference under applicable bankruptcy law is covered by the Policy, however, such payments will be made by the insurer at such time and in such amounts as would have been due absent such prepayment by the District unless the bond insurer chooses to pay such amounts at an earlier date.

Under no circumstances does default of payment of principal and interest obligate acceleration of the obligations of the bond insurer without their consent, so long as the bond insurer performs its obligations under the applicable Policy. In the event the bond insurer is unable to make payment of principal and interest as such payments become due under the Policy, the Bonds are payable solely from the revenues pledged in the Bond Resolution. In the event the bond insurer becomes obligated to make payments with respect to the Bonds, no assurance is given that such event will not adversely affect the market price of the Bonds or the marketability (liquidity) for the Bonds.

In the event bond insurance is purchased, the long-term rating on the Bonds, if any, will be dependent in part on the financial strength of the bond insurer and its claims paying ability. The bond insurer's financial strength and claims paying ability are predicated upon a number of factors which could change over time. No assurance is given that the long-term ratings of the bond insurer or of the Bonds, if any, insured by the bond insurer will not be subject to downgrade and such event could adversely affect the market price of the Bonds or the marketability (liquidity) for the Bonds.

The obligations of the bond insurer are general obligations of the bond insurer and in an event of default by the bond insurer the remedies may be limited by applicable bankruptcy law. Neither the District nor the Financial Advisor have made an independent investigation into the claims paying ability of any potential bond insurer and no assurance or representation regarding the financial strength or projected financial strength of any potential bond insurer is given.

## **THE DISTRICT**

### **General**

The District is a conservation and reclamation district created by division of Paseo del Este Municipal Utility District pursuant to a division order adopted by the Original District on May 15, 2003, and operates pursuant to the Act, and Chapters 49 and 54, Texas Water Code. Prior to division, Paseo del Este Municipal Utility District was created as a Conservation and Reclamation District by the Act. The District is located wholly within the extraterritorial jurisdiction of the City.

The District is empowered, among other things, to purchase, construct, operate and maintain all works, improvements, facilities and plants, and contract rights therefore, necessary for the supply and distribution of water; the collection, transportation, and treatment of wastewater; and the control and diversion of storm water. The District may issue bonds and other forms of indebtedness to purchase or construct such facilities or contract rights therefor. The District is also empowered to establish, operate, and maintain fire-fighting facilities, independently or with one or more conservation and reclamation districts after approval by the City, the TCEQ and the voters of the District

The TCEQ exercises continuing supervisory jurisdiction over the District. The District is required to observe certain requirements of the City which limit the purposes for which the District may sell bonds to the acquisition, construction, and improvement of waterworks, wastewater, and drainage facilities or contract rights therefor, and the refunding of outstanding debt obligations; place restrictions on the terms and provisions and conditions on the sale of the District's bonds so long as such restraints and conditions do not render the bonds unmarketable; require approval by the City of District construction plans; and permit connections only to platted lots and reserves which have been approved by the City. Construction and operation of the District's drainage system are subject to the regulatory jurisdiction of additional government agencies. See "THE SYSTEM."

The District presently contains approximately 380 acres of land located in the east portion of El Paso County approximately 15 miles east of the central area of the City. The District is located just east of Loop 375 and is approximately one mile from the intersection of Interstate Highway 10, the major freeway through El Paso, Texas, and Eastlake Boulevard. From the intersection of I-10 and Eastlake Boulevard proceed northwest along Eastlake Boulevard approximately 1.4 miles to the intersection with Mission Ridge Boulevard. Proceed north along Mission Ridge Boulevard approximately .5 mile to the District's southern boundary. The District lies totally within the exclusive extraterritorial jurisdiction of the City. See "AERIAL PHOTOGRAPH" herein.

### **Validation of Creation of Participant Districts**

The creation of the Original District and its division into Participant District Nos. 1-9 has been validated by a final judgment of the County Court-at-Law of El Paso County, Texas. Likewise, creation of Participant District Nos. 10 and 11 has been validated by a final judgment of the District Court of El Paso County, Texas. Each of the Participant Districts, including the District, has held a confirmation, bond, refunding bond, maintenance tax and contract tax election. All such election propositions have been approved by voters of the Participant Districts, including the District.

## **Status of Development**

The District is being developed primarily for single family residential purposes, and is within the Paseo del Este development (“Paseo del Este”). Paseo del Este is being developed primarily by Hunt Communities Group, Inc. (“Hunt”), and certain affiliates thereof, and B&G/Sunrise Joint Venture (“B&G”) and is planned to include approximately 4,300 acres of land. The land in Paseo del Este was purchased from the Texas General Land Office by Hunt and affiliates thereof and B&G in varying positions in a series of transactions between 1998 and 2020. As of March 31, 2024, approximately 9,823 single family residential lots have been developed within Paseo del Este, and approximately 9,246 homes are completed or are in various stages of construction in Paseo del Este. Within the District, there are currently 764 homes completed or in various stages of construction and 262 lots completed but construction of homes has not begun. There is a total of 1,026 single family lots in the District which encompasses 261 developed acres.

The development within the District includes the Americas Estates Unit 1, Americas Estates Unit 1 Replat A and Replat B, Americas Estates Unit 2 Phase 1, Garden Park at Mission Ridge Unit 1, Garden Park at Mission Ridge Unit Two, Garden Park at Mission Ridge Unit Three and Garden Park at Mission Ridge Unit Four, all of which are single family residential subdivisions. Initial development within the District also includes the Americas Estates Park Subdivision, a five acre park, and Paseo Del Este Boulevard Unit 1 subdivision, a 120 foot arterial that runs thru the district and Mission Ridge Boulevard, another 120 foot arterial that runs through the District. Northtowne Village Joint Venture is the developer of Americas Estates Units 1 and 2, and Americas Estates Unit 1 Replat B, and SDC, Ltd. is the developer of Americas Estates Unit 1 Replat A. Hunt is the developer of Garden Park at Mission Ridge Unit 1 through 4. The land in the Americas Estates Units 1 and 2, and Americas Estates Unit 1 Replat A and Replat B was acquired by Hunt from the GLO and subsequently sold to Northtowne Village Joint Venture and SDC Ltd.

In addition to the development described above, all 261 acres of developable land within the District have been furnished with underground water, sanitary sewer and drainage facilities. There are approximately 119.2 acres of undevelopable land within the District contained in planned easements, parks and open-space land.

## **Community Facilities**

Community facilities are located in the general vicinity of the District. Neighborhood shopping facilities, including supermarkets, pharmacies, cleaners, restaurants, banking facilities and other retail and service establishments are located within five miles of the District along areas adjacent to Loop 375. Fire protection for residents of the District is provided by the El Paso County Emergency Services District No. 2. Police protection is provided by the El Paso County Sheriff. Medical care for District residents is available from various facilities in the City within 15 miles of the District. The land within the District is located within the boundaries of Socorro Independent School District, and children within the District attend elementary and middle schools of Socorro Independent School District located within two (2) miles of the District.

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## MANAGEMENT

### **Board of Directors**

The District is governed by the Board of Directors, consisting of five directors, which has control over and management supervision of all affairs of the District. None of the Directors listed below reside within the District; however, each Director owns a small parcel of land in the District. Directors are elected by the voters within the District for four-year staggered terms. Director elections are held in May in odd numbered years. The Directors and Officers of the District are listed below:

<u>Name</u>	<u>Title</u>	<u>Term Expires</u>
Doug Borrett	President	2025
Anne Jorjorian- Raynal	Vice-President	2027
Clint Newsom	Secretary	2027
Hector Esparza	Assistant Secretary	2027
Gina Mezzacappa	Assistant Secretary	2025

While the District does not employ any full time employees, it has contracted for certain services as follows:

### **Tax Assessor/Collector**

Land and improvements within the District are appraised for ad valorem taxation purposes by the Appraisal District. The District's Tax Assessor/Collector is agreed upon by virtue of the interlocal agreement between the City and the District, and the District has appointed the City Tax Assessor/Collector to serve in this capacity for the District.

### **Operations**

The District contracts with Inframark, LLC for maintenance and operation of the District's System. Inframark, LLC also serves as the operator of the Master District's System.

### **Bookkeeper**

The District has engaged Municipal Accounts & Consulting, L.P., to serve as the District's bookkeeper.

### **Engineer**

The consulting engineer for the District is TRE & Associates, LLC. (the "Engineer").

### **General Counsel**

The District engages Gordon Davis Johnson & Shane P.C., El Paso, Texas, ("General Counsel"). The fees payable to General Counsel are not contingent upon the issuance sale and delivery of the Bonds.

### **Bond Counsel**

The District has engaged McCall, Parkhurst & Horton L.L.P., Austin, Texas ("Bond Counsel"). The fees payable to Bond Counsel are contingent upon the issuance, sale and delivery of the Bonds.

### **Financial Advisor**

Hilltop Securities, Inc., El Paso, Texas and Dallas, Texas (the "Financial Advisor") serves as financial advisor to the District. The fee to be paid the Financial Advisor is contingent upon sale and delivery of the Bonds.

### **Disclosure Counsel**

The District has engaged Locke Lord LLP, Dallas, Texas, as Disclosure Counsel. The fees payable to Disclosure Counsel are contingent upon the sale, issuance and delivery of the Bonds.

### **Auditor**

The District's financial statements for the fiscal year ending September 30, 2023 have been audited by West, Davis & Company, LLP.



## **THE DEVELOPER**

### **Role of a Developer**

In general, the activities of a landowner or developer in a district such as the District include designing the project, defining a marketing program and setting building schedules; securing necessary governmental approvals and permits for development; arranging for the construction of roads and the installation of utilities; and selling or leasing improved tracts or commercial reserves to other Developer or third parties. In most instances, a landowner or developer will be required by the TCEQ to pay thirty percent (30%) of the cost of placing the water distribution, wastewater collection, and storm drainage facilities in a district, exclusive of water supply and storage and wastewater treatment plants of which the district incurs one hundred percent (100%) of the cost. While a developer is required by the TCEQ to pave streets, a developer is under no obligation to a district to undertake development activities according to any particular plan or schedule. Furthermore, there is no restriction on a developer's right to sell any or all of the land which the developer owns within a district. In addition, the developer is ordinarily the major taxpayer within the district during the early stages of development. The relative success or failure of a developer to perform in the above-described capacities may affect the ability of a district to collect sufficient taxes to pay debt service and retire bonds.

Neither the Developer (as hereinafter defined) nor any of its affiliates, is obligated to pay principal of or interest on the Bonds. See "RISK FACTORS - Factors Affecting Taxable Values and Tax Payments." Furthermore, neither the Developer nor any of its affiliates has any binding commitment to the District to carry out any plan of development, and the furnishing of information relating to the proposed development by the Developer should not be interpreted as such a commitment. Prospective purchasers are encouraged to inspect the District in order to acquaint themselves with the nature of development that has occurred or is occurring within the boundaries of the District.

### **The Developer**

Major water, sewer and drainage facilities and streets to serve land within the District are being developed by Hunt, Northtowne Village Joint Venture ("Northtowne"), SDC, Ltd and B&G. The activities of Hunt include development, construction, consulting and advisory. Water, sewer and drainage facilities to serve specific sections within the District have been acquired or constructed by SDC, Ltd. and Northtowne, which entities are unrelated to Hunt and B&G. These four entities may collectively be referred to herein as the "Developers."

Land within the District is a portion of the development known as Paseo del Este. The Master District and the Participant Districts have been formed and include approximately 4,300 acres of land in and adjacent to the District. See "THE DISTRICT - Status of Development."

The Developer is not responsible for, liable for, and has made no commitment for payment of the Bonds or other obligations of the District. The Developer may sell or otherwise dispose of its property within the District, or any other assets, at any time. See "RISK FACTORS - Factors Affecting Taxable Values and Tax Payments - Landowner Obligation to the District."

