

Oscar Leeser
Mayor

Tommy Gonzalez
City Manager



CITY COUNCIL
Peter Svarzbein, District 1
Alexsandra Anello, District 2
Cassandra Hernandez, District 3
Joe Molinar, District 4
Isabel Salcido, District 5
Claudia L. Rodriguez, District 6
Henry Rivera, District 7
Cissy Lizarraga, District 8

AGENDA FOR THE REGULAR COUNCIL MEETING

May 10, 2022

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

**THE LOCAL HEALTH AUTHORITY STRONGLY RECOMMENDS THE USE OF
MASKS IN ALL CITY FACILITIES AND INDOOR SPACES**

Teleconference phone number: 1-915-213-4096

Toll free number: 1-833-664-9267

Conference ID: 162-124-678#

AND

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

May 9, 2022

9:00 AM

Teleconference phone number: 1-915-213-4096

Toll free number: 1-833-664-9267

Conference ID: 452-777-225#

Notice is hereby given that an Agenda Review Meeting will be conducted on May 9, 2022 at 9:00 A.M. and a Regular Meeting of the City Council of the City of El Paso will be conducted on May 10, 2022 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, May 9, 2022 Conference ID: 452-777-225#
Regular Council Meeting, May 10, 2022 Conference ID: 162-124-678#

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:

<https://www.elpasotexas.gov/city-clerk/meetings/city-council-meetings>

For Call to the Public: <https://elpasotx.seamlessdocs.com/f/SpeakerSignUpFormPublic>

To speak on Agenda Items: <https://elpasotx.seamlessdocs.com/f/SpeakerSignUpFormItem>

The following member of City Council will be present via video conference:

Representative Cassandra Hernandez (upon approval on May 9, 2022)

A quorum of City Council must participate in the meeting.

ROLL CALL

INVOCATION BY POLICE CHAPLAIN ROBERT HEMPHILL, JR. PH.D.

PLEDGE OF ALLEGIANCE

MAYOR'S PROCLAMATIONS

El Paso Police Officers Memorial Day - Police Week

Mental Health Awareness Month

International Internal Audit Awareness Month

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 Minutes of the Regular City Council Meeting of April 26, 2022, the Agenda Review Minutes of April 25, 2022, the Work Session of April 25, 2022, the Work Session of December 6, 2021, and the Work Session of December 13, 2021. [22-550](#)

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** [22-555](#)

CONSENT AGENDA - RESOLUTIONS:

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

3. A Resolution to authorize the City Manager to sign a Lease Agreement between the City of El Paso ("Lessor") and B.H. Zane Grey Butterfield, LLC ("Lessee") regarding the following described property: A 5.0234 acres parcel portion of all of Lot 2 and a portion of Lot 2B, Block 1, Butterfield Trail Industrial Park Unit One Replat "A," El Paso County Plat Records, consisting of approximately 218,818.9 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 4 and 6 Butterfield Trail Blvd., El Paso, Texas. [22-514](#)

The term of this lease is an initial term of forty (40) years and one (1) ten-year option to extend the term of the lease. The annual rental fee for the land in the initial term will be \$84,000. The rent fee for the building will be a lump sum in the amount of \$1,145,000.00.

District 3

Airport, Sam Rodriguez, (915) 212-7301

4. A Resolution to authorize the City Manager to sign a Lease Agreement between the City of El Paso ("Lessor") and B.H. Zane Grey Butterfield, LLC ("Lessee") regarding the following described property: A 5.0681 acres parcel portion of Lots 2B and 2C, Block 1, Butterfield Trail Industrial Park Unit One Replat "A," El Paso County Plat Records, consisting of approximately 220,768.6 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 9 Zane Grey Street, El Paso, Texas. [22-515](#)

The term of this lease is an initial term of forty (40) years and one (1) ten-year option to extend the term of the lease. The annual rental fee for the land in the initial term will be \$84,000. The rent fee for the building will be a lump sum in the amount of \$1,440,000.00.

District 3

Airport, Sam Rodriguez, (915) 212-7301

5. A Resolution to authorize the City Manager to sign a Lease Agreement between the City of El Paso ("Lessor") and B.H. 7619 Lockheed Drive, LLC. ("Lessee") regarding the following described property: Lot 15, Block 8, El Paso International Airport Tract Unit Two, City of El Paso, El Paso County, Texas, municipally known and numbered as 7619 Lockheed, El Paso, Texas. [22-516](#)

The term of this lease is an initial term of forty (40) years and one (1) ten-year option to extend the term of the lease. The annual rental fee for the land in the initial term will be \$27,600. The rent fee for the building will be a lump sum in the amount of \$340,000.00.

District 3

Airport, Sam Rodriguez, (915) 212-7301

6. A Resolution to authorize the City Manager to sign a Lease Agreement between the City of El Paso ("Lessor") and B.H. 7108 Airport Road, LLC ("Lessee") regarding the following described property: A portion of Lots 1 and 2, Block 6, Butterfield Trail Industrial Park Unit One Replat A, consisting of approximately 44,262.9 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 7108 Airport Rd., El Paso, Texas. [22-517](#)

The term of this lease is an initial term of forty (40) years and one (1) ten-year option to extend the term of the lease. The annual rental fee for the land in the initial term will be \$48,000. The rent fee for the building will be a lump sum in the amount of \$280,000.00.

District 3

Airport, Sam Rodriguez, (915) 212-7301

Goal 3: Promote the Visual Image of El Paso

7. A Resolution that the City Council authorizes the Mayor to sign a letter in support of the proposed National Register of Historic Places nomination of the structure located at 211 N. Mesa Street (Kress Building), City of El Paso, El Paso County, Texas. [22-500](#)

Subject Property: 211 N. Mesa

District 8

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

Planning and Inspections, Providencia Velazquez, (915) 212-1567

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

8. A Resolution that City Council accepts the recommendation from the Parks and Recreation Advisory Board and hereby approves the renaming of Happiness Senior Center, located at 563 N. Carolina Drive, within the City of El Paso, El Paso County, Texas, as "Jessie Moreno Happiness Center" [22-528](#)

District 3

Parks and Recreation, Ben Fyffe, (915) 212-1766

CONSENT AGENDA - BOARD RE-APPOINTMENTS:

Goal 3: Promote the Visual Image of El Paso

9. Charles Mais to the Historic Landmark Commission by Representative Isabel Salcido, District 5. [22-551](#)

Members of the City Council, Representative Isabel Salcido, (915) 212-0005

Goal 8: Nurture and Promote a Healthy, Sustainable Community

10. Michael Bray to the El Paso Housing Finance Corporation by Mayor Oscar Leeser. [22-497](#)

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

CONSENT AGENDA - APPLICATIONS FOR TAX REFUNDS:

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

11. That the tax refunds listed on the attachment posted with this agenda be approved. 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. (See Attachment A) [22-509](#)

All Districts

Tax Office, Maria O. Pasillas, (915) 212-1737

REGULAR AGENDA - MEMBERS OF THE CITY COUNCIL

Goal 3: Promote the Visual Image of El Paso

12. Discuss the 2022 Texas Society of Architects (TxA) Annual Conference and Design Expo in El Paso event that will attract over 3000 Architects, Design Professionals and Vendors to El Paso this year and will contribute to over 1200 room nights and an estimated \$2,700,000 in economic impact to the City. Texas Society of Architects begun the process by reaching out to City of El Paso staff in CID, MCAD and Sun Metro to request access and assistance in coordinating tours that will highlight the great work the City has accomplished to Architects from across the entire State of Texas and beyond. [22-495](#)

All Districts

Members of the City Council, Representative Peter Svarzbein, (915) 212-1002

Goal 8: Nurture and Promote a Healthy, Sustainable Community

13. Discussion and action protecting Women's Rights and to direct the City Manager to work with the City Council to establish a City of El Paso Women's Commission and/or Board focused on Women's equality and protecting their rights. [22-554](#)

All Districts

Members of the City Council, Representative Henry Rivera, (915) 212-0007
Members of the City Council, Representative Aleksandra Anello, (915) 212-0002
Members of the City Council, Representative Peter Svarzbein, (915) 212-1002
Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003

14. Discussion and action on a Resolution that the City Council declares that the expenditure of District 8 discretionary funds in an amount not to exceed \$50,000 to support the Opportunity Center for the Homeless' renovation, rehabilitation, expansion and construction of bathroom facilities serves a municipal purpose of enhancing El Paso's quality of life while nurturing and promoting a healthy and sustainable community; and that the City Manager be authorized to effectuate any budget transfer necessary to ensure that the funds are properly expended for such purpose and to execute any related agreements and amendments to such agreements. [22-557](#)

District 8

Members of the City Council, Representative Cissy Lizarraga, (915) 212-0008

REGULAR AGENDA - OPERATIONAL FOCUS UPDATES

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

15. Ad Hoc Charter Advisory Committee Update. [22-552](#)

All Districts

Communications and Public Affairs, Laura Cruz-Acosta, (915) 212-1071

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 audits 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 ended August 31, 2021. [22-501](#)

All Districts

Office of the Comptroller, Margarita Munoz, (915) 212-1174

Goal 8: Nurture and Promote a Healthy, Sustainable Community

17. The Department of Aviation will provide a management update regarding the ELP 5MW (Megawatts) Solar Farm Project.

[22-559](#)

All Districts

Airport, Sam Rodriguez, (915) 212-1845

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: 162-124-678#

A sign-up form is available on line for those who wish to sign up in advance of the meeting at: <https://elpasotx.seamlessdocs.com/f/SpeakerSignUpFormPublic>

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 2: Set the Standard for a Safe and Secure City

18. An Ordinance granting a Franchise for Elite Medical Air Transport, LLC d/b/a Emergent Air, to operate a non-emergency ambulance transfer service.

[22-504](#)

All Districts

Fire, Chief Mario D'Agostino, (915) 212-5605

PUBLIC HEARING WILL BE HELD ON MAY 24, 2022

Goal 3: Promote the Visual Image of El Paso

19. An Ordinance to amend Title 5 (Business License and Permit Regulations) Chapter 5.02 (Alcoholic Beverages), Section 5.02.090 (City Protest of Permit/License), Section 5.02.100 (City Liquor License/Permit - Fee) and Section 5.02.140 (Liquor License/Permit - Term); The penalty as provided in 5.02.170 (Violations and Penalties) of the El Paso City Code. [22-506](#)

All Districts

Planning and Inspections, Philip F. Etiwe, (915) 212-1553
Planning and Inspections, Brenda R. Cantu, (915) 212-1500

PUBLIC HEARING WILL BE HELD ON JUNE 7, 2022

20. An Ordinance amending the Future Land Use Map (FLUM) contained in "Plan El Paso" for the properties legally described as Tract 1C, Block 1 and Tract 1A, Block 2, Ysleta Grant, 9879 North Loop Drive, City of El Paso, El Paso County, Texas, from O-3, Agriculture to G-7, Industrial and/or Railyards. [22-521](#)

Subject Property: 9879 North Loop Drive
Applicant: BRE Development, LLC. PLCP21-00004

District 6

Planning and Inspections, Philip F. Etiwe, (915) 212-1553
Planning and Inspections, Andrew Salloum, (915) 212-1603

PUBLIC HEARING WILL BE HELD ON JUNE 7, 2022

21. An Ordinance changing the zoning of Tract 1C, Block 1 and Tract 1A, Block 2, Ysleta Grant, 9879 North Loop Drive, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) to C-4/c (Commercial/condition) and imposing conditions. The penalty is as provided for in Chapter 20.24 of the El Paso City Code. [22-522](#)

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: 9879 North Loop Drive
Applicant: City of El Paso, PZRZ21-00017

District 6

Planning and Inspections, Philip F. Etiwe, (915) 212-1553
Planning and Inspections, Andrew Salloum, (915) 212-1603

PUBLIC HEARING WILL BE HELD ON JUNE 7, 2022

22. An Ordinance amending the Future Land Use Map (FLUM) contained in "Plan El Paso" for the properties legally described as Tract 2, 2B, and 3D, Block 2, Ysleta Grant, City of El Paso, El Paso County, Texas, from O-3, Agriculture to G-4, Suburban (Walkable). [22-523](#)

Subject Property: North of Inglewood Drive and West of North Loop Drive
Applicant: BRE Development, LLC. PLCP21-00005

District 7

Planning and Inspections, Philip F. Etiwe, (915) 212-1553
Planning and Inspections, Andrew Salloum, (915) 212-1603

PUBLIC HEARING WILL BE HELD ON JUNE 7, 2022

23. An Ordinance changing the zoning of Tracts 2, 2B, and 3D, Block 2, Ysleta Grant, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) to A-O/c (Apartment/Office/condition), and imposing conditions. The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

[22-524](#)

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 Inglewood Drive and West of North Loop Drive
Applicant: BRE Development, LLC. PZRZ21-00035

District 7

Planning and Inspections, Philip F. Etiwe, (915) 212-1553
Planning and Inspections, Andrew Salloum, (915) 212-1603

PUBLIC HEARING WILL BE HELD ON JUNE 7, 2022**REGULAR AGENDA – OTHER BIDS, CONTRACTS, PROCUREMENTS:****Goal 2: Set the Standard for a Safe and Secure City**

24. The linkage to the Strategic Plan is subsection: 2.3 - Increase public safety operational efficiency.

[22-530](#)**Award Summary:**

Discussion and action on the request that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue a Purchase Order(s) to LexisNexis Coplogic Solutions Inc dba LexisNexis Risk Solutions, the sole distributor for the Desk Officer Reporting System for a term of two (2) years for an estimated amount of \$135,000.00 with the stipulation that the vendor provides an updated sole source letter and affidavit each year. The award of the contract for the Desk Officer Reporting System will allow citizens to submit police incident reports to be posted into the existing automated Records Management System (RMS).

Contract Variance:

New contract, no contract variance.

Department:

Police

Award to:

LexisNexis Coplogic Solutions Inc dba
LexisNexis Risk Solutions
Alpharetta, GA

Term:

2 years

Annual Estimated Amount:

\$67,500.00

Total Estimated Award: \$135,000.00
Account No.: 321-2710-21230-522020-P2104
-GT2121EJAG 321-2814-21270-522150
Funding Source: EJAG Grant & Confiscated Funds
Districts(s): All
Sole Source No.: 2022-0400

This is a Sole Source, service contract.

All Districts

Police, Chief Gregory Allen, (915) 212-4302
Purchasing and Strategic Sourcing, Claudia A. Garcia, (915) 212-1218

25. The linkage to the Strategic Plan is subsection: 2.7 - Maximize Municipal Court efficiency and enhance customer experience.

[22-527](#)

Award Summary:

Discussion and action, that after having provided adequate notice as required by Sec. 2254.1036 of the Texas Government Code, the Agreement for Delinquent Court Fines and Fees Services, pursuant to Solicitation 2022-0007R Collection Services for Delinquent Fines and Fees - Municipal Court, is awarded to Delgado Acosta Spencer Linebarger & Perez, LLP and that the City Manager, or his designee, is authorized to execute the Agreement and any related documents with Delgado Acosta Spencer Linebarger & Perez, LLP required to effectuate this award.

All Districts

Municipal Courts, Lilia Worrell (915) 212-5822
Purchasing and Strategic Sourcing, Claudia A. Garcia, (915) 212-1218

26. The linkage to the Strategic Plan is subsection: 2.7 - Maximize Municipal Court efficiency and enhance customer experience.

[22-513](#)

Award Summary:

Discussion and action on the award of Solicitation 2022-0007R Collection Services for Delinquent Fines and Fees - Municipal Court to Delgado Acosta Spencer Linebarger & Perez, LLP for an initial four (4) year term for an estimated amount of \$3,796,035.80. The award also includes, three (3), one (1) year options for an estimated amount of \$2,847,026.85. The total value of the contract is, including the initial term plus the options, for a total of seven (7) years, for an estimated amount of \$6,643,062.65. This contract will allow collection services for the Municipal Court.

Contract Variance:

No contract variance

Department: Municipal Court
Award to: Delgado Acosta Spencer Linebarger & Perez, LLP
El Paso, TX
Item(s): All
Annual Estimated Award: \$949,008.95

Initial Term:	\$3,796,035.80 (4 years)
Option to Extend:	\$2,847,026.85 (3 years)
Total Estimated Award:	\$6,643,062.65 (7 years)
Account No.:	111-1000-11030-203400
Funding Source:	Collection Agency Payable
Districts(s):	All

This is a Request for Proposal (RFP), service contract.

The Purchasing & Strategic Sourcing and Municipal Court Departments recommend award as indicated to Delgado Acosta Spencer Linebarger & Perez, LLP, the sole highest ranked proposer based on evaluation factors established for this procurement. 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 be authorized to execute any related contract documents and agreements necessary to effectuate this award.

All Districts

Municipal Courts, Lilia Worrell (915) 212-5822

Purchasing and Strategic Sourcing, Claudia A. Garcia, (915) 212-1218

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

27. The linkage to the Strategic Plan is subsection 7.2 - Improve competitiveness through infrastructure improvements impacting the quality of life. [22-525](#)

Discussion and action that the Purchasing Director is authorized to notify J.A.R. CONCRETE, INC. DBA J.A.R. CONSTRUCTION, INC., that the City is terminating Solicitation 2021-1037 Rojas Drive Widening without cause, pursuant to the provisions and requirements of section 3L of the Contract Clauses at the request from the contractor effective May 10, 2022.

Department: Capital Improvement

District 6

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

Purchasing and Strategic Sourcing, Claudia A. Garcia, (915) 212-1218

REGULAR AGENDA – PUBLIC HEARINGS AND SECOND READING OF ORDINANCES:

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

28. An Ordinance amending Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.020 (Applicability) to clarify the Reasonable Sensibilities Standard; Section 9.40.030 (Sound Level Violations) to clarify the maximum sound level, that sound levels apply to properties producing the noise, and the locations of sound readings; Section 9.40.040 (Vibration) to clarify that Vibration Violations can occur on any affected property; Section 9.40.070 (Penalties) to clarify that [22-176](#)

the city may seek civil action and penalties of up to \$1,000 per day; Section 9.40.080 (Enforcement) to clarify which departments have authority to enforce; the penalty as provided in Section 9.40.070 of the City Code. [POSTPONED FROM 03-01-2022 AND 04-26-2022]

All Districts

Police, Assistant Chief Peter Pacillas, (915) 212-4308

Goal 3: Promote the Visual Image of El Paso

29. An Ordinance amending Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit), Article I (General Provisions), Section 5.03.020 (A) and Section 5.03.020 (E) (Definitions), Article II (Permit Application Process) Section 5.03.040 (B) (3) (Permit Application Processing), Article III (Denial, Suspension, Revocation, and Appeals) Section 5.03.080 (B) (5) and Section 5.03.090 (A) (2), Article IV (Permit Standards), Section 5.03.110 (A) (Permit Standards), Article VI (Violation; Penalty) Section 5.03.130 (C) Violation and adding Section 5.03.130 (E); The penalty as provided in 5.03.130 of the El Paso City Code. [POSTPONED FROM 03-01-2022 AND 04-26-2022] [22-216](#)

All Districts

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

Planning and Inspections, Tony De La Cruz, (915) 212-1589

REGULAR AGENDA - OTHER BUSINESS:

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

30. Discussion and action requesting City Council support for the staff recommended project that has been selected to submit for an Infrastructure for Rebuilding America (INFRA) Grant under the Multimodal Projects Discretionary Grant Program (MPDG) for the Department of Transportation (DOT) to invest in road, rail, transit and port projects that promise to achieve national objectives. [22-510](#)

All Districts

Economic and International Development, Anne Guayante, (915) 479-0341

Economic and International Development, Elizabeth Triggs, (915) 212-1619

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

31. Discussion and action on the appointment of 4 candidates to fill 5 Part Time On call Associate Judge vacancies. Six candidates applied; 1 did not meet qualifications; 1 non-responsive. Four candidates' names were submitted by a city representative to the City Manager's office. These positions serve as substitutes for the elected municipal court trial judges at trial and other court hearings; they preside over arraignments; they serve as magistrates on graveyard shifts. The candidates are: [22-529](#)

1. Elia Garcia
2. Jose Gonzalez

3. Leonel Nunez
4. Manuel Parra

All Districts

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

Goal 3: Promote the Visual Image of El Paso

32. Discussion and action on the results of the Public Engagement related to the Community Progress Bond.

[22-468](#)

All Districts

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

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

33. Discussion and action on a Resolution to adopt the Post-Issuance Compliance Policy for the City of El Paso.

[22-502](#)

All Districts

Office of the Comptroller, Margarita Munoz, (915) 212-1174

34. Discussion and action that the City hereby adopts the revised City of El Paso Budget Policy, which allows for the establishment of a Pension Stabilization Fund and amends the language of the Stabilization Fund created on March 3, 2020.

[22-503](#)

All Districts

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

35. Discussion and action on a Resolution to authorize the Mayor to sign a Certificate of Approval of the Highest Elected Official in conjunction with the proposed issuance by the Housing Opportunity Management Enterprises PFC (the "Issuer"), a non-profit public facility corporation created by the Housing Authority of the City of El Paso, in an aggregate principal amount not to exceed \$20,000,000.00, for the Multifamily Housing Revenue Bonds RAD (Rental Assistance Demonstration) Conversion Program, Cielo Tower Apartments Project.

[22-535](#)

District 8

City Attorney's Office, Karla M. Nieman, (915) 212-0033

36. Discussion and action on a Resolution to authorize the Mayor to sign a Certificate of Approval of the Highest Elected Official in conjunction with the proposed issuance by the Alamito Public Facilities Corporation (the "Issuer"), a public facility of the Housing Authority of the City of El Paso, in an aggregate principal amount not to exceed \$76,125,000, for the following residential rental projects Salazar Apartments; Cien Palmas Apartments; Mesa Place Townhomes; and Franklin Place Townhomes.

[22-536](#)

District 2

City Attorney's Office, Karla M. Nieman, (915) 212-0033

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

37. Discussion and action that the City Manager be authorized to sign a Professional Services Agreement for the project known as "Traffic Management Center Upgrades" to AECOM Technical Services, Inc. The Agreement will be for an amount not to exceed Three Million, Five Hundred Eighteen Thousand, Seven Hundred Sixty-Nine and 71/100 Dollars (\$3,518,769.71), and includes authorization for the City Engineer to approve additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and authorization for the City Engineer to approve Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if the identified services are necessary for proper execution of identified project and if the increased amounts are within the appropriate budget identified for the project for a total amount of \$3,618,769.71. 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 the Agreement.

[22-505](#)

All Districts

Capital Improvement Department, Sam Rodriguez (915) 212-1808

EXECUTIVE SESSION

The following member of City Council will be present via video conference:

Representative Cassandra Hernandez (upon approval on May 9, 2022)

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:

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



Legislation Text

File #: 22-550, 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.

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 Minutes of the Regular City Council Meeting of April 26, 2022, the Agenda Review Minutes of April 25, 2022, the Work Session of April 25, 2022, the Work Session of December 6, 2021, and the Work Session of December 13, 2021.



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-555, 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.*

AGENDA LANGUAGE:

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REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS



Legislation Text

File #: 22-514, 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 3

Airport, Sam Rodriguez, (915) 212-7301

AGENDA LANGUAGE:

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

A Resolution to authorize the City Manager to sign a Lease Agreement between the City of El Paso ("Lessor") and B.H. Zane Grey Butterfield, LLC ("Lessee") regarding the following described property: A 5.0234 acres parcel portion of all of Lot 2 and a portion of Lot 2B, Block 1, Butterfield Trail Industrial Park Unit One Replat "A," El Paso County Plat Records, consisting of approximately 218,818.9 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 4 and 6 Butterfield Trail Blvd., El Paso, Texas.

The term of this lease is an initial term of forty (40) years and one (1) ten-year option to extend the term of the lease. The annual rental fee for the land in the initial term will be \$84,000. The rent fee for the building will be a lump sum in the amount of \$1,145,000.00.

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

DEPARTMENT: Aviation

AGENDA DATE: May 10, 2022

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, (915) 212-7301

DISTRICT(S) AFFECTED: District 3

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

This is a Resolution to authorize the City Manager to sign a Lease Agreement between the City of El Paso ("Lessor") and B.H. Zane Grey Butterfield, LLC ("Lessee") regarding the following described property: A 5.0234 acres parcel portion of all of Lot 2 and a portion of Lot 2B, Block 1, Butterfield Trail Industrial Park Unit One Replat "A," El Paso County Plat Records, consisting of approximately 218,818.9 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 4 and 6 Butterfield Trail Blvd., El Paso, Texas.

The term of this lease is an initial term of forty (40) years and one (1) ten-year option to extend the term of the lease. The annual rental fee for the land in the initial term will be \$84,000. The rent fee for the building will be a lump sum in the amount of \$1,145,000.00.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval to lease the subject property to B.H. Zane Grey Butterfield, LLC. The subject property is located in the El Paso International Airport's Butterfield Industrial Park. The improvements were acquired by the Airport by abandonment by the previous tenant. The property will be repaired and remodeled to accommodate industrial and office uses.

PRIOR COUNCIL ACTION:

None – this is a new tenant

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue generating item.

BOARD / COMMISSION ACTION:

N/A

DEPARTMENT HEAD:


Sam Rodriguez, P.E.

Chief Operations & Transportation Officer/Director of Aviation

RESOLUTION

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

That the City Manager is authorized to sign a Lease Agreement by and between the City of El Paso ("Lessor") and B.H. Zane Grey Butterfield, LLC, ("Lessee") regarding the following described property:

A 5.0234 acres parcel portion of all of Lot 2 and a portion of Lot 2B, Block 1, Butterfield Trail Industrial Park Unit One Replat "A," El Paso County Plat Records, consisting of approximately 218,818.9 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 4 and 6 Butterfield Trail Blvd., El Paso, Texas

with a 40 year initial term and one option to extend for ten years; and

that City Manager is authorized to sign any and all documents related and/or necessary to effectuate the leasing and related closing of the property.

Dated this ____ day of _____ 2022.

CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

4 & 6 BUTTERFIELD TRAIL BLVD. LEASE AGREEMENT

El Paso International Airport El Paso, Texas

B.H. ZANE GREY BUTTERFIELD, LLC

Lessee

May 27, 2022
Effective Date

4 & 6 BUTTERFIELD TRAIL BLVD. LEASE AGREEMENT

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ATTACHMENTS

EXHIBIT “A” - Property Description & Metes and Bounds of Premises

EXHIBIT “B” – Declaration of Restrictions and Covenants

4 & 6 BUTTERFIELD TRAIL BLVD. LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is entered into as of May 10, 2022, by and between the City of El Paso (the "City" or "Lessor") and B.H. Zane Grey Butterfield, LLC ("Lessee").

WHEREAS, Lessor owns and operates El Paso International Airport, located in the County of El Paso, State of Texas, ("Airport"), said Airport being managed by the Director of Aviation, as amended from time to time in terms of actual title ("Director"); and

WHEREAS, Lessor deems it advantageous to itself and to its operation of the Airport to lease unto Lessee the parcel of land described herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out; and

WHEREAS, Lessee proposes to lease on a net basis from Lessor certain ground area and to avail itself of certain privileges, rights and uses pertaining thereto; and

WHEREAS, Lessee has indicated a willingness and ability to properly keep, maintain and improve said ground in accordance with standards established by Lessor;

NOW THEREFORE, Lessor and Lessee agree as follows:

ARTICLE I - PREMISES AND PRIVILEGES

1.01 Description of Premises Demised.

Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas:

A 5.0234 acres parcel portion of all of Lot 2 and a portion of Lot 2B, Block 1, Butterfield Trail Industrial Park Unit One Replat "A," El Paso County Plat Records, consisting of approximately 218,818.9 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 4 and 6 Butterfield Trail Blvd., El Paso, Texas and more particularly described by **Exhibit "A"**, which is attached hereto and by this reference made a part hereof ("Premises") for all purposes.

1.02 Restriction of Privileges, Uses and Rights.

The rights and privileges granted Lessee hereunder are subject and expressly limited to the terms and conditions of the Declaration of Restrictions and Covenants attached hereto as Exhibit "B", and fully incorporated herein by reference (the "Declaration").

1.03 Conditions.

The granting of this Lease and its acceptance by Lessee is conditioned upon the covenant that the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their

authority and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.

1.04 Habendum and Title Warranty.

Lessor warrants that it owns the Premises together with all building, structures, improvements and fixtures with every right, privilege, hereditament and appurtenance belonging or appertaining to it free and clear of all liens, claims and encumbrances.

ARTICLE II - TERM OF LEASEHOLD

2.01 Term.

The "Term" of this Lease will be the Initial Term and any properly exercised Option Period, as provided below. This Lease shall be for an initial term of forty (40) years ("Initial Term"), commencing on May 27, 2022 ("Effective Date") and ending on May 26, 2062 unless sooner terminated pursuant to this Lease.

2.02 Option to Extend.

If the Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease ("Option Period") for one (1) additional term of ten (10) years by notifying Lessor in writing of Lessee's election at least one (1) year prior to the expiration of the Initial Term.

2.03 Holding Over.

It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent of one and one-half times (150%) the current monthly rent, unless the hold over is caused by the City staff not placing a new agreement with Lessee regarding the Premises at the end of the term of the present Agreement on the City Council Agenda on a timely basis in which case the monthly rental rate in effect prior to the hold over shall continue until the new agreement is executed. Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

ARTICLE III - RENT

3.01 Rent.

- A. Lessee shall pay to Lessor, without notice or demand and without deduction or set-off, Base Rent and Additional Rent (collectively, "Rent") for the Premises.
- B. Base Rent shall be as follows:
 - (1) Land Rent: \$84,000.00 per annum; \$7,000.00 monthly, payable in equal monthly installments on or before the first day of the month during the Term; and

- (2) Building/Facility Rent: \$1,145,000.00, paid in a lump sum prior to the Effective Date on May 27, 2022.

3.02 Adjustment of Land Rent.

For the purpose of computing adjustments to rental payments, Lessor and Lessee agree as follows, with each adjustment effective as of the appropriate anniversary date, regardless of the date the actual adjustment is made:

- A. Rent shall be adjusted on the first of the month following each fifth (5th) anniversary of the Effective Date of this Lease thereafter during the Initial Term and any Lessee's Option Period. Lessor and Lessee agree that, except as provided for in paragraph B to this Section, percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the rent readjustment for these anniversary dates. The parties further agree that for the purposes of computing such percentage increase during the Initial Term, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Effective Date of this Lease. Rent shall be adjusted pursuant to the percentage increase in the CPI-U from the Base Year CPI-U to the rate in place ninety (90) days prior to the applicable date of readjustment (i.e. the fifth (5th) anniversary date of the Effective Date of this Lease).

In the event the CPI-U is not yet published or is otherwise unavailable for the month in which this Lease is effective, the price index used will be that price index for the closest preceding month for which the price index is available. In the event that the CPI-U is no longer published by the Bureau of Labor Statistics, Department of Labor at a time when an adjustment is to be made, Lessor and Lessee agree to use the consumer price index published by the Department of Labor that replaces the CPI-U or, if no replacement is available, but a reasonably comparable consumer price index exists, to use the method set forth in paragraph B below to adjust rent.

All readjustments shall be effective as of the fifth (5th) anniversary date, without regard to the date the actual adjustment is made; provided, however, that in no event shall the readjusted Rent be less than the rate in place immediately prior to such readjustment nor more than twenty percent (20%) more than the Rent established at the beginning of the immediately preceding five-year period.

- B. At the beginning of the forty-first year of Lessee's tenancy, the Rent shall be adjusted to a rate equal to eight percent (8%) of the then fair market value of the Premises, including the value of the Lessor owned improvements located on the premises, established as set forth in this Lease. In no event however, shall the Rent for the Option Period be less than the Rent established at the beginning of the immediately preceding five (5) year period. The Rent shall become effective as of the Option Period, regardless of the date the actual adjustment is made.

- C. **Appraisal.** The fair market value of an identified parcel ("Parcel") shall be determined by either a current appraisal (less than three years old) of a similar property ("Current Appraisal") or a new appraisal of the Parcel. It shall be at the discretion of Lessor as to whether a Current Appraisal or a new appraisal shall be used. In the event a new appraisal is preferred, Lessor will select an appraiser from its list of qualified appraisers to establish the fair market value of the Parcel, including the value of the Lessor owned improvements located on the premises. This appraisal or the Current Appraisal shall be known as the "First Appraisal."

Upon completion of the First Appraisal, Lessor shall notify Lessee in writing of the rental rate, which shall be calculated as described in Section 3.04B. If Lessee agrees with the First Appraisal, or does not respond to Lessor in writing within fifteen (15) calendar days after receipt of the written notice as required herein, or it does not produce a Second Appraisal (as defined below) within 30 calendar days from Lessee's notice to proceed with said Second Appraisal, the First Appraisal and its resulting rent shall be deemed to be accepted by Lessee.

If Lessee disagrees with the rental rate resulting from the First Appraisal, Lessee, within fifteen (15) calendar days after receipt of said notice, shall notify Lessor in writing of Lessee's request for a qualified second appraisal ("Second Appraisal"). The second appraiser must be the next appraiser appearing on Lessor's list of qualified appraisers. The cost of the Second Appraisal shall be paid by the Lessee. The rental rate resulting from the Second Appraisal shall be calculated as described in Section 3.04B.

After the Lessee provides Lessor with the Second Appraisal, both parties have a 15 business day review period to consider same. If, by the 15th day, either the Lessor or Lessee disagrees with the rental rate resulting from the Second Appraisal, and a third appraisal ("Third Appraisal") is necessary, the Lessor and Lessee shall agree to the next appraiser appearing on the Lessor's list of qualified appraisers. The cost of the Third Appraisal shall be paid equally by the Lessor and Lessee, and the Third Appraisal shall be the final determinant of the rental rate. There shall be no further appraisals beyond the Third Appraisal, regardless of whether either the Lessor or Lessee disagrees with the rental rate resulting from the Third Appraisal.

Lessee shall pay the Rent as determined by the First Appraisal under protest until there is a final determination of the fair market value for the Parcel for which the Rent is determined. Should the final determination of the fair market value of the Parcel be a lower rate than the fair market value of the Parcel determined by the First Appraisal, Lessee's account will be credited by Lessor accordingly.

3.03 Reserved.

3.04 Unpaid Rent, Fees and Charges.

Any installment of Rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Lessor by the twentieth (20th) day of the month in which payment is due, shall bear interest from the date such Rent or other amount was due at the lesser of the rate of eighteen percent (18%) per year or the then maximum nonusurious rate under applicable law, (the lesser of said amounts being herein referred to as the "Maximum Rate."). In the event the late charge is ever deemed to be "interest" the amount of interest on past due amounts shall be automatically reduced so that the combination of said late charge and the interest on past due amounts, if any, does not exceed the Maximum Rate. Any amount collected which exceeds the Maximum Rate will be deemed credited to other amounts owed by Lessee to Lessor under this Lease, and any remaining excess after such credit shall be refunded to Lessee. It is the intent of both Lessor and Lessee to at all times comply with the applicable law regarding the maximum nonusurious amount or rate of interest which may be contracted for, charged, taken, reserved or received by Lessor.

3.05 Place of Payment.

All rent payments provided herein shall be paid to Lessor at the following address:

Accounting Division
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79997-1278

In lieu of payments being mailed to the above address, electronic payments may be made via any electronic payment system Lessor authorizes in writing.

3.06 Reserved.

ARTICLE IV - OBLIGATIONS OF LESSOR

4.01 Quiet Enjoyment.

Lessor agrees that upon Lessee's paying rent and performing all of the covenants, conditions, and agreements set forth in this Lease, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

ARTICLE V - OBLIGATIONS OF LESSEE

5.01 Net Lease.

This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article IV above and elsewhere in this Lease Agreement. Lessee shall:

- A. Keep and maintain the Premises and any buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises (collectively, the "Improvements") in a good state of repair at all times;

- B. Pay any and all taxes assessed against the Premises, Improvements located on the Premises, Lessee's interest in the Premises and Improvements, and all of Lessee's personal property located on the Premises; and
- C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

5.02 Condition of Premises.

Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or Improvements or their suitability for a particular use. Lessee accepts the Premises "As Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

5.03 Compliance with Laws.

- A. Lessee, at Lessee's expense, agrees that it will construct, operate and maintain Improvements on the Premises in accordance with the Declaration and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, including the Lessor, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any Improvements thereon. In addition, Lessee agrees, if required, it will remove all Improvements placed thereon by the Lessee ("Lessee Improvements"), in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, including the Lessor, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any Improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other 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, which relate to the use or occupation of the Premises and any Improvements thereon by disabled persons ("Disabilities Laws"). Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any Improvements thereon.

B. Environmental Laws.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) "Hazardous Material" shall mean (a) all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like; or (b) give rise to liability under any Environmental Laws or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under applicable reported decisions of state or federal court; or (c) which may be hazardous or harmful to the air, water, soil or environment or affect industrial hygiene, occupational health or safety, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste. "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.
- (3) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its sublessees, agents, employees, contractors, invitees, licensees, or a third party in violation of any Environmental Law.

Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its officers, directors, employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or Release or discharge from the Premises or any Improvements thereon

caused by the act or omission of Lessee, its sublessees, agents, employees, contractors, licensees or invitees. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, Improvements, land, soil, underground or surface water to the extent required under Environmental Laws. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any Improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work to the extent required by any federal, state or local governmental agency or political subdivision having authority to enforce Environmental Laws because of Hazardous Material located on the Premises or any Improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not, on its own, an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

- (4) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any Improvements thereon or permitted by Lessee results in any contamination of the Premises or any Improvements thereon, or any surrounding property, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any Improvements thereon or the surrounding property to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any Improvements thereon or the surrounding property; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any Improvements thereon or the surrounding property.
- (5) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any Improvements thereon or on surrounding property to comply with applicable Environmental Laws, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises to respond to any governmental investigation or to respond to any claim of liability by third

parties which is related to environmental contamination of the Premises or the Improvements thereon or the surrounding property.

- (6) Lessee shall immediately notify Lessor promptly after Lessee becomes aware of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (7) Lessee shall insert the provisions of this Section 5.03 in any lease, agreement, license, or contract by which it grants a right or privilege to any person, firm or corporation under this Lease, but only with respect to those leases, agreements, licenses or contracts executed after the Effective Date of this Lease.
- (8) Fuel storage tanks are not allowed on the Premises.
- (9) Lessee's failure or the failure of its agents, employees, contractors, licensees, invitees, or a third party to comply with any of the requirements and obligations of this section 5.03(C) shall constitute a material default of this Lease and shall permit Lessor to pursue the remedies as set forth in Article X herein below, in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Lessor may resort cumulatively.
- (10) At any time that Lessee submits any filing or response pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the FAA, the EPA or the TCEQ, or any successor agencies, Lessee shall provide duplicate copies to Lessor of such filing(s) or response(s) with any related documents at the time same are made.
- (11) Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide to Lessor a Phase I Environmental Site Assessment meeting ASTM standards of the Premises ("Lessee's Report"); and if, in the opinion of Lessor, if Lessee's Report indicates that the Premises is in violation of applicable Environmental Laws, then Lessee shall perform work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws.

5.04 Lessee Improvements

- A. Lessee shall have during the Term the right to construct or make structural alterations to any building or other structure now or hereafter on the Premises as Lessee Improvements, to be permitted and built in compliance with all applicable federal state and local laws, regulations, and Lessor rules, including any applicable

Federal Aviation Administration ("FAA") regulations, only with the prior express written approval of Lessor which shall not be unreasonably withheld. Lessee shall be responsible for all approvals, permits, licenses, and fees necessary to complete such Lessee Improvements.

- B. Lessee agrees to pay, when due, all sums that may become due for any labor, services, materials, supplies, furnishings, machinery and equipment furnished to or for Lessee in, upon, or about the Premises or the Airport. Lessee shall keep the Leased Premises free and clear of any liens and encumbrances arising or growing out of Lessee use and occupancy of the Premises (including without limitation Improvements made thereto and repair and maintenance completed therein) or activities at the Airport. If a lien is filed against the Premises, Lessee shall immediately, at its expense, bond such lien in accordance with applicable laws, or otherwise cause such lien to be discharged in a manner acceptable to Lessor. If Lessee shall fail to do so, Lessee may, at its option and at Lessee's expense, bond such lien or otherwise cause it to be discharged.
- C. Lessor retains the continuing right in the Premises to prevent the erection or growth of any building, structure, tree, or other object extending into the airspace exceeding the height of any existing structures, trees or other objects on the Premises; to assure compliance with obstruction clearance requirements; and to remove from said airspace at Lessee's expense, or at the sole option of Lessor, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree, or other object now upon, or which in the future may be upon the property together with the right of ingress to, passage over, and egress from Lessee's property for the above purposes.
- D. Lessee covenants and agrees that facilities constructed on the Premises, exclusive of paving and landscaping, shall cover a minimum of twenty percent (20%) of the Premises' land area, and a maximum of fifty percent (50%) of the Premises' land area. In the event such Improvements are partially or totally destroyed by fire or other casualty, Lessee shall have the absolute right to restore or rebuild such Improvements to the same size as existed prior to the casualty.

5.05 Lessor's Approval of Plans.

Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of Improvements or any plans, specifications and working drawings for Lessee's removal of Improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Department of Aviation is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Director, Lessee shall be required to obtain the approval of other City departments. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to the Director one (1) complete set of the Final Plans as approved by the governmental agencies exercising jurisdiction thereover, and copies of all issued permits. Upon completion of construction, Lessee shall deliver to Director a complete set of record (as-built) and shall provide such in electronic files drawings of the construction signed and sealed

by a professional engineer or architect licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises.

5.06 Landscaping and Maintenance of Improvements.

- A. Lessee shall landscape the Premises and keep the Improvements on the Premises in a good state of repair and condition and in a presentable condition comparable in appearance and character to similar improvements at the Airport. The exterior finish on the Improvements shall be repainted and refinished as reasonably necessary to maintain the appearance of such Improvements to a standard comparable to similar improvements at the Airport. Notwithstanding anything to the contrary in the Declaration, Lessor agrees that attractive, low water usage landscaping is a desirable goal and agrees to consider and approve appropriate low water usage landscaping plans as a part of the architectural review process. Lessee shall have 365 days to from the Effective Date to comply with this provision due to the current condition of the Premises.
- B. Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform reasonable maintenance Lessor reasonably deems necessary in order to cause the exterior finish to be in a condition comparable to similar improvements at the Airport. If said maintenance is not commenced by Lessee within forty-five (45) days after receipt of written notice and if Lessee is unable to show that it has made diligent efforts to commence the work, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Lessee.
- C. Lessee shall not remove any of its Improvements from the Premises or waste or destroy said Improvements. Any personal property placed or installed by Lessee in the Premises shall remain the property of Lessee during the Term.

5.07 Utilities.

Lessee shall pay for all costs or charges for utility services furnished to Lessee during the term hereof. Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense.

5.08 Trash, Garbage, and Other Refuse.

Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

5.09 Permitted Uses.

Lessee may use the Premises only for uses permitted under zoning and Covenants and Restrictions (the "Permitted Use", in accordance with all applicable laws. In conjunction with Lessor's use of the Premises, Lessor shall not: (a) cause substantial noise, vibration, fumes, debris, electronic

interference, or other nuisance on or adjacent to the Premises; (b) create any condition that is a safety hazard; or (c) interfere in any way with Airport operations. In addition, without limiting the generality of any other provision of this Lease, Lessee shall not, without the Lessor's written consent: (u) provide any facilities, services, commodities or supplies, now or hereafter made available at or through the Airport, other than the Permitted Uses; (v) operate any automobile or vehicle rental business; (w) operate any airline flight kitchen or other facilities providing meal services to aircraft crews or passengers or the public (non-aircraft); (x) offer lodging facilities; or (y) use any portion of the Premises for parking for passengers or customers of the Airport.

5.10 Penalties Assessed by Federal Agencies.

Lessee understands and agrees that in the event any federal agency assesses a civil penalty against Lessor or the Airport for any violation, including but not limited to any security violation, as a result of or related to any act or failure to act on the part of Lessee, its sublessees, agents, employees contractors, licensees or invitees, Lessee shall reimburse Lessor in the amount of the civil penalty assessed provided that Lessee was permitted to participate in the due process for administration of the violation. Failure to reimburse Lessor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

5.11 Relocation of Premises. Upon at least twenty-four (24) months' prior Notice to the Lessee, Lessor may relocate, at Lessor's expense, all of Lessor's facilities located on the Premises and the Improvements constructed thereon. Except as otherwise agreed between the parties, the Improvements to be constructed by Lessor on the relocated Premises will be of equal or better quality and utility. Lessor agrees to use all reasonable efforts to minimize interference with Lessee's operations at the Premises in connection with any such relocation; provided that, Lessee shall continue to be able to operate at either the Premises, the relocated premises (or, at Lessee's option, a combination of the two), without material interference. Provided however that if any such relocation materially impairs or interferes with Lessee's, sublessee's, or assignee's, in the sole discretion of Lessee, use of the Premises, Lessee will have the option to terminate the Lease at the end twenty-four (24) months.

ARTICLE VI - INSURANCE AND INDEMNIFICATION

6.01 Insurance.

Prior to the execution of this Agreement, Lessee shall obtain, provide proof of, and shall maintain for the term of this Agreement, the types and amounts of insurance coverage listed below, in amounts as reasonably set from time to time by the Director, but not less than:

Comprehensive General Liability Insurance in amounts not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence,

Two Million Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence,

One Million Dollars (\$1,000,000.00) for Property Damage arising out of each occurrence, and

or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

6.02 Additional Insured.

Lessor shall be named as an Additional Insured on all insurance policies either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

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 Lessor or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

Commercial General Liability and Property Damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager.

6.03 Fire and Other Risks Insurance.

Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all Improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such Improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement of the Parties, an appraisal of the Premises and Improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selected be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee, unless the value claimed by Lessee is confirmed through such an appraisal, in which case the Lessor shall reimburse the Lessee for the cost of such appraisal.

6.04 Payment and Performance Bonds.

Prior to commencement of any construction work on the Premises the total cost of which will exceed Fifty Thousand Dollars (\$50,000.00), Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded.

Said bond shall guarantee the faithful performance of all necessary construction and completion of Improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.

- B. Prior to the date of commencement of any construction, a payment bond with Lessee's contractor or contractors as principal in a sum equal to the full amount of the construction contract project.

Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction project.

In accordance with Article 35.03.004 of the Texas Insurance Code, if a Performance or Payment bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas.

In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable Letter of Credit, in a form acceptable to the Director in her/his reasonable discretion and approved by the City Attorney, in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated by the construction contract.

6.05 Authorized Insurance and Surety Companies.

All required policies of insurance and bonds shall be written by insurance and surety companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) calendar days prior to the effective date of the insurance policy for which the certificate is issued and prior to the Effective Date of this Lease. Each insurance policy shall contain:

- A. a statement of the coverage provided by the policy;
- B. a statement certifying the Lessor to be listed as an additional insured in the policy;
- C. a statement of the period during which the policy is in effect;
- D. a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. an agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days prior written notice to Lessor.

6.06 INDEMNIFICATION.

LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED

DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF LESSEE'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF LESSEE OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LESSOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LESSOR BY REASON OF ANY SUCH CLAIM, LESSEE, UPON NOTICE FROM LESSOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR.

**ARTICLE VII - DESTRUCTION OF IMPROVEMENTS BY FIRE
OR OTHER CASUALTY**

7.01 Obligations of Lessee.

During the term hereof, except as provided in Section 7.03 below, should the Improvements constructed by Lessee upon the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and Improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee as aforesaid and subject to and in accordance with the following terms and conditions:

- A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms and provisions of the Declaration. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.
- B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits for the Premises. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Prior to commencing construction, Lessor may require Lessee to furnish a performance and payment bond in accordance with Section 6.04 and, if requested, Builder's Risk Insurance.

- D. Upon compliance with the foregoing, Lessee's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies having been paid to Lessee. After actual receipt of such insurance proceeds, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.
- E. Upon completion of the construction, Lessee shall deliver to Lessor, a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises.

7.02 Insurance Proceeds.

Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall disburse such proceeds during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged Improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

7.03 Cancellation of Lease.

Should the Improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty not caused directly or intentionally by Lessee but materially impairing Lessee's use of the Premises, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and Lessee shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction, in which case Lessee agrees that the following provisions shall apply: 1) Lessee shall return the Premises free and clear of all Improvements (both above and below ground level), rubble and trash; 2) upon Lessee's return of the Premises to Lessor, there shall be no environmental issues on the Premises, as evidenced by a Phase 2 environmental study; 3) Lessee shall pay ground rental for 180 days after the Premises is cleaned in accordance with this paragraph in order to allow Airport the time to secure another tenant. If Lessee elects to cancel this Lease under this provision, there shall be no refund to Lessee for the prepayment of Rent on the Improvements. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessee. Land rents payable under this Lease shall be prorated and paid to the date of such cancellation.

ARTICLE VIII - CONDEMNATION

8.01 Definitions.

The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning

agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.

- B. "Total Taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial Taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - (1) The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
 - (2) The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
 - (3) The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.
- D. "Partial Taking" means the taking of a fee title that is not either a Total or Substantial Taking.
- E. "Notice of Intended Taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to take containing a description or map reasonably defining the extent of the Taking.
- F. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- G. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

8.02 Notice of Condemnation.

The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of Intended Taking;

- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

8.03 Rights of Parties during Condemnation Proceeding.

Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or Intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

8.04 Taking of Leasehold.

Upon a Total Taking, Lessee's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation. If the Taking is a Substantial Taking under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the Intended Taking, elect to treat the Taking as a Total Taking. If Lessee does not so notify Lessor, the Taking shall be deemed a Partial Taking. Upon a Partial Taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

8.05 Total Taking.

All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by any Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

8.06 Partial Taking.

Upon a Partial Taking, all Awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises, as unencumbered by the Lessee-owned improvements but subject to the Lease.

8.07 Obligations of Lessee under Partial Taking.

Promptly after any such Partial Taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last two (2) years of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect;

provided however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

8.08 Taking of Temporary Use of Premises and Improvements.

Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such Taking, Lessee shall receive, hold and disburse the Award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such Taking is for a period extending beyond the expiration date of the term, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings.

ARTICLE IX - ENCUMBRANCES

9.01 Encumbrance.

As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiaries under deeds of trust, whether one or more. Lessee may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage and such mortgage shall be used for the purposes of making improvements to the Premises. The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

- A. The amount of the obligation secured by the Mortgage;
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Lessor shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Lessor upon Lessee under the terms and provisions of this Lease so long as such Mortgage is in effect.

9.02 Mortgagee's Rights.

Upon receipt of a notice or demand in accordance with Section 9.01 above, Mortgagee shall have one hundred and twenty (120) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;

- C. If the default cannot be cured within one hundred and twenty (120) days, to commence performance within such one hundred twenty (120) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.
- E. No Mortgagee shall have any personal liability under this Lease unless and until it becomes Lessee under this Lease.
- F. The Director will, upon request by any Mortgagee, certify in writing that this Lease is in full force and effect, whether this Lease has been amended, that to Lessor's knowledge Lessee is not in default, and the date through which rent has been paid.
- G. If this Lease and the fee estate in the Premises are ever commonly held as a result of a default by Lessee, then they shall remain separate and distinct estates and shall not merge until such time as all cure periods for Mortgagee specified in this Lease have expired.
- H. This Lease may not be amended, modified, changed, cancelled, waived, or terminated without prior written notice to all Mortgagees. Lessor shall not accept a voluntary surrender of the Lease without consent by all Mortgagees.

9.03 Rights on Foreclosure.

In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Lessee's interest in lieu of foreclosure shall succeed to all of Lessee's rights, interests, duties and obligations under this Lease.

ARTICLE X - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

10.01 Expiration.

This Lease shall expire at the end of the term or any extension thereof.

10.02 Cancellation.

Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of thirty (30) days after Lessor has notified Lessee in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property and such petition is not dismissed within ninety (90) days after filing;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;

- E. Be in violation of any local, state, or federal laws rules or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Lessee, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within ninety (90) days after the appointment of such receiver.

In any of the aforesaid events, which shall be events of default, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

10.03 Repossessing and Reletting.

In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, change the locks on the Premises, install fences and gates, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and
- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

10.04 Assignment and Transfer.

Lessee shall have the right and privilege to assign or transfer this Lease subject to the prior written approval of Lessor, which shall not be unreasonably withheld; provided, however, that Lessor's approval shall not be required in the event of an assignment of this Lease by Lessee to the first leasehold Mortgagee.

Any person or entity to which this Lease is assigned to pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

10.05 Subleasing.

Lessee shall have the right to sublease all or any part of the Premises hereunder for the same purposes permitted under the terms and provisions of this Lease, including but not limited to the insurance and indemnity requirements. Any such sublease executed after the Effective Date of this Lease shall be subject to the same conditions, obligations and terms as set forth herein and Lessee shall be responsible for the observance by its sublessees of the terms and covenants contained in this Lease. On or before January 1st and July 1st of each year of the Initial Term or Option Period of this Lease, Lessee shall report to Lessor any subleases of the Premises, or any improvements thereon and, upon request of Lessor, Lessee shall furnish Lessor with a copy of the Sublease Agreement. In addition, Lessee shall provide a list of its sublessees and the sublessees contact information and shall provide to Lessor updated information whenever said sublessees information changes.

10.06 Landlord's Lien.

It is expressly agreed that in the event of default in the payment of Rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for Rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary and proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

ARTICLE XI - GENERAL PROVISIONS

11.01 Continuity of Deed Restrictions and Covenants.

This Lease agreement is subject to the terms, covenants and conditions contained in the Declaration. Lessor reserves the right to revise the standards set forth in Exhibit "B" provided, however, that such revisions will not cause a substantial reduction in the value of Lessee's leasehold interest, result in a material cost or expense to Lessee, or be contradictory to the reasonable and prudent operation of property located at the Airport similar to the Premises. Lessor's right to revise the restrictions and covenants contained in the Declaration, is limited to the right to revise said document because of the development of new concepts or improved construction and architectural techniques and, in any event, such revisions shall be operative on a going forward basis only and shall not apply retroactively to any existing improvements.

11.02 Right of Flight.

Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the Airport.