### **Developer Reimbursement Agreements**

Each Participant District, including the District, has entered into reimbursement agreements with the Developers of the regional water and sanitary sewer facilities serving the District and the other Participant Districts, including engineering costs (the "Regional Facilities") serving all Participant Districts pursuant to which the Participant District agrees to reimburse the Developers for the Participant District's pro rata share of the costs of the Regional Facilities based on the Participant District's total ultimate estimated connections as compared to the total connections in all eleven Participant Districts. In addition, such reimbursement agreements contemplate the Participant District will reimburse the Developers for the Participant District's pro rata share of (i) the Developers costs for creation of all eleven Participant Districts and (ii) the administrative and operation advances to all eleven Participant Districts by the Developers, with each Participant District's pro rata share of such expenses based on the ratio of 1 to 11. Finally, each Participant District, including the District, has entered into reimbursement agreements with the Developer of the Internal Facilities serving the specific Participant District pursuant to which the Participant District agrees to reimburse the Developers for the Internal Facilities serving only the specific Participant District. Before such Internal Facilities are purchased by a Participant District, the developer leases them to the Master District for its use in serving the retail customers within the Participant District. After purchase of such Internal Facilities by a Participant District, the Master District will continue to lease the Internal Facilities from the Participant District.

## THE SYSTEM

### **Regulation**

According to the Engineer, the District's water supply and distribution, wastewater collection, and storm drainage facilities (collectively, the "System") have been designed in accordance with accepted engineering practices and the then current requirements of various entities having regulatory or supervisory jurisdiction over the construction and operation of such facilities. The construction of the System was required to be accomplished in accordance with the standards and specifications of the District, the TCEQ and EPWU and is subject to inspection by each such entity. Operation of the System is conducted by the Master District; however, EPWU operates the water treatment and storage and sewer treatment facilities providing wholesale service to the Master District. The regulations and requirements of entities exercising regulatory jurisdiction over the System are subject to further development and revision which, in turn, could require additional expenditures by the District in order to achieve compliance. In particular, additional or revised requirements in the future in connection with any permit held by the EPWU for the wastewater treatment plant from which the District receives service could result in the need to construct additional facilities in the future.

### **The Master District Contract**

The District and the remaining Participant Districts have each entered into a "Master District Contract" with the Master District to coordinate the development of the water, sanitary sewer and drainage facilities to serve the area within all eleven Participant Districts. Under the Master District Contract, the Master District will acquire, construct, own and operate the Regional Facilities to serve the area within all eleven Participant Districts; each Participant District will acquire, construct and own its Internal Facilities serving only area within it and lease the Internal Facilities to the Master District for operation; and the Master District will provide retail water and wastewater service to all retail customers in all of the Participant Districts.

### **Master District Facilities**

*Source of Water Supply:* The District receives its water supply pursuant to the Paseo del Este Wholesale Potable Water Supply and Wastewater Treatment and Transportation Contract (the "Water Supply and Wastewater Agreement") between the Master District and EPWU. Pursuant to terms of the Water Supply and Wastewater Agreement, which expires in 2063, EPWU is obligated to provide wholesale water to meet the needs of the area served by the Master District, including land within the boundaries of the District. EPWU currently supplies water to the Master District facilities from its existing three million gallon elevated storage tank and 12.3 MGD booster pump station. The major components of the EPWU's system serving the Master District's water supply system will serve the anticipated 16,995 equivalent single-family connections and contractually up to 20,000 equivalent single-family connections committed to the Master District, of which 1,504 are allocated to the District. As of March 31, 2024, the Master District is serving approximately 9,963 active water connections across its entire service area, of which 769 are within the District. According to the Engineer, the District's currently allocated water supply capacity (1,504 equivalent single family connections) is sufficient to serve the District at ultimate build-out.

In order to fully provide water supply to all of the Participant Districts in Paseo del Este, the Master District facilities will need to be expanded from time to time to meet the demand for such facilities.

*Source of Wastewater Treatment:* The District is provided wastewater treatment capacity by EPWU through the Water Supply and Wastewater Agreement. Pursuant to the terms of the Water Supply and Wastewater Agreement, EPWU is obligated to provide wholesale wastewater service to meet the needs of the area served by the Master District, including land within the boundaries of the District. The agreement expires in 2063. Wastewater flows are routed to EPWU's Bustamante plant, which has a current permitted capacity of 39 MGD. Current wastewater treatment capacity can serve the anticipated 16,995 equivalent single-family connections and contractually up to 20,000 equivalent single-family connections committed to the Master District. As of March 31, 2024, the Master District is serving approximately 9,823 active wastewater connections across its entire service area, of which 764 are within the District. The Master District currently receives wholesale water and wastewater services from the EPWU for the areas within Participant Districts. According to the Engineer, the District's currently allocated wastewater treatment capacity (1,504 single family equivalent connections) is sufficient to serve the District at ultimate build-out.

*Distribution and Wastewater Collection:* Water distribution facilities consist of waterlines ranging in size from 8-inch to 16-inch, generally located within the rights-of-way. These water distribution facilities supply water from the EPWU to each Participant District's internal facilities.

The current wastewater collection facilities include sanitary sewer lines ranging in size from 8-inch to 27-inch generally located within the rights-of-way of collector roads. These collection lines collect wastewater from each Participant District and transport it to an EPWU wastewater interceptor.

*Drainage:* The Master District will provide the Participant Districts with drainage facilities when it is determined that the facilities benefit two or more Participant Districts. These Regional Facilities will be capable of handling a 100-year storm event and will include storm sewers, drainage channels and retention ponds.

### **Internal Water Distribution, Wastewater Collection and Storm Drainage Facilities**

Internal water distribution, wastewater collection and storm drainage facilities ("Internal Facilities") have been constructed by the District with funds advanced by the Developer to serve all development, which are a single family residential subdivisions containing approximately 1,026 single family lots and encompassing approximately 261 developable acres.

## **Use and Distribution of Bond Proceeds**

The estimated use and distribution of Bond proceeds is shown below. Of proceeds to be received from sale of the Bonds, \$2,896,377 is estimated for construction costs, and \$803,623 is estimated for non-construction costs. The actual amounts to be reimbursed by the District and the non-construction costs, including Developer Interest, will be finalized after sale of the Bonds and review by an independent auditor.

<u>Construction Costs</u>	<u>District's Share</u>
A. Developer Contribution Items	
1. Garden Park at Mission Ridge Unit 4 Street Drainage, Water & Wastewater Improvements.....	\$ 2,444,712
2. District Engineering	272,873
Total Developer Contribution Items	<u>\$ 2,717,585</u>
B. District Items (Regional Facilities)	
3. Emerald Park Unit Four Water, Wastewater, and Drainage and Regional Wastewater Improvements.....	\$ 33,669
4. Hillside Park at Mission Ridge Unit Two Drainage, Water & Wastewater and Regional Water and Wastewater Improvements...	39,001
5. Painted Sky at Mission Ridge 3 Regional Wastewater Line Segments C2-B, C2-C & C2-D.....	91,749
6. Regional Engineering .....	14,373
Total District Items (Regional Facilities)	<u>\$ 178,792</u>
TOTAL CONSTRUCTION COSTS (78%)	<u>\$ 2,896,377</u>
<u>Non-Construction Costs</u>	
A. Legal Fees .....	\$ 70,500
B. Fiscal Fees .....	46,250
C. Interest	
1. Capitalized Interest .....	-
2. Developer Interest.....	445,981
D. Bond Discount .....	111,000
E. Bond Issuance Expenses.....	56,942
F. Bond Application Report Costs.....	60,000
G. Attorney General's Fee (0.10% ).....	3,700
H. TCEQ Bond Issuance Fee (0.25%).....	9,250
TOTAL NON-CONSTRUCTION COSTS (22%)	<u>\$ 803,623</u>
TOTAL BOND ISSUE REQUIREMENT	<u>\$ 3,700,000</u>

In the event approved estimated amounts exceed actual costs, the difference comprises a surplus which may be expended for uses in accordance with the rules of the TCEQ. In the event actual costs exceed previously approved estimated amounts and contingencies, additional TCEQ approval and the issuance of additional bonds may be required.

**Future Debt**

The Developer has financed the engineering and construction of certain other Regional Facilities. The Developer has expended approximately \$378,682 (as of March 31, 2024) for design, construction and acquisition of the District’s share of Regional Facilities not yet reimbursed and \$0 (as of March 31, 2024) for District Facilities not yet reimbursed. It is anticipated that proceeds from future issues of District bonds will be used, in part, to reimburse the Developer for the District’s pro rata share of the costs of the Regional Facilities and all of the costs of the District Facilities and future costs of developing currently undeveloped land, to the extent allowed by the TCEQ.

**UNLIMITED TAX BONDS AUTHORIZED BUT UNISSUED**

<u>Date of Authorization</u>	<u>Purpose</u>	<u>Amount Authorized</u>	<u>Issued to Date</u>	<u>The Bonds</u>	<u>Remaining Authorized but Unissued</u>
11/6/2007	Water, Sanitary Sewer and Drainage	\$17,000,000	\$7,460,000	\$3,700,000	\$3,760,000
11/6/2007	Refunding	\$17,000,000	\$50,000	\$0	\$16,950,000

**FINANCIAL STATEMENT**

Tax Year 2024 Preliminary Assessed Valuation .....	\$258,643,561 <sup>(a)</sup>
District Debt:	
Currently Outstanding Bonds .....	\$7,590,000
The Bonds .....	<u>\$3,700,000</u>
Gross Debt Outstanding (after issuance of the Bonds).....	\$11,290,000
Ratio of Gross Debt to 2024 Preliminary Assessed Valuation .....	4.37%

Approximate Area of District – 380 acres

<sup>(a)</sup> 2024 Preliminary Assessed Valuation. Represents the preliminary taxable assessed valuation within the District as of January 1, 2024. No assurance can be given as to the final assessed valuation in the District. The District will not levy taxes on such valuation until it is certified by the Appraisal District. See “TAX PROCEDURES.”

**Cash and Investment Balances** (as of May 9, 2024)

Operating Fund	Cash and Temporary Investments	\$763,365.83
Capital Projects	Cash and Temporary Investments	\$53,498.71
Debt Service Fund	Cash and Temporary Investments	\$1,089,368.87

See “SELECTED FINANCIAL INFORMATION.”

## ESTIMATED OVERLAPPING DEBT STATEMENT

Expenditures of the various taxing entities within the territory of the District are paid out of ad valorem taxes levied by such entities on properties within the District. Such entities are independent of the District and may incur borrowings to finance their expenditures. This statement of direct and estimated overlapping ad valorem tax bonds ("Tax Debt") was developed from information contained in the "Texas Municipal Reports" published by the Municipal Advisory Council of Texas. Except for the amounts relating to the District, the District has not independently verified the accuracy or completeness of such information, and no person should rely upon such information as being accurate or complete. Furthermore, certain of the entities listed may have issued additional bonds since the date hereof, and such entities may have programs requiring the issuance of substantial amounts of additional bonds, the amount of which cannot be determined. The following table reflects the estimated share of the overlapping Tax Debt of the District.

Taxing Jurisdiction	Outstanding Bonds	As of	Overlapping	
			Percent	Amount
El Paso County	\$ 238,897,284	4/30/2024	0.25%	\$ 597,243
El Paso County Hospital District	301,115,000	4/30/2024	0.25%	752,788
Socorro Independent School District	735,317,573	4/30/2024	0.92%	6,764,922
Total Estimated Overlapping Debt.....				\$ 8,114,952
The District.....				\$ 11,290,000 <sup>(a)</sup>
Total Direct and Estimated Overlapping Debt.....				\$ 19,404,952
Ratio of Total Direct and Estimated Overlapping Debt to				
2024 Preliminary Assessed Valuation <sup>(b)</sup> .....				7.50%

<sup>(a)</sup> Includes the Bonds.