Lessor reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at the Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

Lessor reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from the Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

11.03 Time Is of the Essence.

Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

11.04 Notices.

All notices provided to be given under this Lease shall be given by a) expedited delivery service with proof of delivery, or b) United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the proper party at the following addresses:

LESSOR:	City Clerk City of El Paso P.O. Box 1890 El Paso, Texas 79950-1890	Director of Aviation El Paso International Airport 6701 Convair Rd. El Paso, Texas 79925-1099
LESSEE:	B.H. Zane Grey Butterfield, LLC 11111 Santa Monica Blvd, Ste. 600 Los Angeles, CA 90025	

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

11.05 Attorney's Fees.

If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

11.06 Agreement Made in Texas.

The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

11.07 General Civil Rights Provision.

Lessee agrees to 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 disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

11.08 Compliance with Nondiscrimination Requirements.

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (for purposes of this Section 11.08 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 Acts 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. **Nondiscrimination:** 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 Nondiscrimination Acts and Authorities, 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 Nondiscrimination Acts and Authorities 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 Lessor (for purposes of this Section 11.08 hereinafter referred to as the "sponsor") or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities 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 subcontract 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.

11.09 Affirmative Action.

Lessee assures that it will undertake an affirmative action program as required 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 for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Lessee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

11.10 FAA Order 1400.11.

Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

- A. Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in Pertinent List of Nondiscrimination Authorities (Federal Aviation Administration Order 1400.11, Appendix 4) as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix C]. The Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the listed acts and authorities appearing in the Acts and Regulations.
- C. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix D]
- D. During the term of this Lease, Lessee for itself, its assignees, and successors in interest, as a part of the consideration hereof, agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:
 - Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - The Age Discrimination Act of 1975, as amended, (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
 - The Federal Aviation Administration’s Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
 - Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 USC 1681 *et seq.*).
- E. B. In the event of breach of any of the covenants in this section 3, Lessor shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]

11.11 Cumulative Rights and Remedies.

All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

11.12 Interpretation.

Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

11.13 Agreement Made in Writing.

This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

11.14 Paragraph Headings.

The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

11.15 Severability.

If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

11.16 Successors and Assigns.

All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

11.17 Taxes and Other Charges.

Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Lessee or Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, during the Term of this Lease including any extensions granted thereto. By March 1 of each year of this Lease and at no charge to Lessor, Lessee will provide written proof satisfactory to the Director that all taxes and governmental charges of any kind as described herein have been paid in full.

Lessor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from Lessee's use of the property or possession of the Premises.

Lessee in good faith may contest any tax or governmental charge, provided that Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to Lessor, such action will not adversely affect any right or interest of Lessor.

11.18 Waiver of Warranty of Suitability.

LESSOR DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. LESSEE LEASES THE PREMISES AS IS AND LESSOR DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE NOR SHALL LESSOR BE RESPONSIBLE OR LIABLE FOR ANY CONDITION OF THE PREMISES WHICH SHALL SOLELY BE THE RESPONSIBILITY OF LESSEE.

11.19 Survival of Certain Provisions.

All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 5.03 and 6.06 for two years.

11.20 Force Majeure.

It is expressly agreed and understood by the parties to this Lease that if the performance of any obligations hereunder is delayed beyond such party's reasonable control by reason of war, civil commotion, acts of God, outbreak of hostilities, epidemic, acts of terrorism, strike, severe weather or other casualty or court injunction, the party so obligated or permitted shall be excused from doing or performing same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period of time such party was reasonably delayed.

11.21 Restrictions and Reservations.

This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

Lessor reserves for itself and any authorized agent to, at any reasonable time and with 24-hour notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

11.22 Subordination of Lease.

All rights granted in this Lease shall be subordinate to the rights in any deed from the United States to the City of El Paso. This Lease shall further be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the

expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Premises, Lessee may cancel this Lease in its entirety. Should Lessee cancel its lease pursuant to this paragraph, it can pursue any remedies available to it under the Section VIII of this Lease.

11.23 Authorization to Enter Lease.

If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

11.24 Effective Date/Memorandum.

Regardless of the date signed, this Lease shall be effective as of the date indicated in the Term section of this Lease. Simultaneously with the full execution and delivery of this Lease, Lessor and Lessee may execute and acknowledge a memorandum of this Lease in form and substance reasonably acceptable to Lessor and Lessee. If the parties execute said memorandum, Lessee shall provide to Lessor a copy of the memorandum filed of record in the Real Property Records for El Paso County, Texas.

(Signatures begin on following page)


LESSOR'S SIGNATURE AND ACKNOWLEDGMENT

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day of _____, 2022.

LESSOR: CITY OF EL PASO


Tomás González
City Manager

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2022, by Tomás González as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

LESSEE'S SIGNATURE AND ACKNOWLEDGMENT

LESSEE: B.H. ZANE GREY
BUTTERFIELD, LLC

By:  *AG*

Print Name: Allen Gozini
Title: Manager

ACKNOWLEDGMENT

THE STATE OF _____)
COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 2022, by _____, its _____ of (Lessee).

Notary Public, State of _____

My Commission Expires:

(see attached)

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

On May 2nd, 2022, before me, Y. Nachtel, a Notary Public, personally appeared Allen Crozini who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

U. ~~Nach~~

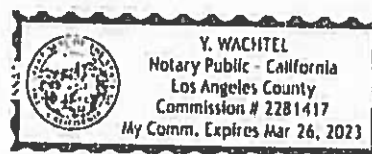
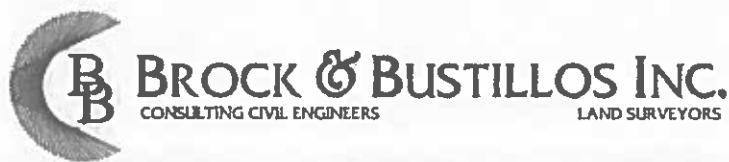


EXHIBIT "A"



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 **(4 AND 6 BUTTERFIELD TRAIL BLVD.)**

A 5.0234 acres parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as all of Lot 2 and a portion of Lot 2B, Block 1, Butterfield Trail Industrial Park Unit One Replat "A", as filed in Volume 56, Page 71 El Paso County Plat Records and being more particularly described by metes and bounds as follows:

COMMENCING for reference at a city monument found at the right-of-way centerline intersection of Butterfield Trail Boulevard (140 feet wide) and Zane Grey Street (90 feet wide); **WHENCE**, a city monument found at the right-of-way centerline intersection of said Zane Grey Street and Leigh Fisher Boulevard (120 feet wide) bears, South 02°12'13" West (South 00°59'34" West-record), a distance of 2,151.28 feet (2,151.20 feet-record); **THENCE**, leaving the intersection of said Butterfield Trail Boulevard and Zane Grey Street and following the centerline of said Butterfield Trail Boulevard, North 87°47'47" West (North 89°00'26" West-record), a distance of 80.00 feet; **THENCE**, leaving the centerline of said Butterfield Trail Boulevard, South 02°12'13" West, a distance of 70.00 feet to a 1/2 inch rebar found on the south right-of-way line of said Butterfield Trail Boulevard for the beginning of a non-tangent curve to the right and the **POINT OF BEGINNING** of the parcel herein described;

THENCE, following the south right-of-way line of said Butterfield Trail Boulevard along the arc of said non-tangent curve to the right having a radius of 35.00 feet, a central angle of 90°00'00", an arc length of 54.98 feet and whose long chord bears South 42°47'47" East (South 45°59'34" East-record), a distance of 49.50 feet to a 1/2-inch rebar with survey cap No. "TX 6223" set on the west right-of-way line of said Zane Grey Street for a point of tangency;

THENCE, following the west right-of-way line of said Zane Grey Street, South 02°12'13" West (South 00°59'34" West-record), a distance of 420.00 feet to a 5/8-inch rebar with busted survey cap found for the southeast corner of parcel herein described;

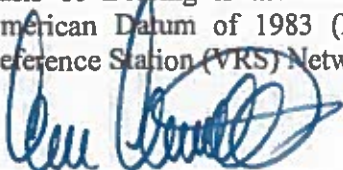
THENCE, leaving the west right-of-way line of said Zane Grey Street, North 87°47'47" West (North 89°00'26" West-record), a distance of 481.50 feet to a 1/2-inch rebar found on the east line of a Platted Railroad Right-of-Way (33.5 feet wide) for the southwest corner of parcel herein described;

THENCE, following the east line of said Platted Railroad Right-of-Way, North 02°12'13" East (North 00°59'34" East-record), a distance of 455.00 feet to a 1/2-inch rebar found on the south right-of-way line of said Butterfield Trail Boulevard for the northwest corner of parcel herein described;

THENCE, leaving the east line of said Platted Railroad Right-of-Way and following the south right-of-way line of said Butterfield Trail Boulevard, South 87°47'47" East (South 89°00'26" East-record), a distance of 446.50 feet to the **POINT OF BEGINNING**.

Said parcel containing 5.0234 acres (218,818.9 square feet), more or less and being subject to all easements, restrictions and covenants of record.

Basis of Bearing is the Texas State Plane Coordinate System, Central Zone 4203, North American Datum of 1983 (NAD 83) (2011), determined via the El Paso County Virtual Reference Station (VRS) Network



Aaron Alvarado, TX R. P. L. S. No. 6223

Date: April 13, 2022

05100-124-4 AND 6 BUTTERFIELD TRAIL BLVD-DESC



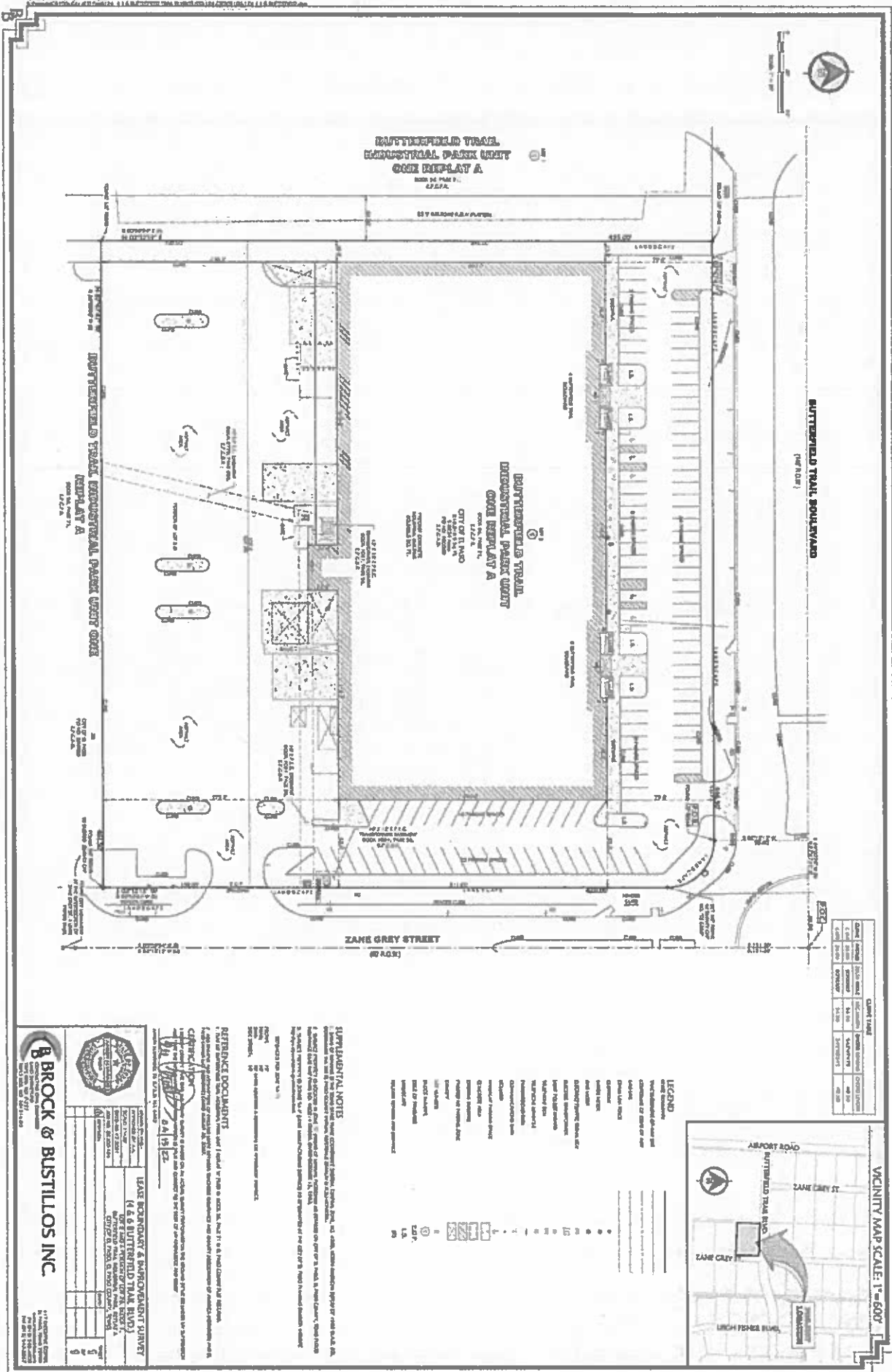


EXHIBIT "B"

EXHIBIT

DECLARATION OF RESTRICTIONS AND COVENANTS

BUTTERFIELD TRAIL INDUSTRIAL PARK

El Paso International Airport

El Paso, Texas

EXHIBIT

Revised: 5/02/94

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DECLARATIONS OF RESTRICTIONS AND COVENANTS
BUTTERFIELD TRAIL INDUSTRIAL PARK

El Paso International Airport
El Paso, Texas

THIS DECLARATION, made this _____ day of _____,
19__, by the CITY OF EL PASO, a political subdivision of the State
of Texas, hereinafter referred to as the "Declarant";

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of El Paso International
Airport, located in the City of El Paso, State of Texas,
hereinafter referred to as the "Airport"; and

WHEREAS, the Airport has within its physical boundary certain
real property intended for the establishment of a desirable
industrial environment for certain manufacturing and industrial
uses and, under statutory authority, for certain manufacturing and
merchandise manipulation to encourage and expedite foreign trade,
and known as Butterfield Trail Industrial Park, hereinafter
referred to as the "Property"; and

WHEREAS, the Butterfield Trail Industrial Park has been
designated as a Foreign-Trade Zone, thereby permitting foreign
trade activities to occur on any Lot in the Property; and

WHEREAS, to establish a general plan for improving and
developing the Property and to use the Property as a Foreign- Trade
Zone, the Declarant desires to subject the development of the
Property to certain conditions, restrictions, and covenants on
which the entire Property and Improvements thereto shall be bound;

WHEREAS, the Declarant desires to subject the development of
said Property to certain conditions, restrictions, and covenants to

ensure the development of a desirable environment for said activities, and to ensure that said development will be compatible with adjacent land uses on the Airport by performance, appearance, and general operating characteristics;

NOW, THEREFORE, the Declarant hereby declares that (except to the extent compliance with this revised Declaration of Restrictions and Covenants would cause undue hardship or expense for a Tenant with respect to leasehold improvements and activities undetaken by him prior to the effective date of this instrument in conformity with the Restrictions and Covenants incorporated in his lease) the Property more particularly described hereinafter is and shall be held and conveyed subject to the conditions, restrictions, and covenants hereinafter set forth, each and all of which are for the benefit of each Tenant of any portion of said Property, each and all of which shall inure to and pass with each and every lot on said Property, and each and all of which shall apply to and bind the respective successors in interest of said Property and any portion thereof, as follows:

ARTICLE 1

PROPERTY

The real property subject to this Declaration is situated on El Paso International Airport in El Paso County, El Paso, Texas, and is known as the Butterfield Trail Industrial Park and Foreign-Trade Zone No. 68.

ARTICLE 2

DEFINITIONS

The words and phrases defined in this Article shall have the following meanings when used elsewhere in this Declaration:

2.01 AIRPORT BOARD: An advisory board appointed by the Mayor and City Council for the purpose of advising them with respect to Airport matters.

2.02 AIRPORT MANAGER: The Manager of El Paso International Airport.

2.03 BUILDING: The main portion of any building located on a Lot or Lots and all projections or extensions therefrom, including garages, outside platforms and docks, carports, canopies, and porches. Ground cover shall not be included.

2.04 BUILDING COVERAGE: The surface area of a Building Site that may be covered by Buildings, expressed as a percentage of the total site area.

2.05 BUILDING SITE: The entire Lot or Lots (if contiguous) leased by one Tenant.

2.06 CITY: The City of El Paso, its duly elected Council, or any duly constituted agent or committee representing said Council to fulfill the obligations herein required.

2.07 DECLARANT: The City of El Paso, a political subdivision of the State of Texas.

2.08 FAA: The Federal Aviation Administration of the U. S. Government or any federal agencies succeeding to its jurisdiction.

2.09 FOREIGN-TRADE ZONE: The use of any or all Lots or any part thereof in the Butterfield Trail Industrial Park for Industrial Operations or other activities that comply with the U. S. Foreign Trade Zone Act Regulations (Title 15, Code of Federal Regulations), U. S. Customs Service Regulations, and City regulations of Foreign-Trade Zone use.

2.10 FRONT LOT LINE: The property line that faces a Street. On corner Lot or Lots fronting on two parallel Streets, the Front Lot Line shall mean the property lines facing each Street, one of which shall be designated by the City as the principal Street.

2.11 IMPROVEMENTS: Improvements shall mean but shall not be limited to Buildings, bridges, overpasses, retaining walls, ditches, culverts, lighting supports, earth fills, earth excavation, paving, ground cover, sidewalks, fences, screening walls, signs, and landscaping, constructed, installed, or placed on, under, or above any Lot by or on account of a Tenant.

2.12 INDUSTRIAL OPERATION: The manufacturing of products from raw or semi-finished materials, including research, warehousing and wholesaling operations. Retail sales of goods and services are specifically prohibited except as otherwise permitted herein with respect to the commercial support areas.

2.13 INDUSTRIAL PARK COMMERCIAL SUPPORT: The retail sale of goods and services on a limited basis primarily to the employees of the Tenants in the Butterfield Trail Industrial Park as specifically provided herein.

2.14 LOT: One of the numbered parcels on the map entitled "Butterfield Trail Industrial Park," as filed with the County Clerk, County of El Paso, Texas.

2.15 REAR LOT LINE: The property line generally paralleled to the Front Lot Line and contiguous to another Lot. On corner Lots, the Rear Lot Line shall be parallel to the Front Lot Line facing the principal Street; on Lots fronting on two parallel Streets, there shall be no Rear Lot Line.

2.16 SETBACK: The distance a Building must be set back from the property line of a Lot.

2.17 STREET: Any street, highway, or other thoroughfare shown on the map entitled "Butterfield Trail Industrial Park," as filed with the County Clerk, County of El Paso, Texas.

2.18 TENANT: Any person, firm or corporation leasing or subleasing one or more Lots or space in a Building on a Lot.

ARTICLE 3

PERMITTED USES AND PERFORMANCE STANDARDS

3.01 PERMITTED USES: No Building, structure, or land shall be used for any purpose other than the following, or any combination thereof, and such uses shall satisfy the standards set forth in this Declaration:

A. All Blocks and Lots in the Butterfield Trail Industrial Park, except as Specified in Paragraph 3.01(B):

1. Unless specifically prohibited as herein defined, any Industrial Operation shall be permitted. In addition, if approved by the U. S. Customs Service

or other federal agency having jurisdiction, any Industrial Operation or activity complying with the Foreign-Trade Zone Act Regulations (Title 15, Code of Federal Regulations) shall be permitted.

All industrial processes shall be carried out entirely within facilities so designed to prevent any nuisance as defined in Paragraph 3.04 to adjacent Lots. An exception shall be made during periods when equipment breaks down in such a manner to make it evident that it was not reasonably preventable.

2. General permitted industrial classifications are as follows: research and light industry, industrial support, and medium and heavy industry, warehousing, and wholesaling.
3. Administrative and professional office use shall be permitted.

B. Lots 1 through 5, Block 3, Block 4 and Block 6 and such other blocks or Lots that may be designated by the Declarant in future stages of the Butterfield Trail: Unless specifically prohibited as herein defined, the following Industrial Park Commercial Support activities shall be permitted:

1. Restaurants, including fast food establishments;
2. Offices;
3. Day-care centers;
4. Banks or banking facilities;

5. Printing, reproduction, and photographic services for Industrial Operations;
6. Office and graphics supplies;
7. Commercial exercise clubs; and
8. Self-service gas stations.

3.02 PROHIBITED USES: The following uses shall not be permitted on a Lot at any time: residential, retail commercial except as permitted in Paragraph 3.01(B); trailer courts; labor camps; junkyards; mining and quarrying; dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or refuse; fat rendering, stockyards or slaughtering of animals; smelting of iron, tin, zinc, or other ores; large animal raising.

3.03 APPROVAL OF USES: Certain industrial uses may neither be specifically prohibited nor specifically permitted. In these cases, approval in writing of the use must be obtained from the Declarant or its authorized agent prior to approval of plans and specifications for construction of the facility.

3.04 PERFORMANCE STANDARDS: No Lots shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions that may affect any other Lots, including but not limited to:

- Hazardous activities
- Vibration or shock
- Noise
- Smoke, dust, odor, or other forms of air pollution
- Heat or glare
- Electronic or radio interference
- Illumination
- Liquid or solid refuse or waste
- Other substance, condition, or element in such amount as to affect the surrounding area or adjoining premises.

A. Hazardous Activities: No activity shall be conducted on any Lot that may be or may become hazardous to public health and safety, that shall increase the fire insurance rating for adjoining or adjacent Lots, or that shall be illegal.

B. Vibration or Shock: No vibration or shock perceptible to a persons of normal sensibilities shall be permitted within fifty (50) feet of the property line.

C. Noise: No noise objectionable to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.

D. Air Pollution: Except for the operation of motor vehicles to, from, and on a Lot as incidental to the use thereof, the following requirements shall apply:

1. Any use producing smoke, gas, dust, odor, fumes, aerosols, particulates, products of combustion, or any other atmosphere pollutant shall be conducted within a completely enclosed Building.
2. Any use producing atmospheric emissions shall comply with the standards of the U. S. Environmental Protection Agency, the Texas Air Control Board, any local environmental regulatory body, or any successor organizations performing similar functions, as such regulations exist at the date of the lease to which this Declaration is attached, or which may be enacted during the term of such lease.

3. The emission of odors that are detectable at any point beyond the property line of any Lot or Lots shall not be permitted.

E. Dust Control: All ground areas not covered by structures shall be landscaped or surfaced with concrete, asphaltic concrete, asphalt oil, or other comparable dust-free surfacing; shall be maintained in good condition, free of weeds, dust, trash, and other debris; and shall be properly drained and graded. Such development shall be accomplished before issuance of a certificate of occupancy.

F. Heat or Glare: Any operation producing intense glare or heat shall be performed within an enclosed screened area in such manner that the glare or heat emitted will not be discernible from the property line.

G. Electronic or Radio Interference: No electrical, electronic, or radio emissions shall be produced that will interfere, obstruct, or adversely affect the operation of air navigation aids and Airport communications.

H. Illumination:

1. The source of illumination of any kind on a Lot shall not be visible at the property line except for normal installation of standard interior lighting fixtures within Buildings.
2. The maximum height of any lighting standards shall be limited to thirty (30) feet above curb level.
3. The intensity of illumination shall be limited to

10 foot candles or 0.1 lumens per square foot per open areas or surfaces visible at the property line.

4. The design and location of exterior lighting shall comply in all respects to the requirements of the FAA or any other governmental agency having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around the Airport.

I. Refuse and Trash: No refuse or trash shall be kept, stored, or allowed to accumulate on any Lot.

J. Sewage Disposal Systems: No cesspool, septic tank, or other sewage disposal system or device shall be installed, maintained, or used on any Lot without the approval of the City.

3.05 SECURITY: If a Tenant activates space on its leased premises for Foreign-Trade Zone usage, said Tenant will comply with the security requirements imposed by the U. S. Customs Service or other federal agencies having jurisdiction.

ARTICLE 4

REGULATION OF IMPROVEMENTS

4.01 MINIMUM SETBACK LINES: No structure of any kind and no part thereof shall be placed on any Lot closer to a property line than hereby described.

A. Front Setback: Setbacks from Front Lot Lines shall be a distance equal to twenty percent (20%) of the length of the

Building or two hundred percent (200%) of the height of the Building, whichever is greater, from the Street; the area between the Street(s) and the Front Setback Line shall be landscaped if no visitor parking is provided in the Front Setback areas. If visitor parking is provided in the front Setback area, an area equivalent to twenty percent (20%) of the Front Setback shall be landscaped. All Buildings shall be set back a minimum of twenty-five (25) feet from the Front Lot Line. If the Tenant's Lot or Lots front on more than one Street, the front Setback shall be from all Lot lines facing a Street.

The front Setback area(s) shall be landscaped and planted in accordance with the Airport Landscaping Standards except for areas used for parking lots, driveways, or sidewalks. In no event shall less than twenty percent (20%) of the required minimum front Setback area(s) facing a Street be landscaped and planted.

B. Side Setbacks: Side Setbacks shall be a minimum of thirty (30) feet, and up to fifty percent (50%) of the required minimum Setback shall be landscaped and planted at the discretion of Declarant or its authorized agent. If a single Tenant uses two or more Lots with a common boundary line between them, the side Setback restrictions may be waived by the Declarant or its authorized agent for the term of the shortest lease.

C. Rear Setback: Rear Setback shall be forty (40) feet from the Lot line or utility easement line, except that Buildings on Lots abutting railroad spurs may have loading docks extending to the Rear Lot Line, provided such construction does not interfere

with utility services.

D. Exclusions from Setback Requirements: The following structures or Improvements are excluded from the Setback requirements:

1. Roof overhang.
2. Steps and walks.
3. Paving and associated curbing, except that parking areas will not be permitted within ten (10) feet of Street property lines.
4. Fences.
5. Landscaping.
6. Planters, none over four (4) feet in height.
7. Railroad spur tracks, switches, and bumpers.
8. Approved signs identifying the Tenant.

4.02 EXCAVATION:

A. General: No excavation shall be made by a Tenant unless the excavation is directly related to the construction of an Improvement. When construction is complete, all disturbed ground shall be filled or graded and shall be landscaped in accordance with and conform to the Airport Landscaping Standards.

B. Cut and Fill: The Declarant or any authorized agent thereof may at any time make such cuts and fills on any Lot and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the Streets in or adjacent to any Lot and to drain surface waters therefrom; provided that after the principal structure on a Lot shall have been completed in

accordance with approved plans, the rights of the Declarant under this Paragraph 4.02 shall terminate with respect to such Lot, except that the Declarant shall thereafter have the right to maintain existing Streets and drainage structures.

4.03 LANDSCAPING: Every Lot on which a Building shall have been placed shall have landscaping according to plans prepared in accordance with the standards established in this Paragraph 4.03 and any amendments or successors standards thereto. The first phase of such landscaping, as approved, shall have been completed within ninety (90) days of the date the certificate of occupancy is filed on the initial Building.

Setback areas shall be landscaped to the minimum extent outlined in Paragraphs 4.01(A) and (B). In addition, paving or landscaping shall extend from the property line to the curb, such paving and landscaping to be compatible with treatment for this area on other Lots on the same block. All landscaping shall be maintained in a sightly and well kept condition.

Lessee shall landscape only in accordance with a plan submitted to and approved in writing by the Declarant or its authorized agent prior to any development. Such landscaping plan shall include information regarding the type of sodding, the type of seeding, types of trees, hedges and shurbs, and information regarding other customary landscape treatment for the entire applicable site, in accordance with such approved plans and said plan may not be altered, amended or revised without submitting the revised landscaping plan for prior written approval by the

Declarant or its authorized agent.

A. Landscaping Standards: It is the intent of the Declarant to obtain high quality landscaping throughout the Property which is the subject of this Declaration. If lessee should fail, in the sole and final judgment of Declarant, to maintain landscaping consistent with Declarant's intent, Declarant may, at its option, do such maintenance work as it deems advisable, and the actual cost of labor and materials multiplied by 1.25 shall be added to the next monthly rental payment of lessee as an additional charge.

The following requirements shall apply:

1. All street setback areas shall be landscaped except those areas approved for walkways, driveways and parking.
2. All areas in site setbacks shall be fully landscaped, except for area approved to be paved.
3. Desert planting, defined as native desert plants set in ground cover of boulder, pebbles, sand or landscape shall not comprise more than fifty percent (50%) of any given landscaped setback area.
4. The lessee shall landscape and maintain unpaved areas between the curb and the setback lines. The first ten (10) feet of setback from street property lines shall be used exclusively for landscaping except where driveways bisecting the required landscape area occur.
5. Complete landscape and sprinkler plans are required for review. Specifications should indicate soil treatment and preparation.

4.04 SIGNS: The number, size, design, and location of all signs displayed for observation from outside a Building whether displayed on, near, or within a Building shall be subject to approval by the Airport Manager after review by the Airport Architectural Review Committee prior to installation, and in accordance with any Airport Graphics Standards and any amendments or successor standards thereto.

A. AIRPORT GRAPHICS STANDARDS: It is the intent of the Declarant that all signs be uniform and limited to specified graphic guidelines.

No billboards, flashing lighting or advertising sign shall be permitted on any site within the Property. Only signs identifying the name, business and products of the person or firm occupying the premises and those offering the premises for sale or lease will be permitted.

Only one (1) sign of approved design shall be permitted on the front setback line and one (1) sign may be attached to the side of a building which faces a public street.

Design and construction of signs shall be approved in writing by the Declarant or its authorized agent after review by the Architectural Review Committee with respect to size, design and color. Signs shall also conform to local building codes as well as regulations of the FAA.

Multiple occupancy building signs may be approved on a case-by-case basis by the Declarant or its authorized agent after review by the Architectural Review Committee.

B. COMMERCIAL SUPPORT AREAS: Signs within the Commercial Support areas shall be limited in height to seven (7) feet, and in space to no more than four (4) square feet. All signs in the Commercial Support area shall be uniform. No signs shall be affixed to or otherwise placed on a building in a Commercial Support area except immediately adjacent to a door and of a style acceptable to Declarant or its authorized agent.

4.05 PARKING AREAS: Adequate offstreet parking shall be provided to accommodate the parking requirements of a business within the limits of the Lot. Parking for employees, visitors, and business vehicular traffic shall be provided on the Lot and designated by white lines painted on the paved surface. All parking must comply with applicable City parking ordinances.

Parking shall not be permitted on the public Streets and between the Street pavement and property line. If visitor parking is permitted in the front Setback area(s), such parking shall be screened from the Street(s) by approved trees or shrubbery specified in the Airport Landscaping Standards or such other screening as may be approved by the Declarant or its authorized agent.

4.06 STORAGE AND VEHICLE LOADING AREAS: All outside storage and refuse areas shall be constructed and contained to eliminate odors, insects, dust, visual nuisances, and other similar nuisance.

No materials, supplies, or equipment, including company-owned or company-operated trucks, shall be stored in any area on a Lot except inside a closed Building or behind a barrier completely

screening such areas from view of adjoining Lots or public Streets or both.

All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on the Lot(s) leased and shall not encroach into Setback areas; onstreet vehicle loading shall not be permitted. Vehicle loading shall be permitted only at the rear of the Buildings, or on a side, except that such loading performed at a side shall be completely screened from view of adjoining Lots or public Streets or both.

4.07 BUILDING HEIGHTS: Building heights shall be limited to the height requirements established in Federal Aviation Regulations Part 77 or successor regulations for the Airport but shall not exceed a maximum of fifty (50) feet above the curb line, including any building equipment, penthouse, extrusions, etc.

4.08 BUILDING COVERAGE: Buildings shall not cover more than fifty percent (50%) of a Building Site.

4.09 BUILDING REGULATIONS:

A. City Zoning Code: The City of El Paso Zoning Code, as amended, shall apply except that in the event of a conflict between the City Zoning Code and the standards in this Declaration, the more stringent requirement shall apply.

B. FAA Regulations: All construction must comply with applicable codes and ordinances and the rules and regulations of the FAA where applicable.

C. Final Approval By Declarant: Final approval of the compatibility of any Improvement with the overall architectural

character of the Butterfield Trail Industrial Park shall remain with the Declarant. Construction shall not commence before the Declarant has granted final approval.

4.10 TYPE OF CONSTRUCTION:

A. Building Materials: All Buildings shall be framed with reinforced concrete or masonry, structural steel, structural aluminum, or wood that has been satisfactorily treated to resist fire, rot, and insects. Siding shall be masonry, concrete or glass. Porcelain, enameled steel, anodized aluminum or treated wood may be used upon approval of the Airport Manager based upon the favorable recommendation of the Airport Architectural Review Committee. Concrete, masonry, and treated wood siding shall be kept neatly painted, if used. State-of-the-art changes in types of construction may be permitted from time to time only upon the express condition that any such change be consistent with the intent of this Declaration and that any such change receives written approval of at least three members of the Airport Architectural Review Committee. Pre-fabricated metal buildings are specifically prohibited.

B. Roof Screening: All heating and cooling towers, equipment, etc., placed on the roofs of Buildings shall be screened or enclosed from view so that they are architecturally compatible with the main portion of the Building and cannot be seen from any point within two hundred-fifty (250) feet of the Building at an eye level of six (6) feet above the curbline.

C. Accessory Buildings, Enclosures, and Fences: Accessory

Buildings, enclosures, and fences shall enhance the design of and be of the same quality of materials as the Buildings they serve.

D. Building Codes and Ordinances: All Buildings shall conform to all local building codes and ordinances.

E. Approval by Airport Manager: The type of building construction proposed shall be subject to the written approval of the Airport Manager as authorized agent of Declarant and the decision of Airport Manager shall be based on the recommendations of the Airport Architectural Review Committee and appealable to the City Council through the Airport Board.

4.11 PIPES: No water pipes, gas pipe, sewer pipe, or drainage pipe (other than those within structures) shall be installed or maintained on any Lot above the surface of the ground, except hoses and movable pipes used for irrigation or similar purposes.

ARTICLE 5

SUBMISSION OF PLANS FOR IMPROVEMENTS

5.01 SUBMISSION OF PLANS: All plans for Improvements shall be prepared by registered engineers, architects, and landscape architects; shall be of contemporary design; and shall require prior written approval by the Declarant or its authorized agent before any construction may begin.

Prior to the execution of a lease for a Building Site, the Declarant or its authorized agent and the Tenant shall jointly determine a reasonable time schedule in which final plans and specifications shall be submitted and construction of facilities

shall be completed. Such time schedule shall be incorporated in the lease.

The following plans shall be required for submission to the Declarant or its authorized agent within the time schedule determined:

A. Topographic, Grading, Drainage, Utility and Plot Plans:

1. Topographic, grading, drainage, and utility plans showing one (1) foot contour intervals and spot elevations referenced to the Airport datum.
2. A plot plan at a scale not smaller than one (1) inch equals one hundred (100) feet showing the relationship of the proposed Improvements to the Lot(s) demised and to the Improvements on adjacent Lots, utilities, and access thereto, curbs, walks, driveways, parking areas, etc.

B. Floor Plan: Floor plans at a scale not smaller than one-sixteenth (1/16) inch equals one (1) foot.

C. Ground Cover Plans: Ground cover plans, including landscaping in accordance with the Airport Landscaping Standards.

D. Renderings: A true architectural rendering of the proposed Buildings, including the proposed exterior color scheme, style, materials, and design and placement of signs.

E. Materials and Color Samples: Samples, no smaller than one (1) foot square, of all materials or paint or both or other coating colors to be used on the exterior of all improvements that are visible from any point on any Lot line. The Declarant reserves

the right through its authorized agent to approve all said materials or colors or both and further reserves the right to suggest alternative materials or colors or both that, in the sole opinion of the Declarant, shall be determined to be more compatible with the Declarant's objectives for the overall aesthetic character and quality of Improvements on the Airport.

F. Other Plans: Any other plans, specifications, or design features that the Declarant or its authorized agent may deem necessary and request.

G. Additional Requirements - Foreign-Trade Zone: Tenants who intend to use their facilities as a Foreign-Trade Zone shall, in addition to submittal to the Declarant or its authorized agent submit their plans and specifications to the U. S. Customs Service and other federal agencies, as appropriate, for approval and compliance with the Foreign-Trade Zone Act and other required federal regulations.

5.02 FORMS AND CONTENT OF PLANS: The Declarant may promulgate rules governing the form and content of plans to be submitted for its approval and may issue statements of policy with respect to approval or disapproval of architectural styles, details, or other matters pertaining to the plans.

Such rules and such statements of policy may be amended or revoked by the Declarant at any time, and no inclusion in, omission from, or amendment of any such rule shall be deemed to bind the Declarant to its approval or to waive the exercise of the Declarant's discretion as to any such matter.

5.03 CODES AND REGULATIONS: All Improvements shall be planned and constructed in accordance with the rules and regulations established by the Declarant or its authorized agent, the laws and ordinances of the City, applicable building codes, and the rules and regulations of the FAA, where applicable.

5.04 REVIEW OF PLANS: Plans and specifications for proposed Improvements submitted to the Declarant for approval by its authorized agent shall be reviewed by the Airport Architectural Review Committee as established by ordinance.

The Airport Architectural Review Committee shall submit in writing to the Airport Manager, as authorized agent of the Declarant, the Committee's recommendation with respect to the plans and specifications of the proposed Improvements within thirty (30) working days of the original date of submission to the Declarant. The Airport Manager, shall within ten (10) days of receipt by him of the recommendations of the committee, approve or disapprove the plans and specifications. Any party dissatisfied with a decision of the Airport Manager based on the recommendation of the Airport Architectural Review Committee shall have the right to appeal such decision to the City Council through the Airport Board. The Airport Architectural Review Committee shall also be responsible for inspecting and continuous monitoring of construction, signs, installation of landscaping, and review of the as-built plans.

5.05 BASIS FOR APPROVAL BY THE DECLARANT: Approval by the Declarant or its authorized agent shall be based on the adequacy of site dimensions and on the general conformity of the plans and

specifications to the intent of this Declaration. The Declarant shall not arbitrarily, without written explanation, withhold approval of properly submitted plans and specifications.

Approval of any plans or specifications for use on any one Lot shall not be deemed a waiver of the discretionary right of the Declarant to disapprove the same plans or specifications if such plans or specifications are subsequently submitted for approval for use on any other Lot or Lots.

5.06 FAILURE TO APPROVE: If the Declarant fails to approve or disapprove plans and specifications within forty (40) working days after the same have been submitted, it shall be conclusively presumed that the Declarant has approved said plans and specifications.

5.07 COMMITMENT TO CONSTRUCT: Upon approval by the Declarant of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the Declarant and a copy of such plans bearing the written approval of the Declarant shall be returned to the Tenant of the Lot(s) on which such structure is or will be placed.

Approval of these plans by the Declarant shall constitute a commitment on the part of the Tenant to erect and maintain the Improvements as proposed and approved within the time schedule established in Paragraph 5.01.

5.08 CONSTRUCTION WITHIN TIME SCHEDULE SPECIFIED: Any approved construction shall be prosecuted diligently in accordance with the approved plans and specifications and shall be completed

within the specified time schedule. Failure to complete such work in the specified time schedule shall cause such approval to be automatically withdrawn unless the Declarant or his authorized agent grants written extension of such approval. After such automatic withdrawal of approval, the Tenant will be considered in default of its lease for such Lot(s), and the Declarant may terminate such lease in accordance with the provisions in that document.

5.09 LANDSCAPING PLANS: Trees, shrubs, fences, hedges, or other landscaping shall not be planted, placed, or maintained on any Lot until a complete plan thereof has been submitted to and approved by the Declarant or his authorized agent in writing. The landscaping plans shall be prepared in accordance with the Airport Landscaping Standards and shall be submitted at the same time as the other plans and specifications for proposed Improvements. The plans shall be reviewed by the Airport Architectural Review Committee in the same manner and time period as those required for architectural plans under Paragraph 5.04.

All plans for landscaping Improvements shall be prepared by registered or approved landscape architects. Final approval shall be by the Declarant or its authorized agent.

5.10 PLANS FOR ALTERATIONS IN IMPROVEMENTS: All plans for alterations to the leased Lot(s), either for the construction of additional facilities or alterations to existing Buildings, shall be prepared, submitted, and approved as outlined in Paragraphs 5.01 through 5.09 and shall be subject to the same restrictions as

herein provided. This paragraph shall apply only to exterior or structural changes; alterations to the interior of Buildings shall not be considered unless they affect the performance standards in Article 3.

5.11 FEES: The Declarant shall charge and collect a reasonable fee, as determined every five years by the Declarant or its authorized agent, for architectural review and other reviews of plans submitted for approval. Such plans could relate to initial development or alterations to existing development. The fee shall be payable at the same time such plans are submitted. If initial plans or any subsequent plans are disapproved, an additional review fee, as determined by the Declarant or its authorized agent, shall be paid before further review.

The amount of such fee shall not exceed the actual cost to the Declarant of making such examination, including the cost of any architect's or engineer's fees incurred in connection therewith.

ARTICLE 6

ENFORCEMENT

6.01 CONSTRUCTION WITHOUT APPROVAL: If any structure shall be erected, placed, altered, or maintained on any Lot other than in accordance with plans and specifications approved by the Declarant or his authorized agent, such erections, alterations, and maintenance shall be deemed to have been undertaken without the approval required herein. This restriction shall be applicable to landscaping and signage plans as well as to architectural plans.

In the event of such construction without approval, the Tenant will be considered in default of the lease for such Lot, and the Declarant may terminate the lease in accordance with the provisions set forth in that document.

6.02 ABATEMENT AND REMOVAL: If the Declarant determines that his Declaration is being violated by any Tenant on a Lot or Lots, the Declarant shall have the right after giving notice as required by the lease to enter the Lot(s) of such Tenant to determine the exact cause, effect a cure, and abate or remove the violation from the Lot(s). All expenses incurred in this action shall be payable by the Tenant of the facility in which the violation occurred.

6.03 SUIT: The Declarant or the Tenants of facilities affected by a violation shall have the right to file suit against violators of this Declaration, to prevent a violation, effect a cure, abate or remove a violation, or recover damages for said violation.

6.04 ATTORNEY'S FEES: In any legal proceeding for the enforcement of this Declaration or prevention of a violation of this Declaration or any part hereof, the party against whom judgment is rendered shall bear the reasonable expense of attorneys' fees of the prevailing party in the amount to be specified by the Court.

6.05 RIGHT OF ENTRY AND INSPECTION: Any authorized agent of the Declarant, at any reasonable time and without notice, may enter on and inspect any Lot to ascertain whether the maintenance of such Lot, Improvements under construction, or alteration of structures

thereon are in compliance with the provisions hereof. Neither the Declarant nor such authorized agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

6.06 FAILURE TO ENFORCE A RESTRICTION: The Declarant may fail to enforce any restriction herein specified on any Tenant on a Lot or Lots, but in no event should this be deemed a waiver of this Declaration or the right to enforce any restriction at a later date.

ARTICLE 7

MISCELLANEOUS PROVISION

7.01 ACCEPTANCE BY ALL TENANTS: Every person, firm, or corporation who shall hereafter acquire any right, title, or interest in any Lot(s) or Buildings or portions thereof shall have consented and agreed to every covenant and restriction herein contained or implied even though this Declaration may not have been made reference to or part of the documents received as a part of leasing a Lot or Building or any portion thereof.

7.02 ASSIGNMENT OF DECLARANT'S RIGHT AND DUTIES: The Declarant has certain rights, powers, and reservations as herein established by this Declaration and may assign to any person, firm, or corporation these rights, powers, and duties evidencing its consent in writing to accept such an assignment and assume such duties. The person, firm or corporation having accepted the rights of the Declarant shall also be bound to the obligations in this Declaration.

7.03 HOUSEKEEPING: If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on a Lot more than ten (10) days after a request in writing from the Declarant or its authorized agent to have them removed, the Declarant or its authorized agent may enter on any Lot to remove same by whatever means it deems necessary. Such entry shall not be deemed a trespass, and the Declarant shall not be subject to any liability therefor. The cost of such work shall be borne by the Tenant.

7.04 MAINTENANCE OF LANDSCAPING: The Declarant shall be the sole judge of the quality of maintenance of the landscaping. If landscaping areas are not maintained in accordance with the standards in the lease and those in this Declaration and the condition is not corrected within ten (10) days after written notice from the Declarant, the Declarant or its authorized agent shall have the right to enter on any of the Lot(s) leased and plant or replant such areas, without being deemed guilty of trespass. The costs therefor, as determined by the Declarant, shall be paid by the Tenant.

7.05 SIDEWALKS PROHIBITED: The construction of sidewalks is prohibited except (1) between onsite parking areas and the Buildings they serve, (2) between Buildings involved in a single industrial activity for single Tenant, (3) in the Industrial Park Commercial Support areas, and (4) along the east side of Airport Road. Any sidewalks to be constructed in said areas shall be depicted on the plot plans and shall be subject to approval by the Declarant.

7.06 USE PERMITS: Such use and occupancy permits as may be required by the Building Code of City shall be maintained in force at all times by each Tenants.

IN WITNESS WHEREOF, THE CITY OF EL PASO, the Declarant, has caused its name to be hereunto subscribed this 5th day of February, 1985.

ATTEST:

CITY OF EL PASO, TEXAS

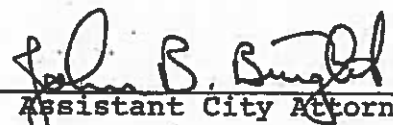

City Clerk


Mayor

APPROVED AS TO CONTENT:


Airport Manager

APPROVED AS TO FORM:


Assistant City Attorney



Legislation Text

File #: 22-515, 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 3

Airport, Sam Rodriguez, (915) 212-7301

AGENDA LANGUAGE:

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

A Resolution to authorize the City Manager to sign a Lease Agreement between the City of El Paso ("Lessor") and B.H. Zane Grey Butterfield, LLC ("Lessee") regarding the following described property: A 5.0681 acres parcel portion of Lots 2B and 2C, Block 1, Butterfield Trail Industrial Park Unit One Replat "A," El Paso County Plat Records, consisting of approximately 220,768.6 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 9 Zane Grey Street, El Paso, Texas.

The term of this lease is an initial term of forty (40) years and one (1) ten-year option to extend the term of the lease. The annual rental fee for the land in the initial term will be \$84,000. The rent fee for the building will be a lump sum in the amount of \$1,440,000.00.

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

DEPARTMENT: Aviation

AGENDA DATE: May 10, 2022

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, (915) 212-7301

DISTRICT(S) AFFECTED: District 3

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

This is a Resolution to authorize the City Manager to sign a Lease Agreement between the City of El Paso ("Lessor") and B.H. Zane Grey Butterfield, LLC ("Lessee") regarding the following described property: A 5.0681 acres parcel portion of Lots 2B and 2C, Block 1, Butterfield Trail Industrial Park Unit One Replat "A," El Paso County Plat Records, consisting of approximately 220,768.6 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 9 Zane Grey Street, El Paso, Texas.

The term of this lease is an initial term of forty (40) years and one (1) ten-year option to extend the term of the lease. The annual rental fee for the land in the initial term will be \$84,000. The rent fee for the building will be a lump sum in the amount of \$1,440,000.00.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval to lease the subject property to B.H. Zane Grey Butterfield, LLC. The subject property is located in the El Paso International Airport's Butterfield Industrial Park. The improvements were acquired by the Airport by abandonment by the previous tenant. The property will be repaired and remodeled to accommodate industrial and office uses.

PRIOR COUNCIL ACTION:

None -- this is a new tenant

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue generating item.

BOARD / COMMISSION ACTION:

N/A

DEPARTMENT HEAD:


Sam Rodriguez, P.E.

Chief Operations & Transportation Officer/Director of Aviation

RESOLUTION

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

That the City Manager is authorized to sign a Lease Agreement by and between the City of El Paso ("Lessor") and B.H. Zane Grey Butterfield, LLC, ("Lessee") regarding the following described property:

A 5.0681 acres parcel portion of Lots 2B and 2C, Block 1, Butterfield Trail Industrial Park Unit One Replat "A," El Paso County Plat Records, consisting of approximately 220,768.6 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 9 Zane Grey Street, El Paso, Texas.

with a 40 year initial term and one option to extend for ten years; and

that City Manager is authorized to sign any and all documents related and/or necessary to effectuate the leasing and related closing of the property.

Dated this ____ day of _____ 2022.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

9 ZANE GREY STREET LEASE AGREEMENT

El Paso International Airport El Paso, Texas

B.H. ZANE GREY BUTTERFIELD, LLC

Lessee

May 27, 2022
Effective Date

9 ZANE GREY STREET LEASE AGREEMENT

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EXHIBIT "A" - Property Description & Metes and Bounds of Premises

EXHIBIT "B" – Declaration of Restrictions and Covenants

9 ZANE GREY STREET LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is entered into as of May 10, 2022, by and between the City of El Paso (the "City" or "Lessor") and B.H. Zane Grey Butterfield, LLC.

WHEREAS, Lessor owns and operates El Paso International Airport, located in the County of El Paso, State of Texas, ("Airport"), said Airport being managed by the Director of Aviation, as amended from time to time in terms of actual title ("Director"); and

WHEREAS, Lessor deems it advantageous to itself and to its operation of the Airport to lease unto Lessee the parcel of land described herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out; and

WHEREAS, Lessee proposes to lease on a net basis from Lessor certain ground area and to avail itself of certain privileges, rights and uses pertaining thereto; and

WHEREAS, Lessee has indicated a willingness and ability to properly keep, maintain and improve said ground in accordance with standards established by Lessor;

NOW THEREFORE, Lessor and Lessee agree as follows:

ARTICLE I - PREMISES AND PRIVILEGES

1.01 Description of Premises Demised.

Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas:

A 5.0681 acres parcel as a portion of Lots 2B and 2C, Block 1, Butterfield Trail Industrial Park Unit One Replat "A," as filed in Volume 56, Page 71 El Paso County Plat Records, consisting of approximately 220,768.6 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 9 Zane Grey Street, El Paso, Texas

1.02 Restriction of Privileges, Uses and Rights.

The rights and privileges granted Lessee hereunder are subject and expressly limited to the terms and conditions of the Declaration of Restrictions and Covenants attached hereto as Exhibit "B", and fully incorporated herein by reference (the "Declaration").

1.03 Conditions.

The granting of this Lease and its acceptance by Lessee is conditioned upon the covenant that the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.

1.04 Habendum and Title Warranty.

Lessor warrants that it owns the Premises together with all building, structures, improvements and fixtures with every right, privilege, hereditament and appurtenance belonging or appertaining to it free and clear of all liens, claims and encumbrances.

ARTICLE II - TERM OF LEASEHOLD**2.01 Term.**

The "Term" of this Lease will be the Initial Term and any properly exercised Option Period, as provided below. This Lease shall be for an initial term of forty (40) years ("Initial Term"), commencing on May 27, 2022 ("Effective Date") and ending on May 26, 2062 unless sooner terminated pursuant to this Lease.

2.02 Option to Extend.

If the Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease ("Option Period") for one (1) additional term of ten (10) years by notifying Lessor in writing of Lessee's election at least one (1) year prior to the expiration of the Initial Term.

2.03 Holding Over.

It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent of one and one-half times (150%) the current monthly rent, unless the hold over is caused by the City staff not placing a new agreement with Lessee regarding the Premises at the end of the term of the present Agreement on the City Council Agenda on a timely basis in which case the monthly rental rate in effect prior to the hold over shall continue until the new agreement is executed. Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

ARTICLE III - RENT**3.01 Rent.**

- A. Lessee shall pay to Lessor, without notice or demand and without deduction or set-off, Base Rent and Additional Rent (collectively, "Rent") for the Premises.
- B. Base Rent shall be as follows:
 - (1) Land Rent: \$84,000.00 per annum; \$7,000.00 monthly, payable in equal monthly installments on or before the first day of the month during the Term; and
 - (2) Building/Facility Rent: \$1,440,000.00, paid in a lump sum prior to the Effective Date on May 27, 2022.

3.02 Adjustment of Land Rent.

For the purpose of computing adjustments to rental payments, Lessor and Lessee agree as follows, with each adjustment effective as of the appropriate anniversary date, regardless of the date the actual adjustment is made:

- A. Rent shall be adjusted on the first of the month following each fifth (5th) anniversary of the Effective Date of this Lease thereafter during the Initial Term and any Lessee's Option Period. Lessor and Lessee agree that, except as provided for in paragraph B to this Section, percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the rent readjustment for these anniversary dates. The parties further agree that for the purposes of computing such percentage increase during the Initial Term, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Effective Date of this Lease. Rent shall be adjusted pursuant to the percentage increase in the CPI-U from the Base Year CPI-U to the rate in place ninety (90) days prior to the applicable date of readjustment (i.e. the fifth (5th) anniversary date of the Effective Date of this Lease).

In the event the CPI-U is not yet published or is otherwise unavailable for the month in which this Lease is effective, the price index used will be that price index for the closest preceding month for which the price index is available. In the event that the CPI-U is no longer published by the Bureau of Labor Statistics, Department of Labor at a time when an adjustment is to be made, Lessor and Lessee agree to use the consumer price index published by the Department of Labor that replaces the CPI-U or, if no replacement is available, but a reasonably comparable consumer price index exists, to use the method set forth in paragraph B below to adjust rent.

All readjustments shall be effective as of the fifth (5th) anniversary date, without regard to the date the actual adjustment is made; provided, however, that in no event shall the readjusted Rent be less than the rate in place immediately prior to such readjustment nor more than twenty percent (20%) more than the Rent established at the beginning of the immediately preceding five-year period.

- B. At the beginning of the forty-first year of Lessee's tenancy, the Rent shall be adjusted to a rate equal to eight percent (8%) of the then fair market value of the Premises, including the value of the Lessor owned improvements located on the premises, established as set forth in this Lease. In no event however, shall the Rent for the Option Period be less than the Rent established at the beginning of the immediately preceding five (5) year period. The Rent shall become effective as of the Option Period, regardless of the date the actual adjustment is made.
- C. **Appraisal.** The fair market value of an identified parcel ("Parcel") shall be determined by either a current appraisal (less than three years old) of a

similar property ("Current Appraisal") or a new appraisal of the Parcel. It shall be at the discretion of Lessor as to whether a Current Appraisal or a new appraisal shall be used. In the event a new appraisal is preferred, Lessor will select an appraiser from its list of qualified appraisers to establish the fair market value of the Parcel, including the value of the Lessor owned improvements located on the premises. This appraisal or the Current Appraisal shall be known as the "First Appraisal."