<sup>(b)</sup> Preliminary assessed valuation subject to change. Represents the preliminary taxable assessed valuation within the District as of January 1, 2024. No assurance can be given as to the final assessed valuation in the District. The District will not levy taxes on such valuation until it is certified by the Appraisal District.

### Overlapping Tax Rates for Year 2023

Taxing Jurisdiction	2023 Tax Rate per \$100 Assessed Valuation
The District	\$ 0.733900
El Paso County	0.458889
El Paso County Emergency Services District No. 1	0.100000
El Paso Community College District	0.115717
Socorro Independent School District	1.249712
University Medical Center	0.235650
Total Overlapping Tax Rate	\$ 2.893868

## TAX DATA

### **Tax Collections**

The following statement of tax collections sets forth in condensed form the historical tax collection experience of the District. This summary has been prepared for inclusion herein, based upon information from District records. Reference is made to these records for further and more complete information.

Tax Year	Assessed Valuation	Tax Rate	Tax Levy	Current Collections		Total Collections		Fiscal Year Ending
				Amount	Percent	Amount	Percent	
2020	\$124,094,906	\$ 0.7500	\$ 930,712	\$ 949,715	102.04%	\$ 950,539	102.13%	9/30/2021
2021	132,936,647	0.7500	997,025	1,020,568	102.36%	1,023,088	102.61%	9/30/2022
2022	163,166,080	0.7500	1,223,746	1,231,097	100.60%	1,234,856	100.91%	9/30/2023
2023	209,142,346	0.7419	1,551,627	1,521,707	98.07%	1,525,621	98.32%	9/30/2024 <sup>(a)</sup>
2024	258,643,561 <sup>(b)</sup>	0.7339 <sup>(c)</sup>	1,898,185 <sup>(d)</sup>	N/A	0.00%	N/A	0.00%	9/30/2025

<sup>(a)</sup> Tax Collections billed on October 1. Collections are as of April 30, 2024.

<sup>(b)</sup> Tax Year 2024 Preliminary Assessed Valuation as reported by the Appraisal District. Represents the preliminary taxable assessed valuation within the District as of January 1, 2024. No assurance can be given as to the final assessed valuation in the District. The District will not levy taxes on such valuation until it is certified by the Appraisal District. Tax Year 2024 certified assessed valuation is expected to be delivered by the Appraisal District to the District in July \_\_, 2024.

<sup>(c)</sup> Based on Tax Year 2023 final tax rate for the District. The District anticipates levying a \$0. \_\_ per \$100 ad valorem property tax rate in Tax Year 2024 by September 2024. Tax levy calculation is preliminary for discussion purposes only.

<sup>(d)</sup> Calculated tax levy is based on 2024 Preliminary Assessed Valuation and Tax Year 2023 tax rate for the District. The actual Tax Year 2024 tax levy will be based on the certified taxable assessed valuation of the District (expected to be available in July \_\_, 2024) and the actual tax rate expected to be levied in September 2024. No assurance can be given as to the final tax levy.

Taxes are due October 1 and become delinquent if not paid before February 1 of the year following the year in which imposed. No split payments are allowed and no discounts are allowed.

### **Tax Rate Distribution**

	2023	2022	2021	2020	2019
Debt Service	\$0.3577	\$0.3780	\$0.3398	\$0.3944	\$0.4000
Contract <sup>(a)</sup>	0.2900	0.2900	0.2900	0.2900	0.2900
Maintenance and Operations	0.0862	0.0739	0.1202	0.0656	0.0600
Total	\$0.7339	\$0.7419	\$0.7500	\$0.7500	\$0.7500

<sup>(a)</sup> See “RISK FACTORS – District Operations and Contract Tax” and “– Contract Tax” below.

### **Tax Rate Limitations**

Debt Service: Unlimited (no legal limit as to rate or amount). Maintenance and Operations: \$1.00 per \$100 assessed valuation.

### **Debt Service Tax**

The Board covenants in the Bond Resolution to levy and assess, for each year that all or any part of the Bonds remain outstanding and unpaid, a tax adequate to provide funds to pay the principal of and interest on the Bonds.

### **Contract Tax**

Under the Master District Contract, each Participant District has agreed to levy and collect a tax (the “Contract Tax”) to make payments to the Master District for (i) the Participant District’s pro rata share of any operating deficits incurred by the Master District and (ii) the debt service on any bonds issued by the Master District for Regional Facilities payable from the Contract Tax (“Master District Bonds”), with the Participant District’s pro rata share based on the Participant District’s total taxable assessed valuation as compared to the total taxable assessed valuation in all eleven Participant Districts. However, the Master District Contract contemplates that the Master District would not issue Master District Bonds for purposes of reimbursing the Developer for the initial construction of the Regional Facilities. Thus, for the foreseeable future, the District contemplates levying a Contract Tax only for its pro rata share of the operating deficits of the Master District. The District levied a total tax rate of \$0.7339 per \$100 of assessed valuation for Tax Year 2023, as follows: \$0.3577 for debt service tax, \$0.29 for contract tax and \$0.0862 for maintenance and operations tax. The District expects to set its Tax Year 2024 rate in September 2024. No assurance can be given regarding the District’s adopted 2024 tax rate.

## **Maintenance Tax**

The Board of Directors of the District has the statutory authority to levy and collect an annual ad valorem tax for maintenance of the District's improvements, if such maintenance tax is authorized by vote of the District's electors. On November 6, 2007, the Board was authorized to levy such a maintenance tax in an amount not to exceed \$1.00 per \$100 of assessed valuation. For the 2023 tax year, the Board has levied a maintenance tax in the amount of \$0.0862 per \$100 assessed valuation. Such tax is in addition to taxes which the District is authorized to levy for paying principal and interest on the District's bonds.

## **Tax Exemptions**

As discussed in the section titled "TAX PROCEDURES" herein, certain property in the District may be exempt from taxation by the District. The District does not exempt any percentage of the market value of any residential homesteads from taxation.

## **Additional Penalties**

The District has contracted with a delinquent tax attorney to collect delinquent taxes. Pursuant to the contract and in accordance with the Texas Property Tax Code, the District recovers certain costs, expenses and fees associated with tax collection suits, including reasonable attorney's fees in the amount of twenty percent (20%) of the total amount of taxes, penalties, and interest due to the District.

## **Principal Taxpayers**

The following list of principal taxpayers is based upon the 2023 tax roll, which reflects ownership as of January 1, 2023.

Name of Taxpayer	Nature of Property	2023 Taxable Assessed Valuation	% of Taxable Assessed Valuation
Cullers Homes LLC	Real Estate	\$ 6,353,484	2.46%
Mendevil Jason M & Hope	Residential	2,100,296	0.81%
Hakes Brothers EPTX LLC	Developer	1,907,568	0.74%
Pointe Homes	Real Estate	1,529,447	0.59%
Tran Sifrance & Peerapan	Residential	1,291,766	0.50%
Mgbokwere Chioma	Residential	1,030,082	0.40%
Guerrero Richard & Martinez Irma	Residential	990,605	0.38%
Chukwu Ikedieze & Nwankwo Adaora C	Residential	944,943	0.37%
The Altar Fire Trust	Trust	892,844	0.35%
Soto Abigail & Obed	Residential	835,798	0.32%
Total		<u>\$17,876,833</u>	<u>6.91%</u>

## **Summary of Assessed Valuation**

The following summary of the District's assessed valuation is provided by the District's Tax Assessor/Collector based on information contained in the 2020-2024 tax rolls of the District. Differences in totals may vary slightly from other information herein due to differences in dates of data.

	2024 <sup>(1)</sup>	2023	2022	2021	2020
Land and Improvements	\$ 303,655,501	\$ 250,781,683	\$ 191,621,049	\$ 151,551,816	\$ 133,627,589
Personal Property	1,065,933	926,987	1,131,383	565,817	470,554
Exemptions	(46,077,873)	(42,566,324)	(29,586,352)	(19,180,986)	(10,003,237)
Total Assessed Valuation	<u>\$ 258,643,561</u>	<u>\$ 209,142,346</u>	<u>\$ 163,166,080</u>	<u>\$ 132,936,647</u>	<u>\$ 124,094,906</u>

(1) 2024 Preliminary Assessed Valuation. Represents the preliminary taxable assessed valuation within the District as of January 1, 2024. No assurance can be given as to the final 2024 assessed valuation in the District. The District will not levy taxes on such valuation until it is certified by the Appraisal District.

**Projected Tax Adequacy for Debt Service**

Assuming (i) a tax collection rate similar to the collection rate of the District in years past, (ii) no increase or decrease in assessed valuation over the 2024 Preliminary Assessed Valuation, (iii) no use of available funds, and (iv) utilization of a tax rate necessary to pay the District’s Projected Average Annual Debt Service requirements on the Bonds, the District expects that sufficient funds will be generated to pay both the Projected Average Annual Debt Service and Projected Maximum Annual Debt Service shown below.

Average Annual Debt Service (2024-2049). . . . .	\$ 650,556
Maximum Annual Debt Service (2033). . . . .	\$ 930,819

**TAX PROCEDURES**

**Authority to Levy Taxes**

The Board is authorized to levy an annual ad valorem tax, without legal limitation as to rate or amount, on all taxable property within the District in an amount sufficient to pay the principal of and interest on the Bonds, and any additional bonds payable from taxes which the District may hereafter issue (see “RISK FACTORS - Future Debt”) and to pay the expenses of assessing and collecting such taxes. The District agrees in the Bond Resolution to levy such a tax from year to year as described more fully herein under “THE BONDS - Source of and Security for Payment.” Under State law, the Board may also levy and collect an annual ad valorem tax for the operation and maintenance of the District and its water and wastewater system and for the payment of certain contractual obligations. See “TAX DATA.”

**Property Tax Code and County-Wide Appraisal District**

The Texas Property Tax Code (the “Property Tax Code”) specifies the taxing procedures of all political subdivisions of the State, including the District. The District must also follow tax procedures found in the Texas Water Code. These statutory provisions are complex and are not fully summarized here.

The Property Tax Code requires, among other matters, county-wide appraisal and equalization of taxable property values and establishes in each county of the State an appraisal district with the responsibility for recording and appraising property for all taxing units within a county and an appraisal review board with responsibility for reviewing and equalizing the values established by the appraisal district. The Appraisal District has the responsibility for appraising property for all taxing units within the County, including the District. Such appraisal values are subject to review and change by the El Paso County Appraisal Review Board (the “Appraisal Review Board”).

**Property Subject to Taxation by the District**

*General:* Except for certain exemptions provided by State law, all real property, tangible personal property held or used for the production of income, mobile homes, and certain categories of intangible personal property with a tax situs in the District are subject to taxation by the District; however, no effort is expected to be made by the Appraisal District to include on a tax roll tangible or intangible personal property not devoted to commercial or industrial use. Principal categories of exempt property include, but are not limited to: property owned by the State or its political subdivisions if the property is used for public purposes; property exempt from ad valorem taxation by federal law; income producing tangible personal property or mineral interest with a taxable value of less than \$500; certain property used for the control of air, water or land pollution; solar and wind powered energy devices; certain non-profit cemeteries, farm products owned by the producer; and certain property owned by qualified charitable, religious, veterans, youth development, fraternal organizations, designated historical sites, travel trailers, and most individually owned automobiles. Goods, wares, ores and merchandise (other than oil, gas, or petroleum products) that are acquired in or imported into the state and forwarded out of state within 175 days thereafter are also exempt. Article VIII, Section 1-a of the Texas Constitution grants a \$3,000 homestead exemption for all homesteads taxed by counties for farm-to-market roads and flood control purposes. Property owned by a disabled veteran or by the spouse of certain children of a deceased disabled veteran or a veteran who died while on active duty is partially exempt to between \$5,000 and \$12,000 of assessed value depending upon the disability rating of the veteran. A veteran who receives a disability rating of 100% is entitled to an exemption for the full value of the veteran’s residence homestead. Additionally, subject to certain conditions, the surviving spouse or a disabled veteran who is entitled to an exemption for the full value of the veteran's residence homestead is also entitled to an exemption from taxation of the total appraised value of the same property to which the disabled veteran's exemption applied. The surviving spouse of a member of the armed services who was killed in action is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead where certain condition are met and, subject to certain conditions, an exemption up to the same amount may be transferred to a subsequent residence homestead of the surviving spouse.