Upon completion of the First Appraisal, Lessor shall notify Lessee in writing of the rental rate, which shall be calculated as described in Section 3.04B. If Lessee agrees with the First Appraisal, or does not respond to Lessor in writing within fifteen (15) calendar days after receipt of the written notice as required herein, or it does not produce a Second Appraisal (as defined below) within 30 calendar days from Lessee's notice to proceed with said Second Appraisal, the First Appraisal and its resulting rent shall be deemed to be accepted by Lessee.

If Lessee disagrees with the rental rate resulting from the First Appraisal, Lessee, within fifteen (15) calendar days after receipt of said notice, shall notify Lessor in writing of Lessee's request for a qualified second appraisal ("Second Appraisal"). The second appraiser must be the next appraiser appearing on Lessor's list of qualified appraisers. The cost of the Second Appraisal shall be paid by the Lessee. The rental rate resulting from the Second Appraisal shall be calculated as described in Section 3.04B.

After the Lessee provides Lessor with the Second Appraisal, both parties have a 15 business day review period to consider same. If, by the 15th day, either the Lessor or Lessee disagrees with the rental rate resulting from the Second Appraisal, and a third appraisal ("Third Appraisal") is necessary, the Lessor and Lessee shall agree to the next appraiser appearing on the Lessor's list of qualified appraisers. The cost of the Third Appraisal shall be paid equally by the Lessor and Lessee, and the Third Appraisal shall be the final determinant of the rental rate. There shall be no further appraisals beyond the Third Appraisal, regardless of whether either the Lessor or Lessee disagrees with the rental rate resulting from the Third Appraisal.

Lessee shall pay the Rent as determined by the First Appraisal under protest until there is a final determination of the fair market value for the Parcel for which the Rent is determined. Should the final determination of the fair market value of the Parcel be a lower rate than the fair market value of the Parcel determined by the First Appraisal, Lessee's account will be credited by Lessor accordingly.

3.03 Reserved.

3.04 Unpaid Rent, Fees and Charges.

Any installment of Rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Lessor by the twentieth (20th) day of the month in which payment is due, shall bear interest from the date such Rent or other amount was due at the lesser of the rate of eighteen percent (18%) per year or the then maximum nonusurious rate under applicable law, (the lesser of said amounts being herein referred to as the "Maximum Rate."). In the event the late charge is ever deemed to be "interest" the amount of interest on past due amounts shall be automatically reduced so that the combination of said late charge and the interest on past due amounts, if any, does not exceed the Maximum Rate. Any amount collected which exceeds the Maximum Rate will be deemed credited to other amounts owed by Lessee to Lessor under this Lease, and any remaining excess after such credit shall be refunded to Lessee. It is the intent of both Lessor and Lessee to at all times comply with the applicable law regarding the maximum nonusurious amount or rate of interest which may be contracted for, charged, taken, reserved or received by Lessor.

3.05 Place of Payment.

All rent payments provided herein shall be paid to Lessor at the following address:

Accounting Division
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79997-1278

In lieu of payments being mailed to the above address, electronic payments may be made via any electronic payment system Lessor authorizes in writing.

3.06 Reserved.**ARTICLE IV - OBLIGATIONS OF LESSOR****4.01 Quiet Enjoyment.**

Lessor agrees that upon Lessee's paying rent and performing all of the covenants, conditions, and agreements set forth in this Lease, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

ARTICLE V - OBLIGATIONS OF LESSEE**5.01 Net Lease.**

This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article IV above and elsewhere in this Lease Agreement. Lessee shall:

- A. Keep and maintain the Premises and any buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises (collectively, the "Improvements") in a good state of repair at all times;

- B. Pay any and all taxes assessed against the Premises, Improvements located on the Premises, Lessee's interest in the Premises and Improvements, and all of Lessee's personal property located on the Premises; and
- C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

5.02 Condition of Premises.

Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or Improvements or their suitability for a particular use. Lessee accepts the Premises "As Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

5.03 Compliance with Laws.

- A. Lessee, at Lessee's expense, agrees that it will construct, operate and maintain Improvements on the Premises in accordance with the Declaration and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, including the Lessor, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any Improvements thereon. In addition, Lessee agrees, if required, it will remove all Improvements placed thereon by the Lessee ("Lessee Improvements"), in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, including the Lessor, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any Improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other 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, which relate to the use or occupation of the Premises and any Improvements thereon by disabled persons ("Disabilities Laws"). Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any Improvements thereon.

B. Environmental Laws.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) "Hazardous Material" shall mean (a) all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like; or (b) give rise to liability under any Environmental Laws or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under applicable reported decisions of state or federal court; or (c) which may be hazardous or harmful to the air, water, soil or environment or affect industrial hygiene, occupational health or safety, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste. "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.
- (3) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its sublessees, agents, employees, contractors, invitees, licensees, or a third party in violation of any Environmental Law.

Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its officers, directors, employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or Release or discharge from the Premises or any Improvements thereon

caused by the act or omission of Lessee, its sublessees, agents, employees, contractors, licensees or invitees. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, Improvements, land, soil, underground or surface water to the extent required under Environmental Laws. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any Improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work to the extent required by any federal, state or local governmental agency or political subdivision having authority to enforce Environmental Laws because of Hazardous Material located on the Premises or any Improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not, on its own, an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

- (4) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any Improvements thereon or permitted by Lessee results in any contamination of the Premises or any Improvements thereon, or any surrounding property, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any Improvements thereon or the surrounding property to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any Improvements thereon or the surrounding property; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any Improvements thereon or the surrounding property.
- (5) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any Improvements thereon or on surrounding property to comply with applicable Environmental Laws, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises to respond to any governmental investigation or to respond to any claim of liability by third

parties which is related to environmental contamination of the Premises or the Improvements thereon or the surrounding property.

- (6) Lessee shall immediately notify Lessor promptly after Lessee becomes aware of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (7) Lessee shall insert the provisions of this Section 5.03 in any lease, agreement, license, or contract by which it grants a right or privilege to any person, firm or corporation under this Lease, but only with respect to those leases, agreements, licenses or contracts executed after the Effective Date of this Lease.
- (8) Fuel storage tanks are not allowed on the Premises.
- (9) Lessee's failure or the failure of its agents, employees, contractors, licensees, invitees, or a third party to comply with any of the requirements and obligations of this section 5.03(C) shall constitute a material default of this Lease and shall permit Lessor to pursue the remedies as set forth in Article X herein below, in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Lessor may resort cumulatively.
- (10) At any time that Lessee submits any filing or response pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the FAA, the EPA or the TCEQ, or any successor agencies, Lessee shall provide duplicate copies to Lessor of such filing(s) or response(s) with any related documents at the time same are made.
- (11) Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide to Lessor a Phase I Environmental Site Assessment meeting ASTM standards of the Premises ("Lessee's Report"); and if, in the opinion of Lessor, if Lessee's Report indicates that the Premises is in violation of applicable Environmental Laws, then Lessee shall perform work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws.

5.04 Lessee Improvements

- A. Lessee shall have during the Term the right to construct or make structural alterations to any building or other structure now or hereafter on the Premises as Lessee Improvements, to be permitted and built in compliance with all applicable federal state and local laws, regulations, and Lessor rules, including any applicable

Federal Aviation Administration ("FAA") regulations, only with the prior express written approval of Lessor which shall not be unreasonably withheld. Lessee shall be responsible for all approvals, permits, licenses, and fees necessary to complete such Lessee Improvements.

- B. Lessee agrees to pay, when due, all sums that may become due for any labor, services, materials, supplies, furnishings, machinery and equipment furnished to or for Lessee in, upon, or about the Premises or the Airport. Lessee shall keep the Leased Premises free and clear of any liens and encumbrances arising or growing out of Lessee use and occupancy of the Premises (including without limitation Improvements made thereto and repair and maintenance completed therein) or activities at the Airport. If a lien is filed against the Premises, Lessee shall immediately, at its expense, bond such lien in accordance with applicable laws, or otherwise cause such lien to be discharged in a manner acceptable to Lessor. If Lessee shall fail to do so, Lessee may, at its option and at Lessee's expense, bond such lien or otherwise cause it to be discharged.
- C. Lessor retains the continuing right in the Premises to prevent the erection or growth of any building, structure, tree, or other object extending into the airspace exceeding the height of any existing structures, trees or other objects on the Premises; to assure compliance with obstruction clearance requirements; and to remove from said airspace at Lessee's expense, or at the sole option of Lessor, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree, or other object now upon, or which in the future may be upon the property together with the right of ingress to, passage over, and egress from Lessee's property for the above purposes.
- D. Lessee covenants and agrees that facilities constructed on the Premises, exclusive of paving and landscaping, shall cover a minimum of twenty percent (20%) of the Premises' land area, and a maximum of fifty percent (50%) of the Premises' land area. In the event such Improvements are partially or totally destroyed by fire or other casualty, Lessee shall have the absolute right to restore or rebuild such Improvements to the same size as existed prior to the casualty.

5.05 Lessor's Approval of Plans.

Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of Improvements or any plans, specifications and working drawings for Lessee's removal of Improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Department of Aviation is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Director, Lessee shall be required to obtain the approval of other City departments. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to the Director one (1) complete set of the Final Plans as approved by the governmental agencies exercising jurisdiction thereover, and copies of all issued permits. Upon completion of construction, Lessee shall deliver to Director a complete set of record (as-built) and shall provide such in electronic files drawings of the construction signed and sealed

by a professional engineer or architect licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises.

5.06 Landscaping and Maintenance of Improvements.

- A. Lessee shall landscape the Premises and keep the Improvements on the Premises in a good state of repair and condition and in a presentable condition comparable in appearance and character to similar improvements at the Airport. The exterior finish on the Improvements shall be repainted and refinished as reasonably necessary to maintain the appearance of such Improvements to a standard comparable to similar improvements at the Airport. Notwithstanding anything to the contrary in the Declaration, Lessor agrees that attractive, low water usage landscaping is a desirable goal and agrees to consider and approve appropriate low water usage landscaping plans as a part of the architectural review process. Lessee shall have 365 days to from the Effective Date to comply with this provision due to the current condition of the Premises.
- B. Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform reasonable maintenance Lessor reasonably deems necessary in order to cause the exterior finish to be in a condition comparable to similar improvements at the Airport. If said maintenance is not commenced by Lessee within forty-five (45) days after receipt of written notice and if Lessee is unable to show that it has made diligent efforts to commence the work, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Lessee.
- C. Lessee shall not remove any of its Improvements from the Premises or waste or destroy said Improvements. Any personal property placed or installed by Lessee in the Premises shall remain the property of Lessee during the Term.

5.07 Utilities.

Lessee shall pay for all costs or charges for utility services furnished to Lessee during the term hereof. Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense.

5.08 Trash, Garbage, and Other Refuse.

Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

5.09 Permitted Uses.

Lessee may use the Premises only for uses permitted under zoning and Covenants and Restrictions (the "Permitted Use", in accordance with all applicable laws. In conjunction with Lessor's use of the Premises, Lessor shall not: (a) cause substantial noise, vibration, fumes, debris, electronic

interference, or other nuisance on or adjacent to the Premises; (b) create any condition that is a safety hazard; or (c) interfere in any way with Airport operations. In addition, without limiting the generality of any other provision of this Lease, Lessee shall not, without the Lessor's written consent: (u) provide any facilities, services, commodities or supplies, now or hereafter made available at or through the Airport, other than the Permitted Uses; (v) operate any automobile or vehicle rental business; (w) operate any airline flight kitchen or other facilities providing meal services to aircraft crews or passengers or the public (non-aircraft); (x) offer lodging facilities; or (y) use any portion of the Premises for parking for passengers or customers of the Airport.

5.10 Penalties Assessed by Federal Agencies.

Lessee understands and agrees that in the event any federal agency assesses a civil penalty against Lessor or the Airport for any violation, including but not limited to any security violation, as a result of or related to any act or failure to act on the part of Lessee, its sublessees, agents, employees contractors, licensees or invitees, Lessee shall reimburse Lessor in the amount of the civil penalty assessed provided that Lessee was permitted to participate in the due process for administration of the violation. Failure to reimburse Lessor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

5.11 Relocation of Premises. Upon at least twenty-four (24) months' prior Notice to the Lessee, Lessor may relocate, at Lessor's expense, all of Lessor's facilities located on the Premises and the Improvements constructed thereon. Except as otherwise agreed between the parties, the Improvements to be constructed by Lessor on the relocated Premises will be of equal or better quality and utility. Lessor agrees to use all reasonable efforts to minimize interference with Lessee's operations at the Premises in connection with any such relocation; provided that, Lessee shall continue to be able to operate at either the Premises, the relocated premises (or, at Lessee's option, a combination of the two), without material interference. Provided however that if any such relocation materially impairs or interferes with Lessee's, sublessee's, or assignee's, in the sole discretion of Lessee, use of the Premises, Lessee will have the option to terminate the Lease at the end twenty-four (24) months.

ARTICLE VI - INSURANCE AND INDEMNIFICATION

6.01 Insurance.

Prior to the execution of this Agreement, Lessee shall obtain, provide proof of, and shall maintain for the term of this Agreement, the types and amounts of insurance coverage listed below, in amounts as reasonably set from time to time by the Director, but not less than:

Comprehensive General Liability Insurance in amounts not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence,

Two Million Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence,

One Million Dollars (\$1,000,000.00) for Property Damage arising out of each occurrence, and

or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

6.02 Additional Insured.

Lessor shall be named as an Additional Insured on all insurance policies either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

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 Lessor or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

Commercial General Liability and Property Damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager.

6.03 Fire and Other Risks Insurance.

Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all Improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such Improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement of the Parties, an appraisal of the Premises and Improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selected be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee, unless the value claimed by Lessee is confirmed through such an appraisal, in which case the Lessor shall reimburse the Lessee for the cost of such appraisal.

6.04 Payment and Performance Bonds.

Prior to commencement of any construction work on the Premises the total cost of which will exceed Fifty Thousand Dollars (\$50,000.00), Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded.

Said bond shall guarantee the faithful performance of all necessary construction and completion of Improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.

- B. Prior to the date of commencement of any construction, a payment bond with Lessee's contractor or contractors as principal in a sum equal to the full amount of the construction contract project.

Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction project.

In accordance with Article 35.03.004 of the Texas Insurance Code, if a Performance or Payment bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas.

In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable Letter of Credit, in a form acceptable to the Director in her/his reasonable discretion and approved by the City Attorney, in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated by the construction contract.

6.05 Authorized Insurance and Surety Companies.

All required policies of insurance and bonds shall be written by insurance and surety companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) calendar days prior to the effective date of the insurance policy for which the certificate is issued and prior to the Effective Date of this Lease. Each insurance policy shall contain:

- A. a statement of the coverage provided by the policy;
- B. a statement certifying the Lessor to be listed as an additional insured in the policy;
- C. a statement of the period during which the policy is in effect;
- D. a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. an agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days prior written notice to Lessor.

6.06 INDEMNIFICATION.

LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED

DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF LESSEE'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF LESSEE OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LESSOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LESSOR BY REASON OF ANY SUCH CLAIM, LESSEE, UPON NOTICE FROM LESSOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR.

**ARTICLE VII - DESTRUCTION OF IMPROVEMENTS BY FIRE
OR OTHER CASUALTY**

7.01 Obligations of Lessee.

During the term hereof, except as provided in Section 7.03 below, should the Improvements constructed by Lessee upon the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and Improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee as aforesaid and subject to and in accordance with the following terms and conditions:

- A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms and provisions of the Declaration. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.
- B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits for the Premises. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Prior to commencing construction, Lessor may require Lessee to furnish a performance and payment bond in accordance with Section 6.04 and, if requested, Builder's Risk Insurance.

- D. Upon compliance with the foregoing, Lessee's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies having been paid to Lessee. After actual receipt of such insurance proceeds, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.
- E. Upon completion of the construction, Lessee shall deliver to Lessor, a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises.

7.02 Insurance Proceeds.

Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall disburse such proceeds during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged Improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

7.03 Cancellation of Lease.

Should the Improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty not caused directly or intentionally by Lessee but materially impairing Lessee's use of the Premises, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and Lessee shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction, in which case Lessee agrees that the following provisions shall apply: 1) Lessee shall return the Premises free and clear of all Improvements (both above and below ground level), rubble and trash; 2) upon Lessee's return of the Premises to Lessor, there shall be no environmental issues on the Premises, as evidenced by a Phase 2 environmental study; 3) Lessee shall pay ground rental for 180 days after the Premises is cleaned in accordance with this paragraph in order to allow Airport the time to secure another tenant. If Lessee elects to cancel this Lease under this provision, there shall be no refund to Lessee for the prepayment of Rent on the Improvements. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessee. Land rents payable under this Lease shall be prorated and paid to the date of such cancellation.

ARTICLE VIII - CONDEMNATION

8.01 Definitions.

The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning

agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.

- B. "Total Taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial Taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - (1) The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
 - (2) The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
 - (3) The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.
- D. "Partial Taking" means the taking of a fee title that is not either a Total or Substantial Taking.
- E. "Notice of Intended Taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to take containing a description or map reasonably defining the extent of the Taking.
- F. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- G. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

8.02 Notice of Condemnation.

The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of Intended Taking;

- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

8.03 Rights of Parties during Condemnation Proceeding.

Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or Intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

8.04 Taking of Leasehold.

Upon a Total Taking, Lessee's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation. If the Taking is a Substantial Taking under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the Intended Taking, elect to treat the Taking as a Total Taking. If Lessee does not so notify Lessor, the Taking shall be deemed a Partial Taking. Upon a Partial Taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

8.05 Total Taking.

All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by any Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

8.06 Partial Taking.

Upon a Partial Taking, all Awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises, as unencumbered by the Lessee-owned improvements but subject to the Lease.

8.07 Obligations of Lessee under Partial Taking.

Promptly after any such Partial Taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last two (2) years of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect;

provided however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

8.08 Taking of Temporary Use of Premises and Improvements.

Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such Taking, Lessee shall receive, hold and disburse the Award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such Taking is for a period extending beyond the expiration date of the term, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings.

ARTICLE IX - ENCUMBRANCES

9.01 Encumbrance.

As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiaries under deeds of trust, whether one or more. Lessee may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage and such mortgage shall be used for the purposes of making improvements to the Premises. The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

- A. The amount of the obligation secured by the Mortgage;
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Lessor shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Lessor upon Lessee under the terms and provisions of this Lease so long as such Mortgage is in effect.

9.02 Mortgagee's Rights.

Upon receipt of a notice or demand in accordance with Section 9.01 above, Mortgagee shall have one hundred and twenty (120) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;

- C. If the default cannot be cured within one hundred and twenty (120) days, to commence performance within such one hundred twenty (120) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.
- E. No Mortgagee shall have any personal liability under this Lease unless and until it becomes Lessee under this Lease.
- F. The Director will, upon request by any Mortgagee, certify in writing that this Lease is in full force and effect, whether this Lease has been amended, that to Lessor's knowledge Lessee is not in default, and the date through which rent has been paid.
- G. If this Lease and the fee estate in the Premises are ever commonly held as a result of a default by Lessee, then they shall remain separate and distinct estates and shall not merge until such time as all cure periods for Mortgagee specified in this Lease have expired.
- H. This Lease may not be amended, modified, changed, cancelled, waived, or terminated without prior written notice to all Mortgagees. Lessor shall not accept a voluntary surrender of the Lease without consent by all Mortgagees.

9.03 Rights on Foreclosure.

In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Lessee's interest in lieu of foreclosure shall succeed to all of Lessee's rights, interests, duties and obligations under this Lease.

ARTICLE X - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

10.01 Expiration.

This Lease shall expire at the end of the term or any extension thereof.

10.02 Cancellation.

Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of thirty (30) days after Lessor has notified Lessee in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property and such petition is not dismissed within ninety (90) days after filing;
- C. Make any general assignment for the benefit of creditors;

- D. Abandon the Premises;
- E. Be in violation of any local, state, or federal laws rules or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Lessee, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within ninety (90) days after the appointment of such receiver.

In any of the aforesaid events, which shall be events of default, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

10.03 Repossessing and Reletting.

In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, change the locks on the Premises, install fences and gates, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and
- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and

conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

10.04 Assignment and Transfer.

Lessee shall have the right and privilege to assign or transfer this Lease subject to the prior written approval of Lessor, which shall not be unreasonably withheld; provided, however, that Lessor's approval shall not be required in the event of an assignment of this Lease by Lessee to the first leasehold Mortgagee.

Any person or entity to which this Lease is assigned to pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

10.05 Subleasing.

Lessee shall have the right to sublease all or any part of the Premises hereunder for the same purposes permitted under the terms and provisions of this Lease, including but not limited to the insurance and indemnity requirements. Any such sublease executed after the Effective Date of this Lease shall be subject to the same conditions, obligations and terms as set forth herein and Lessee shall be responsible for the observance by its sublessees of the terms and covenants contained in this Lease. On or before January 1st and July 1st of each year of the Initial Term or Option Period of this Lease, Lessee shall report to Lessor any subleases of the Premises, or any improvements thereon and, upon request of Lessor, Lessee shall furnish Lessor with a copy of the Sublease Agreement. In addition, Lessee shall provide a list of its sublessees and the sublessees contact information and shall provide to Lessor updated information whenever said sublessees information changes.

10.06 Landlord's Lien.

It is expressly agreed that in the event of default in the payment of Rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for Rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary and proper expense of removing, storing and selling

such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

ARTICLE XI - GENERAL PROVISIONS

11.01 Continuity of Deed Restrictions and Covenants.

This Lease agreement is subject to the terms, covenants and conditions contained in the Declaration. Lessor reserves the right to revise the standards set forth in Exhibit "B" provided, however, that such revisions will not cause a substantial reduction in the value of Lessee's leasehold interest, result in a material cost or expense to Lessee, or be contradictory to the reasonable and prudent operation of property located at the Airport similar to the Premises. Lessor's right to revise the restrictions and covenants contained in the Declaration, is limited to the right to revise said document because of the development of new concepts or improved construction and architectural techniques and, in any event, such revisions shall be operative on a going forward basis only and shall not apply retroactively to any existing improvements.

11.02 Right of Flight.

Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the Airport.

Lessor reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at the Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

Lessor reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from the Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

11.03 Time Is of the Essence.

Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

11.04 Notices.

All notices provided to be given under this Lease shall be given by a) expedited delivery service with proof of delivery, or b) United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the proper party at the following addresses:

LESSOR:	City Clerk City of El Paso P.O. Box 1890 El Paso, Texas 79950-1890	Director of Aviation El Paso International Airport 6701 Convair Rd. El Paso, Texas 79925-1099
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LESSEE: B.H. Zane Grey Butterfield, LLC

11111 Santa Monica Blvd, Ste. 600
Los Angeles, CA 90025

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

11.05 Attorney's Fees.

If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

11.06 Agreement Made in Texas.

The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

11.07 General Civil Rights Provision.

Lessee agrees to 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 disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

11.08 Compliance with Nondiscrimination Requirements.

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (for purposes of this Section 11.08 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 Acts 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. **Nondiscrimination:** 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 Nondiscrimination Acts and Authorities, 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 Nondiscrimination Acts and Authorities 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 Lessor (for purposes of this Section 11.08 hereinafter referred to as the "sponsor") or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities 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 subcontract 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.

11.09 Affirmative Action.

Lessee assures that it will undertake an affirmative action program as required 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 for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of

activity covered by this Subpart. Lessee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

11.10 FAA Order 1400.11.

Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

- A. Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in Pertinent List of Nondiscrimination Authorities (Federal Aviation Administration Order 1400.11, Appendix 4) as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix C]. The Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the listed acts and authorities appearing in the Acts and Regulations.
- C. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix D]

- D. During the term of this Lease, Lessee for itself, its assignees, and successors in interest, as a part of the consideration hereof, agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
 - 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - The Age Discrimination Act of 1975, as amended, (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
 - The Federal Aviation Administration’s Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 USC 1681 *et seq.*).
- E. B. In the event of breach of any of the covenants in this section 3, Lessor shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]

11.11 Cumulative Rights and Remedies.

All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

11.12 Interpretation.

Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

11.13 Agreement Made in Writing.

This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

11.14 Paragraph Headings.

The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

11.15 Severability.

If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

11.16 Successors and Assigns.

All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

11.17 Taxes and Other Charges.

Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Lessee or Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, during the Term of this Lease including any extensions granted thereto. By March 1 of each year of this Lease and at no charge to Lessor, Lessee will provide written proof satisfactory to the Director that all taxes and governmental charges of any kind as described herein have been paid in full.

Lessor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from Lessee's use of the property or possession of the Premises.

Lessee in good faith may contest any tax or governmental charge, provided that Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to Lessor, such action will not adversely affect any right or interest of Lessor.

11.18 Waiver of Warranty of Suitability.

LESSOR DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. LESSEE LEASES THE PREMISES AS IS AND LESSOR DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE NOR SHALL LESSOR BE RESPONSIBLE OR LIABLE FOR ANY CONDITION OF THE PREMISES WHICH SHALL SOLELY BE THE RESPONSIBILITY OF LESSEE.

11.19 Survival of Certain Provisions.

All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 5.03 and 6.06 for two years.

11.20 Force Majeure.

It is expressly agreed and understood by the parties to this Lease that if the performance of any obligations hereunder is delayed beyond such party's reasonable control by reason of war, civil commotion, acts of God, outbreak of hostilities, epidemic, acts of terrorism, strike, severe weather or other casualty or court injunction, the party so obligated or permitted shall be excused from doing or performing same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period of time such party was reasonably delayed.

11.21 Restrictions and Reservations.

This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

Lessor reserves for itself and any authorized agent to, at any reasonable time and with 24-hour notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

11.22 Subordination of Lease.

All rights granted in this Lease shall be subordinate to the rights in any deed from the United States to the City of El Paso. This Lease shall further be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Premises, Lessee may cancel this Lease in its entirety. Should Lessee cancel its lease pursuant to this paragraph, it can pursue any remedies available to it under the Section VIII of this Lease.

11.23 Authorization to Enter Lease.

If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

11.24 Effective Date/Memorandum.

Regardless of the date signed, this Lease shall be effective as of the date indicated in the Term section of this Lease. Simultaneously with the full execution and delivery of this Lease, Lessor and Lessee may execute and acknowledge a memorandum of this Lease in form and substance reasonably acceptable to Lessor and Lessee. If the parties execute said memorandum, Lessee shall provide to Lessor a copy of the memorandum filed of record in the Real Property Records for El Paso County, Texas.

(Signatures begin on following page)


LESSOR'S SIGNATURE AND ACKNOWLEDGMENT

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day of _____, 2022.

LESSOR: CITY OF EL PASO


Tomás González
City Manager

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2022, by Tomás González as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

LESSEE'S SIGNATURE AND ACKNOWLEDGMENT

LESSEE: B.H. ZANE GREY
BUTTERFIELD, LLC

DP
AG

By: 

Print Name: Allen Gozini
Title: Manager

ACKNOWLEDGMENT

THE STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 2022, by _____, its _____ of _____ (Lessee).

Notary Public, State of _____

My Commission Expires:

(see attached)

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
 COUNTY OF LOS ANGELES)

On May 2nd, 2022, before me, Y. Wachtel, a Notary Public, personally appeared Allen Gordin who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Y. Wachtel

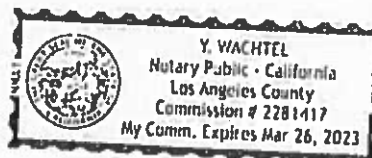


EXHIBIT "A"



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 (9 ZANE GREY STREET)

A 5.0681 acres parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Lots 2B and 2C, Block 1, Butterfield Trail Industrial Park Unit One Replat "A", as filed in Volume 56, Page 71 El Paso County Plat Records and being more particularly described by metes and bounds as follows:

COMMENCING for reference at a city monument found at the right-of-way centerline intersection of Butterfield Trail Boulevard (140 feet wide) and Zane Grey Street (90 feet wide); **WHENCE**, a city monument found at the right-of-way centerline intersection of said Zane Grey Street and Leigh Fisher Boulevard (120 feet wide) bears, South 02°12'13" West (South 00°59'34" West~record), a distance of 2,151.28 feet (2,151.20 feet~record); **THENCE**, leaving the intersection of said Butterfield Trail Boulevard and Zane Grey Street and following the centerline of said Zane Grey Street, South 02°12'13" West (South 00°59'34" West~record), a distance of 525.00 feet; **THENCE**, leaving the centerline of said Zane Grey Street, North 87°47'47" West, a distance of 45.00 feet to a 5/8 inch rebar found on the west right-of-way line of said Zane Grey Street for the northeast corner and the **POINT OF BEGINNING** of the parcel herein described;

THENCE, following the west right-of-way line of said Zane Grey Street, South 02°12'13" West (South 00°59'34" West~record), a distance of 458.50 feet to a chiseled "X" on concrete found for the southeast corner of parcel herein described;

THENCE, leaving the west right-of-way line of said Zane Grey Street, North 87°47'47" West (North 89°00'26" West~record), a distance of 481.50 feet to a 1/2-inch rebar found on the east line of a Platted Railroad Right-of-Way (33.5 feet wide) for the southwest corner of parcel herein described;

THENCE, following the east line of said Platted Railroad Right-of-Way, North 02°12'13" East (North 00°59'34" East~record), a distance of 458.50 feet to a 1/2-inch rebar found for the northwest corner of parcel herein described;

THENCE, leaving the east line of said Platted Railroad Right-of-Way, South 87°47'47" East (South 89°00'26" East~record), a distance of 481.50 feet to the **POINT OF BEGINNING**.

Said parcel containing 5.0681 acres (220,768.6 square feet), more or less and being subject to all easements, restrictions and covenants of record.

Basis of Bearing is the Texas State Plane Coordinate System, Central Zone 4203, North American Datum of 1983 (NAD 83) (2011), determined via the El Paso County Virtual Reference Station (VRS) Network

Aaron Alvarado, TX R. P. L. S. No. 6223

Date: April 13, 2022

05100-123-9 ZANE GREY ST-DESC



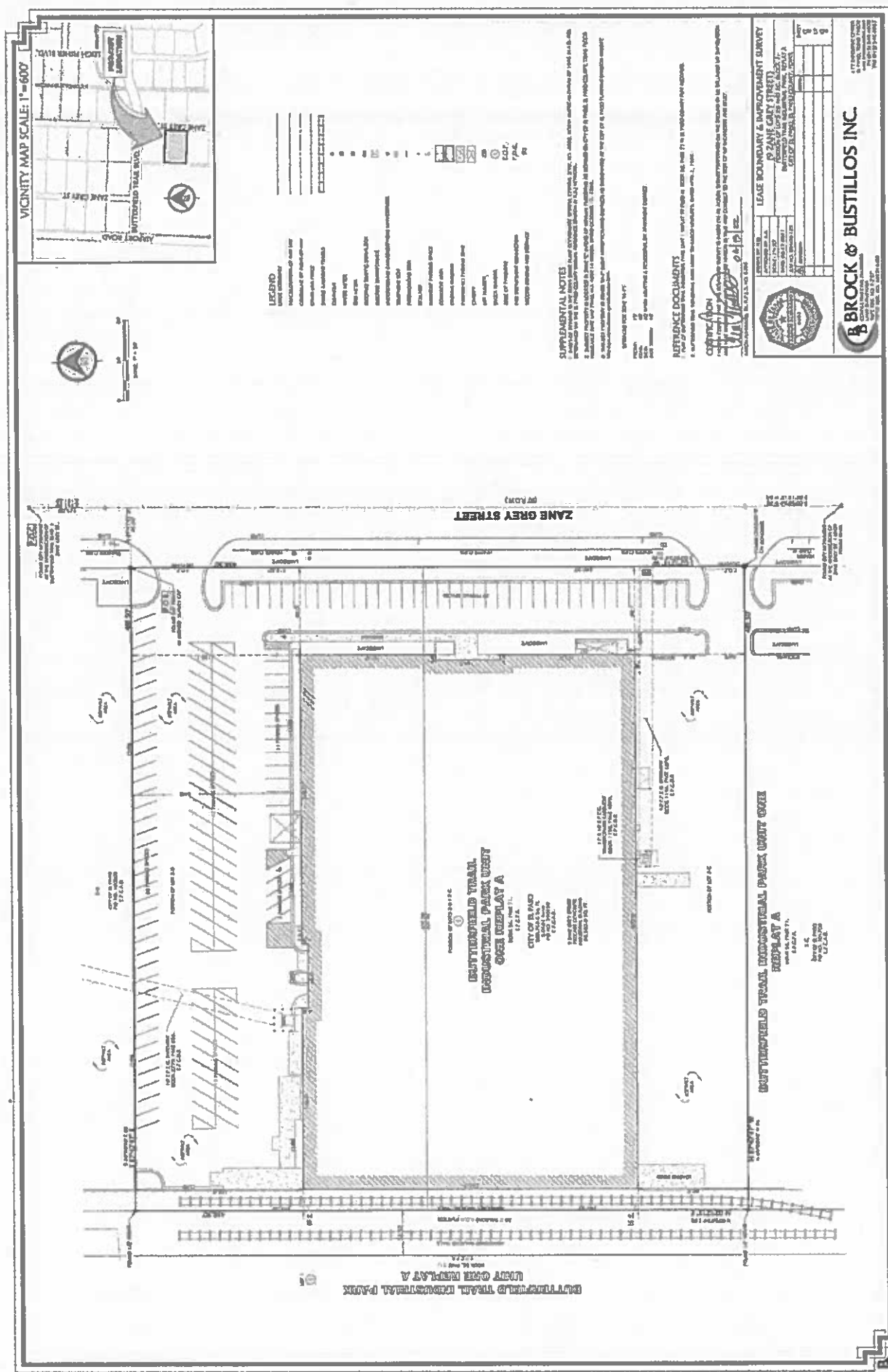


EXHIBIT "B"

EXHIBIT

DECLARATION OF RESTRICTIONS AND COVENANTS

BUTTERFIELD TRAIL INDUSTRIAL PARK

El Paso International Airport

El Paso, Texas

EXHIBIT

Revised: 5/02/94

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DECLARATIONS OF RESTRICTIONS AND COVENANTS
BUTTERFIELD TRAIL INDUSTRIAL PARK

El Paso International Airport
El Paso, Texas

THIS DECLARATION, made this _____ day of _____,
19__, by the CITY OF EL PASO, a political subdivision of the State
of Texas, hereinafter referred to as the "Declarant";

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of El Paso International
Airport, located in the City of El Paso, State of Texas,
hereinafter referred to as the "Airport"; and

WHEREAS, the Airport has within its physical boundary certain
real property intended for the establishment of a desirable
industrial environment for certain manufacturing and industrial
uses and, under statutory authority, for certain manufacturing and
merchandise manipulation to encourage and expedite foreign trade,
and known as Butterfield Trail Industrial Park, hereinafter
referred to as the "Property"; and

WHEREAS, the Butterfield Trail Industrial Park has been
designated as a Foreign-Trade Zone, thereby permitting foreign
trade activities to occur on any Lot in the Property; and

WHEREAS, to establish a general plan for improving and
developing the Property and to use the Property as a Foreign- Trade
Zone, the Declarant desires to subject the development of the
Property to certain conditions, restrictions, and covenants on
which the entire Property and Improvements thereto shall be bound;

WHEREAS, the Declarant desires to subject the development of
said Property to certain conditions, restrictions, and covenants to

ensure the development of a desirable environment for said activities, and to ensure that said development will be compatible with adjacent land uses on the Airport by performance, appearance, and general operating characteristics;

NOW, THEREFORE, the Declarant hereby declares that (except to the extent compliance with this revised Declaration of Restrictions and Covenants would cause undue hardship or expense for a Tenant with respect to leasehold improvements and activities undertaken by him prior to the effective date of this instrument in conformity with the Restrictions and Covenants incorporated in his lease) the Property more particularly described hereinafter is and shall be held and conveyed subject to the conditions, restrictions, and covenants hereinafter set forth, each and all of which are for the benefit of each Tenant of any portion of said Property, each and all of which shall inure to and pass with each and every lot on said Property, and each and all of which shall apply to and bind the respective successors in interest of said Property and any portion thereof, as follows:

ARTICLE 1

PROPERTY

The real property subject to this Declaration is situated on El Paso International Airport in El Paso County, El Paso, Texas, and is known as the Butterfield Trail Industrial Park and Foreign-Trade Zone No. 68.

ARTICLE 2

DEFINITIONS

The words and phrases defined in this Article shall have the following meanings when used elsewhere in this Declaration:

2.01 AIRPORT BOARD: An advisory board appointed by the Mayor and City Council for the purpose of advising them with respect to Airport matters.

2.02 AIRPORT MANAGER: The Manager of El Paso International Airport.

2.03 BUILDING: The main portion of any building located on a Lot or Lots and all projections or extensions therefrom, including garages, outside platforms and docks, carports, canopies, and porches. Ground cover shall not be included.

2.04 BUILDING COVERAGE: The surface area of a Building Site that may be covered by Buildings, expressed as a percentage of the total site area.

2.05 BUILDING SITE: The entire Lot or Lots (if contiguous) leased by one Tenant.

2.06 CITY: The City of El Paso, its duly elected Council, or any duly constituted agent or committee representing said Council to fulfill the obligations herein required.

2.07 DECLARANT: The City of El Paso, a political subdivision of the State of Texas.

2.08 FAA: The Federal Aviation Administration of the U. S. Government or any federal agencies succeeding to its jurisdiction.

2.09 FOREIGN-TRADE ZONE: The use of any or all Lots or any part thereof in the Butterfield Trail Industrial Park for Industrial Operations or other activities that comply with the U. S. Foreign Trade Zone Act Regulations (Title 15, Code of Federal Regulations), U. S. Customs Service Regulations, and City regulations of Foreign-Trade Zone use.

2.10 FRONT LOT LINE: The property line that faces a Street. On corner Lot or Lots fronting on two parallel Streets, the Front Lot Line shall mean the property lines facing each Street, one of which shall be designated by the City as the principal Street.

2.11 IMPROVEMENTS: Improvements shall mean but shall not be limited to Buildings, bridges, overpasses, retaining walls, ditches, culverts, lighting supports, earth fills, earth excavation, paving, ground cover, sidewalks, fences, screening walls, signs, and landscaping, constructed, installed, or placed on, under, or above any Lot by or on account of a Tenant.

2.12 INDUSTRIAL OPERATION: The manufacturing of products from raw or semi-finished materials, including research, warehousing and wholesaling operations. Retail sales of goods and services are specifically prohibited except as otherwise permitted herein with respect to the commercial support areas.

2.13 INDUSTRIAL PARK COMMERCIAL SUPPORT: The retail sale of goods and services on a limited basis primarily to the employees of the Tenants in the Butterfield Trail Industrial Park as specifically provided herein.

2.14 LOT: One of the numbered parcels on the map entitled "Butterfield Trail Industrial Park," as filed with the County Clerk, County of El Paso, Texas.

2.15 REAR LOT LINE: The property line generally paralleled to the Front Lot Line and contiguous to another Lot. On corner Lots, the Rear Lot Line shall be parallel to the Front Lot Line facing the principal Street; on Lots fronting on two parallel Streets, there shall be no Rear Lot Line.

2.16 SETBACK: The distance a Building must be set back from the property line of a Lot.

2.17 STREET: Any street, highway, or other thoroughfare shown on the map entitled "Butterfield Trail Industrial Park," as filed with the County Clerk, County of El Paso, Texas.

2.18 TENANT: Any person, firm or corporation leasing or subleasing one or more Lots or space in a Building on a Lot.

ARTICLE 3

PERMITTED USES AND PERFORMANCE STANDARDS

3.01 PERMITTED USES: No Building, structure, or land shall be used for any purpose other than the following, or any combination thereof, and such uses shall satisfy the standards set forth in this Declaration:

A. All Blocks and Lots in the Butterfield Trail Industrial Park, except as Specified in Paragraph 3.01(B):

1. Unless specifically prohibited as herein defined, any Industrial Operation shall be permitted. In addition, if approved by the U. S. Customs Service

or other federal agency having jurisdiction, any Industrial Operation or activity complying with the Foreign-Trade Zone Act Regulations (Title 15, Code of Federal Regulations) shall be permitted.

All industrial processes shall be carried out entirely within facilities so designed to prevent any nuisance as defined in Paragraph 3.04 to adjacent Lots. An exception shall be made during periods when equipment breaks down in such a manner to make it evident that it was not reasonably preventable.

2. General permitted industrial classifications are as follows: research and light industry, industrial support, and medium and heavy industry, warehousing, and wholesaling.
3. Administrative and professional office use shall be permitted.

B. Lots 1 through 5, Block 3, Block 4 and Block 6 and such other blocks or Lots that may be designated by the Declarant in future stages of the Butterfield Trail: Unless specifically prohibited as herein defined, the following Industrial Park Commercial Support activities shall be permitted:

1. Restaurants, including fast food establishments;
2. Offices;
3. Day-care centers;
4. Banks or banking facilities;

5. Printing, reproduction, and photographic services for Industrial Operations;
6. Office and graphics supplies;
7. Commercial exercise clubs; and
8. Self-service gas stations.

3.02 PROHIBITED USES: The following uses shall not be permitted on a Lot at any time: residential, retail commercial except as permitted in Paragraph 3.01(B); trailer courts; labor camps; junkyards; mining and quarrying; dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or refuse; fat rendering, stockyards or slaughtering of animals; smelting of iron, tin, zinc, or other ores; large animal raising.

3.03 APPROVAL OF USES: Certain industrial uses may neither be specifically prohibited nor specifically permitted. In these cases, approval in writing of the use must be obtained from the Declarant or its authorized agent prior to approval of plans and specifications for construction of the facility.

3.04 PERFORMANCE STANDARDS: No Lots shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions that may affect any other Lots, including but not limited to:

- Hazardous activities
- Vibration or shock
- Noise
- Smoke, dust, odor, or other forms of air pollution
- Heat or glare
- Electronic or radio interference
- Illumination
- Liquid or solid refuse or waste
- Other substance, condition, or element in such amount as to affect the surrounding area or adjoining premises.

A. Hazardous Activities: No activity shall be conducted on any Lot that may be or may become hazardous to public health and safety, that shall increase the fire insurance rating for adjoining or adjacent Lots, or that shall be illegal.

B. Vibration or Shock: No vibration or shock perceptible to a persons of normal sensibilities shall be permitted within fifty (50) feet of the property line.

C. Noise: No noise objectionable to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.

D. Air Pollution: Except for the operation of motor vehicles to, from, and on a Lot as incidental to the use thereof, the following requirements shall apply:

1. Any use producing smoke, gas, dust, odor, fumes, aerosols, particulates, products of combustion, or any other atmosphere pollutant shall be conducted within a completely enclosed Building.
2. Any use producing atmospheric emissions shall comply with the standards of the U. S. Environmental Protection Agency, the Texas Air Control Board, any local environmental regulatory body, or any successor organizations performing similar functions, as such regulations exist at the date of the lease to which this Declaration is attached, or which may be enacted during the term of such lease.

3. The emission of odors that are detectable at any point beyond the property line of any Lot or Lots shall not be permitted.

E. Dust Control: All ground areas not covered by structures shall be landscaped or surfaced with concrete, asphaltic concrete, asphalt oil, or other comparable dust-free surfacing; shall be maintained in good condition, free of weeds, dust, trash, and other debris; and shall be properly drained and graded. Such development shall be accomplished before issuance of a certificate of occupancy.

F. Heat or Glare: Any operation producing intense glare or heat shall be performed within an enclosed screened area in such manner that the glare or heat emitted will not be discernible from the property line.

G. Electronic or Radio Interference: No electrical, electronic, or radio emissions shall be produced that will interfere, obstruct, or adversely affect the operation of air navigation aids and Airport communications.

H. Illumination:

1. The source of illumination of any kind on a Lot shall not be visible at the property line except for normal installation of standard interior lighting fixtures within Buildings.
2. The maximum height of any lighting standards shall be limited to thirty (30) feet above curb level.
3. The intensity of illumination shall be limited to

10 foot candles or 0.1 lumens per square foot per open areas or surfaces visible at the property line.

4. The design and location of exterior lighting shall comply in all respects to the requirements of the FAA or any other governmental agency having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around the Airport.

I. Refuse and Trash: No refuse or trash shall be kept, stored, or allowed to accumulate on any Lot.

J. Sewage Disposal Systems: No cesspool, septic tank, or other sewage disposal system or device shall be installed, maintained, or used on any Lot without the approval of the City.

3.05 SECURITY: If a Tenant activates space on its leased premises for Foreign-Trade Zone usage, said Tenant will comply with the security requirements imposed by the U. S. Customs Service or other federal agencies having jurisdiction.

ARTICLE 4

REGULATION OF IMPROVEMENTS

4.01 MINIMUM SETBACK LINES: No structure of any kind and no part thereof shall be placed on any Lot closer to a property line than hereby described.

A. Front Setback: Setbacks from Front Lot Lines shall be a distance equal to twenty percent (20%) of the length of the

Building or two hundred percent (200%) of the height of the Building, whichever is greater, from the Street; the area between the Street(s) and the Front Setback Line shall be landscaped if no visitor parking is provided in the Front Setback areas. If visitor parking is provided in the front Setback area, an area equivalent to twenty percent (20%) of the Front Setback shall be landscaped. All Buildings shall be set back a minimum of twenty-five (25) feet from the Front Lot Line. If the Tenant's Lot or Lots front on more than one Street, the front Setback shall be from all Lot lines facing a Street.

The front Setback area(s) shall be landscaped and planted in accordance with the Airport Landscaping Standards except for areas used for parking lots, driveways, or sidewalks. In no event shall less than twenty percent (20%) of the required minimum front Setback area(s) facing a Street be landscaped and planted.

B. Side Setbacks: Side Setbacks shall be a minimum of thirty (30) feet, and up to fifty percent (50%) of the required minimum Setback shall be landscaped and planted at the discretion of Declarant or its authorized agent. If a single Tenant uses two or more Lots with a common boundary line between them, the side Setback restrictions may be waived by the Declarant or its authorized agent for the term of the shortest lease.

C. Rear Setback: Rear Setback shall be forty (40) feet from the Lot line or utility easement line, except that Buildings on Lots abutting railroad spurs may have loading docks extending to the Rear Lot Line, provided such construction does not interfere

with utility services.

D. **Exclusions from Setback Requirements:** The following structures or Improvements are excluded from the Setback requirements:

1. Roof overhang.
2. Steps and walks.
3. Paving and associated curbing, except that parking areas will not be permitted within ten (10) feet of Street property lines.
4. Fences.
5. Landscaping.
6. Planters, none over four (4) feet in height.
7. Railroad spur tracks, switches, and bumpers.
8. Approved signs identifying the Tenant.

4.02 EXCAVATION:

A. General: No excavation shall be made by a Tenant unless the excavation is directly related to the construction of an Improvement. When construction is complete, all disturbed ground shall be filled or graded and shall be landscaped in accordance with and conform to the Airport Landscaping Standards.

B. Cut and Fill: The Declarant or any authorized agent thereof may at any time make such cuts and fills on any Lot and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the Streets in or adjacent to any Lot and to drain surface waters therefrom; provided that after the principal structure on a Lot shall have been completed in

accordance with approved plans, the rights of the Declarant under this Paragraph 4.02 shall terminate with respect to such Lot, except that the Declarant shall thereafter have the right to maintain existing Streets and drainage structures.

4.03 LANDSCAPING: Every Lot on which a Building shall have been placed shall have landscaping according to plans prepared in accordance with the standards established in this Paragraph 4.03 and any amendments or successors standards thereto. The first phase of such landscaping, as approved, shall have been completed within ninety (90) days of the date the certificate of occupancy is filed on the initial Building.

Setback areas shall be landscaped to the minimum extent outlined in Paragraphs 4.01(A) and (B). In addition, paving or landscaping shall extend from the property line to the curb, such paving and landscaping to be compatible with treatment for this area on other Lots on the same block. All landscaping shall be maintained in a sightly and well kept condition.

Lessee shall landscape only in accordance with a plan submitted to and approved in writing by the Declarant or its authorized agent prior to any development. Such landscaping plan shall include information regarding the type of sodding, the type of seeding, types of trees, hedges and shrubs, and information regarding other customary landscape treatment for the entire applicable site, in accordance with such approved plans and said plan may not be altered, amended or revised without submitting the revised landscaping plan for prior written approval by the

Declarant or its authorized agent.

A. Landscaping Standards: It is the intent of the Declarant to obtain high quality landscaping throughout the Property which is the subject of this Declaration. If lessee should fail, in the sole and final judgment of Declarant, to maintain landscaping consistent with Declarant's intent, Declarant may, at its option, do such maintenance work as it deems advisable, and the actual cost of labor and materials multiplied by 1.25 shall be added to the next monthly rental payment of lessee as an additional charge.

The following requirements shall apply:

1. All street setback areas shall be landscaped except those areas approved for walkways, driveways and parking.
2. All areas in site setbacks shall be fully landscaped, except for area approved to be paved.
3. Desert planting, defined as native desert plants set in ground cover of boulder, pebbles, sand or landscape shall not comprise more than fifty percent (50%) of any given landscaped setback area.
4. The lessee shall landscape and maintain unpaved areas between the curb and the setback lines. The first ten (10) feet of setback from street property lines shall be used exclusively for landscaping except where driveways bisecting the required landscape area occur.
5. Complete landscape and sprinkler plans are required for review. Specifications should indicate soil treatment and preparation.

4.04 SIGNS: The number, size, design, and location of all signs displayed for observation from outside a Building whether displayed on, near, or within a Building shall be subject to approval by the Airport Manager after review by the Airport Architectural Review Committee prior to installation, and in accordance with any Airport Graphics Standards and any amendments or successor standards thereto.

A. AIRPORT GRAPHICS STANDARDS: It is the intent of the Declarant that all signs be uniform and limited to specified graphic guidelines.

No billboards, flashing lighting or advertising sign shall be permitted on any site within the Property. Only signs identifying the name, business and products of the person or firm occupying the premises and those offering the premises for sale or lease will be permitted.

Only one (1) sign of approved design shall be permitted on the front setback line and one (1) sign may be attached to the side of a building which faces a public street.

Design and construction of signs shall be approved in writing by the Declarant or its authorized agent after review by the Architectural Review Committee with respect to size, design and color. Signs shall also conform to local building codes as well as regulations of the FAA.

Multiple occupancy building signs may be approved on a case-by-case basis by the Declarant or its authorized agent after review by the Architectural Review Committee.

B. COMMERCIAL SUPPORT AREAS: Signs within the Commercial Support areas shall be limited in height to seven (7) feet, and in space to no more than four (4) square feet. All signs in the Commercial Support area shall be uniform. No signs shall be affixed to or otherwise placed on a building in a Commercial Support area except immediately adjacent to a door and of a style acceptable to Declarant or its authorized agent.

4.05 PARKING AREAS: Adequate offstreet parking shall be provided to accommodate the parking requirements of a business within the limits of the Lot. Parking for employees, visitors, and business vehicular traffic shall be provided on the Lot and designated by white lines painted on the paved surface. All parking must comply with applicable City parking ordinances.

Parking shall not be permitted on the public Streets and between the Street pavement and property line. If visitor parking is permitted in the front Setback area(s), such parking shall be screened from the Street(s) by approved trees or shrubbery specified in the Airport Landscaping Standards or such other screening as may be approved by the Declarant or its authorized agent.

4.06 STORAGE AND VEHICLE LOADING AREAS: All outside storage and refuse areas shall be constructed and contained to eliminate odors, insects, dust, visual nuisances, and other similar nuisance.

No materials, supplies, or equipment, including company-owned or company-operated trucks, shall be stored in any area on a Lot except inside a closed Building or behind a barrier completely

screening such areas from view of adjoining Lots or public Streets or both.

All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on the Lot(s) leased and shall not encroach into Setback areas; onstreet vehicle loading shall not be permitted. Vehicle loading shall be permitted only at the rear of the Buildings, or on a side, except that such loading performed at a side shall be completely screened from view of adjoining Lots or public Streets or both.

4.07 BUILDING HEIGHTS: Building heights shall be limited to the height requirements established in Federal Aviation Regulations Part 77 or successor regulations for the Airport but shall not exceed a maximum of fifty (50) feet above the curb line, including any building equipment, penthouse, extrusions, etc.

4.08 BUILDING COVERAGE: Buildings shall not cover more than fifty percent (50%) of a Building Site.

4.09 BUILDING REGULATIONS:

A. City Zoning Code: The City of El Paso Zoning Code, as amended, shall apply except that in the event of a conflict between the City Zoning Code and the standards in this Declaration, the more stringent requirement shall apply.

B. FAA Regulations: All construction must comply with applicable codes and ordinances and the rules and regulations of the FAA where applicable.

C. Final Approval By Declarant: Final approval of the compatibility of any Improvement with the overall architectural

character of the Butterfield Trail Industrial Park shall remain with the Declarant. Construction shall not commence before the Declarant has granted final approval.

4.10 TYPE OF CONSTRUCTION:

A. Building Materials: All Buildings shall be framed with reinforced concrete or masonry, structural steel, structural aluminum, or wood that has been satisfactorily treated to resist fire, rot, and insects. Siding shall be masonry, concrete or glass. Porcelain, enameled steel, anodized aluminum or treated wood may be used upon approval of the Airport Manager based upon the favorable recommendation of the Airport Architectural Review Committee. Concrete, masonry, and treated wood siding shall be kept neatly painted, if used. State-of-the-art changes in types of construction may be permitted from time to time only upon the express condition that any such change be consistent with the intent of this Declaration and that any such change receives written approval of at least three members of the Airport Architectural Review Committee. Pre-fabricated metal buildings are specifically prohibited.

B. Roof Screening: All heating and cooling towers, equipment, etc., placed on the roofs of Buildings shall be screened or enclosed from view so that they are architecturally compatible with the main portion of the Building and cannot be seen from any point within two hundred-fifty (250) feet of the Building at an eye level of six (6) feet above the curblineline.

C. Accessory Buildings, Enclosures, and Fences: Accessory

Buildings, enclosures, and fences shall enhance the design of and be of the same quality of materials as the Buildings they serve.

D. Building Codes and Ordinances: All Buildings shall conform to all local building codes and ordinances.

E. Approval by Airport Manager: The type of building construction proposed shall be subject to the written approval of the Airport Manager as authorized agent of Declarant and the decision of Airport Manager shall be based on the recommendations of the Airport Architectural Review Committee and appealable to the City Council through the Airport Board.

4.11 PIPES: No water pipes, gas pipe, sewer pipe, or drainage pipe (other than those within structures) shall be installed or maintained on any Lot above the surface of the ground, except hoses and movable pipes used for irrigation or similar purposes.