The surviving spouse of a first responder who was killed or fatally injured in the line of duty is, subject to certain conditions, entitled to an exemption of the total appraised value of the surviving spouse's residence homestead, and, subject to certain conditions, an exemption up to the same amount may be transferred to a subsequent residence homestead of the surviving spouse. Also partially exempt are residence homesteads of certain persons who are disabled or at least 65 years old, not less than \$3,000 of appraised value or such higher amount as the Board or the District's voters may approve. Subject to certain conditions, the surviving spouse of a person 65 or older is entitled to an exemption for the same property in an amount equal to that which the deceased spouse was qualified. The District's tax assessor is authorized by statute to disregard exemptions for the disabled and elderly if granting the exemption would impair the District's obligation to pay tax-supported debt incurred prior to adoption of the exemption by the District. The District's tax assessor/collector is authorized by statute to disregard such exemptions for the elderly and disabled if granting the exemptions would impair the District's obligation to pay tax supported debt incurred prior to adoption of the exemptions by the District. See "TAX DATA."

*Residential Homestead Exemptions:* The Property Tax Code authorizes the governing body of each political subdivision in the State to exempt up to twenty percent (20%) (not less than \$5,000) of the appraised value of residential homesteads from ad valorem taxation. Where ad valorem taxes have previously been pledged for the payment of debt, the governing body of a political subdivision may continue to levy and collect taxes against the exempt value of the homesteads until the debt is discharged, if the cessation of the levy would impair the obligations of the contract by which the debt was created. The adoption of a homestead exemption may be considered each year, but must be adopted before July 1. The District has not adopted a general residential homestead exemption. See "TAX DATA."

*Freeport Goods Exemption:* Freeport goods are goods, wares, merchandise, other tangible personal property and ores, other than oil, natural gas and other petroleum products, which have been acquired or brought into the state for assembling, storing, manufacturing, repair, maintenance, processing or fabricating purposes, or used to repair or maintain aircraft of a certified air carrier, and shipped out of the state within one hundred seventy-five (175) days. Freeport goods are exempt from taxation by the District.

*Goods-in-Transit Exemptions:* A "Goods-in-Transit Exemption" may apply to certain tangible personal property that is acquired in or imported into Texas for assembling, storing, manufacturing or fabrication purposes which is destined to be forwarded to another location in Texas not later than 175 days after acquisition or importation, so long as the location where said goods are detained is not directly or indirectly owned by the owner of the goods. The District has not taken action to allow taxation of goods-in-transit, and accordingly, the exemption is available within the District. However, the District may determine in the future to take action to tax exempt goods-in-transit personal property. A taxpayer may not claim both a Freeport Goods Exemption and a Goods-in-Transit Exemption on the same property.

### **Tax Abatement**

The County may designate all or part of the area within the District as a reinvestment zone. Thereafter, the County, Socorro Independent School District, the District, and, if the District is annexed and dissolved, the City, at the option and discretion of each entity, may enter into tax abatement agreements with owners of property within the zone. Prior to entering into a tax abatement agreement, each entity must adopt guidelines and criteria for establishing tax abatement, which each entity will follow in granting tax abatement to owners of property. The tax abatement agreements may exempt from ad valorem taxation by each of the applicable taxing jurisdictions, including the District, for a period of up to ten (10) years, all or any part of any increase in the assessed valuation of property covered by the agreement over its assessed valuation in the year in which the agreement is executed, on the condition that the property owner make specified improvements or repairs to the property in conformity with the terms of the tax abatement. Each taxing jurisdiction has discretion to determine terms for its tax abatement agreements without regard to the terms approved by the other taxing jurisdictions.

### **Temporary Exemption for Qualified Property Damaged by a Disaster**

The Property Tax Code provides for a temporary exemption from ad valorem taxation of a portion of the appraised value of certain property that is at least 15% damaged by a disaster and located within an area declared to be a disaster area by the governor of the State of Texas. This temporary exemption is automatic if the disaster is declared prior to a taxing unit, such as the District, adopting its tax rate for the tax year. A taxing unit, such as the District, may authorize the exemption at its discretion if the disaster is declared after the taxing unit has adopted its tax rate for the tax year. The amount of the exemption is based on the percentage of damage and is prorated based on the date of the disaster. Upon receipt of an application submitted within the eligible timeframe by a person who qualifies for a temporary exemption under the Property Tax Code, the Appraisal District is required to complete a damage assessment and assign a damage assessment rating to determine the amount of the exemption. The temporary exemption amounts established under the Property Tax Code range from 15% for property less than 30% damaged to 100% for property that is a total loss. Any such temporary exemption granted for disaster-damaged property expires on January 1 of the first year in which the property is reappraised.

## **Valuation of Property for Taxation**

Generally, property in the District must be appraised by the Appraisal District at market value as of January 1 of each year. Once an appraisal roll is prepared and finally approved by the Appraisal Review Board, it is used by the District in establishing its tax rolls and tax rate. Generally, assessments under the Property Tax Code are to be based on one hundred percent (100%) of market value, as such is defined in the Property Tax Code. In determining market value, either the replacement cost or the income or the market data method of valuation may be used, whichever is appropriate. Nevertheless, certain land may be appraised at less than market value under the Property Tax Code. Increases in the appraised value of residence homesteads are limited by the Texas Constitution to 10 percent annually regardless of the market value of the property.

The Property Tax Code permits land designated for agricultural use, open space or timberland to be appraised at its value based on the land's capacity to produce agricultural or timber products rather than at its market value. Substantially all of the undeveloped land in the District is valued based on agricultural use. The Property Tax Code permits under certain circumstances that residential real property inventory held by a person in the trade or business be valued at the price all such property would bring if sold as a unit to a purchaser who would continue the business. Provisions of the Property Tax Code are complex and are not fully summarized here. Landowners wishing to avail themselves of the agricultural use, open space or timberland designation or residential real property inventory designation must apply for the designation and the appraiser is required by the Property Tax Code to act on each claimant's right to the designation individually. A claimant may waive the special valuation as to taxation by some political subdivisions while claiming it as to another. If a claimant receives the agricultural use designation and later loses it by changing the use of the property or selling it to an unqualified owner, the District can collect taxes based on the new use, including taxes for the previous three (3) years for agricultural use and taxes for the previous five (5) years for open space land and timberland.

The Property Tax Code requires the Appraisal District to implement a plan for periodic reappraisal of property to update appraisal values. The plan must provide for appraisal of all real property in the Appraisal District at least once every three (3) years. It is not known what frequency of reappraisal will be utilized by the Appraisal District or whether reappraisals will be conducted on a zone or county-wide basis. The District, however, at its expense has the right to obtain from the Appraisal District a current estimate of appraised values within the District or an estimate of any new property or improvements within the District. While such current estimate of appraised values may serve to indicate the rate and extent of growth of taxable values within the District, it cannot be used for establishing a tax rate within the District until such time as the Appraisal District chooses formally to include such values on its appraisal roll.

## **District and Taxpayer Remedies**

Under certain circumstances taxpayers and taxing units (such as the District) may appeal the orders of the Appraisal Review Board by filing a timely petition for review in State district court. In such event, the value of the property in question will be determined by the court or by a jury if requested by any party. Additionally, taxing units may bring suit against the Appraisal District to compel compliance with the Property Tax Code. The Property Tax Code also establishes a procedure for notice to property owners of reappraisals reflecting increased property value, appraisals which are higher than renditions, and appraisals of property not previously on an appraisal roll.

## **Rollback of Operation and Maintenance Tax Rate**

Under current law, the qualified voters of the District have the right to petition for a rollback of the District's operation and maintenance tax rate only if the total tax bill on the average residence homestead increases by more than eight percent. If a rollback election is called and passes, the rollback tax rate is the current year's debt service and contract tax rates plus the operation and maintenance tax rate that would impose 1.08 times the amount of operation and maintenance tax imposed by the District in the preceding tax year on a residence homestead appraised at the average appraised value of a residence homestead in the District in that year, subject to certain homestead exemptions. Thus, debt service and contract tax rates cannot be changed by a rollback election.

During the 86th Regular Legislative Session, Senate Bill 2 ("SB 2") was passed and signed by the Governor, with an effective date (as to those provisions discussed herein) of January 1, 2020, and the provisions described herein are effective beginning with the 2020 tax year. See "SELECTED FINANCIAL INFORMATION" for a description of the District's current total tax rate. Debt service and contract tax rates cannot be reduced by a rollback election held within any of the districts described below.

SB 2 classifies municipal utility districts differently based on their current operation and maintenance tax rate or on the percentage of projected build-out that a district has completed. Districts that have adopted an operation and maintenance tax rate for the current year that is 2.5 cents or less per \$100 of taxable value are classified herein as "Special Taxing Units." Districts that have financed, completed, and issued bonds to pay for all land, improvements and facilities necessary to serve at least 95% of the projected build-

out of the district are classified as "Developed Districts." Districts that do not meet either of the classifications previously discussed can be classified herein as "Developing Districts." The impact each classification has on the ability of a district to increase its maintenance and operations tax rate pursuant to SB 2 is described for each classification below.

### *Special Taxing Units*

Special Taxing Units that adopt a total tax rate that would impose more than 1.08 times the amount of the total tax imposed by such district in the preceding tax year on a residence homestead appraised at the average appraised value of a residence homestead in the district, subject to certain homestead exemptions, are required to hold an election within the district to determine whether to approve the adopted total tax rate. If the adopted total tax rate is not approved at the election, the total tax rate for a Special Taxing Unit is the current year's debt service and contract tax rate plus the operation and maintenance tax rate that would impose 1.08 times the amount of operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, subject to certain homestead exemptions.

### *Developed Districts*

Developed Districts that adopt a total tax rate that would impose more than 1.035 times the amount of the total tax imposed by the district in the preceding tax year on a residence homestead appraised at the average appraised value of a residence homestead in the district, subject to certain homestead exemptions, plus any unused increment rates, as calculated and described in Section 26.013 of the Tax Code, are required to hold an election within the district to determine whether to approve the adopted total tax rate. If the adopted total tax rate is not approved at the election, the total tax rate for a Developed District is the current year's debt service and contract tax rate plus the operation and maintenance tax rate that would impose 1.035 times the amount of operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, subject to certain homestead exemptions, plus any unused increment rates. In addition, if any part of a Developed District lies within an area declared for disaster by the Governor of Texas or President of the United States, alternative procedures and rate limitations may apply for a temporary period. If a district qualifies as both a Special Taxing Unit and a Developed District, the district will be subject to the operation and maintenance tax threshold applicable to Special Taxing Units.

### *Developing Districts*

Districts that do not meet the classification of a Special Taxing Unit or a Developed District can be classified as Developing Districts. The qualified voters of these districts, upon the Developing District's adoption of a total tax rate that would impose more than 1.08 times the amount of the total tax imposed by such district in the preceding tax year on a residence homestead appraised at the average appraised value of a residence homestead in the district, subject to certain homestead exemptions, are authorized to petition for an election to reduce the operation and maintenance tax rate. If an election is called and passes, the total tax rate for Developing Districts is the current year's debt service and contract tax rate plus the operation and maintenance tax rate that would impose 1.08 times the amount of operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, subject to certain homestead exemptions.

### *The District*

A determination as to a district's status as a Special Taxing Unit, Developed District or Developing District will be made by the Board of Directors on an annual basis. With respect to the District's 2023 tax rate, the District currently anticipates that it will be classified as a Developing District. The District cannot give any assurances as to what its classification will be at any point in time or whether the District's future tax rates will result in a total tax rate that will reclassify the District into a new classification and new election calculation.

### **Levy and Collection of Taxes**

The District is responsible for the levy and, unless it elects to transfer such functions to another governmental entity, collection of its taxes. By September 1 of each year, or as soon thereafter as practicable, the rate of taxation is set by the Board of Directors based upon: a) the valuation of property within the District as of the preceding January 1, and b) the amount required to be raised for debt service, maintenance purposes and authorized contractual obligations. Taxes are due October 1, or when billed, whichever comes later, and become delinquent if not paid before February 1 of the year following the year in which imposed. A delinquent tax incurs a penalty of six percent (6%) of the amount of the tax for the first calendar month it is delinquent, plus one percent (1%) for each additional month or portion of a month the tax remains unpaid prior to July 1 of the year in which it becomes delinquent. If the tax is not paid by July 1 of the year in which it becomes delinquent, the tax incurs a total penalty of twelve percent (12%) regardless of the number of months the tax has been delinquent and incurs an additional penalty for collection costs of an amount established by the District and a delinquent tax attorney. For those taxes billed at a later date and that become delinquent on or after

June 1, they will also incur an additional penalty for collection costs of an amount established by the District and a delinquent tax attorney. The delinquent tax accrues interest at a rate of one percent (1%) for each month or portion of a month it remains unpaid. The Property Tax Code makes provisions for the split payment of taxes, discounts for early payment and the postponement of the delinquency date of taxes under certain circumstances which, at the option of the District, may be rejected.

The District's tax collector is required to enter into an installment payment agreement with any person who is delinquent on the payment of tax on a residence homestead for payment of tax, penalties and interest, if the person requests an installment agreement and has not entered into an installment agreement with the collector in the preceding 24 months. The installment agreement must provide for payments to be made in monthly installments and must extend for a period of at least 12 months and no more than 36 months. Additionally, the owner of a residential homestead property who is (i) sixty-five (65) years of age or older, (ii) disabled, or (iii) a disabled veteran, is entitled by law to pay current taxes on a residential homestead in installments without penalty or to defer the payment of taxes during the time of ownership. In the instance of tax deferral, a tax lien remains on the property and interest continue to accrue during the period of deferral.

### **District's Rights in the Event of Tax Delinquencies**

Taxes levied by the District are a personal obligation of the owner of the property as of January 1 of the year for which the tax is imposed. On January 1 of each year, a tax lien attaches to property to secure the payment of all state and local taxes, penalties, and interest ultimately imposed for the year on the property. The lien exists in favor of the State and each local taxing unit, including the District, having power to tax the property. The District's tax lien is on a parity with tax liens of such other taxing units (see "ESTIMATED OVERLAPPING DEBT STATEMENT - Overlapping Tax Rates for Year 2023"). A tax lien on real property takes priority over the claim of most creditors and other holders of liens on the property encumbered by the tax lien, whether or not the debt or lien existed before the attachment of the tax lien; however, whether a lien of the United States is on a parity with or takes priority over a tax lien of the District is determined by applicable federal law. Personal property under certain circumstances is subject to seizure and sale for the payment of delinquent taxes, penalty, and interest.

At any time after taxes on property become delinquent, the District may file suit to foreclose the lien securing payment of the tax, to enforce personal liability for the tax, or both. In filing a suit to foreclose a tax lien on real property, the District must join other taxing units that have claims for delinquent taxes against all or part of the same property. Collection of delinquent taxes may be adversely affected by the cost of suit and sale, by the amount of taxes owed to other taxing units, by the effects of market conditions on the foreclosure sale price, by taxpayer redemption rights (a taxpayer may redeem property within six (6) months for commercial property and two (2) years for residential and all other types of property after the purchaser's deed issued at the foreclosure sale is filed in the county records) or by bankruptcy proceedings which restrict the collection of taxpayer debts. The District's ability to foreclose its tax lien or collect penalties or interest on delinquent taxes may be limited on property owned by a financial institution which is under receivership or conservatorship by the FDIC. See "RISK FACTORS – The Effect of FIRREA on Tax Collections of the District."

### **2023 Legislative Session**

On July 13, 2023, during the Second Special Session, the Texas Legislature passed Senate Bill 2, which, among other things, includes provisions that prohibit an appraisal district from increasing the appraised value of real property during the 2024 tax year on non-homestead properties (the "subjected property") whose appraised values are not more than \$5 million dollars (the "maximum property value") to an amount not to exceed the lesser of: (1) the market value of the subjected property for the most recent tax year that the market value was determined by the appraisal office or (2) the sum of: (a) 20 percent of the appraised value of the subjected property for the preceding tax year; (b) the appraised value of the subjected property for the preceding tax year; and (c) the market value of all new improvements to the subjected property (collectively, the "appraisal cap"). After the 2024 tax year, through December 31, 2026, maximum property value may be increased or decreased by the product of the preceding state fiscal year's increase or decrease in the consumer price index, as applicable, to the maximum property value. The appraisal cap took effect on January 1, 2024.

## **GENERAL FUND OPERATIONS**

### **General**

The Bonds are payable from the levy of an ad valorem tax, without legal limitation as to rate or amount, upon all taxable property in the District. Surplus revenues, if any, of the District's general fund are not pledged to the payment of the Bonds but are available for any lawful purpose including payment of debt service on the Bonds, at the discretion and upon action of the Board. It is not expected that significant net revenue, if any, will be available for payment of debt service on the Bonds.

### **Contract Tax**

Under the Master District Contract, each Participant District has agreed to levy and collect the Contract Tax to make payments to the Master District for (i) the Participant District's pro rata share of any operating deficits incurred by the Master District and (ii) the debt service on any Master District Bonds, with the Participant District's pro rata share based on the Participant District's total taxable assessed valuation as compared to the total taxable assessed valuation in all eleven Participant Districts. However, the Master District Contract contemplates that the Master District would not issue Master District Bonds for purposes of reimbursing the Developer for the initial construction of the Regional Facilities. Thus, for the foreseeable future, the District contemplates levying a Contract Tax only for its pro rata share of the operating deficits of the Master District. The District levied a total tax rate of \$0.7339 per \$100 of assessed valuation for Tax Year 2023, as follows: \$0.3577 for debt service tax, \$0.29 for contract tax and \$0.0862 for maintenance tax.

### **District Operation and Maintenance Expense**

Because the Master District provides retail water and sanitary sewer service to all customers in the area within all eleven Participant Districts, including the District, the District does not expect to incur significant operating expenses; rather it expects to mainly incur administrative expenses. The Master District Contract provides that the Master District will pay each Participant District's ordinary administrative expenses, including the District's, if approved by the Master District as part of an annual budget. The Master District Contract provides an annual budget process where each Participant District submits its budget for approval by the Master District. So long as a Participant District's expenses are no more than ten percent higher than the average of the budgets for Participant Districts Nos. 2-11, the budget must be approved by the Master District. In addition, the District may levy its own maintenance tax to pay such expenses. However, because the Master District provides retail water and sanitary sewer service to all customers in the area within all eleven Participant Districts, including the District, the District does not expect to have any revenues from water and sanitary sewer operations to pay its operation and expenses.

### **No Water and Sanitary Sewer Revenues**

Because the Master District provides retail water and sanitary sewer service to all customers in the area within all eleven Participant Districts, including the District, the District does not expect to have any revenues from water and sanitary sewer operations to pay its operation and maintenance expenses.

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## **Operating Statement**

The following statement sets forth in condensed form the historical results of operation of the District's General Fund. Accounting principles customarily employed in the determination of net revenues have been observed and in all instances exclude depreciation. Such summary is based upon information obtained from the District's audited financial statements and the District's bookkeeping records. Reference is made to such audited financial statements and records for further and more complete information.

	<b>Fiscal Year Ended September 30,</b>				
	<b>2023</b>	<b>2022</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>
Revenues:					
Transfer From Master District	\$ 101,356	\$ 83,421	\$ 80,593	\$ 78,773	\$ 77,219
Property Taxes	123,521	164,014	83,204	75,594	70,884
Contract Taxes	483,556	396,354	367,894	365,268	318,922
Interest	23,144	2,890	130	1,537	6,878
Total Revenues	<u>\$ 731,577</u>	<u>\$ 646,679</u>	<u>\$ 531,821</u>	<u>\$ 521,172</u>	<u>\$ 473,903</u>
Expenditures:					
Tax Transfer to Master District	\$ 483,556	\$ 396,354	\$ 367,894	\$ 365,268	\$ 318,922
Legal Fees	13,233	14,467	16,539	13,194	13,579
Audit Fees	5,500	5,500	5,500	5,500	5,500
Accounting Fees	38,470	25,230	23,675	23,321	23,875
Engineering Fees	4,102	2,945	3,132	4,664	5,612
Management Fees	10,324	9,910	9,287	8,918	8,494
Director Salaries and Payroll Taxes	7,200	6,459	7,266	7,105	4,521
Insurance	1,610	1,437	1,355	1,365	1,437
Tax Assessor/Collector	17,135	13,736	11,104	11,113	11,337
Printing and Office Supplies	644	536	487	522	457
Postage and Delivery	76	125	285	165	135
Legal Notices	1,360	1,510	1,040	1,457	840
Travel	1,702	1,566	923	1,449	1,433
Fiscal Agent Fees	1,500	1,500	1,500	1,500	1,500
Total Expenditures	<u>\$ 586,412</u>	<u>\$ 481,275</u>	<u>\$ 449,987</u>	<u>\$ 445,541</u>	<u>\$ 397,642</u>
Transfer (to) Other Funds	<u>-</u>	<u>-</u>	<u>-</u>	<u>(248,387)</u>	<u>-</u>
Change in Net Position	<u>\$ 145,165</u>	<u>\$ 165,404</u>	<u>\$ 81,834</u>	<u>\$ (172,756)</u>	<u>\$ 76,261</u>
Fund Balance/Net Position - Beginning	150,743	(14,661)	(96,495)	76,261	-
Fund Balance/Net Position - Ending	<u>\$ 295,908</u>	<u>\$ 150,743</u>	<u>\$ (14,661)</u>	<u>\$ (96,495)</u>	<u>\$ 76,261</u>

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## PRO-FORMA DEBT SERVICE REQUIREMENTS

Fiscal year Ending, 30-Sep	Outstanding Debt Service	The Bonds <sup>(1)</sup>			Total Debt Service
		Principal	Interest	Total	
2024	\$ 652,423	\$ -	\$ -	\$ -	\$ 652,423
2025	655,764	75,000	185,000	260,000	915,764
2026	663,361	80,000	181,250	261,250	924,611
2027	659,961	85,000	177,250	262,250	922,211
2028	665,186	90,000	173,000	263,000	928,186
2029	660,234	95,000	168,500	263,500	923,734
2030	659,750	100,000	163,750	263,750	923,500
2031	663,238	105,000	158,750	263,750	926,988
2032	665,988	110,000	153,500	263,500	929,488
2033	667,819	115,000	148,000	263,000	930,819
2034	668,494	120,000	142,250	262,250	930,744
2035	558,369	125,000	136,250	261,250	819,619
2036	505,600	135,000	130,000	265,000	770,600
2037	499,463	140,000	123,250	263,250	762,713
2038	357,875	145,000	116,250	261,250	619,125
2039	201,000	155,000	109,000	264,000	465,000
2040	199,500	160,000	101,250	261,250	460,750
2041	197,750	170,000	93,250	263,250	461,000
2042	200,750	180,000	84,750	264,750	465,500
2043	198,250	185,000	75,750	260,750	459,000
2044	200,500	195,000	66,500	261,500	462,000
2045	202,250	205,000	56,750	261,750	464,000
2046	198,500	215,000	46,500	261,500	460,000
2047	199,500	225,000	35,750	260,750	460,250
2048	-	240,000	24,500	264,500	264,500
2049	-	250,000	12,500	262,500	262,500
Total	<u>\$ 11,001,523</u>	<u>\$ 3,700,000</u>	<u>\$ 2,863,500</u>	<u>\$ 6,563,500</u>	<u>\$ 17,565,023</u>
Average Annual Debt Service (2024-2049). . . . .					
					\$ 650,556
Maximum Annual Debt Service (2033). . . . .					
					\$ 930,819

<sup>(1)</sup> Preliminary, subject to change. Interest on the Bonds calculated at a rate of 5% for purposes of illustration only.