ARTICLE 5

SUBMISSION OF PLANS FOR IMPROVEMENTS

5.01 SUBMISSION OF PLANS: All plans for Improvements shall be prepared by registered engineers, architects, and landscape architects; shall be of contemporary design; and shall require prior written approval by the Declarant or its authorized agent before any construction may begin.

Prior to the execution of a lease for a Building Site, the Declarant or its authorized agent and the Tenant shall jointly determine a reasonable time schedule in which final plans and specifications shall be submitted and construction of facilities

shall be completed. Such time schedule shall be incorporated in the lease.

The following plans shall be required for submission to the Declarant or its authorized agent within the time schedule determined:

A. Topographic, Grading, Drainage, Utility and Plot Plans:

1. Topographic, grading, drainage, and utility plans showing one (1) foot contour intervals and spot elevations referenced to the Airport datum.
2. A plot plan at a scale not smaller than one (1) inch equals one hundred (100) feet showing the relationship of the proposed Improvements to the Lot(s) demised and to the Improvements on adjacent Lots, utilities, and access thereto, curbs, walks, driveways, parking areas, etc.

B. Floor Plan: Floor plans at a scale not smaller than one-sixteenth (1/16) inch equals one (1) foot.

C. Ground Cover Plans: Ground cover plans, including landscaping in accordance with the Airport Landscaping Standards.

D. Renderings: A true architectural rendering of the proposed Buildings, including the proposed exterior color scheme, style, materials, and design and placement of signs.

E. Materials and Color Samples: Samples, no smaller than one (1) foot square, of all materials or paint or both or other coating colors to be used on the exterior of all improvements that are visible from any point on any Lot line. The Declarant reserves

the right through its authorized agent to approve all said materials or colors or both and further reserves the right to suggest alternative materials or colors or both that, in the sole opinion of the Declarant, shall be determined to be more compatible with the Declarant's objectives for the overall aesthetic character and quality of Improvements on the Airport.

F. Other Plans: Any other plans, specifications, or design features that the Declarant or its authorized agent may deem necessary and request.

G. Additional Requirements - Foreign-Trade Zone: Tenants who intend to use their facilities as a Foreign-Trade Zone shall, in addition to submittal to the Declarant or its authorized agent submit their plans and specifications to the U. S. Customs Service and other federal agencies, as appropriate, for approval and compliance with the Foreign-Trade Zone Act and other required federal regulations.

5.02 FORMS AND CONTENT OF PLANS: The Declarant may promulgate rules governing the form and content of plans to be submitted for its approval and may issue statements of policy with respect to approval or disapproval of architectural styles, details, or other matters pertaining to the plans.

Such rules and such statements of policy may be amended or revoked by the Declarant at any time, and no inclusion in, omission from, or amendment of any such rule shall be deemed to bind the Declarant to its approval or to waive the exercise of the Declarant's discretion as to any such matter.

5.03 CODES AND REGULATIONS: All Improvements shall be planned and constructed in accordance with the rules and regulations established by the Declarant or its authorized agent, the laws and ordinances of the City, applicable building codes, and the rules and regulations of the FAA, where applicable.

5.04 REVIEW OF PLANS: Plans and specifications for proposed Improvements submitted to the Declarant for approval by its authorized agent shall be reviewed by the Airport Architectural Review Committee as established by ordinance.

The Airport Architectural Review Committee shall submit in writing to the Airport Manager, as authorized agent of the Declarant, the Committee's recommendation with respect to the plans and specifications of the proposed Improvements within thirty (30) working days of the original date of submission to the Declarant. The Airport Manager, shall within ten (10) days of receipt by him of the recommendations of the committee, approve or disapprove the plans and specifications. Any party dissatisfied with a decision of the Airport Manager based on the recommendation of the Airport Architectural Review Committee shall have the right to appeal such decision to the City Council through the Airport Board. The Airport Architectural Review Committee shall also be responsible for inspecting and continuous monitoring of construction, signs, installation of landscaping, and review of the as-built plans.

5.05 BASIS FOR APPROVAL BY THE DECLARANT: Approval by the Declarant or its authorized agent shall be based on the adequacy of site dimensions and on the general conformity of the plans and

specifications to the intent of this Declaration. The Declarant shall not arbitrarily, without written explanation, withhold approval of properly submitted plans and specifications.

Approval of any plans or specifications for use on any one Lot shall not be deemed a waiver of the discretionary right of the Declarant to disapprove the same plans or specifications if such plans or specifications are subsequently submitted for approval for use on any other Lot or Lots.

5.06 FAILURE TO APPROVE: If the Declarant fails to approve or disapprove plans and specifications within forty (40) working days after the same have been submitted, it shall be conclusively presumed that the Declarant has approved said plans and specifications.

5.07 COMMITMENT TO CONSTRUCT: Upon approval by the Declarant of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the Declarant and a copy of such plans bearing the written approval of the Declarant shall be returned to the Tenant of the Lot(s) on which such structure is or will be placed.

Approval of these plans by the Declarant shall constitute a commitment on the part of the Tenant to erect and maintain the Improvements as proposed and approved within the time schedule established in Paragraph 5.01.

5.08 CONSTRUCTION WITHIN TIME SCHEDULE SPECIFIED: Any approved construction shall be prosecuted diligently in accordance with the approved plans and specifications and shall be completed

within the specified time schedule. Failure to complete such work in the specified time schedule shall cause such approval to be automatically withdrawn unless the Declarant or his authorized agent grants written extension of such approval. After such automatic withdrawal of approval, the Tenant will be considered in default of its lease for such Lot(s), and the Declarant may terminate such lease in accordance with the provisions in that document.

5.09 LANDSCAPING PLANS: Trees, shrubs, fences, hedges, or other landscaping shall not be planted, placed, or maintained on any Lot until a complete plan thereof has been submitted to and approved by the Declarant or his authorized agent in writing. The landscaping plans shall be prepared in accordance with the Airport Landscaping Standards and shall be submitted at the same time as the other plans and specifications for proposed Improvements. The plans shall be reviewed by the Airport Architectural Review Committee in the same manner and time period as those required for architectural plans under Paragraph 5.04.

All plans for landscaping Improvements shall be prepared by registered or approved landscape architects. Final approval shall be by the Declarant or its authorized agent.

5.10 PLANS FOR ALTERATIONS IN IMPROVEMENTS: All plans for alterations to the leased Lot(s), either for the construction of additional facilities or alterations to existing Buildings, shall be prepared, submitted, and approved as outlined in Paragraphs 5.01 through 5.09 and shall be subject to the same restrictions as

herein provided. This paragraph shall apply only to exterior or structural changes; alterations to the interior of Buildings shall not be considered unless they affect the performance standards in Article 3.

5.11 FEES: The Declarant shall charge and collect a reasonable fee, as determined every five years by the Declarant or its authorized agent, for architectural review and other reviews of plans submitted for approval. Such plans could relate to initial development or alterations to existing development. The fee shall be payable at the same time such plans are submitted. If initial plans or any subsequent plans are disapproved, an additional review fee, as determined by the Declarant or its authorized agent, shall be paid before further review.

The amount of such fee shall not exceed the actual cost to the Declarant of making such examination, including the cost of any architect's or engineer's fees incurred in connection therewith.

ARTICLE 6

ENFORCEMENT

6.01 CONSTRUCTION WITHOUT APPROVAL: If any structure shall be erected, placed, altered, or maintained on any Lot other than in accordance with plans and specifications approved by the Declarant or his authorized agent, such erections, alterations, and maintenance shall be deemed to have been undertaken without the approval required herein. This restriction shall be applicable to landscaping and signage plans as well as to architectural plans.

In the event of such construction without approval, the Tenant will be considered in default of the lease for such Lot, and the Declarant may terminate the lease in accordance with the provisions set forth in that document.

6.02 ABATEMENT AND REMOVAL: If the Declarant determines that his Declaration is being violated by any Tenant on a Lot or Lots, the Declarant shall have the right after giving notice as required by the lease to enter the Lot(s) of such Tenant to determine the exact cause, effect a cure, and abate or remove the violation from the Lot(s). All expenses incurred in this action shall be payable by the Tenant of the facility in which the violation occurred.

6.03 SUIT: The Declarant or the Tenants of facilities affected by a violation shall have the right to file suit against violators of this Declaration, to prevent a violation, effect a cure, abate or remove a violation, or recover damages for said violation.

6.04 ATTORNEY'S FEES: In any legal proceeding for the enforcement of this Declaration or prevention of a violation of this Declaration or any part hereof, the party against whom judgment is rendered shall bear the reasonable expense of attorneys' fees of the prevailing party in the amount to be specified by the Court.

6.05 RIGHT OF ENTRY AND INSPECTION: Any authorized agent of the Declarant, at any reasonable time and without notice, may enter on and inspect any Lot to ascertain whether the maintenance of such Lot, Improvements under construction, or alteration of structures

thereon are in compliance with the provisions hereof. Neither the Declarant nor such authorized agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

6.06 FAILURE TO ENFORCE A RESTRICTION: The Declarant may fail to enforce any restriction herein specified on any Tenant on a Lot or Lots, but in no event should this be deemed a waiver of this Declaration or the right to enforce any restriction at a later date.

ARTICLE 7

MISCELLANEOUS PROVISION

7.01 ACCEPTANCE BY ALL TENANTS: Every person, firm, or corporation who shall hereafter acquire any right, title, or interest in any Lot(s) or Buildings or portions thereof shall have consented and agreed to every covenant and restriction herein contained or implied even though this Declaration may not have been made reference to or part of the documents received as a part of leasing a Lot or Building or any portion thereof.

7.02 ASSIGNMENT OF DECLARANT'S RIGHT AND DUTIES: The Declarant has certain rights, powers, and reservations as herein established by this Declaration and may assign to any person, firm, or corporation these rights, powers, and duties evidencing its consent in writing to accept such an assignment and assume such duties. The person, firm or corporation having accepted the rights of the Declarant shall also be bound to the obligations in this Declaration.

7.03 HOUSEKEEPING: If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on a Lot more than ten (10) days after a request in writing from the Declarant or its authorized agent to have them removed, the Declarant or its authorized agent may enter on any Lot to remove same by whatever means it deems necessary. Such entry shall not be deemed a trespass, and the Declarant shall not be subject to any liability therefor. The cost of such work shall be borne by the Tenant.

7.04 MAINTENANCE OF LANDSCAPING: The Declarant shall be the sole judge of the quality of maintenance of the landscaping. If landscaping areas are not maintained in accordance with the standards in the lease and those in this Declaration and the condition is not corrected within ten (10) days after written notice from the Declarant, the Declarant or its authorized agent shall have the right to enter on any of the Lot(s) leased and plant or replant such areas, without being deemed guilty of trespass. The costs therefor, as determined by the Declarant, shall be paid by the Tenant.


7.05 SIDEWALKS PROHIBITED: The construction of sidewalks is prohibited except (1) between onsite parking areas and the Buildings they serve, (2) between Buildings involved in a single industrial activity for single Tenant, (3) in the Industrial Park Commercial Support areas, and (4) along the east side of Airport Road. Any sidewalks to be constructed in said areas shall be depicted on the plot plans and shall be subject to approval by the Declarant.

7.06 USE PERMITS: Such use and occupancy permits as may be required by the Building Code of City shall be maintained in force at all times by each Tenants.

IN WITNESS WHEREOF, THE CITY OF EL PASO, the Declarant, has caused its name to be hereunto subscribed this 5th day of February, 1985.

ATTEST:

CITY OF EL PASO, TEXAS



City Clerk


Mayor

APPROVED AS TO CONTENT:


Airport Manager

APPROVED AS TO FORM:


Assistant City Attorney



Legislation Text

File #: 22-516, 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 3

Airport, Sam Rodriguez, (915) 212-7301

AGENDA LANGUAGE:

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

A Resolution to authorize the City Manager to sign a Lease Agreement between the City of El Paso ("Lessor") and B.H. 7619 Lockheed Drive, LLC. ("Lessee") regarding the following described property: Lot 15, Block 8, El Paso International Airport Tract Unit Two, City of El Paso, El Paso County, Texas, municipally known and numbered as 7619 Lockheed, El Paso, Texas.

The term of this lease is an initial term of forty (40) years and one (1) ten-year option to extend the term of the lease. The annual rental fee for the land in the initial term will be \$27,600. The rent fee for the building will be a lump sum in the amount of \$340,000.00.

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

DEPARTMENT: Aviation

AGENDA DATE: May 10, 2022

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, (915) 212-7301

DISTRICT(S) AFFECTED: District 3

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

This is a Resolution to authorize the City Manager to sign a Lease Agreement between the City of El Paso ("Lessor") and B.H. 7619 Lockheed Drive, LLC. ("Lessee") regarding the following described property: Lot 15, Block 8, El Paso International Airport Tract Unit Two, City of El Paso, El Paso County, Texas, municipally known and numbered as 7619 Lockheed, El Paso, Texas.

The term of this lease is an initial term of forty (40) years and one (1) ten-year option to extend the term of the lease. The annual rental fee for the land in the initial term will be \$27,600. The rent fee for the building will be a lump sum in the amount of \$340,000.00.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval to lease the subject property to B.H. 7619 Lockheed Drive, LLC. The subject property is located in the El Paso International Airport's Southern Industrial Park. The improvements were acquired by the Airport through a court judgment. The property will be repaired and remodeled to accommodate industrial and office uses.

PRIOR COUNCIL ACTION:

None – this is a new tenant

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue generating item.

BOARD / COMMISSION ACTION:

N/A

DEPARTMENT HEAD:


Sam Rodriguez, P.E.

Chief Operations & Transportation Officer/Director of Aviation

RESOLUTION

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

That the City Manager is authorized to sign a Lease Agreement by and between the City of El Paso ("Lessor") and B.H. 7619 Lockheed Drive, LLC, ("Lessee") regarding the following described property:

Lot 15, Block 8, El Paso International Airport Tract Unit Two, City of El Paso, El Paso County, Texas, municipally known and numbered as 7619 Lockheed, El Paso, Texas

with a 40 year initial term and one option to extend for ten years; and

that City Manager is authorized to sign any and all documents related and/or necessary to effectuate the leasing and related closing of the property.

Dated this ____ day of _____ 2022.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

7619 LOCKHEED LEASE AGREEMENT

El Paso International Airport El Paso, Texas

B.H. 7619 LOCKHEED DRIVE, LLC

Lessee

May 27, 2022

Effective Date

7619 LOCKHEED LEASE AGREEMENT

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EXHIBIT “A” - Property Description & Metes and Bounds of Premises

EXHIBIT “B” – Declaration of Restrictions and Covenants

7619 LOCKHEED LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is entered into as of May 10, 2022, by and between the City of El Paso (the "City" or "Lessor") and B.H. 7619 Lockheed Drive, LLC ("Lessee").

WHEREAS, Lessor owns and operates El Paso International Airport, located in the County of El Paso, State of Texas, ("Airport"), said Airport being managed by the Director of Aviation, as amended from time to time in terms of actual title ("Director"); and

WHEREAS, Lessor deems it advantageous to itself and to its operation of the Airport to lease unto Lessee the parcel of land described herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out; and

WHEREAS, Lessee proposes to lease on a net basis from Lessor certain ground area and to avail itself of certain privileges, rights and uses pertaining thereto; and

WHEREAS, Lessee has indicated a willingness and ability to properly keep, maintain and improve said ground in accordance with standards established by Lessor;

NOW THEREFORE, Lessor and Lessee agree as follows:

ARTICLE I - PREMISES AND PRIVILEGES

1.01 Description of Premises Demised.

Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas:

Lot 15, Block 8, El Paso International Airport Tract Unit Two, consisting of approximately 31,647.0 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 7619 Lockheed, El Paso, Texas and more particularly described by **Exhibit "A"**, which is attached hereto and by this reference made a part hereof ("Premises") for all purposes.

1.02 Restriction of Privileges, Uses and Rights.

The rights and privileges granted Lessee hereunder are subject and expressly limited to the terms and conditions of the Declaration of Restrictions and Covenants attached hereto as Exhibit "B", and fully incorporated herein by reference (the "Declaration").

1.03 Conditions.

The granting of this Lease and its acceptance by Lessee is conditioned upon the covenant that the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.

1.04 Habendum and Title Warranty.

Lessor warrants that it owns the Premises together with all building, structures, improvements and fixtures with every right, privilege, hereditament and appurtenance belonging or appertaining to it free and clear of all liens, claims and encumbrances.

ARTICLE II - TERM OF LEASEHOLD**2.01 Term.**

The "Term" of this Lease will be the Initial Term and any properly exercised Option Period, as provided below. This Lease shall be for an initial term of forty (40) years ("Initial Term"), commencing on May 27, 2022 ("Effective Date") and ending on May 26, 2062 unless sooner terminated pursuant to this Lease.

2.02 Option to Extend.

If the Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease ("Option Period") for one (1) additional term of ten (10) years by notifying Lessor in writing of Lessee's election at least one (1) year prior to the expiration of the Initial Term.

2.03 Holding Over.

It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent of one and one-half times (150%) the current monthly rent, unless the hold over is caused by the City staff not placing a new agreement with Lessee regarding the Premises at the end of the term of the present Agreement on the City Council Agenda on a timely basis in which case the monthly rental rate in effect prior to the hold over shall continue until the new agreement is executed. Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

ARTICLE III - RENT**3.01 Rent.**

- A. Lessee shall pay to Lessor, without notice or demand and without deduction or set-off, Base Rent and Additional Rent (collectively, "Rent") for the Premises.
- B. Base Rent shall be as follows:
 - (1) Land Rent: \$27,600 per annum; \$2,300 monthly, payable in equal monthly installments on or before the first day of the month during the Term; and
 - (2) Building/Facility Rent: \$340,000.00, paid in a lump sum prior to the Effective Date on May 27, 2022.

3.02 Adjustment of Land Rent.

For the purpose of computing adjustments to rental payments, Lessor and Lessee agree as follows, with each adjustment effective as of the appropriate anniversary date, regardless of the date the actual adjustment is made:

- A. Rent shall be adjusted on the first of the month following each fifth (5th) anniversary of the Effective Date of this Lease thereafter during the Initial Term and any Lessee's Option Period. Lessor and Lessee agree that, except as provided for in paragraph B to this Section, percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the rent readjustment for these anniversary dates. The parties further agree that for the purposes of computing such percentage increase during the Initial Term, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Effective Date of this Lease. Rent shall be adjusted pursuant to the percentage increase in the CPI-U from the Base Year CPI-U to the rate in place ninety (90) days prior to the applicable date of readjustment (i.e. the fifth (5th) anniversary date of the Effective Date of this Lease).

In the event the CPI-U is not yet published or is otherwise unavailable for the month in which this Lease is effective, the price index used will be that price index for the closest preceding month for which the price index is available. In the event that the CPI-U is no longer published by the Bureau of Labor Statistics, Department of Labor at a time when an adjustment is to be made, Lessor and Lessee agree to use the consumer price index published by the Department of Labor that replaces the CPI-U or, if no replacement is available, but a reasonably comparable consumer price index exists, to use the method set forth in paragraph B below to adjust rent.

All readjustments shall be effective as of the fifth (5th) anniversary date, without regard to the date the actual adjustment is made; provided, however, that in no event shall the readjusted Rent be less than the rate in place immediately prior to such readjustment nor more than twenty percent (20%) more than the Rent established at the beginning of the immediately preceding five-year period.

- B. At the beginning of the forty-first year of Lessee's tenancy, the Rent shall be adjusted to a rate equal to eight percent (8%) of the then fair market value of the Premises, including the value of the Lessor owned improvements located on the premises, established as set forth in this Lease. In no event however, shall the Rent for the Option Period be less than the Rent established at the beginning of the immediately preceding five (5) year period. The Rent shall become effective as of the Option Period, regardless of the date the actual adjustment is made.

- C. **Appraisal.** The fair market value of an identified parcel ("Parcel") shall be determined by either a current appraisal (less than three years old) of a

similar property ("Current Appraisal") or a new appraisal of the Parcel. It shall be at the discretion of Lessor as to whether a Current Appraisal or a new appraisal shall be used. In the event a new appraisal is preferred, Lessor will select an appraiser from its list of qualified appraisers to establish the fair market value of the Parcel, including the value of the Lessor owned improvements located on the premises. This appraisal or the Current Appraisal shall be known as the "First Appraisal."

Upon completion of the First Appraisal, Lessor shall notify Lessee in writing of the rental rate, which shall be calculated as described in Section 3.04B. If Lessee agrees with the First Appraisal, or does not respond to Lessor in writing within fifteen (15) calendar days after receipt of the written notice as required herein, or it does not produce a Second Appraisal (as defined below) within 30 calendar days from Lessee's notice to proceed with said Second Appraisal, the First Appraisal and its resulting rent shall be deemed to be accepted by Lessee.

If Lessee disagrees with the rental rate resulting from the First Appraisal, Lessee, within fifteen (15) calendar days after receipt of said notice, shall notify Lessor in writing of Lessee's request for a qualified second appraisal ("Second Appraisal"). The second appraiser must be the next appraiser appearing on Lessor's list of qualified appraisers. The cost of the Second Appraisal shall be paid by the Lessee. The rental rate resulting from the Second Appraisal shall be calculated as described in Section 3.04B.

After the Lessee provides Lessor with the Second Appraisal, both parties have a 15 business day review period to consider same. If, by the 15th day, either the Lessor or Lessee disagrees with the rental rate resulting from the Second Appraisal, and a third appraisal ("Third Appraisal") is necessary, the Lessor and Lessee shall agree to the next appraiser appearing on the Lessor's list of qualified appraisers. The cost of the Third Appraisal shall be paid equally by the Lessor and Lessee, and the Third Appraisal shall be the final determinant of the rental rate. There shall be no further appraisals beyond the Third Appraisal, regardless of whether either the Lessor or Lessee disagrees with the rental rate resulting from the Third Appraisal.

Lessee shall pay the Rent as determined by the First Appraisal under protest until there is a final determination of the fair market value for the Parcel for which the Rent is determined. Should the final determination of the fair market value of the Parcel be a lower rate than the fair market value of the Parcel determined by the First Appraisal, Lessee's account will be credited by Lessor accordingly.

3.03 Reserved.

3.04 Unpaid Rent, Fees and Charges.

Any installment of Rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Lessor by the twentieth (20th) day of the month in which payment is due, shall bear interest from the date such Rent or other amount was due at the lesser of the rate of eighteen percent (18%) per year or the then maximum nonusurious rate under applicable law, (the lesser of said amounts being herein referred to as the "Maximum Rate."). In the event the late charge is ever deemed to be "interest" the amount of interest on past due amounts shall be automatically reduced so that the combination of said late charge and the interest on past due amounts, if any, does not exceed the Maximum Rate. Any amount collected which exceeds the Maximum Rate will be deemed credited to other amounts owed by Lessee to Lessor under this Lease, and any remaining excess after such credit shall be refunded to Lessee. It is the intent of both Lessor and Lessee to at all times comply with the applicable law regarding the maximum nonusurious amount or rate of interest which may be contracted for, charged, taken, reserved or received by Lessor.

3.05 Place of Payment.

All rent payments provided herein shall be paid to Lessor at the following address:

Accounting Division
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79997-1278

In lieu of payments being mailed to the above address, electronic payments may be made via any electronic payment system Lessor authorizes in writing.

3.06 Reserved.

ARTICLE IV - OBLIGATIONS OF LESSOR

4.01 Quiet Enjoyment.

Lessor agrees that upon Lessee's paying rent and performing all of the covenants, conditions, and agreements set forth in this Lease, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

ARTICLE V - OBLIGATIONS OF LESSEE

5.01 Net Lease.

This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article IV above and elsewhere in this Lease Agreement. Lessee shall:

- A. Keep and maintain the Premises and any buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises (collectively, the "Improvements") in a good state of repair at all times;

- B. Pay any and all taxes assessed against the Premises, Improvements located on the Premises, Lessee's interest in the Premises and Improvements, and all of Lessee's personal property located on the Premises; and
- C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

5.02 Condition of Premises.

Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or Improvements or their suitability for a particular use. Lessee accepts the Premises "As Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

5.03 Compliance with Laws.

- A. Lessee, at Lessee's expense, agrees that it will construct, operate and maintain Improvements on the Premises in accordance with the Declaration and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, including the Lessor, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any Improvements thereon. In addition, Lessee agrees, if required, it will remove all Improvements placed thereon by the Lessee ("Lessee Improvements"), in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, including the Lessor, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any Improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other 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, which relate to the use or occupation of the Premises and any Improvements thereon by disabled persons ("Disabilities Laws"). Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any Improvements thereon.

B. Environmental Laws.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) "Hazardous Material" shall mean (a) all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like; or (b) give rise to liability under any Environmental Laws or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under applicable reported decisions of state or federal court; or (c) which may be hazardous or harmful to the air, water, soil or environment or affect industrial hygiene, occupational health or safety, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste. "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.
- (3) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its sublessees, agents, employees, contractors, invitees, licensees, or a third party in violation of any Environmental Law.

Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its officers, directors, employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or Release or discharge from the Premises or any Improvements thereon

caused by the act or omission of Lessee, its sublessees, agents, employees, contractors, licensees or invitees. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, Improvements, land, soil, underground or surface water to the extent required under Environmental Laws. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any Improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work to the extent required by any federal, state or local governmental agency or political subdivision having authority to enforce Environmental Laws because of Hazardous Material located on the Premises or any Improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not, on its own, an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

- (4) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any Improvements thereon or permitted by Lessee results in any contamination of the Premises or any Improvements thereon, or any surrounding property, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any Improvements thereon or the surrounding property to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any Improvements thereon or the surrounding property; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any Improvements thereon or the surrounding property.
- (5) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any Improvements thereon or on surrounding property to comply with applicable Environmental Laws, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises to respond to any governmental investigation or to respond to any claim of liability by third

parties which is related to environmental contamination of the Premises or the Improvements thereon or the surrounding property.

- (6) Lessee shall immediately notify Lessor promptly after Lessee becomes aware of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (7) Lessee shall insert the provisions of this Section 5.03 in any lease, agreement, license, or contract by which it grants a right or privilege to any person, firm or corporation under this Lease, but only with respect to those leases, agreements, licenses or contracts executed after the Effective Date of this Lease.
- (8) Fuel storage tanks are not allowed on the Premises.
- (9) Lessee's failure or the failure of its agents, employees, contractors, licensees, invitees, or a third party to comply with any of the requirements and obligations of this section 5.03(C) shall constitute a material default of this Lease and shall permit Lessor to pursue the remedies as set forth in Article X herein below, in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Lessor may resort cumulatively.
- (10) At any time that Lessee submits any filing or response pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the FAA, the EPA or the TCEQ, or any successor agencies, Lessee shall provide duplicate copies to Lessor of such filing(s) or response(s) with any related documents at the time same are made.
- (11) Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide to Lessor a Phase I Environmental Site Assessment meeting ASTM standards of the Premises ("Lessee's Report"); and if, in the opinion of Lessor, if Lessee's Report indicates that the Premises is in violation of applicable Environmental Laws, then Lessee shall perform work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws.

5.04 Lessee Improvements

- A. Lessee shall have during the Term the right to construct or make structural alterations to any building or other structure now or hereafter on the Premises as Lessee Improvements, to be permitted and built in compliance with all applicable federal state and local laws, regulations, and Lessor rules, including any applicable

Federal Aviation Administration ("FAA") regulations, only with the prior express written approval of Lessor which shall not be unreasonably withheld. Lessee shall be responsible for all approvals, permits, licenses, and fees necessary to complete such Lessee Improvements.

- B. Lessee agrees to pay, when due, all sums that may become due for any labor, services, materials, supplies, furnishings, machinery and equipment furnished to or for Lessee in, upon, or about the Premises or the Airport. Lessee shall keep the Leased Premises free and clear of any liens and encumbrances arising or growing out of Lessee use and occupancy of the Premises (including without limitation Improvements made thereto and repair and maintenance completed therein) or activities at the Airport. If a lien is filed against the Premises, Lessee shall immediately, at its expense, bond such lien in accordance with applicable laws, or otherwise cause such lien to be discharged in a manner acceptable to Lessor. If Lessee shall fail to do so, Lessee may, at its option and at Lessee's expense, bond such lien or otherwise cause it to be discharged.
- C. Lessor retains the continuing right in the Premises to prevent the erection or growth of any building, structure, tree, or other object extending into the airspace exceeding the height of any existing structures, trees or other objects on the Premises; to assure compliance with obstruction clearance requirements; and to remove from said airspace at Lessee's expense, or at the sole option of Lessor, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree, or other object now upon, or which in the future may be upon the property together with the right of ingress to, passage over, and egress from Lessee's property for the above purposes.
- D. Lessee covenants and agrees that facilities constructed on the Premises, exclusive of paving and landscaping, shall cover a minimum of twenty percent (20%) of the Premises' land area, and a maximum of fifty percent (50%) of the Premises' land area. In the event such Improvements are partially or totally destroyed by fire or other casualty, Lessee shall have the absolute right to restore or rebuild such Improvements to the same size as existed prior to the casualty.

5.05 Lessor's Approval of Plans.

Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of Improvements or any plans, specifications and working drawings for Lessee's removal of Improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Department of Aviation is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Director, Lessee shall be required to obtain the approval of other City departments. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to the Director one (1) complete set of the Final Plans as approved by the governmental agencies exercising jurisdiction thereover, and copies of all issued permits. Upon completion of construction, Lessee shall deliver to Director a complete set of record (as-built) and shall provide such in electronic files drawings of the construction signed and sealed

by a professional engineer or architect licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises.

5.06 Landscaping and Maintenance of Improvements.

- A. Lessee shall landscape the Premises and keep the Improvements on the Premises in a good state of repair and condition and in a presentable condition comparable in appearance and character to similar improvements at the Airport. The exterior finish on the Improvements shall be repainted and refinished as reasonably necessary to maintain the appearance of such Improvements to a standard comparable to similar improvements at the Airport. Notwithstanding anything to the contrary in the Declaration, Lessor agrees that attractive, low water usage landscaping is a desirable goal and agrees to consider and approve appropriate low water usage landscaping plans as a part of the architectural review process. Lessee shall have 180 days to from the Effective Date to comply with this provision due to the current condition of the Premises.
- B. Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform reasonable maintenance Lessor reasonably deems necessary in order to cause the exterior finish to be in a condition comparable to similar improvements at the Airport. If said maintenance is not commenced by Lessee within forty-five (45) days after receipt of written notice and if Lessee is unable to show that it has made diligent efforts to commence the work, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Lessee.
- C. Lessee shall not remove any of its Improvements from the Premises or waste or destroy said Improvements. Any personal property placed or installed by Lessee in the Premises shall remain the property of Lessee during the Term.

5.07 Utilities.

Lessee shall pay for all costs or charges for utility services furnished to Lessee during the term hereof. Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense.

5.08 Trash, Garbage, and Other Refuse.

Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

5.09 Permitted Uses.

Lessee may use the Premises only for uses permitted under zoning and Covenants and Restrictions (the "Permitted Use", in accordance with all applicable laws. In conjunction with Lessor's use of the Premises, Lessor shall not: (a) cause substantial noise, vibration, fumes, debris, electronic

interference, or other nuisance on or adjacent to the Premises; (b) create any condition that is a safety hazard; or (c) interfere in any way with Airport operations. In addition, without limiting the generality of any other provision of this Lease, Lessee shall not, without the Lessor's written consent: (u) provide any facilities, services, commodities or supplies, now or hereafter made available at or through the Airport, other than the Permitted Uses; (v) operate any automobile or vehicle rental business; (w) operate any airline flight kitchen or other facilities providing meal services to aircraft crews or passengers or the public (non-aircraft); (x) offer lodging facilities; or (y) use any portion of the Premises for parking for passengers or customers of the Airport.

5.10 Penalties Assessed by Federal Agencies.

Lessee understands and agrees that in the event any federal agency assesses a civil penalty against Lessor or the Airport for any violation, including but not limited to any security violation, as a result of or related to any act or failure to act on the part of Lessee, its sublessees, agents, employees contractors, licensees or invitees, Lessee shall reimburse Lessor in the amount of the civil penalty assessed provided that Lessee was permitted to participate in the due process for administration of the violation. Failure to reimburse Lessor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

5.11 Relocation of Premises. Upon at least twenty-four (24) months' prior Notice to the Lessee, Lessor may relocate, at Lessor's expense, all of Lessor's facilities located on the Premises and the Improvements constructed thereon. Except as otherwise agreed between the parties, the Improvements to be constructed by Lessor on the relocated Premises will be of equal or better quality and utility. Lessor agrees to use all reasonable efforts to minimize interference with Lessee's operations at the Premises in connection with any such relocation; provided that, Lessee shall continue to be able to operate at either the Premises, the relocated premises (or, at Lessee's option, a combination of the two), without material interference. Provided however that if any such relocation materially impairs or interferes with Lessee's, sublessee's, or assignee's, in the sole discretion of Lessee, use of the Premises, Lessee will have the option to terminate the Lease at the end twenty-four (24) months.

ARTICLE VI - INSURANCE AND INDEMNIFICATION

6.01 Insurance.

Prior to the execution of this Agreement, Lessee shall obtain, provide proof of, and shall maintain for the term of this Agreement, the types and amounts of insurance coverage listed below, in amounts as reasonably set from time to time by the Director, but not less than:

Comprehensive General Liability Insurance in amounts not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence,

Two Million Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence,

One Million Dollars (\$1,000,000.00) for Property Damage arising out of each occurrence, and

or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

6.02 Additional Insured.

Lessor shall be named as an Additional Insured on all insurance policies either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

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 Lessor or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

Commercial General Liability and Property Damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager.

6.03 Fire and Other Risks Insurance.

Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all Improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such Improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement of the Parties, an appraisal of the Premises and Improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selected be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee, unless the value claimed by Lessee is confirmed through such an appraisal, in which case the Lessor shall reimburse the Lessee for the cost of such appraisal.

6.04 Payment and Performance Bonds.

Prior to commencement of any construction work on the Premises the total cost of which will exceed Fifty Thousand Dollars (\$50,000.00), Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded.

Said bond shall guarantee the faithful performance of all necessary construction and completion of Improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.

- B. Prior to the date of commencement of any construction, a payment bond with Lessee's contractor or contractors as principal in a sum equal to the full amount of the construction contract project.

Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction project.

In accordance with Article 35.03.004 of the Texas Insurance Code, if a Performance or Payment bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas.

In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable Letter of Credit, in a form acceptable to the Director in her/his reasonable discretion and approved by the City Attorney, in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated by the construction contract.

6.05 Authorized Insurance and Surety Companies.

All required policies of insurance and bonds shall be written by insurance and surety companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) calendar days prior to the effective date of the insurance policy for which the certificate is issued and prior to the Effective Date of this Lease. Each insurance policy shall contain:

- A. a statement of the coverage provided by the policy;
- B. a statement certifying the Lessor to be listed as an additional insured in the policy;
- C. a statement of the period during which the policy is in effect;
- D. a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. an agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days prior written notice to Lessor.

6.06 INDEMNIFICATION.

LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED

DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF LESSEE'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF LESSEE OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LESSOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LESSOR BY REASON OF ANY SUCH CLAIM, LESSEE, UPON NOTICE FROM LESSOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR.

**ARTICLE VII - DESTRUCTION OF IMPROVEMENTS BY FIRE
OR OTHER CASUALTY**

7.01 Obligations of Lessee.

During the term hereof, except as provided in Section 7.03 below, should the Improvements constructed by Lessee upon the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and Improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee as aforesaid and subject to and in accordance with the following terms and conditions:

- A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms and provisions of the Declaration. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.
- B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits for the Premises. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Prior to commencing construction, Lessor may require Lessee to furnish a performance and payment bond in accordance with Section 6.04 and, if requested, Builder's Risk Insurance.

- D. Upon compliance with the foregoing, Lessee's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies having been paid to Lessee. After actual receipt of such insurance proceeds, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.
- E. Upon completion of the construction, Lessee shall deliver to Lessor, a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises.

7.02 Insurance Proceeds.

Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall disburse such proceeds during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged Improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

7.03 Cancellation of Lease.

Should the Improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty not caused directly or intentionally by Lessee but materially impairing Lessee's use of the Premises, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and Lessee shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction, in which case Lessee agrees that the following provisions shall apply: 1) Lessee shall return the Premises free and clear of all Improvements (both above and below ground level), rubble and trash; 2) upon Lessee's return of the Premises to Lessor, there shall be no environmental issues on the Premises, as evidenced by a Phase 2 environmental study; 3) Lessee shall pay ground rental for 180 days after the Premises is cleaned in accordance with this paragraph in order to allow Airport the time to secure another tenant. If Lessee elects to cancel this Lease under this provision, there shall be no refund to Lessee for the prepayment of Rent on the Improvements. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessee. Land rents payable under this Lease shall be prorated and paid to the date of such cancellation.

ARTICLE VIII - CONDEMNATION

8.01 Definitions.

The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning

agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.

- B. "Total Taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial Taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - (1) The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
 - (2) The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
 - (3) The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.
- D. "Partial Taking" means the taking of a fee title that is not either a Total or Substantial Taking.
- E. "Notice of Intended Taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to take containing a description or map reasonably defining the extent of the Taking.
- F. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- G. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

8.02 Notice of Condemnation.

The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of Intended Taking;

- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

8.03 Rights of Parties during Condemnation Proceeding.

Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or Intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

8.04 Taking of Leasehold.

Upon a Total Taking, Lessee's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation. If the Taking is a Substantial Taking under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the Intended Taking, elect to treat the Taking as a Total Taking. If Lessee does not so notify Lessor, the Taking shall be deemed a Partial Taking. Upon a Partial Taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

8.05 Total Taking.

All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by any Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

8.06 Partial Taking.

Upon a Partial Taking, all Awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises, as unencumbered by the Lessee-owned improvements but subject to the Lease.

8.07 Obligations of Lessee under Partial Taking.

Promptly after any such Partial Taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last two (2) years of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect;

provided however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

8.08 Taking of Temporary Use of Premises and Improvements.

Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such Taking, Lessee shall receive, hold and disburse the Award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such Taking is for a period extending beyond the expiration date of the term, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings.

ARTICLE IX - ENCUMBRANCES

9.01 Encumbrance.

As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiaries under deeds of trust, whether one or more. Lessee may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage and such mortgage shall be used for the purposes of making improvements to the Premises. The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

- A. The amount of the obligation secured by the Mortgage;
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Lessor shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Lessor upon Lessee under the terms and provisions of this Lease so long as such Mortgage is in effect.

9.02 Mortgagee's Rights.

Upon receipt of a notice or demand in accordance with Section 9.01 above, Mortgagee shall have one hundred and twenty (120) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;

- C. If the default cannot be cured within one hundred and twenty (120) days, to commence performance within such one hundred twenty (120) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.
- E. No Mortgagee shall have any personal liability under this Lease unless and until it becomes Lessee under this Lease.
- F. The Director will, upon request by any Mortgagee, certify in writing that this Lease is in full force and effect, whether this Lease has been amended, that to Lessor's knowledge Lessee is not in default, and the date through which rent has been paid.
- G. If this Lease and the fee estate in the Premises are ever commonly held as a result of a default by Lessee, then they shall remain separate and distinct estates and shall not merge until such time as all cure periods for Mortgagee specified in this Lease have expired.
- H. This Lease may not be amended, modified, changed, cancelled, waived, or terminated without prior written notice to all Mortgagees. Lessor shall not accept a voluntary surrender of the Lease without consent by all Mortgagees.

9.03 Rights on Foreclosure.

In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Lessee's interest in lieu of foreclosure shall succeed to all of Lessee's rights, interests, duties and obligations under this Lease.

ARTICLE X - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

10.01 Expiration.

This Lease shall expire at the end of the term or any extension thereof.

10.02 Cancellation.

Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of thirty (30) days after Lessor has notified Lessee in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property and such petition is not dismissed within ninety (90) days after filing;
- C. Make any general assignment for the benefit of creditors;

- D. Abandon the Premises;
- E. Be in violation of any local, state, or federal laws rules or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Lessee, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within ninety (90) days after the appointment of such receiver.

In any of the aforesaid events, which shall be events of default, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

10.03 Repossessing and Reletting.

In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, change the locks on the Premises, install fences and gates, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and
- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and

conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

10.04 Assignment and Transfer.

Lessee shall have the right and privilege to assign or transfer this Lease subject to the prior written approval of Lessor, which shall not be unreasonably withheld; provided, however, that Lessor's approval shall not be required in the event of an assignment of this Lease by Lessee to the first leasehold Mortgagee.

Any person or entity to which this Lease is assigned to pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

10.05 Subleasing.

Lessee shall have the right to sublease all or any part of the Premises hereunder for the same purposes permitted under the terms and provisions of this Lease, including but not limited to the insurance and indemnity requirements. Any such sublease executed after the Effective Date of this Lease shall be subject to the same conditions, obligations and terms as set forth herein and Lessee shall be responsible for the observance by its sublessees of the terms and covenants contained in this Lease. On or before January 1st and July 1st of each year of the Initial Term or Option Period of this Lease, Lessee shall report to Lessor any subleases of the Premises, or any improvements thereon and, upon request of Lessor, Lessee shall furnish Lessor with a copy of the Sublease Agreement. In addition, Lessee shall provide a list of its sublessees and the sublessees contact information and shall provide to Lessor updated information whenever said sublessees information changes.

10.06 Landlord's Lien.

It is expressly agreed that in the event of default in the payment of Rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for Rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary and proper expense of removing, storing and selling

such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

ARTICLE XI - GENERAL PROVISIONS

11.01 Continuity of Deed Restrictions and Covenants.

This Lease agreement is subject to the terms, covenants and conditions contained in the Declaration. Lessor reserves the right to revise the standards set forth in Exhibit "B" provided, however, that such revisions will not cause a substantial reduction in the value of Lessee's leasehold interest, result in a material cost or expense to Lessee, or be contradictory to the reasonable and prudent operation of property located at the Airport similar to the Premises. Lessor's right to revise the restrictions and covenants contained in the Declaration, is limited to the right to revise said document because of the development of new concepts or improved construction and architectural techniques and, in any event, such revisions shall be operative on a going forward basis only and shall not apply retroactively to any existing improvements.

11.02 Right of Flight.

Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the Airport.

Lessor reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at the Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

Lessor reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from the Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

11.03 Time Is of the Essence.

Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

11.04 Notices.

All notices provided to be given under this Lease shall be given by a) expedited delivery service with proof of delivery, or b) United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the proper party at the following addresses:

LESSOR:	City Clerk City of El Paso P.O. Box 1890 El Paso, Texas 79950-1890	Director of Aviation El Paso International Airport 6701 Convair Rd. El Paso, Texas 79925-1099
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LESSEE: B.H. 7619 Lockheed Drive, LLC

11111 Santa Monica Blvd, Ste. 600
Los Angeles, CA 90025

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

11.05 Attorney's Fees.

If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

11.06 Agreement Made in Texas.

The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

11.07 General Civil Rights Provision.

Lessee agrees to 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 disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

11.08 Compliance with Nondiscrimination Requirements.

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (for purposes of this Section 11.08 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 Acts 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. **Nondiscrimination:** 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 Nondiscrimination Acts and Authorities, 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 Nondiscrimination Acts and Authorities 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 Lessor (for purposes of this Section 11.08 hereinafter referred to as the "sponsor") or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities 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 subcontract 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.

11.09 Affirmative Action.

Lessee assures that it will undertake an affirmative action program as required 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 for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Lessee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will

undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

11.10 FAA Order 1400.11.

Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

- A. Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in Pertinent List of Nondiscrimination Authorities (Federal Aviation Administration Order 1400.11, Appendix 4) as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix C]. The Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the listed acts and authorities appearing in the Acts and Regulations.
- C. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix D]

- D. During the term of this Lease, Lessee for itself, its assignees, and successors in interest, as a part of the consideration hereof, agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
 - 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - The Age Discrimination Act of 1975, as amended, (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
 - The Federal Aviation Administration’s Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 USC 1681 *et seq.*).
- E. B. In the event of breach of any of the covenants in this section 3, Lessor shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]

11.11 Cumulative Rights and Remedies.

All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

11.12 Interpretation.

Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

11.13 Agreement Made in Writing.

This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

11.14 Paragraph Headings.

The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

11.15 Severability.

If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

11.16 Successors and Assigns.

All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

11.17 Taxes and Other Charges.

Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Lessee or Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, during the Term of this Lease including any extensions granted thereto. By March 1 of each year of this Lease and at no charge to Lessor, Lessee will provide written proof satisfactory to the Director that all taxes and governmental charges of any kind as described herein have been paid in full.

Lessor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from Lessee's use of the property or possession of the Premises.

Lessee in good faith may contest any tax or governmental charge, provided that Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to Lessor, such action will not adversely affect any right or interest of Lessor.

11.18 Waiver of Warranty of Suitability.

LESSOR DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. LESSEE LEASES THE PREMISES AS IS AND LESSOR DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE NOR SHALL LESSOR BE RESPONSIBLE OR LIABLE FOR ANY CONDITION OF THE PREMISES WHICH SHALL SOLELY BE THE RESPONSIBILITY OF LESSEE.

11.19 Survival of Certain Provisions.

All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 5.03 and 6.06 for two years.

11.20 Force Majeure.

It is expressly agreed and understood by the parties to this Lease that if the performance of any obligations hereunder is delayed beyond such party's reasonable control by reason of war, civil commotion, acts of God, outbreak of hostilities, epidemic, acts of terrorism, strike, severe weather or other casualty or court injunction, the party so obligated or permitted shall be excused from doing or performing same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period of time such party was reasonably delayed.

11.21 Restrictions and Reservations.

This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

Lessor reserves for itself and any authorized agent to, at any reasonable time and with 24-hour notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

11.22 Subordination of Lease.

All rights granted in this Lease shall be subordinate to the rights in any deed from the United States to the City of El Paso. This Lease shall further be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Premises, Lessee may cancel this Lease in its entirety. Should Lessee cancel its lease pursuant to this paragraph, it can pursue any remedies available to it under the Section VIII of this Lease.

11.23 Authorization to Enter Lease.

If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

11.24 Effective Date/Memorandum.

Regardless of the date signed, this Lease shall be effective as of the date indicated in the Term section of this Lease. Simultaneously with the full execution and delivery of this Lease, Lessor and Lessee may execute and acknowledge a memorandum of this Lease in form and substance reasonably acceptable to Lessor and Lessee. If the parties execute said memorandum, Lessee shall provide to Lessor a copy of the memorandum filed of record in the Real Property Records for El Paso County, Texas.

(Signatures begin on following page)


LESSOR'S SIGNATURE AND ACKNOWLEDGMENT

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day of _____, 2022.

LESSOR: CITY OF EL PASO


Tomás González
City Manager

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2022, by Tomás González as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

LESSEE'S SIGNATURE AND ACKNOWLEDGMENT

LESSEE: B.H. 7619 LOCKHEED
DRIVE, LLC

BP

By: 

Print Name: Allen Gozini

Title: Manager

ACKNOWLEDGMENT

THE STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 2022, by _____, its _____ of (Lessee).

Notary Public, State of _____

My Commission Expires:

(see attached)

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
 COUNTY OF LOS ANGELES)

On May 2nd, 2022, before me, Y. Wachtel, a Notary Public, personally appeared Allen Gordin who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Y. Wachtel

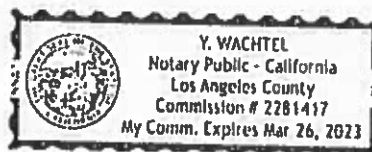


EXHIBIT "A"



BROCK & BUSTILLOS INC.
CONSULTING CIVIL ENGINEERS LAND SURVEYORS

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 (7619 LOCKHEED DRIVE)

A 0.7265 acre parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as all of Lot 15, Block 8, El Paso International Airport Tracts Unit 2, as filed in Volume 18, Page 31, El Paso County Plat Records and being more particularly described by metes and bounds as follows:

COMMENCING for reference at a concrete nail found at the centerline right-of-way intersection of Boeing Drive (variable width) and Sikorsky Street (68 feet wide); **WHENCE**, a concrete nail found at the centerline right-of-way intersection of said Boeing Drive and Beech Street (68 feet wide) bears, North 84°17'48" East (North 81°10'07" East~record), a distance of 2,300.50 feet (2,300.00 feet~record); **THENCE**, leaving the intersection of said Boeing Drive and Sikorsky Street and following the centerline of said Boeing Drive, North 84°17'48" East (North 81°10'07" East~record), a distance of 1,000.00 feet to the centerline intersection of said Boeing Drive and Grumman Street (68 feet wide); **THENCE**, following the centerline of said Grumman Street, South 05°42'12" East (South 08°49'53" East~record), a distance of 239.50 feet; **THENCE**, leaving the centerline of said Grumman Street, North 84°17'48" East (North 81°10'07" East~record), a distance of 188.00 feet to a 1/2 inch rebar with survey cap No. "TX 5152" found for the northwest corner and the **POINT OF BEGINNING** of the parcel herein described, identical to the northwest corner of said Lot 15;

THENCE, North 84°17'48" East (North 81°10'07" East~record), a distance of 154.00 feet to a concrete nail found for the northeast corner of the parcel herein described, identical to the northeast corner of said Lot 15;

THENCE, South 05°42'12" East (South 08°49'53" East~record), a distance 205.50 feet to a 1/2-inch rebar found on the north right-of-way line of Lockheed Drive (54 feet wide) for the southeast corner of the parcel herein described, identical to the southeast corner of said Lot 15;

THENCE, following the north right-of-way line of said Lockheed Drive, South 84°17'48" West (South 81°10'07" West~record), a distance of 154.00 feet to a chiseled "V" found on concrete for the southwest corner of the parcel herein described, identical to the southwest corner of said Lot 15;

THENCE, leaving the north right-of-way line of said Lockheed Drive, North 05°42'12" West (North 08°49'53" West~record), a distance of 205.50 feet to the **POINT OF BEGINNING**.

Said parcel containing 0.7265 acres (31,647.0 square feet), more or less and being subject to all easements, restrictions and covenants of record.

Basis of Bearing is the Texas State Plane Coordinate System, Central Zone 4203, North American Datum of 1983 (NAD 83) (2011), determined via the El Paso County Virtual Reference Station (VRS) Network.

Aaron Alvarado, TX R. P. L. S. No. 6223
Date: April 18, 2022
05100-115C-7619 LOCKHEED-DESC



Apr 18, 2022 - 10:34 AM
20220406

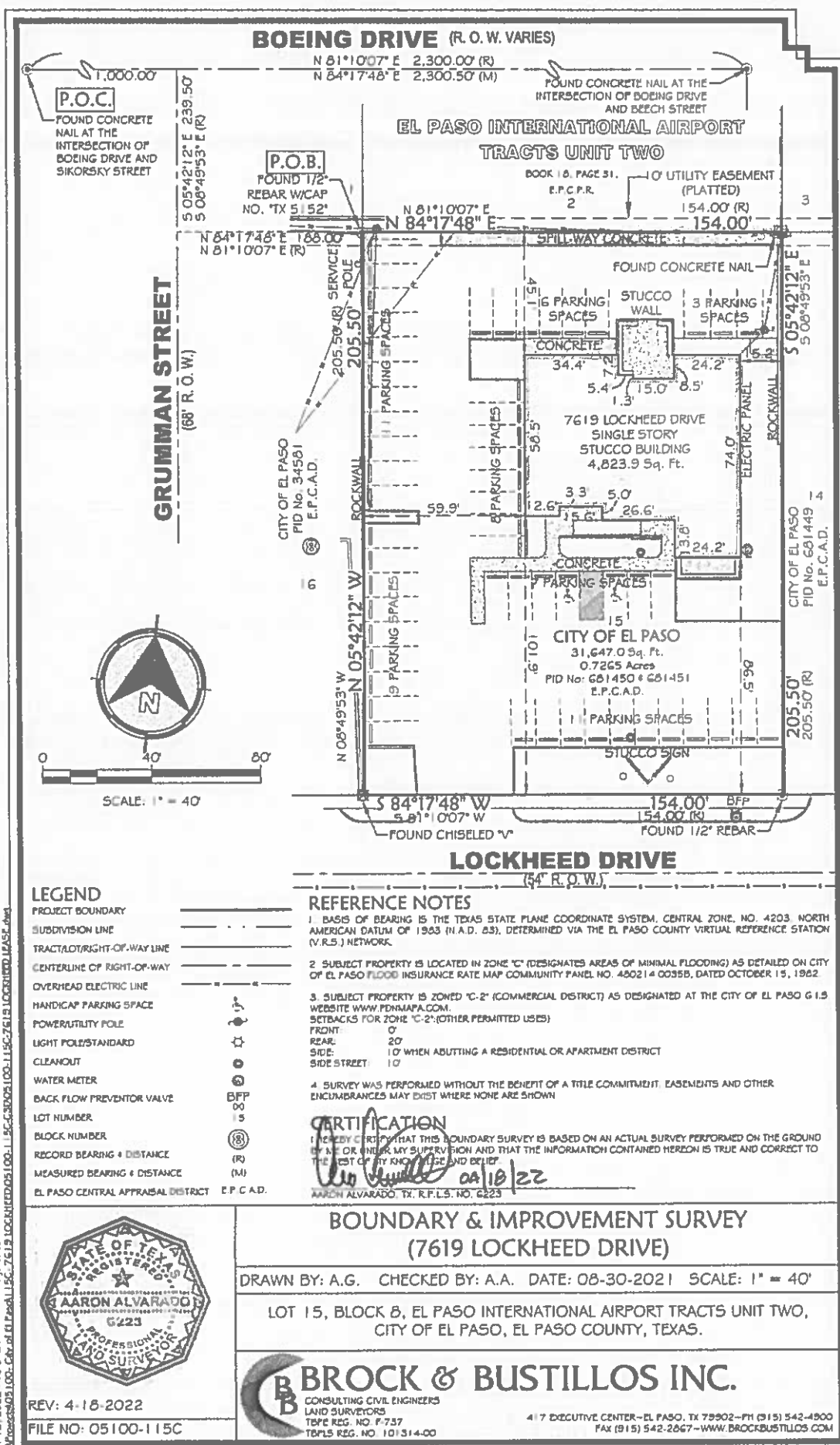


EXHIBIT "B"

EXHIBIT

**DECLARATION OF RESTRICTIONS AND COVENANTS
BUTTERFIELD TRAIL INDUSTRIAL PARK**

**El Paso International Airport
El Paso, Texas**

EXHIBIT

Revised: 5/02/94

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DECLARATIONS OF RESTRICTIONS AND COVENANTS
BUTTERFIELD TRAIL INDUSTRIAL PARK

El Paso International Airport
El Paso, Texas

THIS DECLARATION, made this _____ day of _____,
19__, by the CITY OF EL PASO, a political subdivision of the State
of Texas, hereinafter referred to as the "Declarant";

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of El Paso International
Airport, located in the City of El Paso, State of Texas,
hereinafter referred to as the "Airport"; and

WHEREAS, the Airport has within its physical boundary certain
real property intended for the establishment of a desirable
industrial environment for certain manufacturing and industrial
uses and, under statutory authority, for certain manufacturing and
merchandise manipulation to encourage and expedite foreign trade,
and known as Butterfield Trail Industrial Park, hereinafter
referred to as the "Property"; and

WHEREAS, the Butterfield Trail Industrial Park has been
designated as a Foreign-Trade Zone, thereby permitting foreign
trade activities to occur on any Lot in the Property; and

WHEREAS, to establish a general plan for improving and
developing the Property and to use the Property as a Foreign- Trade
Zone, the Declarant desires to subject the development of the
Property to certain conditions, restrictions, and covenants on
which the entire Property and Improvements thereto shall be bound;

WHEREAS, the Declarant desires to subject the development of
said Property to certain conditions, restrictions, and covenants to

ensure the development of a desirable environment for said activities, and to ensure that said development will be compatible with adjacent land uses on the Airport by performance, appearance, and general operating characteristics;

NOW, THEREFORE, the Declarant hereby declares that (except to the extent compliance with this revised Declaration of Restrictions and Covenants would cause undue hardship or expense for a Tenant with respect to leasehold improvements and activities undetaken by him prior to the effective date of this instrument in conformity with the Restrictions and Covenants incorporated in his lease) the Property more particularly described hereinafter is and shall be held and conveyed subject to the conditions, restrictions, and covenants hereinafter set forth, each and all of which are for the benefit of each Tenant of any portion of said Property, each and all of which shall inure to and pass with each and every lot on said Property, and each and all of which shall apply to and bind the respective successors in interest of said Property and any portion thereof, as follows:

ARTICLE 1

PROPERTY

The real property subject to this Declaration is situated on El Paso International Airport in El Paso County, El Paso, Texas, and is known as the Butterfield Trail Industrial Park and Foreign-Trade Zone No. 68.