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## **LEGAL MATTERS**

### **Legal Proceedings**

Issuance of the Bonds is subject to the approving legal opinion of the Attorney General of Texas to the effect that the Bonds are valid and binding obligations of the District payable from the proceeds of an annual ad valorem tax levied, without legal limit as to rate or amount, upon all taxable property within the District. Issuance of the Bonds is also subject to the legal opinion of Bond Counsel, based upon examination of a transcript of the proceedings incident to authorization and issuance of the Bonds, to the effect that the Bonds are valid and binding obligations of the District payable from the sources and enforceable in accordance with the terms and conditions described therein, except to the extent that the enforceability thereof may be affected by governmental immunity, bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights or the exercise of judicial discretion in accordance with general principles of equity. Bond Counsel's legal opinion will also address the matters described below under "TAX EXEMPTION." Such opinions will express no opinion with respect to the sufficiency of the security for or the marketability of the Bonds. In connection with the issuance of the Bonds, Bond Counsel has been engaged by, and only represents, the District.

The legal fees to be paid Bond Counsel for services rendered in connection with the issuance of the Bonds are based upon a percentage of Bonds actually issued, sold and delivered, and therefore, such fees are contingent upon the sale and delivery of the Bonds.

The various legal opinions to be delivered concurrently with the delivery of the Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. In rendering a legal opinion, the attorney does not become an insurer or guarantor of the expression of professional judgment, of the transaction opined upon, or of the future performance of the parties to the transaction, nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

Bond Counsel has reviewed the information appearing in this Official Statement under "THE BONDS," "THE DISTRICT – General" (excluding the last paragraph thereof), "MANAGEMENT – Bond Counsel," "TAX PROCEDURES," "LEGAL MATTERS – Legal Proceedings" (insofar as such section relates to the legal opinion of Bond Counsel), "TAX EXEMPTION" (insofar as such section relates to the legal opinion of Bond Counsel) and "CONTINUING DISCLOSURE OF INFORMATION" (except under the subheading "Compliance with Prior Undertakings") solely to determine if such information, insofar as it relates to matters of law, is true and correct, and whether such information fairly summarizes the provisions of the documents referred to therein. Bond Counsel has not, however, independently verified any of the factual information contained in this Official Statement nor has it conducted an investigation of the affairs of the District for the purpose of passing upon the accuracy or completeness of this Official Statement. No person is entitled to rely upon Bond Counsel's limited participation as an assumption of responsibility for or an expression of opinion of any kind with regard to the accuracy or completeness of any information contained herein.

### **No Material Adverse Change**

The obligations of the Initial Purchaser to take and pay for the Bonds, and of the District to deliver the Bonds, are subject to the condition that, up to the time of delivery of and receipt of payment for the Bonds, there shall have been no material adverse change in the financial condition of the District from that set forth or contemplated in the Preliminary Official Statement as amended or supplemented through the date of sale.

### **No-Litigation Certificate**

The District will furnish the Initial Purchaser a certificate, executed by both the President and Secretary of the Board, and dated as of the date of delivery of the Bonds, to the effect that no litigation of any nature is pending, or to its knowledge threatened, either in state or federal courts, contesting or attacking the Bonds; restraining or enjoining the levy, assessment and collection of ad valorem taxes to pay the interest or the principal of the Bonds; in any manner questioning the authority or proceedings for the issuance, execution or delivery of the Bonds; or affecting the validity of the Bonds or the title of the present officers of the District.



## **TAX EXEMPTION**

### **Opinion**

On the date of initial delivery of the Bonds, Bond Counsel will render its opinion that, in accordance with statutes, regulations, published rulings and court decisions existing on the date thereof (“Existing Law”), (1) interest on the Bonds for federal income tax purposes will be excludable from the “gross income” of the holders thereof and (2) the Bonds will not be treated as “specified private activity bonds” the interest on which would be included as an alternative minimum tax preference item under section 57(a)(5) of the Code. Except as stated above, Bond Counsel to the District will express no opinion as to any other federal, state or local tax consequences of the purchase, ownership or disposition of the Bonds. See “APPENDIX B – Form of Bond Counsel’s Opinion.”

In rendering its opinion, Bond Counsel to the District will rely upon (a) the District's federal tax certificate and (b) covenants of the District with respect to arbitrage, the application of the proceeds to be received from the issuance and sale of the Bonds and certain other matters. Failure of the District to comply with these representations or covenants could cause the interest on the Bonds to become includable in gross income retroactively to the date of issuance of the Bonds.

The Code and the regulations promulgated thereunder contain a number of requirements that must be satisfied subsequent to the issuance of the Bonds in order for interest on the Bonds to be, and to remain, excludable from gross income for federal income tax purposes. Failure to comply with such requirements may cause interest on the Bonds to be included in gross income retroactively to the date of issuance of the Bonds. The opinion of Bond Counsel is conditioned on compliance by the District with the covenants and the requirements described in the preceding paragraph, and Bond Counsel has not been retained to monitor compliance with these requirements subsequent to the issuance of the Bonds.

Bond Counsel's opinion represents its legal judgment based upon its review of Existing Law and the reliance on the aforementioned information, representations and covenants. Bond Counsel's opinion is not a guarantee of a result. The Existing Law is subject to change by the Congress and to subsequent judicial and administrative interpretation by the courts and the Department of the Treasury. There can be no assurance that such Existing Law or the interpretation thereof will not be changed in a manner which would adversely affect the tax treatment of the purchase, ownership or disposition of the Bonds.

A ruling was not sought from the Internal Revenue Service by the District with respect to the Bonds or the facilities financed or refinanced with the proceeds of the Bonds. Bond Counsel’s opinion represents its legal judgment based upon its review of Existing Law and the representations of the District that it deems relevant to render such opinion and is not a guarantee of a result. No assurances can be given as to whether the Internal Revenue Service will commence an audit of the Bonds, or as to whether the Internal Revenue Service would agree with the opinion of Bond Counsel. If an audit is commenced, under current procedures the Internal Revenue Service is likely to treat the District as the taxpayer and the Bondholders may have no right to participate in such procedure. No additional interest will be paid upon any determination of taxability.

### **Federal Income Tax Accounting Treatment of Original Issue Discount**

The initial public offering price to be paid for one or more maturities of the Bonds may be less than the principal amount thereof or one or more periods for the payment of interest on the Bonds may not be equal to the accrual period or be in excess of one year (the “Original Issue Discount Bonds”). In such event, the difference between (i) the “stated redemption price at maturity” of each Original Issue Discount Bond, and (ii) the initial offering price to the public of such Original Issue Discount Bond would constitute original issue discount. The “stated redemption price at maturity” means the sum of all payments to be made on the Bonds less the amount of all periodic interest payments. Periodic interest payments are payments which are made during equal accrual periods (or during any unequal period if it is the initial or final period) and which are made during accrual periods which do not exceed one year.

Under Existing Law, any owner who has purchased such Original Issue Discount Bond in the initial public offering is entitled to exclude from gross income (as defined in section 61 of the Code) an amount of income with respect to such Original Issue Discount Bond equal to that portion of the amount of such original issue discount allocable to the accrual period. For a discussion of certain collateral federal tax consequences, see discussion set forth below.

In the event of the redemption, sale or other taxable disposition of such Original Issue Discount Bond prior to stated maturity, however, the amount realized by such owner in excess of the basis of such Original Issue Discount Bond in the hands of such owner (adjusted upward by the portion of the original issue discount allocable to the period for which such Original Issue Discount Bond was held by such initial owner) is includable in gross income.

Under Existing Law, the original issue discount on each Original Issue Discount Bond is accrued daily to the stated maturity thereof (in amounts calculated as described below for each six-month period ending on the date before the semiannual anniversary dates of

the date of the Bonds and ratably within each such six-month period) and the accrued amount is added to an initial owner's basis for such Original Issue Discount Bond for purposes of determining the amount of gain or loss recognized by such owner upon the redemption, sale or other disposition thereof. The amount to be added to basis for each accrual period is equal to (a) the sum of the issue price and the amount of original issue discount accrued in prior periods multiplied by the yield to stated maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period) less (b) the amounts payable as current interest during such accrual period on such Original Issue Discount Bond.

The federal income tax consequences of the purchase, ownership, redemption, sale or other disposition of Original Issue Discount Bonds which are not purchased in the initial offering at the initial offering price may be determined according to rules which differ from those described above. All owners of Original Issue Discount Bonds should consult their own tax advisors with respect to the determination for federal, state and local income tax purposes of the treatment of interest accrued upon redemption, sale or other disposition of such Original Issue Discount Bonds and with respect to the federal, state, local and foreign tax consequences of the purchase, ownership, redemption, sale or other disposition of such Original Issue Discount Bonds.

### **Collateral Federal Income Tax Consequences**

The following discussion is a summary of certain collateral federal income tax consequences resulting from the purchase, ownership or disposition of the Bonds. This discussion is based on Existing Law, which is subject to change or modification, retroactively.

The following discussion is applicable to investors, other than those who are subject to special provisions of the Code, such as financial institutions, property and casualty insurance companies, life insurance companies, individual recipients of Social Security or Railroad Retirement benefits, individuals allowed an earned income credit, certain S corporations with Subchapter C earnings and profits, foreign corporations subject to the branch profits tax, taxpayers qualifying for the health insurance premium assistance credit, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase tax-exempt obligations.

THE DISCUSSION CONTAINED HEREIN MAY NOT BE EXHAUSTIVE. INVESTORS, INCLUDING THOSE WHO ARE SUBJECT TO SPECIAL PROVISIONS OF THE CODE, SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE TAX TREATMENT WHICH MAY BE ANTICIPATED TO RESULT FROM THE PURCHASE, OWNERSHIP AND DISPOSITION OF TAX-EXEMPT OBLIGATIONS BEFORE DETERMINING WHETHER TO PURCHASE THE BONDS.

Interest on the Bonds may be includable in certain corporation's "adjusted financial statement income" determined under section 56A of the Code to calculate the alternative minimum tax imposed by section 55 of the Code.

Under section 6012 of the Code, holders of tax-exempt obligations, such as the Bonds, may be required to disclose interest received or accrued during each taxable year on their returns of federal income taxation.