ARTICLE 2

DEFINITIONS

The words and phrases defined in this Article shall have the following meanings when used elsewhere in this Declaration:

2.01 AIRPORT BOARD: An advisory board appointed by the Mayor and City Council for the purpose of advising them with respect to Airport matters.

2.02 AIRPORT MANAGER: The Manager of El Paso International Airport.

2.03 BUILDING: The main portion of any building located on a Lot or Lots and all projections or extensions therefrom, including garages, outside platforms and docks, carports, canopies, and porches. Ground cover shall not be included.

2.04 BUILDING COVERAGE: The surface area of a Building Site that may be covered by Buildings, expressed as a percentage of the total site area.

2.05 BUILDING SITE: The entire Lot or Lots (if contiguous) leased by one Tenant.

2.06 CITY: The City of El Paso, its duly elected Council, or any duly constituted agent or committee representing said Council to fulfill the obligations herein required.

2.07 DECLARANT: The City of El Paso, a political subdivision of the State of Texas.

2.08 FAA: The Federal Aviation Administration of the U. S. Government or any federal agencies succeeding to its jurisdiction.

2.09 FOREIGN-TRADE ZONE: The use of any or all Lots or any part thereof in the Butterfield Trail Industrial Park for Industrial Operations or other activities that comply with the U. S. Foreign Trade Zone Act Regulations (Title 15, Code of Federal Regulations), U. S. Customs Service Regulations, and City regulations of Foreign-Trade Zone use.

2.10 FRONT LOT LINE: The property line that faces a Street. On corner Lot or Lots fronting on two parallel Streets, the Front Lot Line shall mean the property lines facing each Street, one of which shall be designated by the City as the principal Street.

2.11 IMPROVEMENTS: Improvements shall mean but shall not be limited to Buildings, bridges, overpasses, retaining walls, ditches, culverts, lighting supports, earth fills, earth excavation, paving, ground cover, sidewalks, fences, screening walls, signs, and landscaping, constructed, installed, or placed on, under, or above any Lot by or on account of a Tenant.

2.12 INDUSTRIAL OPERATION: The manufacturing of products from raw or semi-finished materials, including research, warehousing and wholesaling operations. Retail sales of goods and services are specifically prohibited except as otherwise permitted herein with respect to the commercial support areas.

2.13 INDUSTRIAL PARK COMMERCIAL SUPPORT: The retail sale of goods and services on a limited basis primarily to the employees of the Tenants in the Butterfield Trail Industrial Park as specifically provided herein.

2.14 LOT: One of the numbered parcels on the map entitled "Butterfield Trail Industrial Park," as filed with the County Clerk, County of El Paso, Texas.

2.15 REAR LOT LINE: The property line generally paralleled to the Front Lot Line and contiguous to another Lot. On corner Lots, the Rear Lot Line shall be parallel to the Front Lot Line facing the principal Street; on Lots fronting on two parallel Streets, there shall be no Rear Lot Line.

2.16 SETBACK: The distance a Building must be set back from the property line of a Lot.

2.17 STREET: Any street, highway, or other thoroughfare shown on the map entitled "Butterfield Trail Industrial Park," as filed with the County Clerk, County of El Paso, Texas.

2.18 TENANT: Any person, firm or corporation leasing or subleasing one or more Lots or space in a Building on a Lot.

ARTICLE 3

PERMITTED USES AND PERFORMANCE STANDARDS

3.01 PERMITTED USES: No Building, structure, or land shall be used for any purpose other than the following, or any combination thereof, and such uses shall satisfy the standards set forth in this Declaration:

A. All Blocks and Lots in the Butterfield Trail Industrial Park, except as Specified in Paragraph 3.01(B):

1. Unless specifically prohibited as herein defined, any Industrial Operation shall be permitted. In addition, if approved by the U. S. Customs Service

2.14 LOT: One of the numbered parcels on the map entitled "Butterfield Trail Industrial Park," as filed with the County Clerk, County of El Paso, Texas.

2.15 REAR LOT LINE: The property line generally paralleled to the Front Lot Line and contiguous to another Lot. On corner Lots, the Rear Lot Line shall be parallel to the Front Lot Line facing the principal Street; on Lots fronting on two parallel Streets, there shall be no Rear Lot Line.

2.16 SETBACK: The distance a Building must be set back from the property line of a Lot.

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3.01 PERMITTED USES: No Building, structure, or land shall be used for any purpose other than the following, or any combination thereof, and such uses shall satisfy the standards set forth in this Declaration:

A. All Blocks and Lots in the Butterfield Trail Industrial Park, except as Specified in Paragraph 3.01(B):

1. Unless specifically prohibited as herein defined, any Industrial Operation shall be permitted. In addition, if approved by the U. S. Customs Service

or other federal agency having jurisdiction, any Industrial Operation or activity complying with the Foreign-Trade Zone Act Regulations (Title 15, Code of Federal Regulations) shall be permitted.

All industrial processes shall be carried out entirely within facilities so designed to prevent any nuisance as defined in Paragraph 3.04 to adjacent Lots. An exception shall be made during periods when equipment breaks down in such a manner to make it evident that it was not reasonably preventable.

2. General permitted industrial classifications are as follows: research and light industry, industrial support, and medium and heavy industry, warehousing, and wholesaling.
3. Administrative and professional office use shall be permitted.

B. Lots 1 through 5, Block 3, Block 4 and Block 6 and such other blocks or Lots that may be designated by the Declarant in future stages of the Butterfield Trail: Unless specifically prohibited as herein defined, the following Industrial Park Commercial Support activities shall be permitted:

1. Restaurants, including fast food establishments;
2. Offices;
3. Day-care centers;
4. Banks or banking facilities;

5. Printing, reproduction, and photographic services for Industrial Operations;
6. Office and graphics supplies;
7. Commercial exercise clubs; and
8. Self-service gas stations.

3.02 PROHIBITED USES: The following uses shall not be permitted on a Lot at any time: residential, retail commercial except as permitted in Paragraph 3.01(B); trailer courts; labor camps; junkyards; mining and quarrying; dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or refuse; fat rendering, stockyards or slaughtering of animals; smelting of iron, tin, zinc, or other ores; large animal raising.

3.03 APPROVAL OF USES: Certain industrial uses may neither be specifically prohibited nor specifically permitted. In these cases, approval in writing of the use must be obtained from the Declarant or its authorized agent prior to approval of plans and specifications for construction of the facility.

3.04 PERFORMANCE STANDARDS: No Lots shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions that may affect any other Lots, including but not limited to:

Hazardous activities
 Vibration or shock
 Noise
 Smoke, dust, odor, or other forms of air pollution
 Heat or glare
 Electronic or radio interference
 Illumination
 Liquid or solid refuse or waste
 Other substance, condition, or element in such amount as to affect the surrounding area or adjoining premises.

A. Hazardous Activities: No activity shall be conducted on any Lot that may be or may become hazardous to public health and safety, that shall increase the fire insurance rating for adjoining or adjacent Lots, or that shall be illegal.

B. Vibration or Shock: No vibration or shock perceptible to a persons of normal sensibilities shall be permitted within fifty (50) feet of the property line.

C. Noise: No noise objectionable to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.

D. Air Pollution: Except for the operation of motor vehicles to, from, and on a Lot as incidental to the use thereof, the following requirements shall apply:

1. Any use producing smoke, gas, dust, odor, fumes, aerosols, particulates, products of combustion, or any other atmosphere pollutant shall be conducted within a completely enclosed Building.
2. Any use producing atmospheric emissions shall comply with the standards of the U. S. Environmental Protection Agency, the Texas Air Control Board, any local environmental regulatory body, or any successor organizations performing similar functions, as such regulations exist at the date of the lease to which this Declaration is attached, or which may be enacted during the term of such lease.

3. The emission of odors that are detectable at any point beyond the property line of any Lot or Lots shall not be permitted.

E. Dust Control: All ground areas not covered by structures shall be landscaped or surfaced with concrete, asphaltic concrete, asphalt oil, or other comparable dust-free surfacing; shall be maintained in good condition, free of weeds, dust, trash, and other debris; and shall be properly drained and graded. Such development shall be accomplished before issuance of a certificate of occupancy.

F. Heat or Glare: Any operation producing intense glare or heat shall be performed within an enclosed screened area in such manner that the glare or heat emitted will not be discernible from the property line.

G. Electronic or Radio Interference: No electrical, electronic, or radio emissions shall be produced that will interfere, obstruct, or adversely affect the operation of air navigation aids and Airport communications.

H. Illumination:

1. The source of illumination of any kind on a Lot shall not be visible at the property line except for normal installation of standard interior lighting fixtures within Buildings.
2. The maximum height of any lighting standards shall be limited to thirty (30) feet above curb level.
3. The intensity of illumination shall be limited to

10 foot candles or 0.1 lumens per square foot per open areas or surfaces visible at the property line.

4. The design and location of exterior lighting shall comply in all respects to the requirements of the FAA or any other governmental agency having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around the Airport.

I. Refuse and Trash: No refuse or trash shall be kept, stored, or allowed to accumulate on any Lot.

J. Sewage Disposal Systems: No cesspool, septic tank, or other sewage disposal system or device shall be installed, maintained, or used on any Lot without the approval of the City.

3.05 SECURITY: If a Tenant activates space on its leased premises for Foreign-Trade Zone usage, said Tenant will comply with the security requirements imposed by the U. S. Customs Service or other federal agencies having jurisdiction.

ARTICLE 4

REGULATION OF IMPROVEMENTS

4.01 MINIMUM SETBACK LINES: No structure of any kind and no part thereof shall be placed on any Lot closer to a property line than hereby described.

A. Front Setback: Setbacks from Front Lot Lines shall be a distance equal to twenty percent (20%) of the length of the

Building or two hundred percent (200%) of the height of the Building, whichever is greater, from the Street; the area between the Street(s) and the Front Setback Line shall be landscaped if no visitor parking is provided in the Front Setback areas. If visitor parking is provided in the front Setback area, an area equivalent to twenty percent (20%) of the Front Setback shall be landscaped. All Buildings shall be set back a minimum of twenty-five (25) feet from the Front Lot Line. If the Tenant's Lot or Lots front on more than one Street, the front Setback shall be from all Lot lines facing a Street.

The front Setback area(s) shall be landscaped and planted in accordance with the Airport Landscaping Standards except for areas used for parking lots, driveways, or sidewalks. In no event shall less than twenty percent (20%) of the required minimum front Setback area(s) facing a Street be landscaped and planted.

B. Side Setbacks: Side Setbacks shall be a minimum of thirty (30) feet, and up to fifty percent (50%) of the required minimum Setback shall be landscaped and planted at the discretion of Declarant or its authorized agent. If a single Tenant uses two or more Lots with a common boundary line between them, the side Setback restrictions may be waived by the Declarant or its authorized agent for the term of the shortest lease.

C. Rear Setback: Rear Setback shall be forty (40) feet from the Lot line or utility easement line, except that Buildings on Lots abutting railroad spurs may have loading docks extending to the Rear Lot Line, provided such construction does not interfere

with utility services.

D. **Exclusions from Setback Requirements:** The following structures or Improvements are excluded from the Setback requirements:

1. Roof overhang.
2. Steps and walks.
3. Paving and associated curbing, except that parking areas will not be permitted within ten (10) feet of Street property lines.
4. Fences.
5. Landscaping.
6. Planters, none over four (4) feet in height.
7. Railroad spur tracks, switches, and bumpers.
8. Approved signs identifying the Tenant.

4.02 EXCAVATION:

A. General: No excavation shall be made by a Tenant unless the excavation is directly related to the construction of an Improvement. When construction is complete, all disturbed ground shall be filled or graded and shall be landscaped in accordance with and conform to the Airport Landscaping Standards.

B. Cut and Fill: The Declarant or any authorized agent thereof may at any time make such cuts and fills on any Lot and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the Streets in or adjacent to any Lot and to drain surface waters therefrom; provided that after the principal structure on a Lot shall have been completed in

accordance with approved plans, the rights of the Declarant under this Paragraph 4.02 shall terminate with respect to such Lot, except that the Declarant shall thereafter have the right to maintain existing Streets and drainage structures.

4.03 LANDSCAPING: Every Lot on which a Building shall have been placed shall have landscaping according to plans prepared in accordance with the standards established in this Paragraph 4.03 and any amendments or successors standards thereto. The first phase of such landscaping, as approved, shall have been completed within ninety (90) days of the date the certificate of occupancy is filed on the initial Building.

Setback areas shall be landscaped to the minimum extent outlined in Paragraphs 4.01(A) and (B). In addition, paving or landscaping shall extend from the property line to the curb, such paving and landscaping to be compatible with treatment for this area on other Lots on the same block. All landscaping shall be maintained in a sightly and well kept condition.

Lessee shall landscape only in accordance with a plan submitted to and approved in writing by the Declarant or its authorized agent prior to any development. Such landscaping plan shall include information regarding the type of sodding, the type of seeding, types of trees, hedges and shurbs, and information regarding other customary landscape treatment for the entire applicable site, in accordance with such approved plans and said plan may not be altered, amended or revised without submitting the revised landscaping plan for prior written approval by the

Declarant or its authorized agent.

A. Landscaping Standards: It is the intent of the Declarant to obtain high quality landscaping throughout the Property which is the subject of this Declaration. If lessee should fail, in the sole and final judgment of Declarant, to maintain landscaping consistent with Declarant's intent, Declarant may, at its option, do such maintenance work as it deems advisable, and the actual cost of labor and materials multiplied by 1.25 shall be added to the next monthly rental payment of lessee as an additional charge.

The following requirements shall apply:

1. All street setback areas shall be landscaped except those areas approved for walkways, driveways and parking.
2. All areas in site setbacks shall be fully landscaped, except for area approved to be paved.
3. Desert planting, defined as native desert plants set in ground cover of boulder, pebbles, sand or landscape shall not comprise more than fifty percent (50%) of any given landscaped setback area.
4. The lessee shall landscape and maintain unpaved areas between the curb and the setback lines. The first ten (10) feet of setback from street property lines shall be used exclusively for landscaping except where driveways bisecting the required landscape area occur.
5. Complete landscape and sprinkler plans are required for review. Specifications should indicate soil treatment and preparation.

4.04 SIGNS: The number, size, design, and location of all signs displayed for observation from outside a Building whether displayed on, near, or within a Building shall be subject to approval by the Airport Manager after review by the Airport Architectural Review Committee prior to installation, and in accordance with any Airport Graphics Standards and any amendments or successor standards thereto.

A. AIRPORT GRAPHICS STANDARDS: It is the intent of the Declarant that all signs be uniform and limited to specified graphic guidelines.

No billboards, flashing lighting or advertising sign shall be permitted on any site within the Property. Only signs identifying the name, business and products of the person or firm occupying the premises and those offering the premises for sale or lease will be permitted.

Only one (1) sign of approved design shall be permitted on the front setback line and one (1) sign may be attached to the side of a building which faces a public street.

Design and construction of signs shall be approved in writing by the Declarant or its authorized agent after review by the Architectural Review Committee with respect to size, design and color. Signs shall also conform to local building codes as well as regulations of the FAA.

Multiple occupancy building signs may be approved on a case-by-case basis by the Declarant or its authorized agent after review by the Architectural Review Committee.

B. COMMERCIAL SUPPORT AREAS: Signs within the Commercial Support areas shall be limited in height to seven (7) feet, and in space to no more than four (4) square feet. All signs in the Commercial Support area shall be uniform. No signs shall be affixed to or otherwise placed on a building in a Commercial Support area except immediately adjacent to a door and of a style acceptable to Declarant or its authorized agent.

4.05 PARKING AREAS: Adequate offstreet parking shall be provided to accommodate the parking requirements of a business within the limits of the Lot. Parking for employees, visitors, and business vehicular traffic shall be provided on the Lot and designated by white lines painted on the paved surface. All parking must comply with applicable City parking ordinances.

Parking shall not be permitted on the public Streets and between the Street pavement and property line. If visitor parking is permitted in the front Setback area(s), such parking shall be screened from the Street(s) by approved trees or shrubbery specified in the Airport Landscaping Standards or such other screening as may be approved by the Declarant or its authorized agent.

4.06 STORAGE AND VEHICLE LOADING AREAS: All outside storage and refuse areas shall be constructed and contained to eliminate odors, insects, dust, visual nuisances, and other similar nuisance.

No materials, supplies, or equipment, including company-owned or company-operated trucks, shall be stored in any area on a Lot except inside a closed Building or behind a barrier completely

screening such areas from view of adjoining Lots or public Streets or both.

All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on the Lot(s) leased and shall not encroach into Setback areas; onstreet vehicle loading shall not be permitted. Vehicle loading shall be permitted only at the rear of the Buildings, or on a side, except that such loading performed at a side shall be completely screened from view of adjoining Lots or public Streets or both.

4.07 BUILDING HEIGHTS: Building heights shall be limited to the height requirements established in Federal Aviation Regulations Part 77 or successor regulations for the Airport but shall not exceed a maximum of fifty (50) feet above the curb line, including any building equipment, penthouse, extrusions, etc.

4.08 BUILDING COVERAGE: Buildings shall not cover more than fifty percent (50%) of a Building Site.

4.09 BUILDING REGULATIONS:

A. City Zoning Code: The City of El Paso Zoning Code, as amended, shall apply except that in the event of a conflict between the City Zoning Code and the standards in this Declaration, the more stringent requirement shall apply.

B. FAA Regulations: All construction must comply with applicable codes and ordinances and the rules and regulations of the FAA where applicable.

C. Final Approval By Declarant: Final approval of the compatibility of any Improvement with the overall architectural

character of the Butterfield Trail Industrial Park shall remain with the Declarant. Construction shall not commence before the Declarant has granted final approval.

4.10 TYPE OF CONSTRUCTION:

A. Building Materials: All Buildings shall be framed with reinforced concrete or masonry, structural steel, structural aluminum, or wood that has been satisfactorily treated to resist fire, rot, and insects. Siding shall be masonry, concrete or glass. Porcelain, enameled steel, anodized aluminum or treated wood may be used upon approval of the Airport Manager based upon the favorable recommendation of the Airport Architectural Review Committee. Concrete, masonry, and treated wood siding shall be kept neatly painted, if used. State-of-the-art changes in types of construction may be permitted from time to time only upon the express condition that any such change be consistent with the intent of this Declaration and that any such change receives written approval of at least three members of the Airport Architectural Review Committee. Pre-fabricated metal buildings are specifically prohibited.

B. Roof Screening: All heating and cooling towers, equipment, etc., placed on the roofs of Buildings shall be screened or enclosed from view so that they are architecturally compatible with the main portion of the Building and cannot be seen from any point within two hundred-fifty (250) feet of the Building at an eye level of six (6) feet above the curblin.

C. Accessory Buildings, Enclosures, and Fences: Accessory

Buildings, enclosures, and fences shall enhance the design of and be of the same quality of materials as the Buildings they serve.

D. Building Codes and Ordinances: All Buildings shall conform to all local building codes and ordinances.

E. Approval by Airport Manager: The type of building construction proposed shall be subject to the written approval of the Airport Manager as authorized agent of Declarant and the decision of Airport Manager shall be based on the recommendations of the Airport Architectural Review Committee and appealable to the City Council through the Airport Board.

4.11 PIPES: No water pipes, gas pipe, sewer pipe, or drainage pipe (other than those within structures) shall be installed or maintained on any Lot above the surface of the ground, except hoses and movable pipes used for irrigation or similar purposes.

ARTICLE 5

SUBMISSION OF PLANS FOR IMPROVEMENTS

5.01 SUBMISSION OF PLANS: All plans for Improvements shall be prepared by registered engineers, architects, and landscape architects; shall be of contemporary design; and shall require prior written approval by the Declarant or its authorized agent before any construction may begin.

Prior to the execution of a lease for a Building Site, the Declarant or its authorized agent and the Tenant shall jointly determine a reasonable time schedule in which final plans and specifications shall be submitted and construction of facilities

shall be completed. Such time schedule shall be incorporated in the lease.

The following plans shall be required for submission to the Declarant or its authorized agent within the time schedule determined:

A. Topographic, Grading, Drainage, Utility and Plot Plans:

1. Topographic, grading, drainage, and utility plans showing one (1) foot contour intervals and spot elevations referenced to the Airport datum.
2. A plot plan at a scale not smaller than one (1) inch equals one hundred (100) feet showing the relationship of the proposed Improvements to the Lot(s) demised and to the Improvements on adjacent Lots, utilities, and access thereto, curbs, walks, driveways, parking areas, etc.

B. Floor Plan: Floor plans at a scale not smaller than one-sixteenth (1/16) inch equals one (1) foot.

C. Ground Cover Plans: Ground cover plans, including landscaping in accordance with the Airport Landscaping Standards.

D. Renderings: A true architectural rendering of the proposed Buildings, including the proposed exterior color scheme, style, materials, and design and placement of signs.

E. Materials and Color Samples: Samples, no smaller than one (1) foot square, of all materials or paint or both or other coating colors to be used on the exterior of all improvements that are visible from any point on any Lot line. The Declarant reserves

the right through its authorized agent to approve all said materials or colors or both and further reserves the right to suggest alternative materials or colors or both that, in the sole opinion of the Declarant, shall be determined to be more compatible with the Declarant's objectives for the overall aesthetic character and quality of Improvements on the Airport.

F. Other Plans: Any other plans, specifications, or design features that the Declarant or its authorized agent may deem necessary and request.

G. Additional Requirements - Foreign-Trade Zone: Tenants who intend to use their facilities as a Foreign-Trade Zone shall, in addition to submittal to the Declarant or its authorized agent submit their plans and specifications to the U. S. Customs Service and other federal agencies, as appropriate, for approval and compliance with the Foreign-Trade Zone Act and other required federal regulations.

5.02 FORMS AND CONTENT OF PLANS: The Declarant may promulgate rules governing the form and content of plans to be submitted for its approval and may issue statements of policy with respect to approval or disapproval of architectural styles, details, or other matters pertaining to the plans.

Such rules and such statements of policy may be amended or revoked by the Declarant at any time, and no inclusion in, omission from, or amendment of any such rule shall be deemed to bind the Declarant to its approval or to waive the exercise of the Declarant's discretion as to any such matter.

5.03 CODES AND REGULATIONS: All Improvements shall be planned and constructed in accordance with the rules and regulations established by the Declarant or its authorized agent, the laws and ordinances of the City, applicable building codes, and the rules and regulations of the FAA, where applicable.

5.04 REVIEW OF PLANS: Plans and specifications for proposed Improvements submitted to the Declarant for approval by its authorized agent shall be reviewed by the Airport Architectural Review Committee as established by ordinance.

The Airport Architectural Review Committee shall submit in writing to the Airport Manager, as authorized agent of the Declarant, the Committee's recommendation with respect to the plans and specifications of the proposed Improvements within thirty (30) working days of the original date of submission to the Declarant. The Airport Manager, shall within ten (10) days of receipt by him of the recommendations of the committee, approve or disapprove the plans and specifications. Any party dissatisfied with a decision of the Airport Manager based on the recommendation of the Airport Architectural Review Committee shall have the right to appeal such decision to the City Council through the Airport Board. The Airport Architectural Review Committee shall also be responsible for inspecting and continuous monitoring of construction, signs, installation of landscaping, and review of the as-built plans.

5.05 BASIS FOR APPROVAL BY THE DECLARANT: Approval by the Declarant or its authorized agent shall be based on the adequacy of site dimensions and on the general conformity of the plans and

specifications to the intent of this Declaration. The Declarant shall not arbitrarily, without written explanation, withhold approval of properly submitted plans and specifications.

Approval of any plans or specifications for use on any one Lot shall not be deemed a waiver of the discretionary right of the Declarant to disapprove the same plans or specifications if such plans or specifications are subsequently submitted for approval for use on any other Lot or Lots.

5.06 FAILURE TO APPROVE: If the Declarant fails to approve or disapprove plans and specifications within forty (40) working days after the same have been submitted, it shall be conclusively presumed that the Declarant has approved said plans and specifications.

5.07 COMMITMENT TO CONSTRUCT: Upon approval by the Declarant of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the Declarant and a copy of such plans bearing the written approval of the Declarant shall be returned to the Tenant of the Lot(s) on which such structure is or will be placed.

Approval of these plans by the Declarant shall constitute a commitment on the part of the Tenant to erect and maintain the Improvements as proposed and approved within the time schedule established in Paragraph 5.01.

5.08 CONSTRUCTION WITHIN TIME SCHEDULE SPECIFIED: Any approved construction shall be prosecuted diligently in accordance with the approved plans and specifications and shall be completed

within the specified time schedule. Failure to complete such work in the specified time schedule shall cause such approval to be automatically withdrawn unless the Declarant or his authorized agent grants written extension of such approval. After such automatic withdrawal of approval, the Tenant will be considered in default of its lease for such Lot(s), and the Declarant may terminate such lease in accordance with the provisions in that document.

5.09 LANDSCAPING PLANS: Trees, shrubs, fences, hedges, or other landscaping shall not be planted, placed, or maintained on any Lot until a complete plan thereof has been submitted to and approved by the Declarant or his authorized agent in writing. The landscaping plans shall be prepared in accordance with the Airport Landscaping Standards and shall be submitted at the same time as the other plans and specifications for proposed Improvements. The plans shall be reviewed by the Airport Architectural Review Committee in the same manner and time period as those required for architectural plans under Paragraph 5.04.

All plans for landscaping Improvements shall be prepared by registered or approved landscape architects. Final approval shall be by the Declarant or its authorized agent.

5.10 PLANS FOR ALTERATIONS IN IMPROVEMENTS: All plans for alterations to the leased Lot(s), either for the construction of additional facilities or alterations to existing Buildings, shall be prepared, submitted, and approved as outlined in Paragraphs 5.01 through 5.09 and shall be subject to the same restrictions as

herein provided. This paragraph shall apply only to exterior or structural changes; alterations to the interior of Buildings shall not be considered unless they affect the performance standards in Article 3.

5.11 FEES: The Declarant shall charge and collect a reasonable fee, as determined every five years by the Declarant or its authorized agent, for architectural review and other reviews of plans submitted for approval. Such plans could relate to initial development or alterations to existing development. The fee shall be payable at the same time such plans are submitted. If initial plans or any subsequent plans are disapproved, an additional review fee, as determined by the Declarant or its authorized agent, shall be paid before further review.

The amount of such fee shall not exceed the actual cost to the Declarant of making such examination, including the cost of any architect's or engineer's fees incurred in connection therewith.

ARTICLE 6

ENFORCEMENT

6.01 CONSTRUCTION WITHOUT APPROVAL: If any structure shall be erected, placed, altered, or maintained on any Lot other than in accordance with plans and specifications approved by the Declarant or his authorized agent, such erections, alterations, and maintenance shall be deemed to have been undertaken without the approval required herein. This restriction shall be applicable to landscaping and signage plans as well as to architectural plans.

In the event of such construction without approval, the Tenant will be considered in default of the lease for such Lot, and the Declarant may terminate the lease in accordance with the provisions set forth in that document.

6.02 ABATEMENT AND REMOVAL: If the Declarant determines that his Declaration is being violated by any Tenant on a Lot or Lots, the Declarant shall have the right after giving notice as required by the lease to enter the Lot(s) of such Tenant to determine the exact cause, effect a cure, and abate or remove the violation from the Lot(s). All expenses incurred in this action shall be payable by the Tenant of the facility in which the violation occurred.

6.03 SUIT: The Declarant or the Tenants of facilities affected by a violation shall have the right to file suit against violators of this Declaration, to prevent a violation, effect a cure, abate or remove a violation, or recover damages for said violation.

6.04 ATTORNEY'S FEES: In any legal proceeding for the enforcement of this Declaration or prevention of a violation of this Declaration or any part hereof, the party against whom judgment is rendered shall bear the reasonable expense of attorneys' fees of the prevailing party in the amount to be specified by the Court.

6.05 RIGHT OF ENTRY AND INSPECTION: Any authorized agent of the Declarant, at any reasonable time and without notice, may enter on and inspect any Lot to ascertain whether the maintenance of such Lot, Improvements under construction, or alteration of structures

thereon are in compliance with the provisions hereof. Neither the Declarant nor such authorized agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

6.06 FAILURE TO ENFORCE A RESTRICTION: The Declarant may fail to enforce any restriction herein specified on any Tenant on a Lot or Lots, but in no event should this be deemed a waiver of this Declaration or the right to enforce any restriction at a later date.

ARTICLE 7

MISCELLANEOUS PROVISION

7.01 ACCEPTANCE BY ALL TENANTS: Every person, firm, or corporation who shall hereafter acquire any right, title, or interest in any Lot(s) or Buildings or portions thereof shall have consented and agreed to every covenant and restriction herein contained or implied even though this Declaration may not have been made reference to or part of the documents received as a part of leasing a Lot or Building or any portion thereof.

7.02 ASSIGNMENT OF DECLARANT'S RIGHT AND DUTIES: The Declarant has certain rights, powers, and reservations as herein established by this Declaration and may assign to any person, firm, or corporation these rights, powers, and duties evidencing its consent in writing to accept such an assignment and assume such duties. The person, firm or corporation having accepted the rights of the Declarant shall also be bound to the obligations in this Declaration.

7.03 HOUSEKEEPING: If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on a Lot more than ten (10) days after a request in writing from the Declarant or its authorized agent to have them removed, the Declarant or its authorized agent may enter on any Lot to remove same by whatever means it deems necessary. Such entry shall not be deemed a trespass, and the Declarant shall not be subject to any liability therefor. The cost of such work shall be borne by the Tenant.

7.04 MAINTENANCE OF LANDSCAPING: The Declarant shall be the sole judge of the quality of maintenance of the landscaping. If landscaping areas are not maintained in accordance with the standards in the lease and those in this Declaration and the condition is not corrected within ten (10) days after written notice from the Declarant, the Declarant or its authorized agent shall have the right to enter on any of the Lot(s) leased and plant or replant such areas, without being deemed guilty of trespass. The costs therefor, as determined by the Declarant, shall be paid by the Tenant.

7.05 SIDEWALKS PROHIBITED: The construction of sidewalks is prohibited except (1) between onsite parking areas and the Buildings they serve, (2) between Buildings involved in a single industrial activity for single Tenant, (3) in the Industrial Park Commercial Support areas, and (4) along the east side of Airport Road. Any sidewalks to be constructed in said areas shall be depicted on the plot plans and shall be subject to approval by the Declarant.


7.06 USE PERMITS: Such use and occupancy permits as may be required by the Building Code of City shall be maintained in force at all times by each Tenants.

IN WITNESS WHEREOF, THE CITY OF EL PASO, the Declarant, has caused its name to be hereunto subscribed this 5th day of February, 1985.

ATTEST:

CITY OF EL PASO, TEXAS

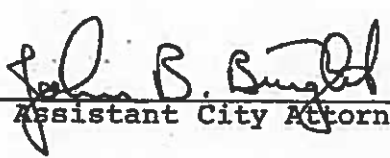

City Clerk


Mayor

APPROVED AS TO CONTENT:


Airport Manager

APPROVED AS TO FORM:


Assistant City Attorney



Legislation Text

File #: 22-517, 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 3

Airport, Sam Rodriguez, (915) 212-7301

AGENDA LANGUAGE:

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

A Resolution to authorize the City Manager to sign a Lease Agreement between the City of El Paso ("Lessor") and B.H. 7108 Airport Road, LLC ("Lessee") regarding the following described property: A portion of Lots 1 and 2, Block 6, Butterfield Trail Industrial Park Unit One Replat A, consisting of approximately 44,262.9 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 7108 Airport Rd., El Paso, Texas.

The term of this lease is an initial term of forty (40) years and one (1) ten-year option to extend the term of the lease. The annual rental fee for the land in the initial term will be \$48,000. The rent fee for the building will be a lump sum in the amount of \$280,000.00.

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

DEPARTMENT: Aviation

AGENDA DATE: May 10, 2022

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, (915) 212-7301

DISTRICT(S) AFFECTED: District 3

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

This is a Resolution to authorize the City Manager to sign a Lease Agreement between the City of El Paso ("Lessor") and B.H. 7108 Airport Road, LLC ("Lessee") regarding the following described property: A portion of Lots 1 and 2, Block 6, Butterfield Trail Industrial Park Unit One Replat A, consisting of approximately 44,262.9 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 7108 Airport Rd., El Paso, Texas.

The term of this lease is an initial term of forty (40) years and one (1) ten-year option to extend the term of the lease. The annual rental fee for the land in the initial term will be \$48,000. The rent fee for the building will be a lump sum in the amount of \$280,000.00.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval to lease the subject property to B.H. 7108 Airport Road, LLC. The subject property is located in the El Paso International Airport's Butterfield Industrial Park. The improvements were acquired by the Airport through bankruptcy proceedings involving the previous tenant. The property will be repaired and remodeled to accommodate industrial and office uses.

PRIOR COUNCIL ACTION:

None – this is a new tenant

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue generating item.

BOARD / COMMISSION ACTION:

N/A

DEPARTMENT HEAD:


Sam Rodriguez, P.E.

Chief Operations & Transportation Officer/Director of Aviation

RESOLUTION

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

That the City Manager is authorized to sign a Lease Agreement by and between the City of El Paso ("Lessor") and B.H. 7108 Airport Road, LLC, ("Lessee") regarding the following described property:

A portion of Lots 1 and 2, Block 6, Butterfield Trail Industrial Park Unit One Replat A, consisting of approximately 44,262.9 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 7108 Airport Rd., El Paso, Texas

with a 40 year initial term and one option to extend for ten years; and

that City Manager is authorized to sign any and all documents related and/or necessary to effectuate the leasing and related closing of the property.

Dated this ____ day of _____ 2022.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

7108 AIRPORT ROAD LEASE AGREEMENT

El Paso International Airport El Paso, Texas

B.H. 7108 AIRPORT ROAD, LLC

Lessee

May 27, 2022
Effective Date

7108 AIRPORT ROAD LEASE AGREEMENT

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EXHIBIT "A" - Property Description & Metes and Bounds of Premises

EXHIBIT "B" – Declaration of Restrictions and Covenants

7108 AIRPORT ROAD LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is entered into as of May 10, 2022, by and between the City of El Paso (the "City" or "Lessor") and B.H. 7108 Airport Road, LLC ("Lessee").

WHEREAS, Lessor owns and operates El Paso International Airport, located in the County of El Paso, State of Texas, ("Airport"), said Airport being managed by the Director of Aviation, as amended from time to time in terms of actual title ("Director"); and

WHEREAS, Lessor deems it advantageous to itself and to its operation of the Airport to lease unto Lessee the parcel of land described herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out; and

WHEREAS, Lessee proposes to lease on a net basis from Lessor certain ground area and to avail itself of certain privileges, rights and uses pertaining thereto; and

WHEREAS, Lessee has indicated a willingness and ability to properly keep, maintain and improve said ground in accordance with standards established by Lessor;

NOW THEREFORE, Lessor and Lessee agree as follows:

ARTICLE I - PREMISES AND PRIVILEGES

1.01 Description of Premises Demised.

Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas:

A portion of Lots 1 and 2, Block 6, Butterfield Trail Industrial Park Unit One, Replat A, consisting of approximately 44,262.9 square feet, City of El Paso, El Paso County, Texas, municipally known and numbered as 7108 Airport Rd., El Paso, Texas and more particularly described by **Exhibit "A"**, which is attached hereto and by this reference made a part hereof ("Premises") for all purposes.

1.02 Restriction of Privileges, Uses and Rights.

The rights and privileges granted Lessee hereunder are subject and expressly limited to the terms and conditions of the Declaration of Restrictions and Covenants attached hereto as Exhibit "B", and fully incorporated herein by reference (the "Declaration").

1.03 Conditions.

The granting of this Lease and its acceptance by Lessee is conditioned upon the covenant that the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.

1.04 Habendum and Title Warranty.

Lessor warrants that it owns the Premises together with all building, structures, improvements and fixtures with every right, privilege, hereditament and appurtenance belonging or appertaining to it free and clear of all liens, claims and encumbrances.

ARTICLE II - TERM OF LEASEHOLD**2.01 Term.**

The "Term" of this Lease will be the Initial Term and any properly exercised Option Period, as provided below. This Lease shall be for an initial term of forty (40) years ("Initial Term"), commencing on May 27, 2022 ("Effective Date") and ending on May 26, 2062 unless sooner terminated pursuant to this Lease.

2.02 Option to Extend.

If the Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease ("Option Period") for one (1) additional term of ten (10) years by notifying Lessor in writing of Lessee's election at least one (1) year prior to the expiration of the Initial Term.

2.03 Holding Over.

It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent of one and one-half times (150%) the current monthly rent, unless the hold over is caused by the City staff not placing a new agreement with Lessee regarding the Premises at the end of the term of the present Agreement on the City Council Agenda on a timely basis in which case the monthly rental rate in effect prior to the hold over shall continue until the new agreement is executed. Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

ARTICLE III - RENT**3.01 Rent.**

- A. Lessee shall pay to Lessor, without notice or demand and without deduction or set-off, Base Rent and Additional Rent (collectively, "Rent") for the Premises.
- B. Base Rent shall be as follows:
 - (1) Land Rent: \$48,000 per annum; \$4,000 monthly, payable in equal monthly installments on or before the first day of the month during the Term; and
 - (2) Building/Facility Rent: \$280,000.00, paid in a lump sum prior to the Effective Date on May 27, 2022.

3.02 Adjustment of Land Rent.

For the purpose of computing adjustments to rental payments, Lessor and Lessee agree as follows, with each adjustment effective as of the appropriate anniversary date, regardless of the date the actual adjustment is made:

- A. Rent shall be adjusted on the first of the month following each fifth (5th) anniversary of the Effective Date of this Lease thereafter during the Initial Term and any Lessee's Option Period. Lessor and Lessee agree that, except as provided for in paragraph B to this Section, percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the rent readjustment for these anniversary dates. The parties further agree that for the purposes of computing such percentage increase during the Initial Term, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Effective Date of this Lease. Rent shall be adjusted pursuant to the percentage increase in the CPI-U from the Base Year CPI-U to the rate in place ninety (90) days prior to the applicable date of readjustment (i.e. the fifth (5th) anniversary date of the Effective Date of this Lease).

In the event the CPI-U is not yet published or is otherwise unavailable for the month in which this Lease is effective, the price index used will be that price index for the closest preceding month for which the price index is available. In the event that the CPI-U is no longer published by the Bureau of Labor Statistics, Department of Labor at a time when an adjustment is to be made, Lessor and Lessee agree to use the consumer price index published by the Department of Labor that replaces the CPI-U or, if no replacement is available, but a reasonably comparable consumer price index exists, to use the method set forth in paragraph B below to adjust rent.

All readjustments shall be effective as of the fifth (5th) anniversary date, without regard to the date the actual adjustment is made; provided, however, that in no event shall the readjusted Rent be less than the rate in place immediately prior to such readjustment nor more than twenty percent (20%) more than the Rent established at the beginning of the immediately preceding five-year period.

- B. At the beginning of the forty-first year of Lessee's tenancy, the Rent shall be adjusted to a rate equal to eight percent (8%) of the then fair market value of the Premises, including the value of the Lessor owned improvements located on the premises, established as set forth in this Lease. In no event however, shall the Rent for the Option Period be less than the Rent established at the beginning of the immediately preceding five (5) year period. The Rent shall become effective as of the Option Period, regardless of the date the actual adjustment is made.
- C. **Appraisal.** The fair market value of an identified parcel ("Parcel") shall be determined by either a current appraisal (less than three years old) of a

similar property ("Current Appraisal") or a new appraisal of the Parcel. It shall be at the discretion of Lessor as to whether a Current Appraisal or a new appraisal shall be used. In the event a new appraisal is preferred, Lessor will select an appraiser from its list of qualified appraisers to establish the fair market value of the Parcel, including the value of the Lessor owned improvements located on the premises. This appraisal or the Current Appraisal shall be known as the "First Appraisal."

Upon completion of the First Appraisal, Lessor shall notify Lessee in writing of the rental rate, which shall be calculated as described in Section 3.04B. If Lessee agrees with the First Appraisal, or does not respond to Lessor in writing within fifteen (15) calendar days after receipt of the written notice as required herein, or it does not produce a Second Appraisal (as defined below) within 30 calendar days from Lessee's notice to proceed with said Second Appraisal, the First Appraisal and its resulting rent shall be deemed to be accepted by Lessee.

If Lessee disagrees with the rental rate resulting from the First Appraisal, Lessee, within fifteen (15) calendar days after receipt of said notice, shall notify Lessor in writing of Lessee's request for a qualified second appraisal ("Second Appraisal"). The second appraiser must be the next appraiser appearing on Lessor's list of qualified appraisers. The cost of the Second Appraisal shall be paid by the Lessee. The rental rate resulting from the Second Appraisal shall be calculated as described in Section 3.04B.

After the Lessee provides Lessor with the Second Appraisal, both parties have a 15 business day review period to consider same. If, by the 15th day, either the Lessor or Lessee disagrees with the rental rate resulting from the Second Appraisal, and a third appraisal ("Third Appraisal") is necessary, the Lessor and Lessee shall agree to the next appraiser appearing on the Lessor's list of qualified appraisers. The cost of the Third Appraisal shall be paid equally by the Lessor and Lessee, and the Third Appraisal shall be the final determinant of the rental rate. There shall be no further appraisals beyond the Third Appraisal, regardless of whether either the Lessor or Lessee disagrees with the rental rate resulting from the Third Appraisal.

Lessee shall pay the Rent as determined by the First Appraisal under protest until there is a final determination of the fair market value for the Parcel for which the Rent is determined. Should the final determination of the fair market value of the Parcel be a lower rate than the fair market value of the Parcel determined by the First Appraisal, Lessee's account will be credited by Lessor accordingly.

3.03 Reserved.

3.04 Unpaid Rent, Fees and Charges.

Any installment of Rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Lessor by the twentieth (20th) day of the month in which payment is due, shall bear interest from the date such Rent or other amount was due at the lesser of the rate of eighteen percent (18%) per year or the then maximum nonusurious rate under applicable law, (the lesser of said amounts being herein referred to as the "Maximum Rate."). In the event the late charge is ever deemed to be "interest" the amount of interest on past due amounts shall be automatically reduced so that the combination of said late charge and the interest on past due amounts, if any, does not exceed the Maximum Rate. Any amount collected which exceeds the Maximum Rate will be deemed credited to other amounts owed by Lessee to Lessor under this Lease, and any remaining excess after such credit shall be refunded to Lessee. It is the intent of both Lessor and Lessee to at all times comply with the applicable law regarding the maximum nonusurious amount or rate of interest which may be contracted for, charged, taken, reserved or received by Lessor.

3.05 Place of Payment.

All rent payments provided herein shall be paid to Lessor at the following address:

Accounting Division
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79997-1278

In lieu of payments being mailed to the above address, electronic payments may be made via any electronic payment system Lessor authorizes in writing.

3.06 Reserved.**ARTICLE IV - OBLIGATIONS OF LESSOR****4.01 Quiet Enjoyment.**

Lessor agrees that upon Lessee's paying rent and performing all of the covenants, conditions, and agreements set forth in this Lease, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

ARTICLE V - OBLIGATIONS OF LESSEE**5.01 Net Lease.**

This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article IV above and elsewhere in this Lease Agreement. Lessee shall:

- A. Keep and maintain the Premises and any buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises (collectively, the "Improvements") in a good state of repair at all times;

- B. Pay any and all taxes assessed against the Premises, Improvements located on the Premises, Lessee's interest in the Premises and Improvements, and all of Lessee's personal property located on the Premises; and
- C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

5.02 Condition of Premises.

Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or Improvements or their suitability for a particular use. Lessee accepts the Premises "As Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

5.03 Compliance with Laws.

- A. Lessee, at Lessee's expense, agrees that it will construct, operate and maintain Improvements on the Premises in accordance with the Declaration and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, including the Lessor, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any Improvements thereon. In addition, Lessee agrees, if required, it will remove all Improvements placed thereon by the Lessee ("Lessee Improvements"), in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, including the Lessor, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any Improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other 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, which relate to the use or occupation of the Premises and any Improvements thereon by disabled persons ("Disabilities Laws"). Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any Improvements thereon.

B. Environmental Laws.

- (1) “Environmental Laws” means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) “Hazardous Material” shall mean (a) all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like; or (b) give rise to liability under any Environmental Laws or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under applicable reported decisions of state or federal court; or (c) which may be hazardous or harmful to the air, water, soil or environment or affect industrial hygiene, occupational health or safety, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste. “Release” shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.
- (3) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its sublessees, agents, employees, contractors, invitees, licensees, or a third party in violation of any Environmental Law.

Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its officers, directors, employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or Release or discharge from the Premises or any Improvements thereon

caused by the act or omission of Lessee, its sublessees, agents, employees, contractors, licensees or invitees. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, Improvements, land, soil, underground or surface water to the extent required under Environmental Laws. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any Improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work to the extent required by any federal, state or local governmental agency or political subdivision having authority to enforce Environmental Laws because of Hazardous Material located on the Premises or any Improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not, on its own, an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

- (4) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any Improvements thereon or permitted by Lessee results in any contamination of the Premises or any Improvements thereon, or any surrounding property, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any Improvements thereon or the surrounding property to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any Improvements thereon or the surrounding property; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any Improvements thereon or the surrounding property.
- (5) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any Improvements thereon or on surrounding property to comply with applicable Environmental Laws, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises to respond to any governmental investigation or to respond to any claim of liability by third

parties which is related to environmental contamination of the Premises or the Improvements thereon or the surrounding property.

- (6) Lessee shall immediately notify Lessor promptly after Lessee becomes aware of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (7) Lessee shall insert the provisions of this Section 5.03 in any lease, agreement, license, or contract by which it grants a right or privilege to any person, firm or corporation under this Lease, but only with respect to those leases, agreements, licenses or contracts executed after the Effective Date of this Lease.
- (8) Fuel storage tanks are not allowed on the Premises.
- (9) Lessee's failure or the failure of its agents, employees, contractors, licensees, invitees, or a third party to comply with any of the requirements and obligations of this section 5.03(C) shall constitute a material default of this Lease and shall permit Lessor to pursue the remedies as set forth in Article X herein below, in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Lessor may resort cumulatively.
- (10) At any time that Lessee submits any filing or response pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the FAA, the EPA or the TCEQ, or any successor agencies, Lessee shall provide duplicate copies to Lessor of such filing(s) or response(s) with any related documents at the time same are made.
- (11) Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide to Lessor a Phase I Environmental Site Assessment meeting ASTM standards of the Premises ("Lessee's Report"); and if, in the opinion of Lessor, if Lessee's Report indicates that the Premises is in violation of applicable Environmental Laws, then Lessee shall perform work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws.

5.04 Lessee Improvements

- A. Lessee shall have during the Term the right to construct or make structural alterations to any building or other structure now or hereafter on the Premises as Lessee Improvements, to be permitted and built in compliance with all applicable federal state and local laws, regulations, and Lessor rules, including any applicable

Federal Aviation Administration ("FAA") regulations, only with the prior express written approval of Lessor which shall not be unreasonably withheld. Lessee shall be responsible for all approvals, permits, licenses, and fees necessary to complete such Lessee Improvements.

- B. Lessee agrees to pay, when due, all sums that may become due for any labor, services, materials, supplies, furnishings, machinery and equipment furnished to or for Lessee in, upon, or about the Premises or the Airport. Lessee shall keep the Leased Premises free and clear of any liens and encumbrances arising or growing out of Lessee use and occupancy of the Premises (including without limitation Improvements made thereto and repair and maintenance completed therein) or activities at the Airport. If a lien is filed against the Premises, Lessee shall immediately, at its expense, bond such lien in accordance with applicable laws, or otherwise cause such lien to be discharged in a manner acceptable to Lessor. If Lessee shall fail to do so, Lessee may, at its option and at Lessee's expense, bond such lien or otherwise cause it to be discharged.
- C. Lessor retains the continuing right in the Premises to prevent the erection or growth of any building, structure, tree, or other object extending into the airspace exceeding the height of any existing structures, trees or other objects on the Premises; to assure compliance with obstruction clearance requirements; and to remove from said airspace at Lessee's expense, or at the sole option of Lessor, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree, or other object now upon, or which in the future may be upon the property together with the right of ingress to, passage over, and egress from Lessee's property for the above purposes.
- D. Lessee covenants and agrees that facilities constructed on the Premises, exclusive of paving and landscaping, shall cover a minimum of twenty percent (20%) of the Premises' land area, and a maximum of fifty percent (50%) of the Premises' land area. In the event such Improvements are partially or totally destroyed by fire or other casualty, Lessee shall have the absolute right to restore or rebuild such Improvements to the same size as existed prior to the casualty.

5.05 Lessor's Approval of Plans.

Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of Improvements or any plans, specifications and working drawings for Lessee's removal of Improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Department of Aviation is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Director, Lessee shall be required to obtain the approval of other City departments. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to the Director one (1) complete set of the Final Plans as approved by the governmental agencies exercising jurisdiction thereover, and copies of all issued permits. Upon completion of construction, Lessee shall deliver to Director a complete set of record (as-built) and shall provide such in electronic files drawings of the construction signed and sealed

by a professional engineer or architect licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises.

5.06 Landscaping and Maintenance of Improvements.

- A. Lessee shall landscape the Premises and keep the Improvements on the Premises in a good state of repair and condition and in a presentable condition comparable in appearance and character to similar improvements at the Airport. The exterior finish on the Improvements shall be repainted and refinished as reasonably necessary to maintain the appearance of such Improvements to a standard comparable to similar improvements at the Airport. Notwithstanding anything to the contrary in the Declaration, Lessor agrees that attractive, low water usage landscaping is a desirable goal and agrees to consider and approve appropriate low water usage landscaping plans as a part of the architectural review process. Lessee shall have 180 days to from the Effective Date to comply with this provision due to the current condition of the Premises.
- B. Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform reasonable maintenance Lessor reasonably deems necessary in order to cause the exterior finish to be in a condition comparable to similar improvements at the Airport. If said maintenance is not commenced by Lessee within forty-five (45) days after receipt of written notice and if Lessee is unable to show that it has made diligent efforts to commence the work, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Lessee.
- C. Lessee shall not remove any of its Improvements from the Premises or waste or destroy said Improvements. Any personal property placed or installed by Lessee in the Premises shall remain the property of Lessee during the Term.

5.07 Utilities.

Lessee shall pay for all costs or charges for utility services furnished to Lessee during the term hereof. Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense.

5.08 Trash, Garbage, and Other Refuse.

Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

5.09 Permitted Uses.

Lessee may use the Premises only for uses permitted under zoning and Covenants and Restrictions (the "Permitted Use", in accordance with all applicable laws. In conjunction with Lessor's use of the Premises, Lessor shall not: (a) cause substantial noise, vibration, fumes, debris, electronic

interference, or other nuisance on or adjacent to the Premises; (b) create any condition that is a safety hazard; or (c) interfere in any way with Airport operations. In addition, without limiting the generality of any other provision of this Lease, Lessee shall not, without the Lessor's written consent: (u) provide any facilities, services, commodities or supplies, now or hereafter made available at or through the Airport, other than the Permitted Uses; (v) operate any automobile or vehicle rental business; (w) operate any airline flight kitchen or other facilities providing meal services to aircraft crews or passengers or the public (non-aircraft); (x) offer lodging facilities; or (y) use any portion of the Premises for parking for passengers or customers of the Airport.

5.10 Penalties Assessed by Federal Agencies.

Lessee understands and agrees that in the event any federal agency assesses a civil penalty against Lessor or the Airport for any violation, including but not limited to any security violation, as a result of or related to any act or failure to act on the part of Lessee, its sublessees, agents, employees contractors, licensees or invitees, Lessee shall reimburse Lessor in the amount of the civil penalty assessed provided that Lessee was permitted to participate in the due process for administration of the violation. Failure to reimburse Lessor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

5.11 Relocation of Premises. Upon at least twenty-four (24) months' prior Notice to the Lessee, Lessor may relocate, at Lessor's expense, all of Lessor's facilities located on the Premises and the Improvements constructed thereon. Except as otherwise agreed between the parties, the Improvements to be constructed by Lessor on the relocated Premises will be of equal or better quality and utility. Lessor agrees to use all reasonable efforts to minimize interference with Lessee's operations at the Premises in connection with any such relocation; provided that, Lessee shall continue to be able to operate at either the Premises, the relocated premises (or, at Lessee's option, a combination of the two), without material interference. Provided however that if any such relocation materially impairs or interferes with Lessee's, sublessee's, or assignee's, in the sole discretion of Lessee, use of the Premises, Lessee will have the option to terminate the Lease at the end twenty-four (24) months.