Section 1276 of the Code provides for ordinary income tax treatment of gain recognized upon the disposition of a tax-exempt obligation, such as the Bonds, if such obligation was acquired at a "market discount" and if the fixed maturity of such obligation is equal to, or exceeds, one year from the date of issue. Such treatment applies to "market discount Bonds" to the extent such gain does not exceed the accrued market discount of such Bonds; although for this purpose, a de minimis amount of market discount is ignored. A "market discount bond" is one which is acquired by the holder at a purchase price which is less than the stated redemption price at maturity or, in the case of a bond issued at an original issue discount, the "revised issue price" (i.e., the issue price plus accrued original issue discount). The "accrued market discount" is the amount which bears the same ratio to the market discount as the number of days during which the holder holds the obligation bears to the number of days between the acquisition date and the final maturity date.

### **State, Local and Foreign Taxes**

Investors should consult their own tax advisors concerning the tax implications of the purchase, ownership or disposition of the Bonds under applicable state or local laws. Foreign investors should also consult their own tax advisors regarding the tax consequences unique to investors who are not United States persons.

### **Information Reporting and Backup Withholding**

Subject to certain exceptions, information reports describing interest income, including original issue discount, with respect to the Bonds will be sent to each registered holder and to the IRS. Payments of interest and principal may be subject to backup withholding under section 3406 of the Code if a recipient of the payments fails to furnish to the payor such owner's social security number or other taxpayer identification number ("TIN"), furnishes an incorrect TIN, or otherwise fails to establish an exemption from the backup withholding tax. Any amounts so withheld would be allowed as a credit against the recipient's federal income tax. Special

rules apply to partnerships, estates and trusts, and in certain circumstances, and in respect of Non-U.S. Holders, certifications as to foreign status and other matters may be required to be provided by partners and beneficiaries thereof.

### **Future and Proposed Legislation**

Tax legislation, administrative actions taken by tax authorities, or court decisions, whether at the Federal or state level, may adversely affect the tax-exempt status of interest on the Bonds under Federal or state law and could affect the market price or marketability of the Bonds. Any such proposal could limit the value of certain deductions and exclusions, including the exclusion for tax-exempt interest. The likelihood of any such proposal being enacted cannot be predicted. Prospective purchasers of the Bonds should consult their own tax advisors regarding the foregoing matters.

### **Qualified Tax-Exempt Obligations for Financial Institutions**

Section 265(a) of the Code provides, in pertinent part, that interest paid or incurred by a taxpayer, including a “financial institution,” on indebtedness incurred or continued to purchase or carry tax-exempt obligations is not deductible in determining the taxpayer’s taxable income. Section 265(b) of the Code provides an exception to the disallowance of such deduction for any interest expense paid or incurred on indebtedness of a taxpayer that is a “financial institution” allocable to tax-exempt obligations, other than “private activity bonds,” that are designated by a “qualified small issuer” as “qualified tax-exempt obligations.” A “qualified small issuer” is any governmental issuer (together with any “on-behalf of” and “subordinate” issuers) who issues no more than \$10,000,000 of tax-exempt obligations during the calendar year. Section 265(b)(5) of the Code defines the term “financial institution” as any “bank” described in section 585(a)(2) of the Code, or any person accepting deposits from the public in the ordinary course of such person’s trade or business that is subject to federal or state supervision as a financial institution. Notwithstanding the exception to the disallowance of the deduction of interest on indebtedness related to “qualified tax-exempt obligations” provided by section 265(b) of the Code, section 291 of the Code provides that the allowable deduction to a “bank,” as defined in section 585(a)(2) of the Code, for interest on indebtedness incurred or continued to purchase “qualified tax-exempt obligations” shall be reduced by twenty-percent (20%) as a “financial institution preference item.”

The District expects to designate the Bonds as “qualified tax-exempt obligations” within the meaning of section 265(b) of the Code. In furtherance of that designation, the District will covenant to take such action that would assure, or to refrain from such action that would adversely affect, the treatment of the Bonds as “qualified tax-exempt obligations.” **Potential purchasers should be aware that if the issue price to the public exceeds \$10,000,000, there is a reasonable basis to conclude that the payment of a de minimis amount of premium in excess of \$10,000,000 is disregarded; however the Internal Revenue Service could take a contrary view. If the Internal Revenue Service takes the position that the amount of such premium is not disregarded, then such obligations might fail to satisfy the \$10,000,000 limitation and the Bonds would not be “qualified tax-exempt obligations.”**

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## **SALE AND DISTRIBUTION OF THE BONDS**

### **Award of the Bonds**

After requesting competitive bids for the Bonds, the District accepted the bid resulting in the lowest net interest cost, which bid was tendered by \_\_\_\_\_ (the “Initial Purchaser”) bearing the interest rates shown on the cover page hereof, at a price of \_\_\_\_\_ % of the principal amount thereof which resulted in a net effective interest rate of \_\_\_\_\_ % as calculated pursuant to Chapter 1204 of the Texas Government Code, as amended.

### **Prices and Marketability**

The delivery of the Bonds is conditioned upon the receipt by the District of a certificate executed and delivered by the Initial Purchaser on or before the date of delivery of the Bonds stating the prices at which the Bonds have been offered for sale to the public. For this purpose, the term “public” shall not include any person who is a bond house, broker, or similar person acting in the capacity of initial purchaser or wholesaler. Otherwise, the District has no understanding with the Initial Purchaser regarding the reoffering yields or prices of the Bonds. Information concerning reoffering yields or prices is the responsibility of the Initial Purchaser.

The prices and other terms with respect to the offering and sale of the Bonds may be changed at any time by the Initial Purchaser after the Bonds are released for sale, and the Bonds may be offered and sold at prices other than the initial offering prices, including sales to dealers who may sell the Bonds into investment accounts. In connection with the offering of the Bonds, the Initial Purchaser may over-allot or effect transactions that stabilize or maintain the market prices of the Bonds at levels above those that might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.

The District has no control over trading of the Bonds in the secondary market. Moreover, there is no guarantee that a secondary market will be made in the Bonds. In such a secondary market, the difference between the bid and asked price of utility district bonds may be greater than the difference between the bid and asked price of bonds of comparable maturity and quality issued by more traditional municipal entities, as bonds of such entities are more generally bought, sold, or traded in the secondary market. Additionally, there are no assurances that if a secondary market for the Bonds were to develop, that any such secondary market would not be disrupted by other events. See “RISK FACTORS – Marketability.”

### **Securities Laws**

No registration statement relating to the offer and sale of the Bonds has been filed with the United States Securities and Exchange Commission under the Securities Act of 1933, as amended, in reliance upon the exemptions provided thereunder. The Bonds have not been registered or qualified under the Securities Act of Texas in reliance upon various exemptions contained therein; nor have the Bonds been registered or qualified under the securities laws of any other jurisdiction. The District assumes no responsibility for registration or qualification of the Bonds under the securities laws of any other jurisdiction in which the Bonds may be offered, sold or otherwise transferred. This disclaimer of responsibility for registration or qualification for sale or other disposition of the Bonds shall not be construed as an interpretation of any kind with regard to the availability of any exemption from securities registration or qualification provisions in such other jurisdiction.

### **Municipal Bond Rating and Municipal Bond Insurance**

No application for a rating on the Bonds has been made.

Application has been made to municipal bond insurance companies for the qualification of the Bonds for municipal bond insurance. If qualified, such insurance will be available at the option and expense of the Initial Purchaser. The rating fees, if any, associated with the insurance will be the responsibility of the Initial Purchaser. See “BOND INSURANCE.”

## **PREPARATION OF OFFICIAL STATEMENT**

### **Sources and Compilation of Information**

The financial data and other information contained in this Official Statement has been obtained primarily from the District’s records, the Developer, the Engineer, the Tax Assessor/Collector, the Appraisal District and information from certain other sources. All of these sources are believed to be reliable, but no guarantee is made by the District as to the accuracy or completeness of the information derived from sources other than the District, and its inclusion herein is not to be construed as a representation on the part of the District except as described below under “Certification of Official Statement.” Furthermore, there is no guarantee that any of the assumptions or estimates contained herein will be realized. The summaries of the agreements, reports, statutes, resolutions, engineering and other related information set forth in this Official Statement are included herein subject to all of the provisions of such documents. These summaries do not purport to be complete statements of such provisions, and reference is made to such documents for further information.

## **Financial Advisor**

Hilltop Securities, Inc., (“HilltopSecurities”) is employed as the Financial Advisor to the District to render certain professional services, including advising the District on a plan of financing and preparing the Official Statement. In its capacity as Financial Advisor, HilltopSecurities has compiled and edited this Preliminary Official Statement. In addition to compiling and editing, the Financial Advisor has obtained the information set forth herein under the caption indicated from the following sources:

“THE DISTRICT” – the Developer; TRE & Associates, LLC (“Engineer”), and records of the District (“Records”); “THE DEVELOPER” - Developer; “THE SYSTEM” - Engineer; “UNLIMITED TAX BONDS AUTHORIZED BUT UNISSUED” - Records; “FINANCIAL STATEMENT” - District records; “ESTIMATED OVERLAPPING DEBT STATEMENT” - Municipal Advisory Council of Texas and Financial Advisor; “TAX DATA” - City of El Paso Tax Assessor/Collector; “MANAGEMENT” - District General Counsel; “PRO FORMA DEBT SERVICE REQUIREMENTS” - Financial Advisor; “THE BONDS,” “LEGAL MATTERS,” and “TAX EXEMPTION” - McCall, Parkhurst & Horton L.L.P.

The Financial Advisor has provided the following sentence for inclusion in this Preliminary Official Statement. The Financial Advisor has reviewed the information in this Preliminary Official Statement in accordance with, and as part of, its responsibilities to the District and, as applicable, to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Financial Advisor does not guarantee the accuracy or completeness of such information.

## **Consultants**

In approving this Official Statement the District has relied upon the following consultants.

**Engineer:** The information contained in this Official Statement relating to engineering matters and to the description of the System and in particular that information included in the sections entitled “THE DISTRICT” and “THE SYSTEM” has been provided by TRE & Associates, LLC, Consulting Engineers, and has been included herein in reliance upon the authority of said firm as experts in the field of civil engineering.

**Appraisal District:** The information contained in this Official Statement relating to the assessed valuations has been provided by the El Paso Central Appraisal District and has been included herein in reliance upon the authority of such entity as experts in assessing the values of property in the County, including the District.

**Tax Assessor/Collector:** The information contained in this Official Statement relating to the historical breakdown of the assessed valuations, principal taxpayers, and certain other historical data concerning tax rates and tax collections has been provided by the Appraisal District and the City Tax Assessor/Collector and is included herein in reliance upon their respective authority as experts in assessing and collecting taxes.

**Auditor:** The District’s financial statements for the fiscal year ending September 30, 2023 have been audited by West, Davis & Company, LLP. See “APPENDIX A” for a copy of the District’s September 30, 2023, audited financial statements.

## **Updating the Official Statement**

If, subsequent to the date of the Official Statement, the District learns, through the ordinary course of business and without undertaking any investigation or examination for such purposes, or is notified by the Initial Purchaser, of any adverse event which causes the Official Statement to be materially misleading, and unless the Initial Purchaser elects to terminate its obligation to purchase the Bonds, the District will promptly prepare and supply to the Initial Purchaser an appropriate amendment or supplement to the Official Statement satisfactory to the Initial Purchaser; provided, however, that the obligation of the District to so amend or supplement the Official Statement will terminate when the District delivers the Bonds to the Initial Purchaser, unless the Initial Purchaser notifies the District on or before such date that less than all of the Bonds have been sold to ultimate customers, in which case the District's obligations hereunder will extend for an additional period of time as required by law (but not more than 90 days after the date the District delivers the Bonds).

## **Certification of Official Statement**

The District, acting through its Board of Directors in its official capacity, hereby certifies, as of the date hereof, that the information, statements, and descriptions or any addenda, supplement and amendment thereto pertaining to the District and its affairs contained herein, to the best of its knowledge and belief, contain no untrue statement of a material fact and do not omit to state any material fact necessary to make the statements herein, in light of the circumstances under which they are made, not misleading. With respect to information included in this Official Statement other than that relating to the District, the District has no reason to believe that

such information contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein, in the light of the circumstances under which they are made, not misleading; however, the Board has made no independent investigation as to the accuracy or completeness of the information derived from sources other than the District. In rendering such certificate, the official executing this certificate may state that he has relied in part on his examination of records of the District relating to matters within his own area of responsibility, and his discussions with, or certificates or correspondence signed by, certain other officials, employees, consultants and representatives of the District.

#### **Official Statement “Deemed Final”**

For purposes of compliance with Rule 15c2-12, this document, as the same may be supplemental or corrected by the District from time-to-time, may be treated as an official statement with respect to the Bonds described herein “deemed final” by the District as of the date hereof (or of any such supplement or correction).

The Official Statement, when further supplemented by adding information specifying the interest rates and certain other information relating to the Bonds, shall constitute a “final official statement” of the District with respect to the Bonds as that term is defined in Rule 15c2-12.

### **CONTINUING DISCLOSURE OF INFORMATION**

Pursuant to Rule 15c2-12(b)(5) of the United States Securities and Exchange Commission (“SEC”), in the Bond Resolution, the District has made the following agreement for the benefit of the holders and beneficial owners of the Bonds. Under the agreement, the District will be obligated to provide certain updated financial information and operating data annually, and timely notice of specified material events, to the Municipal Securities Rulemaking Board (the “MSRB”) or to any successor to its functions as a repository through its Electronic Municipal Market Access (“EMMA”) system. The District is required to observe the agreement for so long as it remains obligated to advance funds to pay the Bonds.

#### **Annual Reports**

The District will provide certain financial information and operating data annually to the MSRB. The financial information and operating data which will be provided with respect to the District will be the District’s audited financial statements and supplemental schedules as found in “APPENDIX A - District Audited Financial Statements for Fiscal Year Ended September 30, 2023.” The District will update and provide this information within six months after the end of each of its fiscal years. The District will provide the updated information to the MSRB or any successor to its functions as a repository through the EMMA system. Any information concerning the District so provided shall be prepared in accordance with generally accepted auditing standards or other such principles as the District may be required to employ from time to time pursuant to State law or regulation, and audited if the audit report is completed within the period during which it must be provided. If the audited financial statements of the District are not complete within such period, then the District shall provide unaudited financial statements for the applicable fiscal year to the MSRB within such six month period, and audited financial statements when the audited financial statements become available.

The District's current fiscal year end is September 30. Accordingly, it must provide updated information by March 31 in each year, unless the District changes its fiscal year. If the District changes its fiscal year, it will notify the MSRB of the change.

#### **Notice of Certain Events**

The District will provide timely notices of certain events to the MSRB, but in no event will such notices be provided to the MSRB in excess of ten business days after the occurrence of an event. The District will provide notice of any of the following events with respect to the Bonds: (1) principal and interest payment delinquencies; (2) non-payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds; (7) modifications to rights of Beneficial Owners of the Bonds, if material; (8) bond calls, if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Bonds, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the District or other obligated person within the meaning of Rule 15c2-12; (13) consummation of a merger, consolidation, or acquisition involving the District or other obligated person within the meaning of the Rule or the sale of all or substantially all of the assets of the District or other obligated person within the meaning of the Rule, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of an definitive agreement relating to any such actions, other than pursuant to its terms, if material; (14) appointment of a successor or additional trustee or the change of name of a trustee, if material; (15) incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of

the obligated person, any of which affect security holders, if material; and (16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

For these purposes, any event described in clause (12) of the immediately preceding paragraph is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer of the District in a proceeding under the United States Bankruptcy Court or in any other proceeding under state or federal law in which a court of governmental authority has assumed jurisdiction over substantially all of the assets or business of the District, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers of the District in possession but subject to the supervision and orders of a court of governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the District. For the purposes of the events described in clauses (15) and (16) of the preceding paragraph, the term “Financial Obligation” is defined in the Bond Resolution to mean (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, and existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “Financial Obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule. The Bond Resolution further provides that the District intends the words in such clauses (15) and (16) in the preceding paragraph and in the definition of Financial Obligation to have the meanings ascribed to them in SEC Release No. 34-83885 dated August 29, 2018.

The District will provide notice of the aforementioned events to the MSRB in a timely manner (but not in excess of ten business days after the occurrence of the event). The District will also provide timely notice of any failure by the District to provide annual financial information in accordance with its agreement described above under “Annual Reports.”

#### **Availability of Information from MSRB**

The District has agreed to provide the foregoing information only to the MSRB. The MSRB makes the information available to the public without charge through its EMMA internet portal at [www.emma.msrb.org](http://www.emma.msrb.org). The address of the MSRB is 1900 Duke Street, Suite 600, Alexandria, VA 22314, and its telephone number is (703) 797-6600.

#### **Limitations and Amendments**

The District has agreed to update information and to provide notices of material events only as described above. The District has not agreed to provide other information that may be relevant or material to a complete presentation of its financial results of operations, condition, or prospects or agreed to update any information that is provided, except as described above. The District makes no representation or warranty concerning such information or concerning its usefulness to a decision to invest in or sell Bonds at any future date. The District disclaims any contractual or tort liability for damages resulting in whole or in part from any breach of its continuing disclosure agreement or from any statement made pursuant to its agreement, although holders or beneficial owners of Bonds may seek a writ of mandamus to compel the District to comply with its agreement.

The District may amend its continuing disclosure agreement from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the District, but only if the agreement, as amended, would have permitted an initial purchaser to purchase or sell Bonds in the offering made hereby in compliance with Rule 15c2-12, taking into account any amendments or interpretations of Rule 15c2-12 to the date of such amendment, as well as such changed circumstances, and either the holders of a majority in aggregate principal amount of the outstanding Bonds consent to the amendment or any person unaffiliated with the District (such as nationally recognized bond counsel) determines that the amendment will not materially impair the interests of the holders and beneficial owners of the Bonds. The District may also amend or repeal the agreement in the Bond Resolution if the SEC amends or repeals the applicable provisions of Rule 15c2-12 or a court of final jurisdiction determines that such provisions are invalid or unenforceable, but only to the extent that its right to do so would not prevent the Initial Purchaser from lawfully purchasing the Bonds in the offering described herein.

If the District so amends the agreement, it has agreed to include with any financial information or operating data next provided in accordance with its agreement described above under “Annual Reports” an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information and operating data so provided.

#### **Compliance with Prior Undertakings**

Over the last five years, the District has complied in all material respects with its continuing disclosure undertakings pursuant to the Rule.

## MISCELLANEOUS

All estimates, statements and assumptions in this Official Statement and the Appendices hereto have been made on the basis of the best information available and are believed to be reliable and accurate. Any statements in this Official Statement involving matters of opinion or estimates, whether or not expressly so stated, are intended as such and not as representations of fact, and no representation is made that any such statements will be realized.

This Official Statement was approved by the Board of Directors of Paseo del Este Municipal Utility District No. 2, as of the date shown on the cover page.

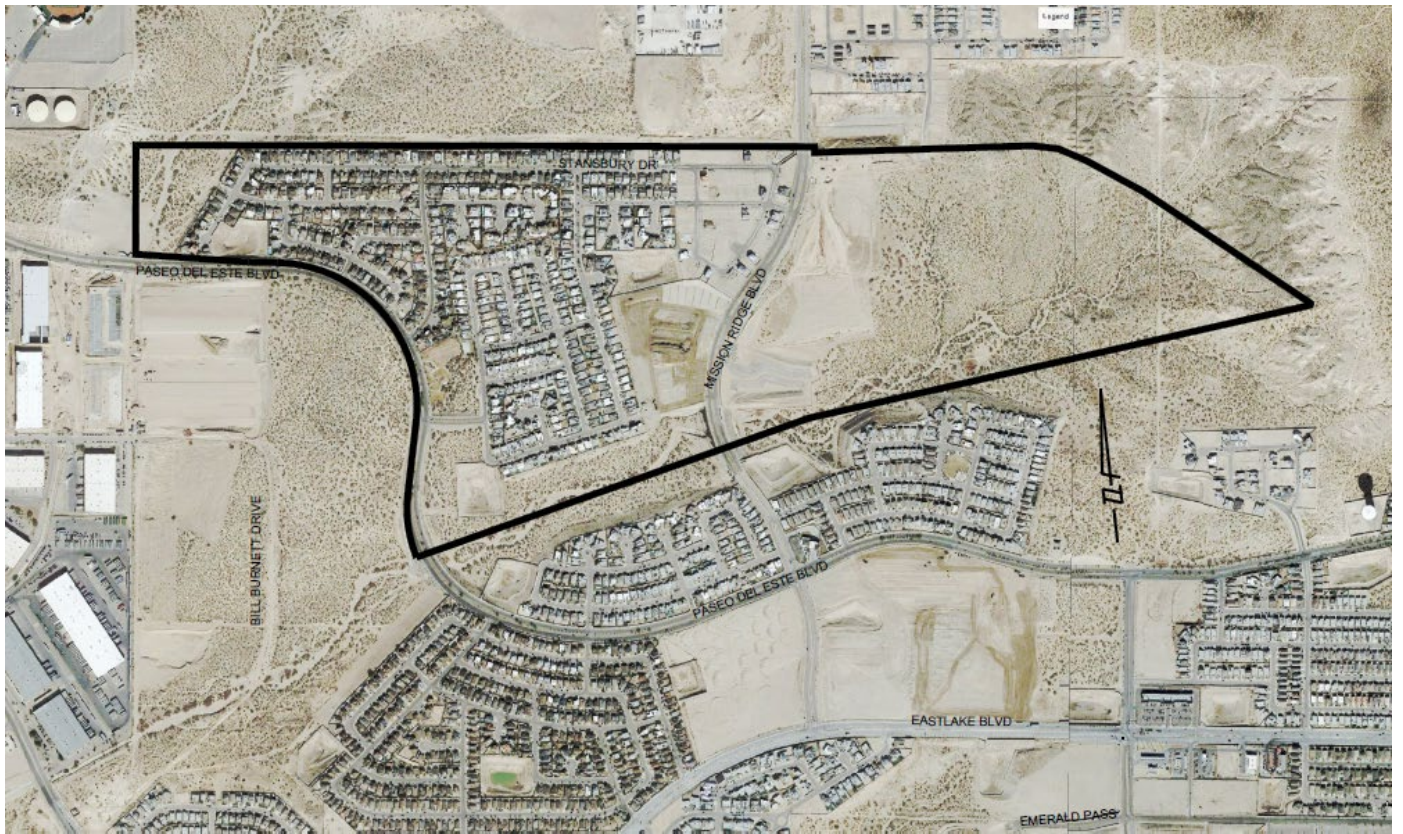
/s/ \_\_\_\_\_  
President, Board of Directors  
Paseo del Este Municipal Utility District No. 2

ATTEST:

/s/ \_\_\_\_\_  
Secretary, Board of Directors  
Paseo del Este Municipal Utility District No. 2



**AERIAL PHOTOGRAPH**  
**(Approximate boundaries)**



## **PHOTOGRAPHS**

The following photographs were taken in the District on May 22, 2024, solely to illustrate the type of improvements which have been constructed in the District. The District cannot predict if any additional improvements will be constructed in the future.









## **APPENDIX A**

**District Audited Financial Statements for the fiscal year ended September 30, 2023**



## **APPENDIX B**

### **Form of Bond Counsel's Opinion**