ARTICLE VI - INSURANCE AND INDEMNIFICATION

6.01 Insurance.

Prior to the execution of this Agreement, Lessee shall obtain, provide proof of, and shall maintain for the term of this Agreement, the types and amounts of insurance coverage listed below, in amounts as reasonably set from time to time by the Director, but not less than:

Comprehensive General Liability Insurance in amounts not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence,

Two Million Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence,

One Million Dollars (\$1,000,000.00) for Property Damage arising out of each occurrence, and

or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

6.02 Additional Insured.

Lessor shall be named as an Additional Insured on all insurance policies either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

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 Lessor or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

Commercial General Liability and Property Damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager.

6.03 Fire and Other Risks Insurance.

Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all Improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such Improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement of the Parties, an appraisal of the Premises and Improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selected be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee, unless the value claimed by Lessee is confirmed through such an appraisal, in which case the Lessor shall reimburse the Lessee for the cost of such appraisal.

6.04 Payment and Performance Bonds.

Prior to commencement of any construction work on the Premises the total cost of which will exceed Fifty Thousand Dollars (\$50,000.00), Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded.

Said bond shall guarantee the faithful performance of all necessary construction and completion of Improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.

- B. Prior to the date of commencement of any construction, a payment bond with Lessee's contractor or contractors as principal in a sum equal to the full amount of the construction contract project.

Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction project.

In accordance with Article 35.03.004 of the Texas Insurance Code, if a Performance or Payment bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas.

In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable Letter of Credit, in a form acceptable to the Director in her/his reasonable discretion and approved by the City Attorney, in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated by the construction contract.

6.05 Authorized Insurance and Surety Companies.

All required policies of insurance and bonds shall be written by insurance and surety companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) calendar days prior to the effective date of the insurance policy for which the certificate is issued and prior to the Effective Date of this Lease. Each insurance policy shall contain:

- A. a statement of the coverage provided by the policy;
- B. a statement certifying the Lessor to be listed as an additional insured in the policy;
- C. a statement of the period during which the policy is in effect;
- D. a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. an agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days prior written notice to Lessor.

6.06 INDEMNIFICATION.

LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED

DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF LESSEE'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF LESSEE OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LESSOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LESSOR BY REASON OF ANY SUCH CLAIM, LESSEE, UPON NOTICE FROM LESSOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR.

**ARTICLE VII - DESTRUCTION OF IMPROVEMENTS BY FIRE
OR OTHER CASUALTY**

7.01 Obligations of Lessee.

During the term hereof, except as provided in Section 7.03 below, should the Improvements constructed by Lessee upon the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and Improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee as aforesaid and subject to and in accordance with the following terms and conditions:

- A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms and provisions of the Declaration. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.
- B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits for the Premises. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Prior to commencing construction, Lessor may require Lessee to furnish a performance and payment bond in accordance with Section 6.04 and, if requested, Builder's Risk Insurance.

- D. Upon compliance with the foregoing, Lessee's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies having been paid to Lessee. After actual receipt of such insurance proceeds, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.
- E. Upon completion of the construction, Lessee shall deliver to Lessor, a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises.

7.02 Insurance Proceeds.

Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall disburse such proceeds during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged Improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

7.03 Cancellation of Lease.

Should the Improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty not caused directly or intentionally by Lessee but materially impairing Lessee's use of the Premises, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and Lessee shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction, in which case Lessee agrees that the following provisions shall apply: 1) Lessee shall return the Premises free and clear of all Improvements (both above and below ground level), rubble and trash; 2) upon Lessee's return of the Premises to Lessor, there shall be no environmental issues on the Premises, as evidenced by a Phase 2 environmental study; 3) Lessee shall pay ground rental for 180 days after the Premises is cleaned in accordance with this paragraph in order to allow Airport the time to secure another tenant. If Lessee elects to cancel this Lease under this provision, there shall be no refund to Lessee for the prepayment of Rent on the Improvements. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessee. Land rents payable under this Lease shall be prorated and paid to the date of such cancellation.

ARTICLE VIII - CONDEMNATION

8.01 Definitions.

The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning

agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.

- B. "Total Taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial Taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - (1) The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
 - (2) The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
 - (3) The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.
- D. "Partial Taking" means the taking of a fee title that is not either a Total or Substantial Taking.
- E. "Notice of Intended Taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to take containing a description or map reasonably defining the extent of the Taking.
- F. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- G. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

8.02 Notice of Condemnation.

The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of Intended Taking;

- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

8.03 Rights of Parties during Condemnation Proceeding.

Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or Intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

8.04 Taking of Leasehold.

Upon a Total Taking, Lessee's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation. If the Taking is a Substantial Taking under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the Intended Taking, elect to treat the Taking as a Total Taking. If Lessee does not so notify Lessor, the Taking shall be deemed a Partial Taking. Upon a Partial Taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

8.05 Total Taking.

All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by any Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

8.06 Partial Taking.

Upon a Partial Taking, all Awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises, as unencumbered by the Lessee-owned improvements but subject to the Lease.

8.07 Obligations of Lessee under Partial Taking.

Promptly after any such Partial Taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last two (2) years of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect;

provided however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

8.08 Taking of Temporary Use of Premises and Improvements.

Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such Taking, Lessee shall receive, hold and disburse the Award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such Taking is for a period extending beyond the expiration date of the term, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings.

ARTICLE IX - ENCUMBRANCES

9.01 Encumbrance.

As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiaries under deeds of trust, whether one or more. Lessee may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage and such mortgage shall be used for the purposes of making improvements to the Premises. The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

- A. The amount of the obligation secured by the Mortgage;
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Lessor shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Lessor upon Lessee under the terms and provisions of this Lease so long as such Mortgage is in effect.

9.02 Mortgagee's Rights.

Upon receipt of a notice or demand in accordance with Section 9.01 above, Mortgagee shall have one hundred and twenty (120) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;

- C. If the default cannot be cured within one hundred and twenty (120) days, to commence performance within such one hundred twenty (120) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.
- E. No Mortgagee shall have any personal liability under this Lease unless and until it becomes Lessee under this Lease.
- F. The Director will, upon request by any Mortgagee, certify in writing that this Lease is in full force and effect, whether this Lease has been amended, that to Lessor's knowledge Lessee is not in default, and the date through which rent has been paid.
- G. If this Lease and the fee estate in the Premises are ever commonly held as a result of a default by Lessee, then they shall remain separate and distinct estates and shall not merge until such time as all cure periods for Mortgagee specified in this Lease have expired.
- H. This Lease may not be amended, modified, changed, cancelled, waived, or terminated without prior written notice to all Mortgagees. Lessor shall not accept a voluntary surrender of the Lease without consent by all Mortgagees.

9.03 Rights on Foreclosure.

In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Lessee's interest in lieu of foreclosure shall succeed to all of Lessee's rights, interests, duties and obligations under this Lease.

ARTICLE X - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

10.01 Expiration.

This Lease shall expire at the end of the term or any extension thereof.

10.02 Cancellation.

Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of thirty (30) days after Lessor has notified Lessee in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property and such petition is not dismissed within ninety (90) days after filing;
- C. Make any general assignment for the benefit of creditors;

- D. Abandon the Premises;
- E. Be in violation of any local, state, or federal laws rules or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Lessee, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within ninety (90) days after the appointment of such receiver.

In any of the aforesaid events, which shall be events of default, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

10.03 Repossessing and Reletting.

In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, change the locks on the Premises, install fences and gates, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and
- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and

conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

10.04 Assignment and Transfer.

Lessee shall have the right and privilege to assign or transfer this Lease subject to the prior written approval of Lessor, which shall not be unreasonably withheld; provided, however, that Lessor's approval shall not be required in the event of an assignment of this Lease by Lessee to the first leasehold Mortgagee.

Any person or entity to which this Lease is assigned to pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

10.05 Subleasing.

Lessee shall have the right to sublease all or any part of the Premises hereunder for the same purposes permitted under the terms and provisions of this Lease, including but not limited to the insurance and indemnity requirements. Any such sublease executed after the Effective Date of this Lease shall be subject to the same conditions, obligations and terms as set forth herein and Lessee shall be responsible for the observance by its sublessees of the terms and covenants contained in this Lease. On or before January 1st and July 1st of each year of the Initial Term or Option Period of this Lease, Lessee shall report to Lessor any subleases of the Premises, or any improvements thereon and, upon request of Lessor, Lessee shall furnish Lessor with a copy of the Sublease Agreement. In addition, Lessee shall provide a list of its sublessees and the sublessees contact information and shall provide to Lessor updated information whenever said sublessees information changes.

10.06 Landlord's Lien.

It is expressly agreed that in the event of default in the payment of Rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for Rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary and proper expense of removing, storing and selling

such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

ARTICLE XI - GENERAL PROVISIONS

11.01 Continuity of Deed Restrictions and Covenants.

This Lease agreement is subject to the terms, covenants and conditions contained in the Declaration. Lessor reserves the right to revise the standards set forth in Exhibit "B" provided, however, that such revisions will not cause a substantial reduction in the value of Lessee's leasehold interest, result in a material cost or expense to Lessee, or be contradictory to the reasonable and prudent operation of property located at the Airport similar to the Premises. Lessor's right to revise the restrictions and covenants contained in the Declaration, is limited to the right to revise said document because of the development of new concepts or improved construction and architectural techniques and, in any event, such revisions shall be operative on a going forward basis only and shall not apply retroactively to any existing improvements.

11.02 Right of Flight.

Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the Airport.

Lessor reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at the Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

Lessor reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from the Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

11.03 Time Is of the Essence.

Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

11.04 Notices.

All notices provided to be given under this Lease shall be given by a) expedited delivery service with proof of delivery, or b) United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the proper party at the following addresses:

LESSOR:	City Clerk City of El Paso P.O. Box 1890 El Paso, Texas 79950-1890	Director of Aviation El Paso International Airport 6701 Convair Rd. El Paso, Texas 79925-1099
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LESSEE: B.H. 7108 Airport Road, LLC
 11111 Santa Monica Blvd, Ste. 600
 Los Angeles, CA 90025

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

11.05 Attorney's Fees.

If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

11.06 Agreement Made in Texas.

The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

11.07 General Civil Rights Provision.

Lessee agrees to 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 disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

11.08 Compliance with Nondiscrimination Requirements.

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (for purposes of this Section 11.08 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 Acts 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. **Nondiscrimination:** 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 Nondiscrimination Acts and Authorities, 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 Nondiscrimination Acts and Authorities 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 Lessor (for purposes of this Section 11.08 hereinafter referred to as the "sponsor") or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities 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 subcontract 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.

11.09 Affirmative Action.

Lessee assures that it will undertake an affirmative action program as required 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 for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of

activity covered by this Subpart. Lessee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

11.10 FAA Order 1400.11.

Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

- A. Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in Pertinent List of Nondiscrimination Authorities (Federal Aviation Administration Order 1400.11, Appendix 4) as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix C]. The Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the listed acts and authorities appearing in the Acts and Regulations.
- C. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix D]

- D. During the term of this Lease, Lessee for itself, its assignees, and successors in interest, as a part of the consideration hereof, agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
 - 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - The Age Discrimination Act of 1975, as amended, (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
 - The Federal Aviation Administration’s Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 USC 1681 *et seq.*).
- E. B. In the event of breach of any of the covenants in this section 3, Lessor shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]

11.11 Cumulative Rights and Remedies.

All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

11.12 Interpretation.

Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

11.13 Agreement Made in Writing.

This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

11.14 Paragraph Headings.

The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

11.15 Severability.

If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

11.16 Successors and Assigns.

All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

11.17 Taxes and Other Charges.

Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Lessee or Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, during the Term of this Lease including any extensions granted thereto. By March 1 of each year of this Lease and at no charge to Lessor, Lessee will provide written proof satisfactory to the Director that all taxes and governmental charges of any kind as described herein have been paid in full.

Lessor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from Lessee's use of the property or possession of the Premises.

Lessee in good faith may contest any tax or governmental charge, provided that Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to Lessor, such action will not adversely affect any right or interest of Lessor.

11.18 Waiver of Warranty of Suitability.

LESSOR DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. LESSEE LEASES THE PREMISES AS IS AND LESSOR DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE NOR SHALL LESSOR BE RESPONSIBLE OR LIABLE FOR ANY CONDITION OF THE PREMISES WHICH SHALL SOLELY BE THE RESPONSIBILITY OF LESSEE.

11.19 Survival of Certain Provisions.

All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 5.03 and 6.06 for two years.

11.20 Force Majeure.

It is expressly agreed and understood by the parties to this Lease that if the performance of any obligations hereunder is delayed beyond such party's reasonable control by reason of war, civil commotion, acts of God, outbreak of hostilities, epidemic, acts of terrorism, strike, severe weather or other casualty or court injunction, the party so obligated or permitted shall be excused from doing or performing same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period of time such party was reasonably delayed.

11.21 Restrictions and Reservations.

This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

Lessor reserves for itself and any authorized agent to, at any reasonable time and with 24-hour notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

11.22 Subordination of Lease.

All rights granted in this Lease shall be subordinate to the rights in any deed from the United States to the City of El Paso. This Lease shall further be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Premises, Lessee may cancel this Lease in its entirety. Should Lessee cancel its lease pursuant to this paragraph, it can pursue any remedies available to it under the Section VIII of this Lease.

11.23 Authorization to Enter Lease.

If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

11.24 Effective Date/Memorandum.

Regardless of the date signed, this Lease shall be effective as of the date indicated in the Term section of this Lease. Simultaneously with the full execution and delivery of this Lease, Lessor and Lessee may execute and acknowledge a memorandum of this Lease in form and substance reasonably acceptable to Lessor and Lessee. If the parties execute said memorandum, Lessee shall provide to Lessor a copy of the memorandum filed of record in the Real Property Records for El Paso County, Texas.

(Signatures begin on following page)

LESSOR'S SIGNATURE AND ACKNOWLEDGMENT

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day of _____, 2022.

LESSOR: CITY OF EL PASO

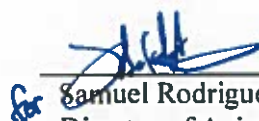
Tomás González
City Manager

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2022, by Tomás González as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

LESSEE'S SIGNATURE AND ACKNOWLEDGMENT

LESSEE: B.H. 7108 AIRPORT ROAD,
LLC

BP

At

By:

Print Name: Allen Gozini

Title: Manager

ACKNOWLEDGMENT

THE STATE OF)

COUNTY OF)

This instrument was acknowledged before me on this day of , 2022, by , its of (Lessee).

Notary Public, State of

My Commission Expires:

(see attached)

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
 COUNTY OF LOS ANGELES)

On May 2nd, 2022, before me, Y. Wachtel, a Notary Public, personally appeared Allen Giorini who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Y. Wachtel

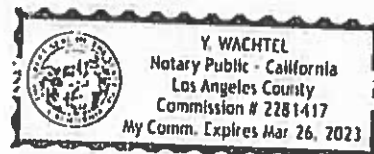


EXHIBIT "A"

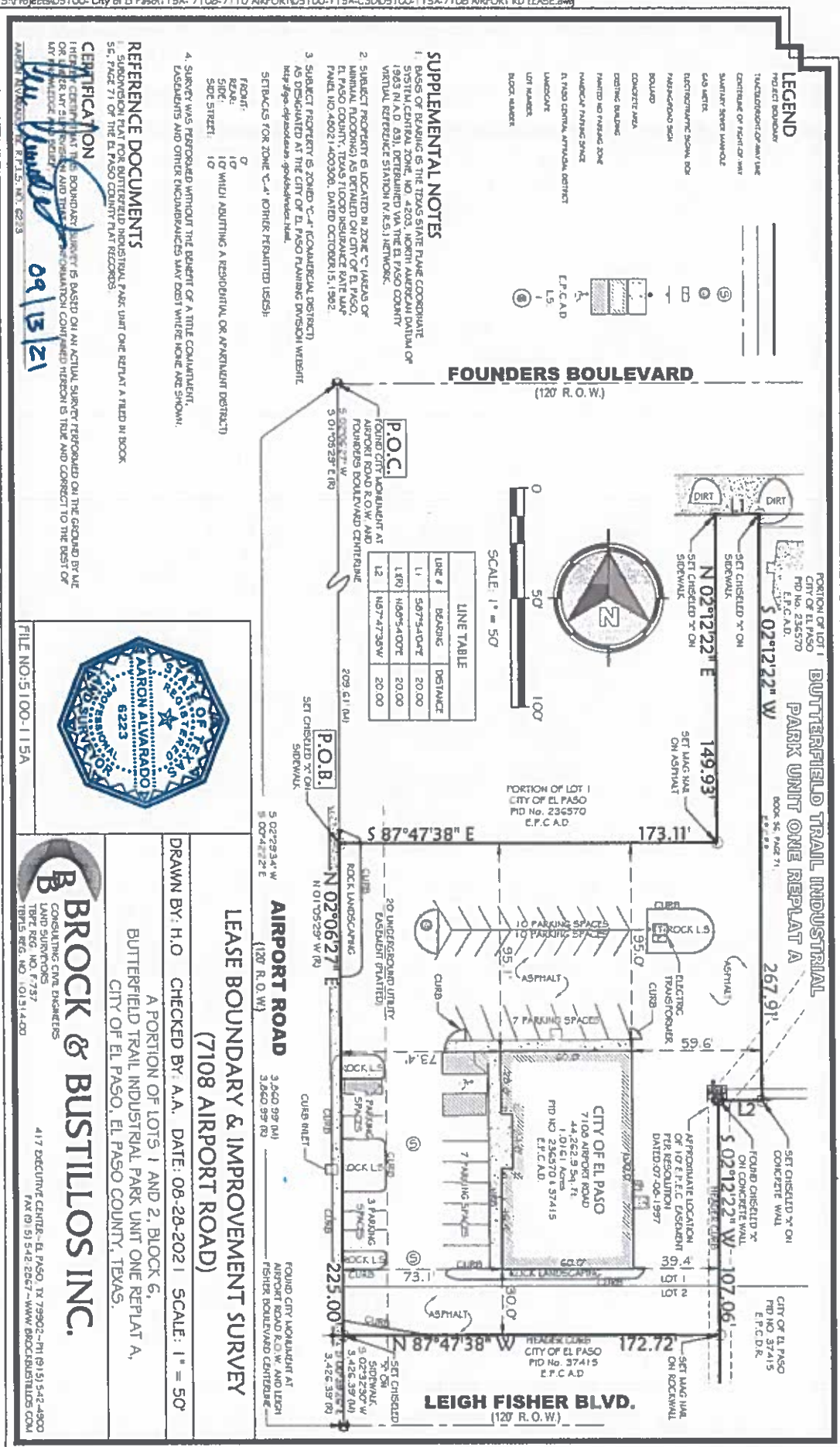


EXHIBIT "B"

EXHIBIT

**DECLARATION OF RESTRICTIONS AND COVENANTS
BUTTERFIELD TRAIL INDUSTRIAL PARK**

**El Paso International Airport
El Paso, Texas**

EXHIBIT

Revised: 5/02/94

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DECLARATIONS OF RESTRICTIONS AND COVENANTS
BUTTERFIELD TRAIL INDUSTRIAL PARK

El Paso International Airport
El Paso, Texas

THIS DECLARATION, made this _____ day of _____,
19__, by the CITY OF EL PASO, a political subdivision of the State
of Texas, hereinafter referred to as the "Declarant";

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of El Paso International
Airport, located in the City of El Paso, State of Texas,
hereinafter referred to as the "Airport"; and

WHEREAS, the Airport has within its physical boundary certain
real property intended for the establishment of a desirable
industrial environment for certain manufacturing and industrial
uses and, under statutory authority, for certain manufacturing and
merchandise manipulation to encourage and expedite foreign trade,
and known as Butterfield Trail Industrial Park, hereinafter
referred to as the "Property"; and

WHEREAS, the Butterfield Trail Industrial Park has been
designated as a Foreign-Trade Zone, thereby permitting foreign
trade activities to occur on any Lot in the Property; and

WHEREAS, to establish a general plan for improving and
developing the Property and to use the Property as a Foreign- Trade
Zone, the Declarant desires to subject the development of the
Property to certain conditions, restrictions, and covenants on
which the entire Property and Improvements thereto shall be bound;

WHEREAS, the Declarant desires to subject the development of
said Property to certain conditions, restrictions, and covenants to

ensure the development of a desirable environment for said activities, and to ensure that said development will be compatible with adjacent land uses on the Airport by performance, appearance, and general operating characteristics;

NOW, THEREFORE, the Declarant hereby declares that (except to the extent compliance with this revised Declaration of Restrictions and Covenants would cause undue hardship or expense for a Tenant with respect to leasehold improvements and activities undetaken by him prior to the effective date of this instrument in conformity with the Restrictions and Covenants incorporated in his lease) the Property more particularly described hereinafter is and shall be held and conveyed subject to the conditions, restrictions, and covenants hereinafter set forth, each and all of which are for the benefit of each Tenant of any portion of said Property, each and all of which shall inure to and pass with each and every lot on said Property, and each and all of which shall apply to and bind the respective successors in interest of said Property and any portion thereof, as follows:

ARTICLE 1

PROPERTY

The real property subject to this Declaration is situated on El Paso International Airport in El Paso County, El Paso, Texas, and is known as the Butterfield Trail Industrial Park and Foreign-Trade Zone No. 68.

ARTICLE 2

DEFINITIONS

The words and phrases defined in this Article shall have the following meanings when used elsewhere in this Declaration:

2.01 AIRPORT BOARD: An advisory board appointed by the Mayor and City Council for the purpose of advising them with respect to Airport matters.

2.02 AIRPORT MANAGER: The Manager of El Paso International Airport.

2.03 BUILDING: The main portion of any building located on a Lot or Lots and all projections or extensions therefrom, including garages, outside platforms and docks, carports, canopies, and porches. Ground cover shall not be included.

2.04 BUILDING COVERAGE: The surface area of a Building Site that may be covered by Buildings, expressed as a percentage of the total site area.

2.05 BUILDING SITE: The entire Lot or Lots (if contiguous) leased by one Tenant.

2.06 CITY: The City of El Paso, its duly elected Council, or any duly constituted agent or committee representing said Council to fulfill the obligations herein required.

2.07 DECLARANT: The City of El Paso, a political subdivision of the State of Texas.

2.08 FAA: The Federal Aviation Administration of the U. S. Government or any federal agencies succeeding to its jurisdiction.

2.09 FOREIGN-TRADE ZONE: The use of any or all Lots or any part thereof in the Butterfield Trail Industrial Park for Industrial Operations or other activities that comply with the U. S. Foreign Trade Zone Act Regulations (Title 15, Code of Federal Regulations), U. S. Customs Service Regulations, and City regulations of Foreign-Trade Zone use.

2.10 FRONT LOT LINE: The property line that faces a Street. On corner Lot or Lots fronting on two parallel Streets, the Front Lot Line shall mean the property lines facing each Street, one of which shall be designated by the City as the principal Street.

2.11 IMPROVEMENTS: Improvements shall mean but shall not be limited to Buildings, bridges, overpasses, retaining walls, ditches, culverts, lighting supports, earth fills, earth excavation, paving, ground cover, sidewalks, fences, screening walls, signs, and landscaping, constructed, installed, or placed on, under, or above any Lot by or on account of a Tenant.

2.12 INDUSTRIAL OPERATION: The manufacturing of products from raw or semi-finished materials, including research, warehousing and wholesaling operations. Retail sales of goods and services are specifically prohibited except as otherwise permitted herein with respect to the commercial support areas.

2.13 INDUSTRIAL PARK COMMERCIAL SUPPORT: The retail sale of goods and services on a limited basis primarily to the employees of the Tenants in the Butterfield Trail Industrial Park as specifically provided herein.

2.14 LOT: One of the numbered parcels on the map entitled "Butterfield Trail Industrial Park," as filed with the County Clerk, County of El Paso, Texas.

2.15 REAR LOT LINE: The property line generally paralleled to the Front Lot Line and contiguous to another Lot. On corner Lots, the Rear Lot Line shall be parallel to the Front Lot Line facing the principal Street; on Lots fronting on two parallel Streets, there shall be no Rear Lot Line.

2.16 SETBACK: The distance a Building must be set back from the property line of a Lot.

2.17 STREET: Any street, highway, or other thoroughfare shown on the map entitled "Butterfield Trail Industrial Park," as filed with the County Clerk, County of El Paso, Texas.

2.18 TENANT: Any person, firm or corporation leasing or subleasing one or more Lots or space in a Building on a Lot.

ARTICLE 3

PERMITTED USES AND PERFORMANCE STANDARDS

3.01 PERMITTED USES: No Building, structure, or land shall be used for any purpose other than the following, or any combination thereof, and such uses shall satisfy the standards set forth in this Declaration:

A. All Blocks and Lots in the Butterfield Trail Industrial Park, except as Specified in Paragraph 3.01(B):

1. Unless specifically prohibited as herein defined, any Industrial Operation shall be permitted. In addition, if approved by the U. S. Customs Service

or other federal agency having jurisdiction, any Industrial Operation or activity complying with the Foreign-Trade Zone Act Regulations (Title 15, Code of Federal Regulations) shall be permitted.

All industrial processes shall be carried out entirely within facilities so designed to prevent any nuisance as defined in Paragraph 3.04 to adjacent Lots. An exception shall be made during periods when equipment breaks down in such a manner to make it evident that it was not reasonably preventable.

2. General permitted industrial classifications are as follows: research and light industry, industrial support, and medium and heavy industry, warehousing, and wholesaling.
3. Administrative and professional office use shall be permitted.

B. Lots 1 through 5, Block 3, Block 4 and Block 6 and such other blocks or Lots that may be designated by the Declarant in future stages of the Butterfield Trail: Unless specifically prohibited as herein defined, the following Industrial Park Commercial Support activities shall be permitted:

1. Restaurants, including fast food establishments;
2. Offices;
3. Day-care centers;
4. Banks or banking facilities;

5. Printing, reproduction, and photographic services for Industrial Operations;
6. Office and graphics supplies;
7. Commercial exercise clubs; and
8. Self-service gas stations.

3.02 PROHIBITED USES: The following uses shall not be permitted on a Lot at any time: residential, retail commercial except as permitted in Paragraph 3.01(B); trailer courts; labor camps; junkyards; mining and quarrying; dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or refuse; fat rendering, stockyards or slaughtering of animals; smelting of iron, tin, zinc, or other ores; large animal raising.

3.03 APPROVAL OF USES: Certain industrial uses may neither be specifically prohibited nor specifically permitted. In these cases, approval in writing of the use must be obtained from the Declarant or its authorized agent prior to approval of plans and specifications for construction of the facility.

3.04 PERFORMANCE STANDARDS: No Lots shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions that may affect any other Lots, including but not limited to:

Hazardous activities
 Vibration or shock
 Noise
 Smoke, dust, odor, or other forms of air pollution
 Heat or glare
 Electronic or radio interference
 Illumination
 Liquid or solid refuse or waste
 Other substance, condition, or element in such amount as to affect the surrounding area or adjoining premises.

A. Hazardous Activities: No activity shall be conducted on any Lot that may be or may become hazardous to public health and safety, that shall increase the fire insurance rating for adjoining or adjacent Lots, or that shall be illegal.

B. Vibration or Shock: No vibration or shock perceptible to a persons of normal sensibilities shall be permitted within fifty (50) feet of the property line.

C. Noise: No noise objectionable to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.

D. Air Pollution: Except for the operation of motor vehicles to, from, and on a Lot as incidental to the use thereof, the following requirements shall apply:

1. Any use producing smoke, gas, dust, odor, fumes, aerosols, particulates, products of combustion, or any other atmosphere pollutant shall be conducted within a completely enclosed Building.
2. Any use producing atmospheric emissions shall comply with the standards of the U. S. Environmental Protection Agency, the Texas Air Control Board, any local environmental regulatory body, or any successor organizations performing similar functions, as such regulations exist at the date of the lease to which this Declaration is attached, or which may be enacted during the term of such lease.

3. The emission of odors that are detectable at any point beyond the property line of any Lot or Lots shall not be permitted.

E. Dust Control: All ground areas not covered by structures shall be landscaped or surfaced with concrete, asphaltic concrete, asphalt oil, or other comparable dust-free surfacing; shall be maintained in good condition, free of weeds, dust, trash, and other debris; and shall be properly drained and graded. Such development shall be accomplished before issuance of a certificate of occupancy.

F. Heat or Glare: Any operation producing intense glare or heat shall be performed within an enclosed screened area in such manner that the glare or heat emitted will not be discernible from the property line.

G. Electronic or Radio Interference: No electrical, electronic, or radio emissions shall be produced that will interfere, obstruct, or adversely affect the operation of air navigation aids and Airport communications.

H. Illumination:

1. The source of illumination of any kind on a Lot shall not be visible at the property line except for normal installation of standard interior lighting fixtures within Buildings.
2. The maximum height of any lighting standards shall be limited to thirty (30) feet above curb level.
3. The intensity of illumination shall be limited to

10 foot candles or 0.1 lumens per square foot per open areas or surfaces visible at the property line.

4. The design and location of exterior lighting shall comply in all respects to the requirements of the FAA or any other governmental agency having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around the Airport.

I. Refuse and Trash: No refuse or trash shall be kept, stored, or allowed to accumulate on any Lot.

J. Sewage Disposal Systems: No cesspool, septic tank, or other sewage disposal system or device shall be installed, maintained, or used on any Lot without the approval of the City.

3.05 SECURITY: If a Tenant activates space on its leased premises for Foreign-Trade Zone usage, said Tenant will comply with the security requirements imposed by the U. S. Customs Service or other federal agencies having jurisdiction.

ARTICLE 4

REGULATION OF IMPROVEMENTS

4.01 MINIMUM SETBACK LINES: No structure of any kind and no part thereof shall be placed on any Lot closer to a property line than hereby described.

A. Front Setback: Setbacks from Front Lot Lines shall be a distance equal to twenty percent (20%) of the length of the

Building or two hundred percent (200%) of the height of the Building, whichever is greater, from the Street; the area between the Street(s) and the Front Setback Line shall be landscaped if no visitor parking is provided in the Front Setback areas. If visitor parking is provided in the front Setback area, an area equivalent to twenty percent (20%) of the Front Setback shall be landscaped. All Buildings shall be set back a minimum of twenty-five (25) feet from the Front Lot Line. If the Tenant's Lot or Lots front on more than one Street, the front Setback shall be from all Lot lines facing a Street.

The front Setback area(s) shall be landscaped and planted in accordance with the Airport Landscaping Standards except for areas used for parking lots, driveways, or sidewalks. In no event shall less than twenty percent (20%) of the required minimum front Setback area(s) facing a Street be landscaped and planted.

B. Side Setbacks: Side Setbacks shall be a minimum of thirty (30) feet, and up to fifty percent (50%) of the required minimum Setback shall be landscaped and planted at the discretion of Declarant or its authorized agent. If a single Tenant uses two or more Lots with a common boundary line between them, the side Setback restrictions may be waived by the Declarant or its authorized agent for the term of the shortest lease.

C. Rear Setback: Rear Setback shall be forty (40) feet from the Lot line or utility easement line, except that Buildings on Lots abutting railroad spurs may have loading docks extending to the Rear Lot Line, provided such construction does not interfere

with utility services.

D. Exclusions from Setback Requirements: The following structures or Improvements are excluded from the Setback requirements:

1. Roof overhang.
2. Steps and walks.
3. Paving and associated curbing, except that parking areas will not be permitted within ten (10) feet of Street property lines.
4. Fences.
5. Landscaping.
6. Planters, none over four (4) feet in height.
7. Railroad spur tracks, switches, and bumpers.
8. Approved signs identifying the Tenant.

4.02 EXCAVATION:

A. General: No excavation shall be made by a Tenant unless the excavation is directly related to the construction of an Improvement. When construction is complete, all disturbed ground shall be filled or graded and shall be landscaped in accordance with and conform to the Airport Landscaping Standards.

B. Cut and Fill: The Declarant or any authorized agent thereof may at any time make such cuts and fills on any Lot and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the Streets in or adjacent to any Lot and to drain surface waters therefrom; provided that after the principal structure on a Lot shall have been completed in

accordance with approved plans, the rights of the Declarant under this Paragraph 4.02 shall terminate with respect to such Lot, except that the Declarant shall thereafter have the right to maintain existing Streets and drainage structures.

4.03 LANDSCAPING: Every Lot on which a Building shall have been placed shall have landscaping according to plans prepared in accordance with the standards established in this Paragraph 4.03 and any amendments or successors standards thereto. The first phase of such landscaping, as approved, shall have been completed within ninety (90) days of the date the certificate of occupancy is filed on the initial Building.

Setback areas shall be landscaped to the minimum extent outlined in Paragraphs 4.01(A) and (B). In addition, paving or landscaping shall extend from the property line to the curb, such paving and landscaping to be compatible with treatment for this area on other Lots on the same block. All landscaping shall be maintained in a sightly and well kept condition.

Lessee shall landscape only in accordance with a plan submitted to and approved in writing by the Declarant or its authorized agent prior to any development. Such landscaping plan shall include information regarding the type of sodding, the type of seeding, types of trees, hedges and shrubs, and information regarding other customary landscape treatment for the entire applicable site, in accordance with such approved plans and said plan may not be altered, amended or revised without submitting the revised landscaping plan for prior written approval by the

Declarant or its authorized agent.

A. Landscaping Standards: It is the intent of the Declarant to obtain high quality landscaping throughout the Property which is the subject of this Declaration. If lessee should fail, in the sole and final judgment of Declarant, to maintain landscaping consistent with Declarant's intent, Declarant may, at its option, do such maintenance work as it deems advisable, and the actual cost of labor and materials multiplied by 1.25 shall be added to the next monthly rental payment of lessee as an additional charge.

The following requirements shall apply:

1. All street setback areas shall be landscaped except those areas approved for walkways, driveways and parking.
2. All areas in site setbacks shall be fully landscaped, except for area approved to be paved.
3. Desert planting, defined as native desert plants set in ground cover of boulder, pebbles, sand or landscape shall not comprise more than fifty percent (50%) of any given landscaped setback area.
4. The lessee shall landscape and maintain unpaved areas between the curb and the setback lines. The first ten (10) feet of setback from street property lines shall be used exclusively for landscaping except where driveways bisecting the required landscape area occur.
5. Complete landscape and sprinkler plans are required for review. Specifications should indicate soil treatment and preparation.

4.04 SIGNS: The number, size, design, and location of all signs displayed for observation from outside a Building whether displayed on, near, or within a Building shall be subject to approval by the Airport Manager after review by the Airport Architectural Review Committee prior to installation, and in accordance with any Airport Graphics Standards and any amendments or successor standards thereto.

A. AIRPORT GRAPHICS STANDARDS: It is the intent of the Declarant that all signs be uniform and limited to specified graphic guidelines.

No billboards, flashing lighting or advertising sign shall be permitted on any site within the Property. Only signs identifying the name, business and products of the person or firm occupying the premises and those offering the premises for sale or lease will be permitted.

Only one (1) sign of approved design shall be permitted on the front setback line and one (1) sign may be attached to the side of a building which faces a public street.

Design and construction of signs shall be approved in writing by the Declarant or its authorized agent after review by the Architectural Review Committee with respect to size, design and color. Signs shall also conform to local building codes as well as regulations of the FAA.

Multiple occupancy building signs may be approved on a case-by-case basis by the Declarant or its authorized agent after review by the Architectural Review Committee.

B. COMMERCIAL SUPPORT AREAS: Signs within the Commercial Support areas shall be limited in height to seven (7) feet, and in space to no more than four (4) square feet. All signs in the Commercial Support area shall be uniform. No signs shall be affixed to or otherwise placed on a building in a Commercial Support area except immediately adjacent to a door and of a style acceptable to Declarant or its authorized agent.

4.05 PARKING AREAS: Adequate offstreet parking shall be provided to accommodate the parking requirements of a business within the limits of the Lot. Parking for employees, visitors, and business vehicular traffic shall be provided on the Lot and designated by white lines painted on the paved surface. All parking must comply with applicable City parking ordinances.

Parking shall not be permitted on the public Streets and between the Street pavement and property line. If visitor parking is permitted in the front Setback area(s), such parking shall be screened from the Street(s) by approved trees or shrubbery specified in the Airport Landscaping Standards or such other screening as may be approved by the Declarant or its authorized agent.

4.06 STORAGE AND VEHICLE LOADING AREAS: All outside storage and refuse areas shall be constructed and contained to eliminate odors, insects, dust, visual nuisances, and other similar nuisance.

No materials, supplies, or equipment, including company-owned or company-operated trucks, shall be stored in any area on a Lot except inside a closed Building or behind a barrier completely

screening such areas from view of adjoining Lots or public Streets or both.

All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on the Lot(s) leased and shall not encroach into Setback areas; onstreet vehicle loading shall not be permitted. Vehicle loading shall be permitted only at the rear of the Buildings, or on a side, except that such loading performed at a side shall be completely screened from view of adjoining Lots or public Streets or both.

4.07 BUILDING HEIGHTS: Building heights shall be limited to the height requirements established in Federal Aviation Regulations Part 77 or successor regulations for the Airport but shall not exceed a maximum of fifty (50) feet above the curb line, including any building equipment, penthouse, extrusions, etc.

4.08 BUILDING COVERAGE: Buildings shall not cover more than fifty percent (50%) of a Building Site.

4.09 BUILDING REGULATIONS:

A. City Zoning Code: The City of El Paso Zoning Code, as amended, shall apply except that in the event of a conflict between the City Zoning Code and the standards in this Declaration, the more stringent requirement shall apply.

B. FAA Regulations: All construction must comply with applicable codes and ordinances and the rules and regulations of the FAA where applicable.

C. Final Approval By Declarant: Final approval of the compatibility of any Improvement with the overall architectural

character of the Butterfield Trail Industrial Park shall remain with the Declarant. Construction shall not commence before the Declarant has granted final approval.

4.10 TYPE OF CONSTRUCTION:

A. Building Materials: All Buildings shall be framed with reinforced concrete or masonry, structural steel, structural aluminum, or wood that has been satisfactorily treated to resist fire, rot, and insects. Siding shall be masonry, concrete or glass. Porcelain, enameled steel, anodized aluminum or treated wood may be used upon approval of the Airport Manager based upon the favorable recommendation of the Airport Architectural Review Committee. Concrete, masonry, and treated wood siding shall be kept neatly painted, if used. State-of-the-art changes in types of construction may be permitted from time to time only upon the express condition that any such change be consistent with the intent of this Declaration and that any such change receives written approval of at least three members of the Airport Architectural Review Committee. Pre-fabricated metal buildings are specifically prohibited.

B. Roof Screening: All heating and cooling towers, equipment, etc., placed on the roofs of Buildings shall be screened or enclosed from view so that they are architecturally compatible with the main portion of the Building and cannot be seen from any point within two hundred-fifty (250) feet of the Building at an eye level of six (6) feet above the curblin.

C. Accessory Buildings, Enclosures, and Fences: Accessory

Buildings, enclosures, and fences shall enhance the design of and be of the same quality of materials as the Buildings they serve.

D. Building Codes and Ordinances: All Buildings shall conform to all local building codes and ordinances.

E. Approval by Airport Manager: The type of building construction proposed shall be subject to the written approval of the Airport Manager as authorized agent of Declarant and the decision of Airport Manager shall be based on the recommendations of the Airport Architectural Review Committee and appealable to the City Council through the Airport Board.

4.11 PIPES: No water pipes, gas pipe, sewer pipe, or drainage pipe (other than those within structures) shall be installed or maintained on any Lot above the surface of the ground, except hoses and movable pipes used for irrigation or similar purposes.

ARTICLE 5

SUBMISSION OF PLANS FOR IMPROVEMENTS

5.01 SUBMISSION OF PLANS: All plans for Improvements shall be prepared by registered engineers, architects, and landscape architects; shall be of contemporary design; and shall require prior written approval by the Declarant or its authorized agent before any construction may begin.

Prior to the execution of a lease for a Building Site, the Declarant or its authorized agent and the Tenant shall jointly determine a reasonable time schedule in which final plans and specifications shall be submitted and construction of facilities

shall be completed. Such time schedule shall be incorporated in the lease.

The following plans shall be required for submission to the Declarant or its authorized agent within the time schedule determined:

A. Topographic, Grading, Drainage, Utility and Plot Plans:

1. Topographic, grading, drainage, and utility plans showing one (1) foot contour intervals and spot elevations referenced to the Airport datum.
2. A plot plan at a scale not smaller than one (1) inch equals one hundred (100) feet showing the relationship of the proposed Improvements to the Lot(s) demised and to the Improvements on adjacent Lots, utilities, and access thereto, curbs, walks, driveways, parking areas, etc.

B. Floor Plan: Floor plans at a scale not smaller than one-sixteenth (1/16) inch equals one (1) foot.

C. Ground Cover Plans: Ground cover plans, including landscaping in accordance with the Airport Landscaping Standards.

D. Renderings: A true architectural rendering of the proposed Buildings, including the proposed exterior color scheme, style, materials, and design and placement of signs.

E. Materials and Color Samples: Samples, no smaller than one (1) foot square, of all materials or paint or both or other coating colors to be used on the exterior of all improvements that are visible from any point on any Lot line. The Declarant reserves

the right through its authorized agent to approve all said materials or colors or both and further reserves the right to suggest alternative materials or colors or both that, in the sole opinion of the Declarant, shall be determined to be more compatible with the Declarant's objectives for the overall aesthetic character and quality of Improvements on the Airport.

F. Other Plans: Any other plans, specifications, or design features that the Declarant or its authorized agent may deem necessary and request.

G. Additional Requirements - Foreign-Trade Zone: Tenants who intend to use their facilities as a Foreign-Trade Zone shall, in addition to submittal to the Declarant or its authorized agent submit their plans and specifications to the U. S. Customs Service and other federal agencies, as appropriate, for approval and compliance with the Foreign-Trade Zone Act and other required federal regulations.

5.02 FORMS AND CONTENT OF PLANS: The Declarant may promulgate rules governing the form and content of plans to be submitted for its approval and may issue statements of policy with respect to approval or disapproval of architectural styles, details, or other matters pertaining to the plans.

Such rules and such statements of policy may be amended or revoked by the Declarant at any time, and no inclusion in, omission from, or amendment of any such rule shall be deemed to bind the Declarant to its approval or to waive the exercise of the Declarant's discretion as to any such matter.

5.03 CODES AND REGULATIONS: All Improvements shall be planned and constructed in accordance with the rules and regulations established by the Declarant or its authorized agent, the laws and ordinances of the City, applicable building codes, and the rules and regulations of the FAA, where applicable.

5.04 REVIEW OF PLANS: Plans and specifications for proposed Improvements submitted to the Declarant for approval by its authorized agent shall be reviewed by the Airport Architectural Review Committee as established by ordinance.

The Airport Architectural Review Committee shall submit in writing to the Airport Manager, as authorized agent of the Declarant, the Committee's recommendation with respect to the plans and specifications of the proposed Improvements within thirty (30) working days of the original date of submission to the Declarant. The Airport Manager, shall within ten (10) days of receipt by him of the recommendations of the committee, approve or disapprove the plans and specifications. Any party dissatisfied with a decision of the Airport Manager based on the recommendation of the Airport Architectural Review Committee shall have the right to appeal such decision to the City Council through the Airport Board. The Airport Architectural Review Committee shall also be responsible for inspecting and continuous monitoring of construction, signs, installation of landscaping, and review of the as-built plans.

5.05 BASIS FOR APPROVAL BY THE DECLARANT: Approval by the Declarant or its authorized agent shall be based on the adequacy of site dimensions and on the general conformity of the plans and

specifications to the intent of this Declaration. The Declarant shall not arbitrarily, without written explanation, withhold approval of properly submitted plans and specifications.

Approval of any plans or specifications for use on any one Lot shall not be deemed a waiver of the discretionary right of the Declarant to disapprove the same plans or specifications if such plans or specifications are subsequently submitted for approval for use on any other Lot or Lots.

5.06 FAILURE TO APPROVE: If the Declarant fails to approve or disapprove plans and specifications within forty (40) working days after the same have been submitted, it shall be conclusively presumed that the Declarant has approved said plans and specifications.

5.07 COMMITMENT TO CONSTRUCT: Upon approval by the Declarant of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the Declarant and a copy of such plans bearing the written approval of the Declarant shall be returned to the Tenant of the Lot(s) on which such structure is or will be placed.

Approval of these plans by the Declarant shall constitute a commitment on the part of the Tenant to erect and maintain the Improvements as proposed and approved within the time schedule established in Paragraph 5.01.

5.08 CONSTRUCTION WITHIN TIME SCHEDULE SPECIFIED: Any approved construction shall be prosecuted diligently in accordance with the approved plans and specifications and shall be completed

within the specified time schedule. Failure to complete such work in the specified time schedule shall cause such approval to be automatically withdrawn unless the Declarant or his authorized agent grants written extension of such approval. After such automatic withdrawal of approval, the Tenant will be considered in default of its lease for such Lot(s), and the Declarant may terminate such lease in accordance with the provisions in that document.

5.09 LANDSCAPING PLANS: Trees, shrubs, fences, hedges, or other landscaping shall not be planted, placed, or maintained on any Lot until a complete plan thereof has been submitted to and approved by the Declarant or his authorized agent in writing. The landscaping plans shall be prepared in accordance with the Airport Landscaping Standards and shall be submitted at the same time as the other plans and specifications for proposed Improvements. The plans shall be reviewed by the Airport Architectural Review Committee in the same manner and time period as those required for architectural plans under Paragraph 5.04.

All plans for landscaping Improvements shall be prepared by registered or approved landscape architects. Final approval shall be by the Declarant or its authorized agent.

5.10 PLANS FOR ALTERATIONS IN IMPROVEMENTS: All plans for alterations to the leased Lot(s), either for the construction of additional facilities or alterations to existing Buildings, shall be prepared, submitted, and approved as outlined in Paragraphs 5.01 through 5.09 and shall be subject to the same restrictions as

herein provided. This paragraph shall apply only to exterior or structural changes; alterations to the interior of Buildings shall not be considered unless they affect the performance standards in Article 3.

5.11 FEES: The Declarant shall charge and collect a reasonable fee, as determined every five years by the Declarant or its authorized agent, for architectural review and other reviews of plans submitted for approval. Such plans could relate to initial development or alterations to existing development. The fee shall be payable at the same time such plans are submitted. If initial plans or any subsequent plans are disapproved, an additional review fee, as determined by the Declarant or its authorized agent, shall be paid before further review.

The amount of such fee shall not exceed the actual cost to the Declarant of making such examination, including the cost of any architect's or engineer's fees incurred in connection therewith.

ARTICLE 6

ENFORCEMENT

6.01 CONSTRUCTION WITHOUT APPROVAL: If any structure shall be erected, placed, altered, or maintained on any Lot other than in accordance with plans and specifications approved by the Declarant or his authorized agent, such erections, alterations, and maintenance shall be deemed to have been undertaken without the approval required herein. This restriction shall be applicable to landscaping and signage plans as well as to architectural plans.

In the event of such construction without approval, the Tenant will be considered in default of the lease for such Lot, and the Declarant may terminate the lease in accordance with the provisions set forth in that document.

6.02 ABATEMENT AND REMOVAL: If the Declarant determines that his Declaration is being violated by any Tenant on a Lot or Lots, the Declarant shall have the right after giving notice as required by the lease to enter the Lot(s) of such Tenant to determine the exact cause, effect a cure, and abate or remove the violation from the Lot(s). All expenses incurred in this action shall be payable by the Tenant of the facility in which the violation occurred.

6.03 SUIT: The Declarant or the Tenants of facilities affected by a violation shall have the right to file suit against violators of this Declaration, to prevent a violation, effect a cure, abate or remove a violation, or recover damages for said violation.

6.04 ATTORNEY'S FEES: In any legal proceeding for the enforcement of this Declaration or prevention of a violation of this Declaration or any part hereof, the party against whom judgment is rendered shall bear the reasonable expense of attorneys' fees of the prevailing party in the amount to be specified by the Court.

6.05 RIGHT OF ENTRY AND INSPECTION: Any authorized agent of the Declarant, at any reasonable time and without notice, may enter on and inspect any Lot to ascertain whether the maintenance of such Lot, Improvements under construction, or alteration of structures

thereon are in compliance with the provisions hereof. Neither the Declarant nor such authorized agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

6.06 FAILURE TO ENFORCE A RESTRICTION: The Declarant may fail to enforce any restriction herein specified on any Tenant on a Lot or Lots, but in no event should this be deemed a waiver of this Declaration or the right to enforce any restriction at a later date.

ARTICLE 7

MISCELLANEOUS PROVISION

7.01 ACCEPTANCE BY ALL TENANTS: Every person, firm, or corporation who shall hereafter acquire any right, title, or interest in any Lot(s) or Buildings or portions thereof shall have consented and agreed to every covenant and restriction herein contained or implied even though this Declaration may not have been made reference to or part of the documents received as a part of leasing a Lot or Building or any portion thereof.

7.02 ASSIGNMENT OF DECLARANT'S RIGHT AND DUTIES: The Declarant has certain rights, powers, and reservations as herein established by this Declaration and may assign to any person, firm, or corporation these rights, powers, and duties evidencing its consent in writing to accept such an assignment and assume such duties. The person, firm or corporation having accepted the rights of the Declarant shall also be bound to the obligations in this Declaration.

7.03 HOUSEKEEPING: If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on a Lot more than ten (10) days after a request in writing from the Declarant or its authorized agent to have them removed, the Declarant or its authorized agent may enter on any Lot to remove same by whatever means it deems necessary. Such entry shall not be deemed a trespass, and the Declarant shall not be subject to any liability therefor. The cost of such work shall be borne by the Tenant.

7.04 MAINTENANCE OF LANDSCAPING: The Declarant shall be the sole judge of the quality of maintenance of the landscaping. If landscaping areas are not maintained in accordance with the standards in the lease and those in this Declaration and the condition is not corrected within ten (10) days after written notice from the Declarant, the Declarant or its authorized agent shall have the right to enter on any of the Lot(s) leased and plant or replant such areas, without being deemed guilty of trespass. The costs therefor, as determined by the Declarant, shall be paid by the Tenant.

7.05 SIDEWALKS PROHIBITED: The construction of sidewalks is prohibited except (1) between onsite parking areas and the Buildings they serve, (2) between Buildings involved in a single industrial activity for single Tenant, (3) in the Industrial Park Commercial Support areas, and (4) along the east side of Airport Road. Any sidewalks to be constructed in said areas shall be depicted on the plot plans and shall be subject to approval by the Declarant.

7.06 USE PERMITS: Such use and occupancy permits as may be required by the Building Code of City shall be maintained in force at all times by each Tenants.

IN WITNESS WHEREOF, THE CITY OF EL PASO, the Declarant, has caused its name to be hereunto subscribed this 5th day of February, 1985.

ATTEST:

CITY OF EL PASO, TEXAS



City Clerk



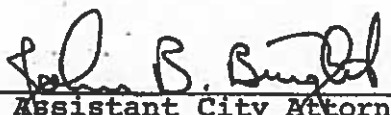
Mayor

APPROVED AS TO CONTENT:



Airport Manager

APPROVED AS TO FORM:



Assistant City Attorney



Legislation Text

File #: 22-500, Version: 2

**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 8

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

Planning and Inspections, Providencia Velazquez, (915) 212-1567

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 a letter in support of the proposed National Register of Historic Places nomination of the structure located at 211 N. Mesa Street (Kress Building), City of El Paso, El Paso County, Texas.

Subject Property: 211 N. Mesa

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

AGENDA DATE: May 10, 2022
PUBLIC HEARING DATE: May 10, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553
Providencia Velazquez, (915) 212-1567

DISTRICT(S) AFFECTED: District 8

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

SUBGOAL: 3.1 Provide business friendly permitting and inspection processes
3.2 Improve the visual impression of the community

SUBJECT:

A Resolution that the City Council authorizes the Mayor to sign a letter in support of the proposed National Register of Historic Places nomination of the structure located at 211 N. Mesa Street (Kress Building), City of El Paso, El Paso County, Texas.

Subject Property: 211 N. Mesa

BACKGROUND / DISCUSSION:

The National Register nomination of the Kress Building meets the criteria of A. Property is associated with events that have made a significant contribution to the broad patterns of our history and C. Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction. This nomination will enable the property to qualify a 20% federal investment tax credit and a 25% state tax credit if rehabilitated for commercial use per the Secretary of the Interior's Standards for Rehabilitation and for technical assistance from the State Historic Preservation Office for properties listed on the National Register of Historic Places.

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

(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 Mayor is authorized to sign a letter in support of the proposed National Register of Historic Places nomination of the Kress Building (211 N. Mesa Street).

APPROVED this _____ day of _____, 2022.


THE CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

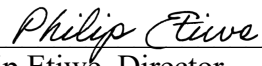
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Russell T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:



Philip Etiwe, Director
Planning and Inspections



Legislation Text

File #: 22-528, 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 3

Parks and Recreation, Ben Fyffe, (915) 212-1766

AGENDA LANGUAGE:

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

A Resolution that City Council accepts the recommendation from the Parks and Recreation Advisory Board and hereby approves the renaming of Happiness Senior Center, located at 563 N. Carolina Drive, within the City of El Paso, El Paso County, Texas, as "Jessie Moreno Happiness Center"

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

AGENDA DATE: May 10, 2022 (Consent)

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ben Fyffe, (915) 212-1766

DISTRICT(S) AFFECTED: 3

STRATEGIC GOAL: Goal 4: Enhance El Paso's Quality of Life through Recreational, Cultural & Educational Environments

SUBJECT:

Approve a resolution that City Council accepts the recommendation from the Parks and Recreation Advisory Board and hereby approves the renaming of Happiness Senior Center, located at 563 N. Carolina Drive, within the City of El Paso, El Paso County, Texas, as "Jessie Moreno Happiness Center"

BACKGROUND / DISCUSSION:

Applicant gathered sufficient signatures to re-name park after his mother, the late Jessie Moreno. Ms. Moreno was a longtime center user and advocate, passing away last year at age 101. The re-naming meets policy criteria, allowing for renaming for non-living individuals who have made outstanding contributions to their community. The Parks & Recreation Advisory Board voted unanimously to approve the re-naming on April 13, 2022. Per process, the re-naming comes before Council for final approval.

PRIOR COUNCIL ACTION:

As part of the Parks & Recreation Naming Policy, City Council is final approval on any re-naming of parkland or facilities.

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES ___ NO

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

DEPARTMENT HEAD:



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

RESOLUTION

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

THAT City Council accepts the recommendation from the Parks and Recreation Advisory Board and hereby approves the renaming of the Happiness Senior Center, located at 563 N. Carolina Drive within the City of El Paso, El Paso County, Texas, as “Jessie Moreno Happiness Center”; and

THAT John Moreno, (“Applicant”) shall incur the customary costs associated with the renaming of the park, such as installing or replacing signs with the park name or any other signs posted or affixed to a facility. Any proposed signs shall be reviewed and agreed upon by both the Parks and Recreation Department and Applicant, (District 7).

PASSED AND APPROVED this _____ day of _____, 2022.

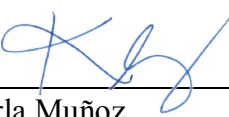
CITY OF EL PASO:

Oscar Leoser
Mayor

ATTEST:

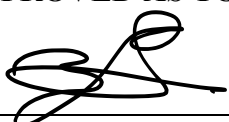
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Karla Muñoz
Assistant City Attorney

APPROVED AS TO CONTENT:



Benjamin E. Fyffe, Managing Director
Cultural Affairs and Recreation



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-551, 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.

Members of the City Council, Representative Isabel Salcido, (915) 212-0005

AGENDA LANGUAGE:

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

Charles Mais to the Historic Landmark Commission by Representative Isabel Salcido, District 5.

DATE: May 3, 2022

TO: City Clerk

FROM: City Representative Isabel Salcido

ADDRESS: 300 N. Campbell TELEPHONE 915-212-0005

Please place the following item on the (Check one): CONSENT X REGULAR _____

Agenda for the Council Meeting of May 10, 2022

Re-appointment of Charles Mais to the Historic Landmark Commission by Representative Isabel

Item should read as follows: Salcido, District 5.

BOARD COMMITTEE/COMMISSION APPOINTMENT/REAPPOINTMENT FORM

NAME OF BOARD/COMMITTEE/COMMISSION: Historic Landmark Commission

NOMINATED BY: Isabel Salcido DISTRICT: 5

NAME OF APPOINTEE Charles Mais III

(Please verify correct spelling of name)

E-MAIL ADDRESS: _____

BUSINESS ADDRESS: _____

CITY: El Paso ST: TX ZIP: _____ PHONE: _____

HOME ADDRESS: _____

CITY: El Paso ST: TX ZIP: _____ PHONE: _____

DOES THE PROPOSED APPOINTEE HAVE A RELATIVE WORKING FOR THE CITY? YES: _____ NO X

IF SO, PLEASE PROVIDE HIS OR HER NAME, CITY POSITION AND RELATIONSHIP TO THE PROPOSED APPOINTEE:

HAS APPOINTEE BEEN A MEMBER OF OTHER CITY BOARDS/COMMISSIONS/COMMITTEES? IF SO, PLEASE PROVIDE NAMES AND DATES: _____

LIST ALL REAL ESTATE OWNED BY APPOINTEE IN EL PASO COUNTY (BY ADDRESS):

WHO WAS THE LAST PERSON TO HAVE HELD THIS POSITION BEFORE IT BECAME VACANT?

NAME OF INCUMBENT: Charles Mais III

EXPIRATION DATE OF INCUMBENT: March 2022

REASON PERSON IS NO LONGER IN OFFICE (CHECK ONE): TERM EXPIRED: X

RESIGNED _____

REMOVED _____

DATE OF APPOINTMENT: May 10, 2022

TERM BEGINS ON: March 13, 2022

EXPIRATION DATE OF NEW APPOINTEE: March 12, 2024

PLEASE CHECK ONE OF THE FOLLOWING: 1st TERM: _____

2nd TERM: X

UNEXPIRED TERM: _____

CHARLES MAIS

DESIGN PROFESSIONAL

Architecture and Interior Designs | Documentation | Project Management | Graphic Designs Conceptualization / Design Strategies and Architectural Solutions | Client Management and Presentation | Logistics/Scheduling/Tracking

PROFILE OVERVIEW

- ✓ Extensively experienced in space planning, schematic design, design development, construction documentation and construction administration. Technical proficiency includes AutoCAD, Adobe Photoshop, SketchUp, MS Project and MS Office Suite. Proven record of success in creating and implementing AutoCAD office standards. Registered architect in the State of Texas; working towards LEED accreditation and NCARB certification.
- ✓ Seasoned and innovative professional, equipped with 18 years of varied experience in Hospitality, Education, Commercial and Retail fields. Distinct creativity as evidenced by numerous project accomplishments and ability to impact overall company performance. Exemplifies diverse and unique multitasking leadership and business skills. Detail-oriented and comfortable performing in deadline-driven environments. Accustomed to performing initial project programming and research; and managing projects from conception to delivery.
- ✓ In-depth capacity to convey creative ideas to clients and innovatively complete projects with complex design specifications, ranging from small scale remodels to multimillion dollar hotel and casinos. Collaboratively works with and provides training to other professional staff to communicate and enhance ideas. Highly skilled at researching for design elements that further enhance concepts.

PROFESSIONAL EXPERIENCE

PSRBB Architects, El Paso, TX

Principal/Owner

Principal Architect, TX License No. 26455

2021-Present

- Co-owner of the 15 employee company focusing on architecture of commercial properties, K-12 Education and Higher Ed projects and Industrial projects
- Collaborate with clients to develop architectural designs according to owner provided programs
- Develop conceptual and Schematic design plans, working through design development to finalize concepts
- Establish design direction for projects and the overall firm
- Site Evaluation and Master Planning

Ysleta Independent School District, El Paso, TX

Construction Project Manager II

Project Liaison/ Project Manager

Environmental Department Supervisor

2016-2021

- Provide oversight/support for, and report directly to, the Chief Operations Officer for a \$450 million school bond program; including project management and tracking for new campus projects, campus addition/renovation projects and campus wide infrastructure upgrade projects; ensuring projects are delivered within district budget, timeline and quality requirements
- Development of conceptual design packages, cost/feasibility studies and entitlements for prospective campus addition and renovation projects. Directly responsible for project management of approved projects; ensuring project delivery
- Create and implement annual Campus Transition Plans to ensure successful movement and relocation of multiple campuses within limited and strict summer timeframes. Transition planning includes: creating transition scheduling and timelines; meeting with and coordinating campus administration, district departments and personnel; identification, tracking and warranting inventory delivery; and on site supervision of the physical relocation/distribution of district equipment and physical assets
- In conjunction with the Chief Operations Officer; developed the Facility Master Plan living document, which clearly states the district's overall plan for campus improvement and preventative maintenance for a 10 year period

CHARLES MAIS

- Direct supervisor to the district CADD Technician and Environmental department, which handles asbestos and hazardous waste removal and also maintain the overall pest management plan for the district
- Provide direct support to the Director of Maintenance and Operations and coordinate with the Maintenance Supervisor to ensure the initiation and completion of approved preventative maintenance projects

Ysleta Independent School District, El Paso, TX

Project Manager/CADD Technician

2013-2016

- Development of conceptual design packages, cost/feasibility studies and entitlements for prospective new school campuses and renovation projects for presentation to the district Superintendent and School Board of Trustees
- Perform project research, site analysis, design and development of site master plans for prospective school district projects
- Perform independent research of technical solutions for design-driven tasks
- Resolve design issues resourcefully and cost effectively during project planning, documentation and construction life spans
- Manage and organize the entire project and informational archives for the school district; including over 65 campuses and district properties

Alvidrez Architecture Inc., El Paso, TX

Senior Project Manager / Designer

2009-2013

- Planned project work efforts for developing project documents at all phases of the design process
- Facilitated designs based on project requirements for the project and design teams
- Applied concepts and intent of building codes to projects to ensure that local municipal design reviews were completed efficiently and smoothly
- Produced clear and coordinated construction documents, specifications and addenda; as well as, managed bidding and construction administration processes
- Collaborated with the project team and design consultants to ensure successful completion and on time delivery of design and architectural projects

CM3 Nevada, Las Vegas, NV

Freelance Designer and Project Manager

2008-2009

- Managed and streamlined overall planning and operations of design firms; providing conceptual and schematic design development services as well as construction documentation and administration for various direct and sub-contracted projects including casinos, culturally-inclined restaurants, first class hotels and exhibit spaces.
- Directly interface and negotiate design specifications with clients; thoroughly analyze functional requirements to effectively develop scope of work and implement design strategies in accordance to budgetary guidelines and client demands. Ensure quality and cost-effectiveness of design materials to guarantee optimum client satisfaction. Project accomplishments include Marriott Grand Chateau, Andre's French Restaurant, Titanic Museum Exhibit Space, and Majestic Star Hotel and Casino.
- Worked with multiple clients such as Urbane Design, Tremaine + Associates, Tandem and Cleo Design

Tandem, Las Vegas, NV

Senior Project Manager / Designer

2006-2008

- Appointed by the firm principals as one of the designers and senior project managers. Developed and oversaw overall architectural projects from initial design to completion. Co-developed project plans and architectural solutions while coordinating workflow for mid-range to high-end hospitality, commercial and retail projects.

CHARLES MAIS

- Worked with team members in managing remodel and expansion projects, and served as designer / lead project manager for Pala Casino in California. Ensured timely completion and innovative redesign of the casino's architectural features and facility expansions involving the development and design of the high limit area, center bar, buffet and poker room.
- Coordinated and ensured on time completion of other projects, including but not limited to Atlantis Hotel and Casino, Pala Hotel and Casino, and Annie Creamcheese retail store.

Paul Steelman Design Group, Las Vegas, NV

Job Captain/Project Manager

2004-2006

- Collaborated with the designated design team in streamlining all phases of design, including design presentations, construction documents, 3D models and animations.
- Participated in developing presentation packages and design development for Toby Keith Bar. Spearheaded the final design stages and directly interacted with clients to coordinate design modifications. Coordinated and ensured successful design projects including Voodoo Lounge and Altitude Nightclub.

Friedmutter Group, Las Vegas, NV

Junior Designer /Job Captain

1999-2004

- Initially served as an entry-level runner and earned fast-tracked promotion to junior designer, job captain, designer and eventually project manager. Partnered with the Director of Design and collaborated with team members to ensure proficient project execution in all phases of the design and construction processes.
- Optimized creativity in developing presentation packages and construction documents for various projects including small-scale bar/taverns to multi-million dollar hotel and casino projects.
- Developed an innovative initial brand design for Golden Gaming Inc., improving their mid-level and high-end properties with additional projects perpetuated in accordance to original brand design of the company. Maintained proficiency and accountability in managing projects and developing designs, as well as in providing senior members of the company more opportunity to work on larger scale multi-million dollar casino projects.

EDUCATION

BACHELOR OF SCIENCE IN ARCHITECTURE (2000)

University of Nevada, Las Vegas, NV

ARCHITECTURAL LICENSURE

- ☐ Registered architect in good standing in the State of Texas; License #: 26455

AWARDS

- ☐ Co-developed the architectural design of the Annie Creamcheese retail facility, which was awarded "Best Retail Space" at the 2007 HOSPY awards banquet.
- ☐ Co-developed the interior design for a hotel suite for the El Cortes Hotel and Casino, Suite Design Competition; which was named one of the top 4 finalists

APPLICABLE SKILLS

- ☐ Bilingual; English and Spanish
- ☐ Asbestos Supervisor Certification Training



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-497, 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.*

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.

Michael Bray to the El Paso Housing Finance Corporation by Mayor Oscar Leeser.

RESOLUTION

WHEREAS, the Housing Finance Corporation Act, Chapter 394 Local Government Code authorizes the creation of a Housing Finance Corporation; and

WHEREAS, the City of El Paso has approved the incorporation of the El Paso Housing Finance Corporation pursuant to the Housing Finance Corporations Act, which incorporation took place in 1979; and

WHEREAS, the Articles of Incorporation and the Articles of Amendment of the El Paso Housing Finance Corporation provide for appointment of members of the Board of Directors to be appointed by written resolution of the governing body of the City of El Paso, Texas.

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

Michael Bray is appointed to the Board of Directors of the El Paso Housing Finance Corporation to fill the term that ends November 18, 2025.

APPROVED this ____ day of _____, 2022.


CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Karla M. Nieman
City Attorney

Michael Bray

I have been serving the City of El Paso in many capacities over the past few years to include:

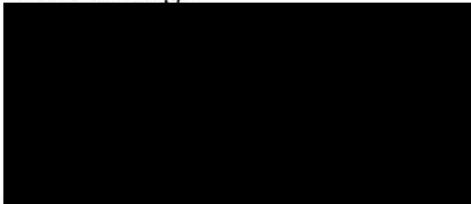
- President, El Paso Property Finance Authority
- Vice-President, El Paso Housing Finance Corporation
- Commissioner, City of El Paso Building & Standards Commission
- Participant, Emergency Shelter Grant committee

I also serve in other state and local boards & commissions:

- Texas Real Estate Commission, Broker/Lawyer Committee
- Commissioner, Texas Department of Housing & Community Affairs, MH Board (Governor's appointee)
- Regional Vice President, Texas Association of Realtors®
- Director, Texas Association of Realtors® Housing Opportunity Fund
- Director, Frontera Land Alliance
- Non-Attorney Mediator of the Year, El Paso Bar Association
- Faculty Instructor, Texas Realtors® University
- Instructor, Real Estate Academy of El Paso
- Director, Rio Grande Council of Governments Dispute Resolution Center Advisory Board

Please contact me if you have any further questions.

*Michael Bray, ABR, CSP, GRI, eCertified
Sales Manager*





Legislation Text

File #: 22-509, 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.

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.

That the tax refunds listed on the attachment posted with this agenda be approved. 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. (See Attachment A)

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

AGENDA DATE: May 10, 2022
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:

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 property tax overpayment refunds greater than \$2,500.00, per the Texas Property Tax Code, Sec. 31.11 – Refunds of Overpayments or Erroneous Payments.

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?

That the tax refunds listed on the attachment posted with this agenda be approved. 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. (See Attachment A)

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Council has considered this previously on a routine basis.

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?

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Tax Office

SECONDARY DEPARTMENT: N/A

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

DEPARTMENT HEAD:

Maria O. Pasillas


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

Revised 04/09/2021

TAX REFUNDS
May 10, 2022

1. Habitat International, in the amount of \$2,999.80 made an overpayment on January 29, 2021 of 2020 taxes.
(Geo. # L203-999-0030-0200)
2. Jorge O. Aguirre, in the amount of \$2,527.31 made an overpayment on March 31, 2022 of 2021 taxes.
(Geo. # M282-999-001A-0100)
3. Southwestern Bell Telephone, in the amount of \$32,235.39 made an overpayment on January 30, 2022 of 2021 taxes.
(Geo. # V893-999-127A-3000)

Laura D. Prine
City Clerk



Maria O. Pasillas, RTA
Tax Assessor Collector



MARIA O. PASILLAS, RTA
CITY OF EL PASO TAX ASSESSOR COLLECTOR
221 N. KANSAS, STE 300
EL PASO, TX 79901

PH: (915) 212-0106 FAX: (915) 212-0107 www.elpasotexas.gov/tax-office

TAX OFFICE
RECEIVED

APR 22 2022

HABITAT INTERNATIONAL INC
11576 JAMAICAN PALM DR
EL PASO, TX 79936

OP ✓
+2,500

Geo No. L203-999-0030-0200	Prop ID 168372
Legal Description of the Property 3 LAS PALMAS #3 LOT 2 (3843.00 SQ FT) 3616 MACAW PALM DR	
OWNER: LAS PALMAS PHASE III JOINT VENTURE	
2020 OVERAGE AMOUNT \$2,999.80	

1: CITY OF EL PASO, 6: COUNTY OF EL PASO, 7: EL PASO COMMUNITY COLLEGE, 8: UNIVERSITY MEDICAL CENTER OF EL PASO, 9: SOCORRO ISD

Dear Taxpayer:

Our records indicate that an overpayment exists on the property tax account listed above as of the date of this letter. If you paid the taxes on this account and believe you are entitled to a refund, please complete the application below, sign it, and return it to our office. If the taxes were paid by your mortgage/title company or any other party, you must obtain a written letter of release in order for the refund to be issued in your name. If you did not make the payment(s) on this account, please forward this letter to the person who paid these taxes. You may also request the transfer of this overpayment to other tax accounts and/or tax years in the space provided or by attaching an additional sheet if necessary. Your application for refund must be submitted within three years from the date of the overpayment, or you waive the right to the refund (Sec. 31.11c). Governing body approval is required for refunds in excess of \$2500.

APPLICATION FOR PROPERTY TAX REFUND:

This application must be completed, signed, and submitted with supporting documents.

OVERpayment
Refund
available

Step 1. Identify the refund recipient. Show information for whomever will be receiving the refund.	Who should the refund be issued to:			
	Name: HABITAT INTERNATIONAL			
	Address: 11576 JAMAICAN PALM DR			
	City, State, Zip: EL PASO, TX 79936 ✓			
	Daytime Phone No.: (915) 203-4411		E-Mail Address:	
Step 2. Provide payment information. Please attach copy of cancelled check, original receipt, online payment confirmation or bank/credit card statement.	Payment made by:	Check No.	Date Paid	Amount Paid
	HOMERO PEREZ	CK 1291	1/25/21	21,729.29
	TOTAL AMOUNT PAID (sum of the above amounts)			
Step 3. Provide reason for this refund. Please list any accounts and/or years that you intended to pay with this overage.	Please check one of the following:			
	<input type="checkbox"/> I paid this account in error and I am entitled to the refund.			
	<input checked="" type="checkbox"/> I overpaid this account. Please refund the excess to the address listed in Step 1. ✓			
	<input type="checkbox"/> I want this payment applied to next year's taxes.			
	<input type="checkbox"/> This payment should have been applied to other tax account(s) and/or year(s), escrow (listed below):			
Step 4. Sign the form. Unsigned applications cannot be processed.	By signing below, I hereby apply for the refund of the above-described taxes and certify that the information I have given on this form is true and correct. (If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under the Texas Penal Code, Sec. 37.10.)			
	SIGNATURE OF REQUESTOR (REQUIRED) JMC 4/22/22		PRINTED NAME & DATE HOMERO PEREZ / 4-16-22 ✓	
TAX OFFICE USE ONLY: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied By: N.H. Date: 4-22-22 ✓				

Notes

Go To :

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ACTEP

DEPOSIT Remittance Detail

Summary Query

Summary

Deposit No.	Account No.	Remit Seq No.	Check No.	Payment Amount	Payment Agreement No.
A01292165	L20399900300200				

Check/Receipt Images	Deposit No	Receipt Date	Remit Seq No.	Check No.	Payment Type	Payment Amount	Applied Amount	Transaction Type	Account No	Payer
	A01292201	01/29/2022	49710221	1430	CH	\$13,847.56	\$278.50	AA	L20399900300200	20132137-HABITAT INTER
	A01292165	01/29/2021	46468386	1291	CH	\$21,729.29	\$221.38	AA	L20399900300200	20132137-HABITAT INTER
	A01292165	01/29/2021	46468386	1291	CH	\$21,729.29	\$2,999.80	LG	L20399900300200	20132137-HABITAT INTER
	A02282081	02/28/2020	43834590	1095	CH	\$38,021.13	\$238.91	AA	L20399900300200	20132137-HABITAT INTER
*	X0206192002	01/31/2019	40685730	05813	CH	\$18,201.33	\$215.52	PA	L20399900300200	LAS PALMAS PHASE III J
*	X0205182000	01/30/2018	37760345	05560	CH	\$13,433.98	\$205.70	PA	L20399900300200	LAS PALMAS PHASE III J
*	X0203172001	01/31/2017	34843215	05312	CH	\$23,573.33	\$200.92	PA	L20399900300200	LAS PALMAS PHASE III J
*	X020216B2006	01/31/2016	31610239	05056	CH	\$26,897.57	\$197.77	PA	L20399900300200	LAS PALMAS PHASE III J
*	X0205152004	01/31/2015	28763739	04757	CH	\$14,765.35	\$195.26	PA	L20399900300200	LAS PALMAS PHASE III J
*	X0130142008	01/30/2014	25481390	04446	CH	\$36,128.77	\$191.69	PA	L20399900300200	LAS PALMAS PHASE III J
*	X0205132005	01/31/2013	22991662	04040	CH	\$10,377.04	\$186.29	PA	L20399900300200	LAS PALMAS PHASE III J
*	X0201122002	01/31/2012	20343985	03657	CH	\$8,653.39	\$178.47	PA	L20399900300200	LAS PALMAS PHASE III J

Applied Total \$7,370.45



MARIA O. PASILLAS, RTA
CITY OF EL PASO TAX ASSESSOR COLLECTOR
221 N. KANSAS, STE 300
EL PASO, TX 79901

PH: (915) 212-0106 FAX: (915) 212-0107 www.elpasotexas.gov/tax-office

TAX OFFICE
RECEIVED
APR 08 2022

JORGE OCTAVIO AGUIRRE
490 GREGGERSON
EL PASO, TX 79907

OP
+2500

Geo No. M282-999-001A-0100	Prop ID 682334
Legal Description of the Property BLK 1 MC ELROY ACRES REPLAT A LOT 1 (29728.32 SQ FT) 490 GREGGERSON DR 79907 OWNER: AGUIRRE JORGE O	

2021 OVERAGE AMOUNT \$2,527.31

1: CITY OF EL PASO, 5: YSLETA ISD, 6: COUNTY OF EL PASO, 7: EL PASO COMMUNITY COLLEGE, 8: UNIVERSITY MEDICAL CENTER OF EL PASO

Dear Taxpayer:

Our records indicate that an overpayment exists on the property tax account listed above as of the date of this letter. If you paid the taxes on this account and believe you are entitled to a refund, please complete the application below, sign it, and return it to our office. If the taxes were paid by your mortgage/title company or any other party, you must obtain a written letter of release in order for the refund to be issued in your name. If you did not make the payment(s) on this account, please forward this letter to the person who paid these taxes. You may also request the transfer of this overpayment to other tax accounts and/or tax years in the space provided or by attaching an additional sheet if necessary. Your application for refund must be submitted within three years from the date of the overpayment, or you waive the right to the refund (Sec. 31.11c). Governing body approval is required for refunds in excess of \$2500.

APPLICATION FOR PROPERTY TAX REFUND:

This application must be completed, signed, and submitted with supporting documentation to be valid.

Step 1. Identify the refund recipient. Show information for whomever will be receiving the refund.	Who should the refund be issued to:			
	Name: <u>Jorge O. Aguirre</u>			
	Address: <u>490 Greggerson</u>			
	City, State, Zip: <u>El Paso TX 79907</u>			
Step 2. Provide payment information. Please attach copy of cancelled check, original receipt, online payment confirmation or bank/credit card statement.	Daytime Phone No.: <u>915-203-4660</u>		E-Mail Address: <u>jaguirre@elpaso.com</u>	
	Payment made by:	Check No.	Date Paid	Amount Paid
	<u>Echeck</u>	<u>4458047</u>	<u>3/31/22</u>	<u>\$3936.64</u>
	TOTAL AMOUNT PAID (sum of the above amounts)			
Step 3. Provide reason for this refund. Please list any accounts and/or years that you intended to pay with this overage.	Please check one of the following:			
	<input checked="" type="checkbox"/>	I paid this account in error and I am entitled to the refund.		
	<input checked="" type="checkbox"/>	I overpaid this account. Please refund the excess to the address listed in Step 1.		
	<input type="checkbox"/>	I want this payment applied to next year's taxes.		
Step 4. Sign the form. Unsigned applications cannot be processed.	This payment should have been applied to other tax account(s) and/or year(s), escrow (listed below):			
By signing below, I hereby apply for the refund of the above-described taxes and certify that the information I have given on this form is true and correct. (If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under the Texas Penal Code, Sec. 37.10.)				
SIGNATURE OF REQUESTOR (REQUIRED)		PRINTED NAME & DATE		
<u>Jorge O. Aguirre</u>		<u>Jorge O. Aguirre 4-5-22</u>		
TAX OFFICE USE ONLY: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied By: <u>NH</u> Date: <u>4-19-22</u>				

Notes

Go To :

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ACTEP

DEPOSIT Remittance Detail

Summary Query

Summary

Deposit No.		Account No.			Remit Seq No.		Check No.		Payment Amount		Payment Agreement No.	
EC040122		M282999001A0100										
Check/Receipt Images	Deposit No	Receipt Date	Remit Seq No.	Check No.	Payment Type	Payment Amount	Applied Amount	Transaction Type	Account No.	Payer		
	A03312290	03/31/2022	50459768	004899	CH	\$6,718.30	\$2,527.32	AA	M282999001A0100	25959829-TEXSTAR ESCF		
	A03312290	03/31/2022	50459768	004899	CH	\$3,166.79-	\$2,527.32-	RV	M282999001A0100	25959829-TEXSTAR ESCF		
	B04012275	03/31/2022	50462150	004899	CH	\$14,782.04	\$2,527.32	AA	M282999001A0100	25959829-TEXSTAR ESCF		
	EC040122	03/31/2022	50473063	CC004458047	EC	\$3,936.64	\$2,527.31	LG	M282999001A0100	31200628-JORGE OCTAV		
	EC040122	03/31/2022	50473063	CC004458047	EC	\$3,936.64	\$1,409.33	PA	M282999001A0100	31200628-JORGE OCTAV		
	RC220418	03/31/2022	50473063	CC004458047	EC	\$2,527.31-	\$2,527.31-	TR	M282999001A0100	31200628-JORGE OCTAV		
	RC220418	03/31/2022	50473063	CC004458047	EC	\$2,527.31	\$2,527.31	TR	M282999001A0100	26290377-AGUIRRE JORC		
	RC220420	03/31/2022	50473063	CC004458047	EC	\$2,527.31	\$2,527.31	TR	M282999001A0100	AGUIRRE JORGE O		
	RC220420	03/31/2022	50473063	CC004458047	EC	\$2,527.31-	\$2,527.31-	TR	M282999001A0100	26290377-AGUIRRE JORC		
	A02052201	01/31/2022	50028569	004610	CH	\$50,415.82	\$4,784.24	AA	M282999001A0100	25959829-TEXSTAR ESCF		
	A12102065	12/10/2020	45213160	2795	CH	\$123,557.93	\$4,804.27	PA	M282999001A0100	25959829-TEXSTAR ESCF		
	A01172065	01/17/2020	42955570	1633	CH	\$37,117.09	\$4,697.00	AA	M282999001A0100	25959829-TEXSTAR ESCF		
Applied Total						\$20,749.47						



MARIA O. PASILLAS, RTA
CITY OF EL PASO TAX ASSESSOR COLLECTOR
221 N. KANSAS, STE 300
EL PASO, TX 79901

PH: (915) 212-0106 FAX: (915) 212-0107 www.elpasotexas.gov/tax-office

TT00
TAX OFFICE
RECEIVED
APR 19 2022

AT&T
1010 PINE STREET
ST LOUIS, MO 63101

OP
+2,500

Geo No. V893-999-127A-3000	Prop ID 329343
Legal Description of the Property 127-A VISTA DEL SOL #21 4 TO 7 (432855 SQ FT)	
11200 PELLICANO DR 79935	
OWNER: SOUTH WESTERN BELL TELEPHONE CO	

2021 OVERAGE AMOUNT \$32,235.39

1: CITY OF EL PASO, 5: YSLETA ISD, 6: COUNTY OF EL PASO, 7: EL PASO COMMUNITY COLLEGE, 8: UNIVERSITY MEDICAL CENTER OF EL PASO

Dear Taxpayer:

Our records indicate that an overpayment exists on the property tax account listed above as of the date of this letter. If you paid the taxes on this account and believe you are entitled to a refund, please complete the application below, sign it, and return it to our office. If the taxes were paid by your mortgage/title company or any other party, you must obtain a written letter of release in order for the refund to be issued in your name. If you did not make the payment(s) on this account, please forward this letter to the person who paid these taxes. You may also request the transfer of this overpayment to other tax accounts and/or tax years in the space provided or by attaching an additional sheet if necessary. Your application for refund must be submitted within three years from the date of the overpayment, or you waive the right to the refund (Sec. 31.11c). Governing body approval is required for refunds in excess of \$2500.

APPLICATION FOR PROPERTY TAX REFUND:

This application must be completed, signed, and submitted with supporting documentation to be valid.

Step 1. Identify the refund recipient. Show information for whomever will be receiving the refund.	Who should the refund be issued to:			
	Name: Southwestern Bell Telephone			
	Address: 1010 Pine 9E-L-01			
	City, State, Zip: St. Louis MO 63101			
Step 2. Provide payment information. Please attach copy of cancelled check, original receipt, online payment confirmation or bank/credit card statement.	Daytime Phone No.: 314-396-3361		E-Mail Address: CS4158@ATT.COM	
	Payment made by:	Check No.	Date Paid	Amount Paid
	SWBT	3000007289	4/4/22	2,094,583.70
	TOTAL AMOUNT PAID (sum of the above amounts)			
Step 3. Provide reason for this refund. Please list any accounts and/or years that you intended to pay with this overage.	Please check one of the following:			
	<input checked="" type="checkbox"/> I paid this account in error and I am entitled to the refund.			
	<input type="checkbox"/> I overpaid this account. Please refund the excess to the address listed in Step 1.			
	<input type="checkbox"/> I want this payment applied to next year's taxes.			
Step 4. Sign the form. Unsigned applications cannot be processed.	This payment should have been applied to other tax account(s) and/or year(s), escrow (listed below):			
	By signing below, I hereby apply for the refund of the above-described taxes and certify that the information I have given on this form is true and correct. (If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under the Texas Penal Code, Sec. 37.10.)			
	SIGNATURE OF REQUESTOR (REQUIRED)		PRINTED NAME & DATE	
	Christine Steff		CHRISTINE STEFF 4/14/22	
TAX OFFICE USE ONLY: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied By: NH Date: 4-19-22				

Notes

Go To :

LUZR
ACT80122 v1.9105/02/2022 13:36:02
ACTEP

DEPOSIT

Remittance

Detail

Summary Query

Summary

Deposit No.	Account No.	Remit Seq No.	Check No.	Payment Amount	Payment Agreement No.
A02132265	V893999127A3000				

Check/Receipt Images	Deposit No	Receipt Date	Remit Seq No.	Check No.	Payment Type	Payment Amount	Applied Amount	Transaction Type	Account No.	Payer
	A02132265	01/30/2022	50151561	2000007287	CH	\$2,094,583.70	\$32,235.39	LG	V893999127A3000	31014422-AT&T
	A02132265	01/30/2022	50151561	2000007287	CH	\$2,094,583.70	\$86,404.73	AA	V893999127A3000	31014422-AT&T
	RC220419	01/30/2022	50151561	2000007287	CH	\$32,235.39	\$32,235.39	TR	V893999127A3000	31014422-AT&T
	RC220419	01/30/2022	50151561	2000007287	CH	\$32,235.39	\$32,235.39	TR	V893999127A3000	31235732-SOUTHWESTEI
	RD3925959	01/21/2022	46695064	0000241392	CH	\$34,437.74	\$34,437.74	RD	V893999127A3000	SOUTHWESTERN BELL 1
	A02032165	02/01/2021	46695064	3323705200	CH	\$2,227,810.47	\$119,613.96	PA	V893999127A3000	26462589-AT&T COMMUN
	RF220118	02/01/2021	46695064	3323705200	CH	\$0.00	\$5,180.72	DA	V893999127A3000	SOUTHWESTERN BELL 1
	RF220118	02/01/2021	46695064	3323705200	CH	\$0.00	\$2,836.67	DA	V893999127A3000	26462589-AT&T COMMUN
	RF220118	02/01/2021	46695064	3323705200	CH	\$0.00	\$0.00	DA	V893999127A3000	26462589-AT&T COMMUN
	RF220118	02/01/2021	46695064	3323705200	CH	\$0.00	\$0.00	DA	V893999127A3000	26462589-AT&T COMMUN
	RF220118	02/01/2021	46695064	3323705200	CH	\$0.00	\$15,326.13	DA	V893999127A3000	SOUTHWESTERN BELL 1
	RF220118	02/01/2021	46695064	3323705200	CH	\$0.00	\$2,836.67	DA	V893999127A3000	SOUTHWESTERN BELL 1

Applied Total \$1,933,875.84



Legislation Text

File #: 22-495, Version: 2

**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 Peter Svarzbein, (915) 212-1002

AGENDA LANGUAGE:

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

Discuss the 2022 Texas Society of Architects (TxA) Annual Conference and Design Expo in El Paso event that will attract over 3000 Architects, Design Professionals and Vendors to El Paso this year and will contribute to over 1200 room nights and an estimated \$2,700,000 in economic impact to the City. Texas Society of Architects begun the process by reaching out to City of El Paso staff in CID, MCAD and Sun Metro to request access and assistance in coordinating tours that will highlight the great work the City has accomplished to Architects from across the entire State of Texas and beyond.

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

DEPARTMENT: Mayor & Council

AGENDA DATE: May 10, 2022

CONTACT PERSON NAME AND PHONE NUMBER:
City Representative Peter Svarzbein, 915.212.1002

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: Goal 3 - Promote the visual image of El Paso

3.3 Establish a brand that celebrates and promotes El Paso's unique identity and offerings. Establish a brand that celebrates and promotes El Paso's unique identity and offerings.

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.

Discuss the 2022 Texas Society of Architects (TxA) Annual Conference and Design Expo in El Paso event that will attract over 3000 Architects, Design Professionals and Vendors to El Paso this year and will contribute to over 1200 room nights and an estimated \$2,700,000 in economic impact to the City. Texas Society of Architects begun the process by reaching out to City of El Paso staff in CID, MCAD and Sun Metro to request access and assistance in coordinating tours that will highlight the great work the City has accomplished to Architects from across the entire State of Texas and beyond.

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?

Destination El Paso and the El Paso Chapter of the American Institute of Architects (AIA) will welcome the Texas Society of Architects (TxA) back to El Paso for the first annual conference of our organization to be held in El Paso since 1977 on October 25-29, 2022. Founded in 1939, TxA is one of the nation's largest organizations of architectural professionals, with 17 regional chapters and more than 7,400 members. The mission of TxA is to be the voice for Texas architecture, supporting the creation of safe, beautiful, sustainable environments. The conference will occupy the entire campus of the El Paso Convention Center and other venues throughout downtown including the use of the Convention Center for the Design Expo and meeting rooms, additional meeting rooms and the ballroom will be used at the Hotel Paso del Norte and Keynotes Sessions will take place each morning in the Plaza Theater. Other breakout activities during the convention will take place at the Arts Festival Plaza, the Alcantar Sky Garden and other locations throughout downtown. Our partner hotels include the recently restored architectural gems; Hotel Paso Del Norte, Plaza Pioneer Park and the Aloft at Basset Tower. In the evenings, attendees will be free to enjoy the downtown nightlife scene – exploring the restaurants and bars while taking in the beautiful historic architecture of downtown El Paso.

The tours highlighting City of El Paso projects will include:

- Children's Museum (Hard Hat Tour)
- Mexican American Cultural Center (Hard Hat Tour)
- El Paso Streetcar and Streetcar Maintenance Facility
- San Jacinto Plaza
- Paseo de Las Luces
- Pedestrian Pathway

- Digie Wall and Public Art Projects around the Ballpark
- Westside Natatorium
- Eastside Regional Park Recreation Center (BEast)
- Upper East Side Transit Center

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? N/A Has the item been budgeted? N/A If so, identify funding source by account numbers and description of account. Does it require a budget transfer? N/A

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



El Paso

Texas
Society of
Architects

TEXAS SOCIETY OF ARCHITECTS

Annual Conference & Design Expo

thanks to our local committee members for making this conference happen

DESTINATION EL PASO: Brook Underwood, Valerie Garcia

Michael Stills, AIA - President
Edgar Lopez, AIA
Jorge Loya, AIA
Paulina Lagos, AIA
Martina Lorey, AIA
Laura Foster, AIA

Lorena Holguin, AIA
Eugenio Mesta, AIA
Charles Mais, AIA
John Reyes, AIA
Greg McNicol, AIA
Jennifer Matthews, AIA

Ersela Kripa, AIA
Stephen Mueller, AIA
Sebastian Garcia, AIA
Elias Padilla, AIA
Julie Vetter, AIA
Rida Asfahani, AIA

Josue Munoz-Miramon, AAIA
Ivan Lopez, AAIA
Ramina Deroee, AAIA
Daniel Aburto, AAIA
Italia Aguilera, AAIA
Christian Mijares, AAIA

William Helm, AIA - TxA Conference Committee Chair



El Paso

**Texas
Society of
Architects**

TxA Annual Conference & Design Expo

October 25-29th, 2022

3,000+ Architects and Industry professionals traveling to El Paso to attend

80+ Educational Sessions throughout downtown

30+ tours throughout El Paso and the region

100,000 Square Feet of Design Expo, 300+ Booths at the Convention Center

3 Keynote Sessions in the Plaza Theater hosting 1,800+ attendees

1,200+ Single and Double room nights spread across our partner hotels downtown

Millions of investment in our local economy

Supports Destination El Paso's efforts to bring more conventions of this size to El Paso



PLAZA HOTEL



SAN JACINTO



PASEO DE LAS LUCES





EASTSIDE REGIONAL



MACC

LA NUBE



CHILDREN'S MUSEUM

THANK YOU

TEXAS SOCIETY OF ARCHITECTS
Annual Conference & Design Expo

October 25-29th, 2022



Texas
Society of
Architects



Legislation Text

File #: 22-554, 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.

All Districts

Members of the City Council, Representative Henry Rivera, (915) 212-0007

Members of the City Council, Representative Alessandra Annello, (915) 212-0002

Members of the City Council, Representative Peter Svarzbein, (915) 212-1002

Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003

AGENDA LANGUAGE:

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

Discussion and action protecting Women's Rights and to direct the City Manager to work with the City Council to establish a City of El Paso Women's Commission and/or Board focused on Women's equality and protecting their rights.

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

DEPARTMENT: Mayor and Council

AGENDA DATE: Tuesday, May 10, 2022

CONTACT PERSON NAME AND PHONE NUMBER:

City Representative Henry Rivera, District 7- 915.212.0007

City Representative Aleksandra Anello, District 2- 915.212.0002 (co-sponsor)

City Representative Peter Svarzbein, District 1- 915.212.1002 (co-sponsor)

City Representative Cassandra Hernandez, District 2- 915.212.0003 (co-sponsor)

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL:

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

Goal 8 - Nurture and Promote a Healthy, Sustainable 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.

Discussion and action protecting Women's Rights and to direct the City Manager to work with the City Council to establish a City of El Paso Women's Commission and/or Board focused on Women's equality and protecting their rights.

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?

On May 2nd, 2022, an initial draft majority opinion written by Justice Samuel Alito was leaked and stated that the Supreme Court has voted to strike down the landmark Roe vs. Wade decision. According to the draft, the U.S. Supreme Court intends to overturn Roe v. Wade, reversing nearly 50 years of constitutional protection for abortion, and let states set their own restrictions on the procedure. If this draft reflects the final decision of the Court, expected this summer, it would virtually eliminate abortion access in Texas.

This item is intended to protect **ALL** Women's rights, including, but not limited to, the right to make a decision about their bodies, and direct the City Manager to establish a City of El Paso Women's Commission focused on Women's equality and protecting their rights.

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

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



Legislation Text

File #: 22-557, 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 8

Members of the City Council, Representative Cissy Lizarraga, (915) 212-0008

AGENDA LANGUAGE:

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

Discussion and action on a Resolution that the City Council declares that the expenditure of District 8 discretionary funds in an amount not to exceed \$50,000 to support the Opportunity Center for the Homeless' renovation, rehabilitation, expansion and construction of bathroom facilities serves a municipal purpose of enhancing El Paso's quality of life while nurturing and promoting a healthy and sustainable community; and that the City Manager be authorized to effectuate any budget transfer necessary to ensure that the funds are properly expended for such purpose and to execute any related agreements and amendments to such agreements.

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

DEPARTMENT: Mayor and Council

AGENDA DATE: 05/10/2022 (Regular Agenda)

CONTACT PERSON NAME AND PHONE NUMBER:

Rep. Cissy Lizarraga, 915-212-0008

DISTRICT(S) AFFECTED: District 8

STRATEGIC GOAL:

Goal 8 - Nurture and Promote a Healthy, Sustainable 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.

Discussion and action to approve a resolution that the City Council declares that the expenditure of District 8 discretionary funds in an amount not to exceed \$50,000 to support the Opportunity Center for the Homeless' renovation, rehabilitation, expansion and construction of bathroom facilities serves a municipal purpose of enhancing El Paso's quality of life while nurturing and promoting a healthy and sustainable community; and that the City Manager be authorized to effectuate any budget transfer necessary to ensure that the funds are properly expended for such purpose and to execute any related agreements and amendments to such agreements.

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?

District 8 discretionary funds, to be disbursed to the Opportunity Center for the Homeless on a reimbursement basis per a Discretionary Funds Reimbursement Agreement to be executed.

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



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-552, 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.*

All Districts

Communications and Public Affairs, Laura Cruz-Acosta, (915) 212-1071

AGENDA LANGUAGE:

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

Ad Hoc Charter Advisory Committee Update.

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

DEPARTMENT: Strategic Communications Office

AGENDA DATE: May 10, 2022

PUBLIC HEARING DATE: N/A

CONTACT PERSON NAME AND PHONE NUMBER: Laura Cruz-Acosta, Strategic Communications Director – 915-212-1071

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: #5 – Promote transparent and consistent communication amongst all members of the community. #6 – Set the standard for sound governance and fiscal management

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.

Ad Hoc Charter Advisory Committee Update

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?

On January 18, 2022, the City Council established the City of El Paso Ad Hoc Charter Advisory Committee to review and advise on potential amendments to the City Charter for the November 8, 2022 election.

The Committee has been meeting biweekly since February 24, 2022 and City staff has begun hosting community meetings at various City locations to inform the public of the proposed amendments and obtain feedback for the Committee's consideration prior to them making final recommendations to City Council.

The Committee Chair will present an update to City Council to report on the Committee's progress.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

The original Resolution activating the Ad Hoc Charter Advisory Committee was approved on January 18, 2022.

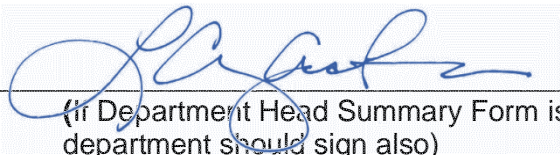
AMOUNT AND SOURCE OF FUNDING:

What is the source of funding? What is the amount? Is there a current appropriation? Does it require a budget transfer? Are there continuing costs? How long and for what amount?

N/A

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

DEPARTMENT HEAD:



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



Legislation Text

File #: 22-501, 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.

All Districts

Office of the Comptroller, Margarita Munoz, (915) 212-1174

AGENDA LANGUAGE:

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

Presentation and discussion on a report by Moss Adams, LLP on the financial and grants audits 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 ended August 31, 2021.

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

DEPARTMENT: Office of the Comptroller

AGENDA DATE: May 10, 2022

CONTACT PERSON/PHONE: Margarita Munoz, Comptroller, 212-1174

DISTRICT (S) AFFECTED: All

STRATEGIC GOAL NO. 6: Set the Standard for Sound Governance and Fiscal Management

SUBJECT:

Presentation and discussion on a report by Moss Adams, LLP on the financial and grants audits 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 ended August 31, 2021.

BACKGROUND / DISCUSSION:

Moss Adams LLP, is an independent accounting firm of Certified Public Accountants contracted by City Council to audit the financial statements and grants of the City. Included in the services provided by Moss Adams, LLP is an opinion on the financial statements and supplementary information included in the Annual Comprehensive Financial Report (ACFR), and Single Audit on state and federal grants (SEFA), and four Agreed Upon Procedures Reports. The ACFR and SEFA reports are prepared by the Office of the Comptroller.

PRIOR COUNCIL ACTION:

Existing Contract 2019-1034R Professional Auditing Services awarded August 13, 2019.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: Margarita Munoz



05/10/2022



FISCAL YEAR 2021 - AUDIT RESULTS

Office of the Comptroller



Strategic Plan Alignment

Goal 6. Set the Standard for Sound Governance and Fiscal Management

- *6.6 Ensure continued financial stability and accountability through sound financial management, budgeting and reporting*



Financial Reporting Highlights

- Early implementation of GASB Statement No. 98
- Continuous improvement in financial reporting
- Monitoring internal controls
- Adjusting investment strategies to provide a higher return
- Timely and accurate grant reporting to granting agencies
- Monitoring a high volume of grants

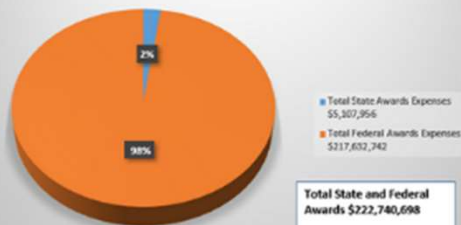
CITY OF EL PASO, TEXAS

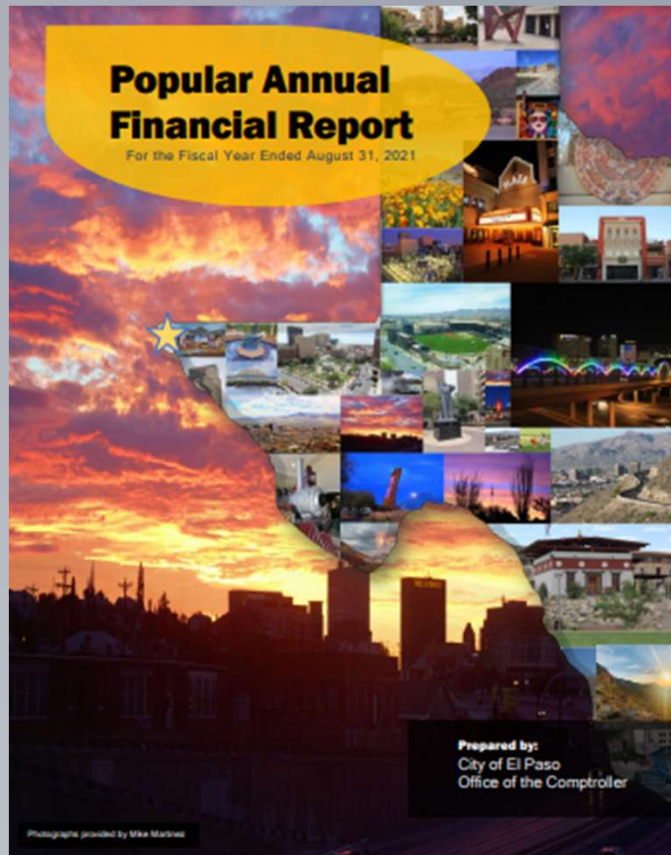
ANNUAL COMPREHENSIVE FINANCIAL REPORT



FOR THE FISCAL YEAR ENDED
AUGUST 31, 2021

FY21 Awards Expended





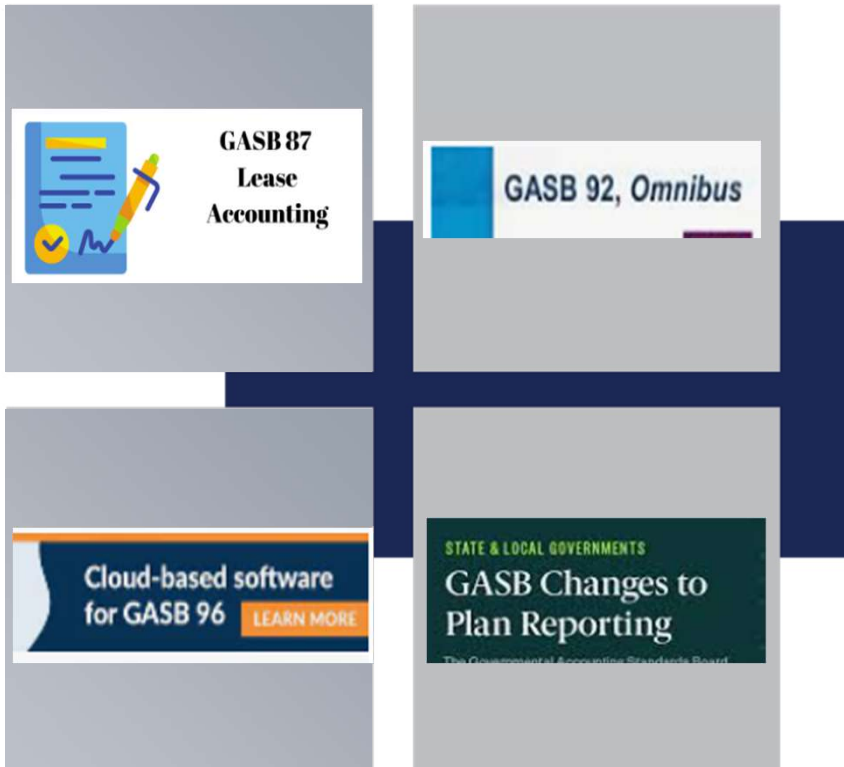
Popular Annual Financial Report PAFR

- First time the City deploys this report
- <https://www.amazon.com/clouddrive/share/ULdPfsmhxMrpYGcmEB2Zql1L0LXhJrgcCIHgec7Hkcq/XW7VbGFHSB-UCzY1iHy6rQ>

The Results:

No Audit Findings





FUTURE GASB STATEMENTS IMPLEMENTATION

- GASB Statement 87
- GASB Statement 92
- GASB Statement 96
- GASB Statement 97



Special Thanks To:

- City Manager and CFO
- Comptroller's Office Staff
- All City departments





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



Misión

Brindar servicios excepcionales para respaldar una vida y un lugar de alta calidad para nuestra comunidad



Visión

Desarrollar una economía regional vibrante, vecindarios seguros y hermosos y oportunidades recreativas, culturales y educativas excepcionales impulsadas por un gobierno de alto desempeño



Valores

Integridad, Respeto, Excelencia, Responsabilidad, Personas



2021 Audit Results

[illegible]

Agenda



- Reports Issued
- Areas of Audit Emphasis
- Required Communications
- Upcoming Accounting Pronouncement

Reports Issued

We issued the following reports for the year ended August 31, 2021

- **Annual Comprehensive Financial Report (ACFR)**
 - Financial statements are presented fairly in accordance with accounting principles generally accepted in the United States of America (Unmodified opinion)
 - Report on internal control and compliance over financial reporting in accordance with *Government Auditing Standards*
- **Single Audit Report**
 - Report on compliance related to major federal and state award programs
 - 6 federal programs and 2 state programs tested
 - No findings of noncompliance noted



Other Reports Issued

We issued the following agreed-upon procedure and compliance reports for the year ended August 31, 2021

- Passenger Facility Charge Program (El Paso International Airport)
- Chapter 59 Asset Forfeiture Report (El Paso Police Department)
- TCEQ Local Government Financial Test
- National Transit Database Federal Fund Allocation Data (Sun Metro)

No findings of noncompliance or internal control matters noted

Areas of Audit Emphasis

- **Internal control environment**
 - Capital assets/project management, cash receipts/receivables, cash disbursements/payables, payroll, bond and investment transactions, pensions, and administration of federal awards
- **Management estimates**
 - Environmental remediation liability, legal contingencies/ recoveries, depreciation, allowance for doubtful accounts, grant receivables, actuarial valuations for pensions and health plans
- **Enterprise funds**
 - Airport, transit, international bridges, tax office and environmental quality
- **Fiduciary funds and activities**
 - Pensions, other post employment benefits (OPEB) and custodial funds
- **Capital assets**
 - Consideration of capitalization policies and potential impairment, as well as testing of additions, retirements, depreciation

Areas of Audit Emphasis (continued)

- **Bond activity**
 - New issuances, debt repayments, discounts and premiums, compliance with covenants, and procedures over information presented in the net revenues schedule
- **Information systems**
 - General computer internal controls
- **6 major federal programs identified and tested this year**
 - Federal Transit Cluster Grants - \$40.0M
 - COVID-19 Coronavirus Relief Fund - \$100.7M
 - COVID-19 Coronavirus State & Local Fiscal Recovery Fund - \$14.8M
 - Airport Improvement Program - \$9.1M
 - COVID-19 Emergency Rental Assistance - \$12.3M
 - WIC Special Supplemental Nutrition Program for Women, Infants, and Children - \$5.2M
- **2 major state programs identified and tested this year**
 - Immunization Branch Locals Program - \$422K
 - Texas Anti-Gang Program - \$1.1M

Required Communications

- **Auditor and Management responsibilities for financial statements under Generally Accepted Auditing Standards**
 - Auditor forms and expresses an opinion about whether the financial statements are fairly presented and plans and performs the audits in accordance with generally accepted auditing standards and *Government Auditing Standards*
 - Our audits do not relieve City management of its responsibilities
- **Audits were performed according to the planned scope**
- **Significant accounting policies are summarized in Note 1 to the financial statements**
- **Financial statement disclosures were consistent, clear and understandable**
- **Representations were requested and received from management**
- **No disagreements with management or difficulties encountered**

Required Communications (continued)

- **No consultation with other independent auditors of which we are aware**
- **No material weaknesses noted**
- **No illegal acts noted**
- **Ability to continue as a going concern (no disclosure necessary)**
- **Significant new accounting standards**
 - No significant new standards implemented in fiscal 2021
 - GASB No. 98 changed reference of financial reporting from *Comprehensive Annual Financial Report* to *Annual Comprehensive Financial Report*
- **Consideration of fraud in a financial statement audit**
 - Procedures performed included journal entry testing, vendor analysis, and interviews of City Council members, management, and personnel
- **Moss Adams is independent with respect to the City of El Paso**

Upcoming Accounting Pronouncement

GASB No. 87 *Leases* (effective in 2022): Addresses recognition of certain lease assets and liabilities for leases that previously were classified as operating leases.

- Under the standard, leases will be capitalized as “right to use” assets with related liabilities and deferred inflows/outflows of resources over the term of each lease.
- We are working with management for the implementation of this standard, which requires careful consideration of current leases and lease-like arrangements across all departments for applicability and measurement.



THANK YOU

- Weekly status meetings were held between Moss Adams and City management throughout the audit process
- All City personnel across all departments were courteous, responsive and fulfilled our requests in a timely manner
- ‘Tone at the Top’ and attitude from management was one of helpfulness, and openness in response to audit requests and discussion points



Legislation Text

File #: 22-559, 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.*

All Districts

Airport, Sam Rodriguez, (915) 212-1845

AGENDA LANGUAGE:

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

The Department of Aviation will provide a management update regarding the ELP 5MW (Megawatts) Solar Farm Project.

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

AGENDA DATE: May 10, 2022
PUBLIC HEARING DATE: Not Applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:
Sam Rodriguez, Chief Operations and Transportation Officer, Aviation Director
and City Engineer, (915) 212-1845

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 1 - Cultivate an Environment Conducive to Strong, Sustainable Economic
Development

SUBGOAL: 1.4 – Grow the core business of air transportation

SUBJECT:

The Department of Aviation will provide a management update regarding the ELP 5MW Solar Farm Project

BACKGROUND / DISCUSSION:

The airport will present an update on the 5MW Solar Farm located at the El Paso International Airport. Approximately 40 acres of land located in the airfield have been identified as the location for a ground-mounted solar panel system that will offset the airports energy consumption as well as various other City operated facilities. The site will generate approximately 5 megawatts per year. The airport currently consumes 3 megawatts, the remaining 2 megawatts generated will be used to offset the other City departments consumption.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

PRIMARY DEPARTMENT: El Paso International Airport

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

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

DEPARTMENT HEAD:

R. Shane Brooks



for Sam Rodriguez, Chief Operations and Transportation Officer,
Aviation Director and City Engineer



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-504, 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.

All Districts

Fire, Chief Mario D'Agostino, (915) 212-5605

AGENDA LANGUAGE:

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

An Ordinance granting a Franchise for Elite Medical Air Transport, LLC d/b/a Emergent Air, to operate a non-emergency ambulance transfer service.

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

AGENDA DATE: May 10, 2022
PUBLIC HEARING DATE: May 24, 2022

CONTACT PERSON/PHONE: Mario D'Agostino, Fire Chief (915) 212-5605

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: NO. 2: Set the Standard for a Safe and Secure City

SUBGOAL: 2.3 – Increase Public Safety Operational Efficiency

SUBJECT:

Discussion and action on an ordinance granting a Franchise for Elite Medical Air Transport, LLC d/b/a Emergent Air, to operate a non-emergency ambulance transfer service.

BACKGROUND / DISCUSSION:

Elite Medical Air Transport, LLC d/b/a Emergent Air has applied for Franchise to provide non-emergency ambulance transfer services under the El Paso City Code Title 9 (Health and Safety) Chapter 9.85 (Emergency and Transfer Ambulance Service).

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING: N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES ___ NO

PRIMARY DEPARTMENT: El Paso Fire Department

SECONDARY DEPARTMENT: All City

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

DEPARTMENT HEAD:



ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE FOR ELITE MEDICAL AIR TRANSPORT, LLC D/B/A EMERGENT AIR, TO OPERATE A NON-EMERGENCY AMBULANCE TRANSFER SERVICE

WHEREAS, the City of El Paso, Texas is empowered to grant franchises for the use of its streets, alleys, and public rights-of-way under the City Charter and the City's general police powers; and

WHEREAS, Elite Medical Air Transport, LLC d/b/a Emergent Air ("GRANTEE") has applied for a Franchise to provide non-emergency ambulance transfer services under the El Paso City Code Title 9 (Health and Safety) Chapter 9.85 (Emergency and Transfer Ambulance Services).

WHEREAS, on evidence received, City Council finds that public convenience and necessity justify granting a franchise to GRANTEE to operate a non-emergency ambulance transfer service in the City of El Paso, Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS THAT:

ARTICLE I. GRANT OF THE FRANCHISE AND GENERAL PROVISIONS

A. Grant of Non-Exclusive Franchise

A non-exclusive franchise, subject to the Grantee's compliance with the requirements and limitations set forth herein and by local, state and federal laws, is hereby granted to **Elite Medical Air Transport, LLC d/b/a Emergent Air**, Grantee, to operate a non-emergency transfer ambulance service within the City and upon the public streets, rights-of-way and alleys of the City of El Paso.

B. Definitions

For the purpose of this franchise the following terms, phrases, words and their derivations shall have the following meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and the word "may" is permissive.

1. "City" shall mean the City of El Paso, Texas and any department or board that may be designated by the City Council to administer, oversee or enforce the provisions of this franchise.
2. "City Council" shall mean the council of the City as the governmental, legislative and administrative body of the City.

ORDINANCE NO. _____

3. "Customer" shall mean any person who requests or receives the services of the Grantee.
4. "DSHS" shall mean the Texas Department of State Health Services.
5. "Fire Chief" shall mean the Fire Department official responsible for the management of emergency ambulance service for the City of El Paso or his designee.
6. "Franchise Area" shall mean that portion of the City for which a franchise is granted under the authority of this agreement. If not otherwise stated in the franchise, the Franchise Area shall be the corporate limits of the City of El Paso including all territory hereafter annexed to the City.
7. "Grantee" shall mean **Elite Medical Air Transport, LLC d/b/a Emergent Air**.
8. "Net Receipts" shall be defined as all cash, credits and property of any kind or nature received as consideration directly or indirectly by the Grantee, its affiliates, subsidiaries, parent and any person in which Grantee has a financial interest, or from any source whatsoever, arising from or attributable to the transport of patients or services rendered in relation to the transport of a patient by the Grantee or in any way derived from the operation of its franchise. These net receipts shall not be reduced for any purpose and shall be the basis for computing the franchise fee.
9. "Non-emergency ambulance transfer service" shall mean the operation of a service whereby persons are transported by ambulance under the supervision and care of duly licensed and certified emergency medical technicians in non-emergency situations except that a non-emergency ambulance transfer service may transport persons in emergency situations as permitted by the terms of this franchise and other applicable laws.
10. "Person" means any individual, firm, partnership, limited partnership, association, corporation, company, and organizations of any kind, or any other legally recognized entity.
11. "Public Rights-of-Way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, land, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkways, waterways, utility easements or other public right-of-way now or hereafter held by the City.
12. "Service" shall mean any service which is authorized pursuant to the terms of this Franchise Agreement.

C. Term and Effective Date

Regardless of the date upon which the ordinance granting the franchise is adopted, the term of this franchise shall commence on 12:01 a.m., _____, 2022 (the "Effective Date"), with the possibility to renew the franchise as set forth below, with the initial term ending at 11:59pm on April 30, 2023.

ORDINANCE NO. _____

D. Operational Timeframe

This franchise shall automatically expire if Grantee's non-emergency ambulance transfer service is not fully operational, as verified by the Fire Chief, within ninety (90) days of the date the Franchise is approved by City Council.

E. Renewal of Franchise

1. **Renewal Procedure.** If the Grantee wishes that the City renew this franchise, Grantee shall submit a request in writing to the City Clerk's Office, P.O. Box 1890, El Paso, Texas 79950-1890, by at least three (3) months prior to the expiration date of this franchise, whether it be during the initial term or any renewal period. The City shall consider Grantee's written request and shall determine whether public convenience and necessity justify renewal of this franchise, including during any renewal period.

2. Should Grantee fail to submit a request for the renewal of this franchise to the City as herein required, this franchise shall expire upon the expiration date and a new franchise shall be required if Grantee desires to operate a non-emergency ambulance franchise within the City of El Paso.

3. Notwithstanding Article I, Sections E.1 and E.2 of this franchise, the City Manager is authorized to grant a thirty (30) day extension of this franchise, under the same terms and conditions in effect at the time that Grantee makes its written renewal request, whether or not Grantee timely submits the renewal request notice prior to the expiration of this franchise during the initial term or any renewal periods.

4. **City's Right to Modify Terms of Franchise and Require Additional Information Reserved.** Grantee understands, agrees, and accepts that the City reserves its rights to require a) that the terms, conditions, and provisions of this franchise be modified upon Grantee's request for renewal of the franchise and b) that Grantee submit additional information and documents as conditions for renewing the grant of this franchise to operate a non-emergency ambulance transfer service.

F. Business Entity

1. **Registered Business Entity and Assumed Name.** Grantee shall, forward to and maintain on file with the Fire Chief a certified copy of its corporate Articles of Incorporation, Partnership Agreement and Bylaws, or a sworn and notarized statement of sole proprietorship for the purpose of identifying Grantee's business entity status and a sworn and notarized statement of any name by which it does business if different than the business entity name within 15 days of the grant of this franchise, unless required to be performed at an earlier time by other legal provisions.

2. **Sale of Business.** Grantee shall notify the City immediately of the proposed sale or actual sale of the Grantee's business entity. Grantee shall give notice to the City of any actual

sale of the Grantee's business entity no less than ten (10) business days prior to the actual sale or transfer.

3. **Business Officers, Supervisors and Managers.** Grantee shall, within fifteen (15) days of the grant of this franchise, submit to the Fire Chief, the names and business addresses of all owners, officers and supervisory and management personnel of Grantee.

4. **Financial Interest.** Grantee shall, within 15 days of the grant of this franchise, submit to the Fire Chief the names and business addresses of all persons having a financial interest in the Grantee or any parent, affiliate or subsidiary of Grantee's business entity.

5. **Fiscal Year.** Grantee shall, within 15 days of the grant of this franchise, submit to the Fire Chief the beginning and ending dates of its fiscal year.

6. **Changes.** Any additions or changes in the information, which is required to be submitted to the City pursuant to this section, shall be forwarded in written form by the Grantee to the Fire Chief within 15 days of such changes.

7. **Non-compliance and Revocation.** Failure to comply with this section shall constitute a material breach by Grantee and shall constitute grounds for revocation of this franchise by the City.

G. Indemnification and Public Liability Insurance

1. **Indemnification.** Grantee shall, at its sole cost, fully indemnify and hold harmless the City, its officers, boards and commissions, and city employees against any and all claims or actions for damages arising out of Grantee's actions or omissions under this franchise, including, but not limited to, expenses for reasonable legal fees and disbursements and liabilities assumed by the City in connection with any such claims or actions.

2. Grantee shall be required to obtain and maintain in effect throughout the term of the Agreement a public liability insurance policy which meets the requirements set forth in this Agreement. This policy shall be for the protection of any person, whether a passenger or patient in Grantee's ambulance or not, whether injured or killed by the negligence of Grantee or its agent or employee and shall not contain a passenger liability exclusion.

2.1 Grantee shall obtain and maintain in effect throughout the term of this Agreement public liability insurance in an amount of not less than \$500,000. Grantee shall immediately advise the Fire Chief of any claim or litigation which affects Grantee's insurance coverage.

2.2 Grantee shall maintain comprehensive general and automobile liability coverage with limits of no less than five hundred thousand dollars (\$500,000) per occurrence and one million dollars (\$1,000,000) annual aggregate. Grantee shall maintain medical professional liability coverage with limits of no less than five hundred thousand dollars

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ORDINANCE NO. _____

(\$500,000) per occurrence and one million dollars (\$1,000,000) annual aggregate. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless. Grantee shall immediately advise the Fire Chief of any claim or litigation which affects Grantee's insurance.

2.3 The policy of public liability insurance shall be written by an insurance company with an A rating, authorized to do business in the State of Texas.

2.4 The policy of public liability insurance shall provide that it cannot be suspended, revoked, canceled or reduced in coverage without sixty (60) days written notice to the City.

2.5 The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantee, his officers, agents, servants or employees. The policy shall name the City of El Paso, its officers, agents, servants and employees as additional insureds to the full amount of the policy limits.

2.6 Grantee shall not operate its service during any period for which: 1) its insurance lapses for any reason; 2) its insurance is suspended, revoked or canceled; or 3) the amount of effective coverage of its insurance has been reduced below the minimum coverage amounts required by this Agreement. Failure to keep the policy in full force and effect throughout the term of the special privilege shall be grounds for termination of the Agreement.

2.7 Grantee shall forward to the Fire Chief a copy of each certificate of insurance issued within fifteen (15) days after the execution of this Agreement and as such policy or policies are modified, renewed, suspended or canceled.

2.8 Certificates of insurance that state that the insurer shall endeavor to give notice and/or that there shall be no liability for the failure to give the notice required herein shall not meet the requirements of this section.

H. Compensation and Payment of Franchise Fee

1. Compensation - Franchise Fee. As compensation for the grant of this franchise to use the public rights-of-way of the City of El Paso, Grantee shall pay to the City 2.75% of Grantee's monthly net receipts.

2. Franchise Area for Which Net Receipts Are to Be Reported. The Grantee shall report its net receipts for all transports, treatment or other services rendered to any customer, which commence within the Franchise Area as defined herein.

3. Net Receipts. Net receipts shall include those items of revenue as defined by generally accepted accounting principles and as defined herein for the type of business and accounting method used.

ORDINANCE NO. _____

4. **Payment Due Date.** Grantee's payments shall be paid monthly and shall be postmarked by the 15th day of the month following the month for which net receipts are reported.

5. **Interest Charged for Late Payments.** In the event that any payment required by this Section is not made when due, interest shall be compounded daily from such date at the annual rate equivalent to the then existing prime rate reported in the Wall Street Journal on the due date plus four percent (+4%).

6. **Statement Required Where No Net Receipts Reportable.** If Grantee has no net receipts for a given month, Grantee shall provide written verification that it has no net receipts which shall be postmarked no later than the 15th day of the month following the month for which the Grantee has no gross revenues. Failure to provide such notice to the City shall result in commencement of proceedings to terminate the franchise.

7. **Payments to City Comptroller.** All payments are to be sent to the City Comptroller with copies of all accompanying correspondence sent to the Fire Chief.

I. **Ad Valorem Taxes**

Grantee will also pay before delinquency all ad valorem taxes lawfully assessed against its property.

J. **City Inspection of Grantee's Books and Audits**

Grantee agrees that it will keep a true and accurate set of books, accounts and records. The City shall have the right to inspect the books of Grantee during the term of this franchise and shall further have the right to order an independent audit of said books made when, in the opinion of the City, the condition of said books justifies such actions. In the event the audit proves that the Grantee has kept true and accurate records on book accounts, the cost of such audit will be borne by the City. In the event that the audit shows that the Grantee has failed to keep true and accurate records and books of accounts, the cost of said audit will be borne by Grantee.

K. **Annual Audited Statement of Net Receipts Required**

The Grantee shall submit to the City Comptroller an annual audited statement of net receipts by month for fees derived in the Franchise Area. Such annual audit shall reflect the Grantee's fiscal year and shall be submitted to the City Comptroller within sixty (60) days of the close of Grantee's fiscal year. A copy of this audit shall be sent to the Fire Chief. The annual audit shall be conducted at no expense to the City.

L. **Grantee to Keep Separate Records**

Grantee shall maintain separate records if other services are provided outside the scope of this franchise.

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M. Franchise Not Transferable

This franchise is not for the benefit of any third party and is not transferable.

N. Failure to Enforce Franchise Agreement No Waiver of Terms Thereof

The Grantee or other parties shall not be excused from complying with any of the terms and conditions of this franchise by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

O. Judicial Relief, Costs and Attorneys' Fees

In addition to all remedies provided in this franchise, the City shall have the right to apply to any court of competent jurisdiction to secure judicial relief, as it shall deem proper. The City's costs and attorney's fees for such action shall be paid by the Grantee if the City obtains a judgment or other relief.

P. Contractual Relationship

Nothing contained herein shall be construed as creating the relationship of employer and employee between the City and the Grantee, their employees, or between the City and the Grantee's employees. The Grantee shall be deemed at all times to be an independent franchisee. In carrying out the terms of this franchise, the Grantee shall employ its own personnel, and such employees shall be and act under the exclusive and complete supervision and control of their employer.

Q. Notice

Wherever any notice is required or permitted hereunder such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid, Certified Mail, Return Receipt Requested, addressed to the individuals named herein and to whom copies or notice are required to be provided at the respective addresses as follows:

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

and

Fire Chief
Fire Department
416 N. Stanton, Ste. 200
El Paso, Texas 79901

ORDINANCE NO. _____

and

Elite Medical Air Transport, LLC d/b/a Emergent Air
Attn: Ronald King
7201 Boeing Dr.
El Paso, Texas, 79925

or to such other addresses as the City or Grantee may designate to each other in writing via certified, postage pre-paid, first class mail. It shall be the duty of the Grantee to provide the City with Grantee's most current mailing and business addresses no less than ten (10) business days prior to any change of same.

R. Revocation and Termination

1. **Public Protection and Welfare.** Should the City at any time, for any reason, decide that the public protection or welfare is not being met as contemplated by this franchise, upon thirty (30) days written notice to the Grantee, the City Council may cancel, terminate and revoke this franchise at no cost to the City. Any and all rights of the Grantee in the use of City streets, alleys or public rights-of-way shall then be terminated.
2. **Failure to Use Public Rights-of-Way.** In addition, if Grantee has ceased to use the City streets, alleys, or public rights-of-way for the purposes herein contemplated for a period of thirty (30) days or if Grantee defaults in any of Grantee's obligations under the franchise and fails to correct such default within thirty (30) days after written notice to do so, the City Council may cancel, terminate and revoke this franchise at no cost to the City. Any and all rights of the Grantee under this franchise shall then terminate.
3. **Breach of Franchise Agreement Terms.** After thirty (30) days written notice, the City Council may cancel, terminate and revoke this franchise for breach by the Grantee of any of its obligations hereunder or for failure of the Grantee to pay any final judgment of a court of competent jurisdiction in a suit on any claim in connection with the operation of the ambulance service. If court proceedings are instituted to determine the legality of such revocation, and Grantee does not prevail, the Grantee shall pay the reasonable expenses incurred by the City in connection with such litigation. Article II, Section C.3 of this franchise contains specific terms regarding termination for failure to meet response times. The City may at any time make an inquiry as to whether Grantee is able to comply with each and every term of this franchise.
4. **Convenience.** This non-exclusive franchise for non-emergency ambulance transfer service may be terminated in whole or in part by the City by giving thirty (30) days' written notice of termination to Grantee. Such right of termination is in addition to and not in lieu of rights of the City set forth in Article I, Sections R.1-3 and Article II, Section C.3 of the present franchise.
5. **Annual Review.** The City shall conduct a compliance review regarding all aspects of this franchise ninety (90) days prior to the end of each twelve month period. Should

the City determine that compliance is not being met, the City shall proceed under the provisions of Art. I, Sec. R.3 of this franchise.

S. Entire Franchise Agreement

This document contains all of the terms of this franchise and may not be modified, except by an agreement in writing signed by both parties.

T. Severability

The invalidity or illegality of any one or more provisions of this franchise by any court of competent jurisdiction shall not affect the validity of the remaining provisions hereof.

U. Acceptance of Terms by Grantee Required

This franchise shall be null and void unless Grantee, before the grant of this franchise, files with the City Clerk its written acceptance of the franchise. Grantee's failure to accept the terms and conditions of this franchise and file its acceptance thereof with the City Clerk prior to the grant of this franchise shall render the grant of this franchise null and void.

V. Acceptance by Grantee's Authorized Representative

The individual accepting the terms and conditions of this franchise on behalf of the Grantee affirmatively acknowledges that he is authorized to do so and said individual further warrants that he is authorized to commit and bind the Grantee to the terms and conditions of this franchise.

W. Rights of Individuals

1. Service and Rates. The Grantee shall not refuse non-emergency ambulance transport service to any person or customer who requests the service for a lawful purpose and which the Grantee has the ability to render. The Grantee shall not, as to rates, charges, quality of service, or in any other respect, make or grant any unreasonable preference or advantage, nor subject any person to any prejudice or disadvantage. The Grantee shall take affirmative steps to disseminate the information concerning the availability of its service to all persons. The Grantee shall ensure that all services are equally available to all persons. This provision shall not be deemed to prohibit promotional campaigns to stimulate requests for service, nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within the classification shall be entitled, provided the schedules have been filed with and approved by the City Council as provided in Article I, Section Y ("Amendments") of this franchise.

2. Personnel and EEOC. The Grantee shall strictly adhere to the equal employment opportunity requirements of Federal and State statutes and local regulations, as amended from time to time. The Grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are incorporated in this franchise by reference.

ORDINANCE NO. _____

3. Customer Medical Records and Privacy. The Grantee shall be responsible for protecting the rights of customers as set forth in the Emergency Health Care Act, TEX. HEALTH & SAFETY CODE ANN., CHAPTER 773, (VERNON'S 1997), and other applicable laws, as amended.

X. Time Is of the Essence

Whenever this agreement shall set forth any time for an act to be performed by or on behalf of the Grantee, the time shall be deemed of the essence and any failure within the control of the Grantee to perform within the time allotted shall be sufficient ground for the City to invoke an appropriate penalty including possible revocation of the franchise.

Y. Amendments

The City reserves the right to amend the terms of this ordinance and franchise in any manner necessary for the safety or welfare of the public or to protect the public interests.

Z. Police Powers

1. Compliance by Grantee Required. In accepting this franchise, the Grantee acknowledges that its rights under this franchise are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and the Grantee agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to this power.

2. Conflict of Laws. Any conflict between the provisions of this franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the City except that any such exercise that is not of general application in the jurisdiction or applies exclusively to the Grantee which contains provisions inconsistent with this franchise shall prevail only if the City finds their exercise necessary to protect the public health, safety, property or general welfare or the exercise is mandated by law. Should the terms of this franchise conflict with any other law or regulation, this franchise shall control where any law or regulation permits the City to impose more stringent standards or requirements upon Grantee.

AA. Compliance with Laws

The Grantee shall comply with all laws and regulations of the United States, the State of Texas and the City of El Paso. Grantee shall comply with all applicable statutes, laws, codes, regulations, and ordinances applicable to Grantee's use of City streets, alleys, and public rights-of-way for the purposes permitted herein. Failure to comply with these laws and regulations shall constitute a material breach by Grantee and shall constitute grounds for cancellation, termination and revocation of this franchise by the City.

ORDINANCE NO. _____

BB. Governmental Powers Not Surrendered

The granting of this franchise does not surrender any governmental powers now or hereafter conferred upon the City.

CC. Law Governing

The laws of the State of Texas shall govern the validity, performances and enforcement of this franchise.

ARTICLE II. SERVICE OPERATIONS, STANDARDS AND REQUIREMENTS

A. Availability of Service

The Grantee shall offer service on a twenty-four hour basis to the general public within the Franchise Area.

B. Radio Communications

1. Communications Center. Grantee must provide, at its own expense, a communications center, which will include 24-hour day telephone access for the public and direct radio communication with all company ambulances used under this franchise.

2. Communications with El Paso Fire Department (EPFD). Grantee shall equip each ambulance with a radio capable of maintaining direct radio communication with the EPFD Communications Center through either an 800 Mhz trunked commercial radio system or UHF National EMS Frequency, Channel 2. Grantee shall so equip each ambulance at its sole expense and such radios shall be used to coordinate disaster and emergency relief with EPFD when responding to an incident as directed by the Fire Chief or when an emergency is encountered within the Franchise Area.

C. Response Time Requirements

1. Grantee's Response to Customers' Requests for Service. Grantee shall respond to a customer's request for non-emergency transfer service, at any time of day on any day of the week, no later than eighty minutes for at least ninety percent (90%) of the time after the request for service is received unless pre-arrangements are made.

2. Grantee's Response Per Request of Fire Chief. Grantee shall respond to non-emergency incidents upon the request of the Fire Chief or his designee. Grantee agrees to send the earliest available ambulance to non-emergency incidents as requested by Fire Chief or his designees, but in no case shall response time exceed twenty-five minutes for at least ninety percent (90%) of the time for non-emergency calls.

3. Failure to Meet Response Time. In the event that Grantee fails to meet the response times indicated in this Section C, during four consecutive months, the City shall notify Grantee of such failure and that failure to meet the response times during the immediately following month shall be grounds for immediate termination of this franchise.

D. Emergency Aid to City of El Paso

Grantee shall provide emergency aid assistance to the City of El Paso in cases of system overload or multiple patient incidents as requested or directed by the Fire Chief or his designee. Such assistance shall be provided on an emergency basis with immediate priority being given to those requests.

E. Grantee's Costs

The City shall not be responsible for any cost incurred in providing services as described in this franchise.

F. Billing and Collection for Services

The Grantee shall bill and collect charges for services from the patient or responsible party at Grantee's sole expense.

G. Transportation Logs

The Grantee shall be required to submit monthly or more frequently as directed by the Fire Chief, a log showing the following information:

1. list of emergency transports commencing within the Franchise Area for the month, to include date, time, transport commencing address and destination address;
2. the total number of non-emergency transports commencing within the Franchise Area for the month; and
3. the number of transports originating within the Franchise Area for the month.

H. Personnel Requirements

1. Records of Personnel. The Grantee shall be required to submit to the Fire Chief, prior to the commencement of operations, a list identifying all of its employees hired to drive or attend Grantee's customers. The list shall identify each employee by name and shall identify the employee's current DSHS certification status, driver's license status, and Defensive Driving Course Status. The Grantee shall forward written notice of any addition or change in the information required to be submitted within fifteen (15) calendar days of the addition or change.

2. Monthly Report Noting Changes of Personnel or Personnel License Status. Grantee shall submit to the Fire Chief monthly reports to include additions and changes of personnel and personnel records information as required in Article II, Section H(1) of this franchise.

3. DSHS Certification of Grantee's Employees. Each of Grantee's attendants and drivers employed by Grantee must be currently certified as an Emergency Medical Technician-Basic with the Texas Department of State Health Services, Emergency Medical Services Division. Individuals providing a higher level of care to customers must be currently certified with the Texas Department of Health at the level consistent with the type of care for which that ambulance is equipped as identified in this franchise.

4. Driver's License Required. While on duty, each of Grantee's attendants and drivers must possess at all times a license issued by the State of Texas or New Mexico which is valid to operate an emergency vehicle and transfer ambulance.

5. EMT Identification Required. While on duty, each of Grantee's attendants and drivers shall be required to possess proof of EMT certificate issued to the EMT by the Texas Department of State Health Services;

6. Statement from Physician; Reportable Communicable Diseases. Within fifteen (15) days of employment of each attendant and driver, the Grantee must submit to the Fire Chief a written statement from a physician authorized to practice medicine in the State of Texas stating the person is free of the following communicable diseases (Tuberculosis, Measles, Mumps, Rubella, Hepatitis B, and Tetanus) and is physically capable of performing the required duties. If an individual contracts a communicable disease which is required to be reported to appropriate federal, state or local health authorities, Grantee shall immediately notify the Fire Chief that the individual is unable to perform duties as an EMT and shall, prior to permitting the individual to resume his or her duties as an EMT, submit to the Fire Chief, a physician's statement that the individual has recovered from his or her illness and may resume providing care under the individual's EMT license as permitted by those laws governing emergency medical technicians and communicable diseases.

7. Defensive Driving or Emergency Vehicles Operation Course Certificate. Within ninety (90) days of employment, the Grantee must submit to the Fire Chief, for each of Grantee's employees, evidence showing completion of a National Safety Council Approved Defensive Driving Course or an Emergency Vehicles Operation Course, the latter from the El Paso Fire Department, while operating under this franchise.

I. Ambulance Staffing Requirements

1. Basic Ambulance Staffing. Each ambulance being used for basic care must be staffed by no less than an EMT-Basic driver and an EMT-Basic attendant, and any other personnel needed to sustain current level of care for the patient as determined by the attending physician.

ORDINANCE NO. _____

2. Advanced Life Support Ambulance Staffing. Each ambulance being used for advanced life support care (ALS) must be staffed by no less than an Advanced EMT and an EMT-Basic, and any other personnel needed to sustain current level of care for the patient as determined by the attending physician.

3. MICU Ambulance Staffing. Each ambulance being used for mobile intensive care (MICU) must be staffed by a minimum of an EMT-Paramedic, an EMT-Basic, and any other personnel needed to sustain current level of care for the patient as determined by the attending physician.

J. Vehicle Inspections

1. Inspection of Ambulances Prior to Initial Operation. Prior to the commencement of operations, the Fire Chief or his designee shall inspect all ambulances used by Grantee in operating its transfer service at a reasonable time. An ambulance must pass inspection and have a current valid permit sticker prior to any use for customer transportation or care. Subsequent to the initial inspection, all ambulances which are subject to this franchise shall be inspected by the Fire Chief or designee every two years, except as noted in Article II.J.2.

2. Field Inspections. Ambulances may be inspected in the field at any hour by the Fire Chief or designee, and he may require any ambulance to proceed to a specified location for further inspection. If Grantee has three ambulance field inspection failures within a 12-month period, then the City shall re-inspect Grantee's entire ambulance fleet within 30 days of the last failed field inspection.

3. Non-Compliance. The Fire Chief or designee shall flag the ambulance and remove the permit sticker from an ambulance that fails an inspection. Grantee shall not operate an ambulance without a valid permit sticker. It shall be an event of default for Grantee to operate a vehicle without a valid permit.

4. Inspection Process. Each inspection shall include:

a. Confirmation that the vehicle has a current motor vehicle registration sticker on the front windshield in compliance with Texas Transportation Code §502.059(c), as amended, with proof of vehicle inspection pursuant to the requirements of Texas Transportation Code Chapter 548, as amended.

b. Confirmation that the Grantee has a current EMS Provider License issued by Texas Department of State Health Services, Emergency Medical Services Division as provided for under 25 T.A.C. §§ 157.2 and 157.11.

c. Visual inspection of the vehicle(s) for the purpose of determining full operation of the following motor vehicle equipment:

ORDINANCE NO. _____

- (1) headlights, tail-lights, back-up lights, ambulance body clearance lights (if appropriate), brake lights and license plate lights, and appropriate emergency lights and sirens; and
 - (2) tires.
 - d. Visual and mechanical inspection of equipment for the purpose of determining compliance with the medical equipment specifications of the franchise.
5. **Written Inspection Report.** EPFD shall give the Grantee a written report at the time of inspection indicating any deficiencies.
 6. **Permit Sticker.** A vehicle that meets the requirements of this franchise under this ordinance shall be issued a permit sticker indicating its validity for a twenty-four month period from the date of inspection. The sticker's expiration date shall not be deemed to impair or limit the City's ability to conduct field inspections or perform any other function under the terms of this franchise. An ambulance that has met the inspection requirements of this franchise shall display the permit sticker on the vehicle's rear window and said sticker shall be visible from the exterior of the vehicle at all times.
 7. **Permit Sticker Non-transferable.** A permit sticker is not transferable from one vehicle to another.
 8. **Ambulances Not Passing Inspection.** Any ambulance found to not be in compliance with the requirements of this franchise or of any other ordinance of the City regulating the use of ambulances on the streets and alleys of the City of El Paso shall 1) fail inspection, 2) be considered not safe or useable and 3) have any existing permit sticker removed. Thereafter, until the vehicle passes inspection, it shall not be operated for customer transportation or care upon the streets of the City of El Paso.
 9. **Re-inspection.** At the request of the Grantee, EPFD shall re-inspect a vehicle that has failed inspection to determine if the deficiencies have been corrected. EPFD may require review of written documentation, such as equipment repair bills or sales receipts, and may re-inspect the vehicle and equipment visually and mechanically for compliance with this franchise.
 10. **Specialty Ambulance.** The City, upon verification of the licensing of a vehicle as a specialty ambulance by the Texas Department of State Health Services, shall issue a sticker, as described in Article II, Section J.5, for any such vehicle.

K. Vehicle, Equipment and Supply Requirements

1. **DSHS Regulations.** Vehicles are required to meet all applicable Texas Department of State Health Services Regulations in effect at the time of inspection.

ORDINANCE NO. _____

2. DSHS Vehicle Equipment and Supply Requirements. The following equipment and supplies are required for each ambulance operated in the Franchise Area by the Grantee:

- a. Each ambulance being used for Basic Life Support Care must comply fully with DSHS requirements for Basic Life Support Ambulances, as amended.
- b. Each ambulance being used for Advanced Life Support Care must comply fully with DSHS requirements for Advanced Life Support Ambulances, as amended.
- c. Each ambulance being used for Mobile Intensive Care Unit services must comply fully with DSHS requirements for Mobile Intensive Care Ambulances, as amended.

3. Ambulance Markings. Grantee shall mark each ambulance distinctly with its company's name. Grantee's name shall be marked with a minimum one inch wide and five inch tall lettering on at least three sides of the ambulance. The color of Grantee's name must contrast with the color of the ambulance or the wrap. The Texas of Department of State Health Service provider's license number shall be displayed on the sides of the ambulance with "TX" appearing prior to said number in the width and height required by the State of Texas. Business phone numbers and logos are permissible; however, the words "Emergency Medical Services" or "EMS" shall not be used in any fashion.

4. Grantee shall submit to the Fire Chief or designee the Grantee's Medical Equipment checklist for approval. Grantor shall conduct the required vehicle inspection with said checklist to ensure that Grantee meets state and local requirements. Changes to Grantee's medical equipment as listed on the checklist shall be submitted to the Fire Chief or designee within fifteen days prior to the change to be in effect.

5. Grantee to Comply with Most Comprehensive Requirements. Grantee shall comply at the time of inspection or re-inspection with the supply and medical equipment list required in this ordinance or by the Texas Department of State Health Services, whichever is more comprehensive.

L. Operational Requirements

- 1. Permits. Grantee shall obtain and maintain, at its own expense, all required permits necessary for the operation of Grantee's service under applicable laws and the terms of this franchise.
- 2. Lights and Sirens. Grantee shall not avail himself of the permission given ambulances to disregard traffic laws except in those instances as expressly permitted under federal, state or local laws and with the permission of the Fire Department as may be granted upon a case-by-case basis.

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3. **Transportation and Treatment Decisions.** Transportation and treatment decisions shall be made in accordance with Grantee's established policies and in accordance with the usual and customary medical practices of the medical community.

4. **Treatment Protocols and Transfer Policies.** Grantee shall file a copy of its treatment protocols and transfer policies with the Fire Chief and shall forward any changes in such protocols or procedures no less than five (5) working days prior to implementation of same.

5. **Dispatcher's Responsibilities.** Grantee's Dispatchers shall make reasonable efforts to determine if a request for service is an emergency or non-emergency. Upon receipt of a request for emergency service within the City limits of El Paso, or if Grantee responds to a call within the City limits that in good faith was taken as a non-emergency and then upon arrival it is determined that the call is an emergency, the call shall be immediately relayed by Grantee to EPFD Communications via radio or, if necessary, Grantee shall relay the call via 911 or 915-832-4429. EPFD will either elect to respond to the call or give Grantee permission to handle the incident.

6. **Response to Emergency Situations.** Unless authorized to do so by the Fire Chief or his designee, Grantee, its agents, or its employees, shall not knowingly go to the scene of an emergency within the City limits of El Paso with the intent to provide emergency service and transportation; provided, however, if Grantee discovers an emergency situation within the City limits of El Paso it shall immediately notify the EPFD Communications via EPFD radio and shall remain to render aid until an EPFD vehicle arrives or may transport if instructed to do so per EPFD Communications via EPFD radio. Such aid must be comprehensive and at the maximum level allowed for those personnel by the Grantee's medical director.

7. **Uniforms.** Grantee's employees shall be required to wear uniforms while performing duties associated with the transportation and care of a customer. Uniform style and color provided by Grantee shall have the prior written approval of the Fire Chief and shall not resemble the uniform of the Fire Department.

8. **Representation as EMT.** Neither Grantee nor its employees shall hold out to the public in any manner that they are trained Emergency Medical Technicians or Paramedics unless they have been so certified by the Texas Department of State Health Services, Emergency Medical Services Division.

9. **EMT to Attend Customer.** All patient care and transport decisions are the responsibility of the highest medically trained and highest credentialed person on the scene. After a complete patient assessment and if the patient is stable, patient will be attended by the most appropriate certified EMT. In the event of an emergency situation, Grantee shall adhere to Article II.L.6 of this Franchise.

10. **Ambulance for Customer Transport Only.** Ambulances shall be used only for the purpose of transporting customers.

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ARTICLE III. ADMINISTRATION AND REGULATIONS

A. State-Issued EMS Provider License

1. State License to Be Filed with City. Before commencing operations under this franchise, Grantee shall file with the City Clerk and the Fire Chief, a copy of its EMS Provider License as issued by the State of Texas, Department of State Health Services.
2. Suspension, Revocation, Non-Renewal of State License. Should Grantee's state-issued EMS Provider License be suspended, revoked or not renewed by the State of Texas, Grantee shall not operate any ambulance upon the streets, alleys or public rights-of-way within the City of El Paso until such time as Grantee's EMS Provider License is reinstated or renewed by the State of Texas. Grantee shall immediately notify the Fire Chief of any suspension, revocation, or non-renewal of its state-issued EMS Provider License.
3. Termination of Franchise Where Grantee Not Licensed by State. The basis set forth by the State of Texas for the suspension, revocation, or non-renewal of Grantee's EMS Provider License shall constitute a reasonable basis for the cancellation, termination or revocation of this franchise by the City of El Paso.

B. Rates

1. Grantee's Rates. The Mayor and City Council hereby approve the schedule of maximum rates attached hereto as "Exhibit A" and by reference made a part hereof. Any increase to the listed rates under this franchise shall be subject to the prior approval of the Mayor and City Council before being assessed to any patient or client by Grantee. Grantee shall indicate where any discounts to third parties have been given when providing its payment to the City.
2. Rates for EPFD-directed Emergency Response. Whenever the Grantee shall be directed by the Fire Chief to respond to an emergency as permitted by this franchise or other applicable law, the Grantee shall charge the City of El Paso rates established in the City's Budget Resolution or other resolution appropriately adopted by the El Paso City Council for Grantee's services provided to this franchise, instead of the rates listed for emergency response in the attached "Exhibit A". The discounts referenced in Article III, B.1 above are not applicable to EPFD-directed emergency response.
3. Special Segments: The following shall be handled as stated below:
 - a. Long Distance. Long Distance transport fee shall only include the base rate and shall exclude mileage from the computation.

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b. Airport Transfer. For calls that originate in the City of El Paso and request transfer to the El Paso International Airport the fee shall only include the base rate and shall exclude mileage from the computation.

c. Special Events. Special events shall be billed only when an actual transport is required to an El Paso hospital from a special event and shall include both the base rate and the mileage.

C. Grantee's Office and Telephone Number

The Grantee shall, at its own cost, maintain an office within the City, which shall be open during all usual business hours, have a publicly-listed telephone with a locally accessible number and sufficient lines and be operated so that complaints and requests for billing or adjustments shall be received on a twenty-four (24) hour basis.

D. Billing Statements

1. Franchising Authority Identified. Grantee's billing statements shall include the Grantee's proper phone number and street address for its El Paso office and shall identify the City as Grantee's franchising authority as follows: Franchising Authority: City of El Paso, Attn: Fire Department, Community Health Program, 416 N. Stanton, Ste. 200, El Paso, Texas 79901.

2. Complaints May Be Sent to City of El Paso. Grantee shall include in each of its billing statements a notice to its clients and patients that copies of complaints may be forwarded to the Grantee's franchising authority, the City of El Paso.

E. Customer Complaints

1. Complaint Procedure shall, in addition to the requirements mandated elsewhere in this franchise, establish procedures for receiving, acting upon, and resolving complaints. A copy of the most current procedures shall be filed with the Fire Chief. The Grantee shall furnish a notice of such procedures to its patients and clients on each of its billing statements.

2. Complaint Logs. The Grantee shall keep a log, which will indicate the name of the complainant, the name of the customer (if different from the complainant), the nature of each complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection by representatives of the City.

3. Retention of Complaint Logs. All complaint entries shall be retained on file for a period of two (2) years from the date the complaint entry was made.

4. Multiple complaints - City-ordered Investigation, Analysis and Report. When similar complaints are filed or when other evidence exists which casts doubt on the reliability or quality of Grantee's service, the City shall have the right to require the Grantee to

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investigate, analyze, and report on the performance of the transfer service and the personnel involved. Such report shall be delivered to the City no later than fourteen (14) days after the City formally notifies the Grantee and shall include, at a minimum, the following information: the nature of the complaints which precipitated the investigation; the equipment used in rendering services; the procedures employed in rendering services to the complainant or patient; a narrative of the incident and the resulting outcome; and the method by which said complaints were resolved.

5. **City May Conduct Own Investigation.** The City may conduct its own investigation, analysis and draft reports regarding the Grantee's customer service. The City may also require that an investigation, analysis and report be conducted or supervised by an independent health care professional with demonstrated knowledge and understanding of appropriate EPFD and Medical Transfer procedures and protocols and who is not on the permanent staff of the Grantee.

6. **Selection of Independent Health Care Professional.** An independent health care professional shall be selected by the Grantee from a list of no less than two persons or firms nominated by the City of El Paso through its Fire Chief. Should Grantee fail to select an independent health care professional from the list of nominees within ten days after receiving the notice identifying the nominees, the City shall be entitled to select the independent health care professional and such selection shall be final. The aforesaid professional shall sign all reports of the investigation and analysis and shall forward the report, including such records as necessary to properly interpret the results of the investigation and analysis, to the City or other designated City representative. The report shall recommend actions to be taken by the Grantee and the City. The reasonable costs of such independent investigation shall be paid by the Grantee, provided, however, in the event such investigation determines that the Grantee is operating in accordance with all performance standards and requirements of this franchise, all costs for such independent investigation shall be paid by the City.

7. **Basis for Investigation.** The City shall require investigations, analyses, and reports when and under such circumstances as the City has reasonable grounds to believe a) that the health or welfare of the public may be at risk or b) that Grantee's level of service does not meet or comply with the standards of care and service which are customary in the emergency medical profession or which are required by federal, state, or local laws.

F. **HHS PRIVACY REGULATIONS.** The Health Insurance Portability and Accountability Act (HIPAA) *Standards for Privacy of Individually Identifiable Health Information* (Privacy Rule), as amended by the HITECH Act and regulations promulgated thereunder by the U.S. Department of Health and Human Services, and any subsequent amendments or modifications thereto (collectively, "HIPAA"); see 45 CFR Part 160 and Subparts A and E of Part 164, requires that Grantee offer assurances to the City that the Grantee will safeguard any protected health information received or created on behalf of the City. Pursuant to this requirement, the following is set forth:

ORDINANCE NO. _____

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 Grantee.
 - c. **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.
 - d. **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. 160.103.
 - e. **Information** shall mean any "health information" provided and/or made available by the CITY to BUSINESS ASSOCIATE, and has the same meaning as the term "health information" as defined by 45 C.F.R. 160.103.
 - f. **Parties** shall mean the CITY and BUSINESS ASSOCIATE.
 - 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 CITY for any other purpose other than as expressly permitted or required by this Agreement (ref. 45 C.F.R. 164.504(e)(2).)
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 CITY for the following stated purposes:

To provide ambulance, public health, and related support services (service) to the community of the CITY for the mutual benefit and general welfare of BUSINESS ASSOCIATE and the CITY (ref. 45 C.F.R. 164.504(e)(2); 65 Fed. Reg. 82505.)

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ORDINANCE NO. _____

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 CITY 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 CITY. (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 CITY 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 CITY **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)).

ORDINANCE NO. _____

- d. **Subcontractors and Agents.** 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 CITY, 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 CITY, 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)(I)).

- j. **Return or Destruction of Information.** At the termination of this Agreement, BUSINESS ASSOCIATE hereby agrees to adhere to Subsection F.3 of Article III of this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(J)).
 - 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, as amended.** To the extent BUSINESS ASSOCIATE is to carry out one or more of CITY'S obligations under Subpart E of 45 C.F.R. Part 164, as amended, BUSINESS ASSOCIATE shall comply with the requirements of Subpart E that apply to CITY 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 CITY. 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 CITY and BUSINESS ASSOCIATE 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, of the Code of Federal Regulations, as amended.

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.

ORDINANCE NO. _____

PASSED AND APPROVED this _____ day of _____, 2022.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:


THE CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

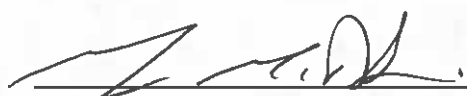
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Mario D'Agostino
Fire Chief

(ACCEPTANCES AND ACKNOWLEDGMENT ON THE FOLLOWING PAGE)

ORDINANCE NO. _____

ACCEPTANCE AND ACKNOWLEDGMENT**ACCEPTANCE**

The above instrument, with all conditions thereof, is hereby accepted this _____ day of _____, 2022.

Elite Medical Air Transport, LLC d/b/a Emergent Air

By: _____

Printed Name: _____

Title: _____

ACKNOWLEDGEMENT

THE STATE OF TEXAS)

)

COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2022, by _____, as _____, on behalf of **Elite Medical Air Transport, LLC d/b/a Emergent Air.**

Notary Public, State of Texas

Notary's Printed or Typed Name:

My Commission Expires:

RECEIVED FOR FILING THIS _____ DAY OF _____, 2022.

Laura D. Prine, City Clerk

ORDINANCE NO. _____

EXHIBIT A**Elite Medical Air Transport, LLC d/b/a Emergent Air****PUBLIC RATES**

TRANSPORT TYPE:	RATE
BLS NON-EMERGENCY	\$600.00
BLS EMERGENCY	\$800.00
ALS NON-EMERGENCY	\$700.00
ALS-1 EMERGENCY	\$900.00
ALS-2 EMERGENCY	\$1000.00
SPECIALITY CARE TRANSPORT (SCT)	\$5000.00
MILEAGE	\$25.00

* Discount consideration may be given to the following:

1. Patients
2. Facilities
3. Payors
4. Vendors

ORDINANCE NO. _____



Legislation Text

File #: 22-506, 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.

All Districts

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

Planning and Inspections, Brenda R. Cantu, (915) 212-1500

AGENDA LANGUAGE:

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

An Ordinance to amend Title 5 (Business License and Permit Regulations) Chapter 5.02 (Alcoholic Beverages), Section 5.02.090 (City Protest of Permit/License), Section 5.02.100 (City Liquor License/Permit - Fee) and Section 5.02.140 (Liquor License/Permit - Term); The penalty as provided in 5.02.170 (Violations and Penalties) of the El Paso City Code.

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

AGENDA DATE: May 10, 2022
PUBLIC HEARING DATE: May 24, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553
Brenda R. Cantu, (915) 212-1500

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

SUBGOAL: 3.1 Provide business friendly permitting and inspection processes
3.2 Improve the visual impression of the community

SUBJECT:

An ordinance to amend Title 5 (Business License and Permit Regulations) Chapter 5.02 (Alcoholic Beverages), Section 5.02.090 (City Protest of Permit/License), Section 5.02.100 (City Liquor License/Permit – Fee) and Section 5.02.140 (Liquor License/Permit – Term); The penalty as provided in 5.02.170 (Violations and Penalties) of the El Paso City Code.

BACKGROUND / DISCUSSION:

This modification to the City Code is required in order to comply with recent changes made by the Texas Alcoholic Beverage Commission (TABC). The TABC changes were made because of amendments enacted by the 87th Texas Legislature directing the TABC to consolidate the number of license and permits that they offered. Based on the amendments, the El Paso City Code requires changes to comply with new TABC license and permit consolidations.

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: Kevin Smith for

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

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATION) CHAPTER 5.02 (ALCOHOLIC BEVERAGES) SECTION 5.02.090 (CITY PROTEST OF PERMIT/LICENSE) AND SECTION 5.02.100 (CITY LIQUOR LICENSE/PERMIT—FEE) AND SECTION 5.02.140 (LIQUOR LICENSE/PERMIT—TERM); THE PENALTY AS PROVIDED IN 5.02.170 OF THE EL PASO CITY CODE.

WHEREAS, El Paso City Code, Title 5 (Business License and Permit Regulations), Chapter 5.02 (Alcoholic Beverages) contains various permits related to alcoholic beverages in accordance with the Texas Alcoholic Beverage Code;

WHEREAS, the 87th Texas Legislature recently enacted legislation requiring the City to update Chapter 5.02 (Alcoholic Beverages) of the El Paso City Code;

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

SECTION 1: That Title 5 (Business License and Permit Regulation) Chapter 5.02 (Alcoholic Beverages) Section 5.02.090 (City Protest of Permit/License) is amended in its entirety and replaced with the following section:

5.02.090 – City protest of permit/license

- A. The City Manager for the City of El Paso may protest the issuance of alcoholic beverage licenses to the County Judge and the Texas Alcoholic Beverage Commission in accordance with Texas Alcoholic Beverage Code Section 61.314. Evidence supporting the protest shall be presented by the City Manager with the assistance of the City Attorney if necessary.
- B. The City Manager may protest the issuance or renewal of a state permit or license in compliance with Texas Alcoholic Beverage Commission Code Sections 11.432 and 61.314. Evidence supporting the protest shall be presented to the City Manager with the assistance of the City Attorney if necessary.

SECTION 2: That Title 5 (Business License and Permit Regulation) Chapter 5.02 (Alcoholic Beverages) Section 5.02.100 (City Liquor License/Permit—Fee) is amended in its entirety and replaced with the following section:

5.02.100 – City Liquor License/Permit –Fee

- A. Once an applicant has obtained a license or permit from the Texas Alcoholic Beverage Commission, they must also obtain the corresponding license or permit from the City prior to operations. There shall be charged and collected by the City the established fee from every licensee or permittee issued any license or permit by the state or its authorized agents, and from which licensee or permittee the City is given the power by the Texas Alcoholic Beverage Code to collect a fee. The City license or permit shall correspond to the same class of license or permit issued to such licensee or permittee by the state.

- B. No person may manufacture, distill, brew, sell, import, export, transport, distribute, possess, possess for the purpose of sale, warehouse, store, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages without first paying the established fee and obtaining applicable license(s) or permit(s) from the City in accordance with the Texas Alcoholic Beverage Code.

SECTION 3: That Title 5 (Business License and Permit Regulation) Chapter 5.02 (Alcoholic Beverages) Section 5.02.140 (City Liquor License/Permit—Term) is amended in its entirety and replaced with the following section:

5.02.140 – City Liquor License/Permit—Term

A license or permit issued under this Chapter expires on the second anniversary of the date it is issued.

Except as herein amended, Title 5 of the El Paso City Code shall remain in full force and effect.

ADOPTED this _____ day of _____, 20__.

THE CITY OF EL PASO:

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Russell Abeln

Russell T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:

Philip F. Etiwe, Director
Planning & Inspections Department

Chapter 5.02 ALCOHOLIC BEVERAGES

Sections:

5.02.010 Compliance required.

No person may manufacture, distill, brew, sell, import, export, transport, distribute, possess, possess for the purpose of sale, warehouse, store, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages unless the use is authorized by and the person has complied with all applicable requirements of the Texas Alcoholic Beverage Code, and Title 20 and 21 of the City Code, as amended, and the person has paid the established fee and obtained a permit of the type required pursuant to the terms of this chapter.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.020 Definitions.

A word or term used in this chapter that is specifically defined by the Texas Alcoholic Beverage Code shall be construed to have the same meaning established by the Texas Alcoholic Beverage Code, as amended.

"Alcoholic beverage" means alcohol or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

"City secretary" means the permit official or other designee of the city manager whenever referenced in the Texas Alcoholic Beverage Code.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.030 Construction consistent with state law.

This chapter is intended to be in conformity with the Texas Alcoholic Beverage Code and with all the rules and regulations promulgated under authority of the Texas Alcoholic Beverage Commission, both as amended.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.040 No vested right conferred.

The sale of alcoholic beverages is a privilege and this chapter is not intended to give any person a vested right to engage in such business.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.050 Existing liquor districts are repealed.

Liquor districts were repealed as of August 1, 2000.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.060 Applicability to annexed territories.

- A. When at the time of any annexation of territory to the city there was in actual existence in the annexed area a place of business at which alcoholic beverages or intoxicating liquors were lawfully sold, the room in which such business was then being conducted shall be deemed a nonresidential section for the purposes of this section, and such business may continue to operate, but only upon the following conditions:
 - 1. The person operating or desiring to operate such business shall file with the permit official an affidavit made by himself and by another person knowing the facts and competent to testify, showing the fact that such business was in lawful operation at the time of annexation, the location then actually occupied by the business, and the name and address of the owner of the business.
 - 2. Such person shall also produce for inspection a current valid state license or permit under which the business was being operated at the time of annexation and shall file a copy thereof.
 - 3. A business operated under authority of this section shall not be enlarged or extended; and if the business shall cease to be conducted for a continuous period of one hundred and twenty days, it shall be deemed to be permanently abandoned, and all rights to operate an alcoholic beverage business in that location by virtue of this section shall expire.
- B. The privilege granted by the above provision shall apply in the case of both past and future annexations.
- C. Nothing in this section shall authorize any act which is unlawful under Title 20 or 21 of this Code, relating to zoning.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.070 Certification of compliance with city requirements for application to the Texas Alcoholic Beverage Commission.

- A. This section applies to an application for a permit or license required by the Texas Alcoholic Beverage Code when the Texas Alcoholic Beverage Code requires certification by the city that the sale of alcoholic beverages at the place of business is authorized by city ordinance. This section also applies to a permittee seeking to change the place, address, premises, or location for which the permit or license is issued, when the Texas Alcoholic Beverage Code requires certification by the city that the sale of alcoholic beverages at the place of business is authorized by city ordinance.
- B. The applicant for a permit or license subject to this section shall file a completed and verified application with the permit official. The application shall be on forms promulgated by the Texas Alcoholic Beverage Commission.
- C. The permit official shall forward copies of the completed and verified application to the appropriate city officials.
- D. Each city official receiving a copy of the application under subsection C. shall require that a proper investigation and inspection be conducted necessary to certify the findings required by the official under this section. If the place of business was inspected in the twelve months preceding the date the application was filed, the city official may make his certification without reinspecting the place of business if there has been no material change since the previous inspection that would affect the certification required by this section, as determined by the official in his sole discretion.
- E. The applicant shall make the business place available for all inspections authorized and undertaken under this section. Inspections under subsection D. may relate, without limitation, to the requirements established by the zoning code, building code, plumbing code, mechanical code, gas code, electrical code and fire code,

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(Supp. No. 90)

as may be amended; and to any provisions of this Code of ordinances and state requirements that are administered or enforced by the department of public health.

- F. If the building official determines that the sale of alcoholic beverages at the place of business is an authorized use at that location and the place of business complies with all applicable provisions of the building code, plumbing code, mechanical code, gas code and electrical code, as may be amended, the building official shall certify that finding.
- G. If the fire chief certifies that the place of business complies with all applicable provisions of the fire code, the fire chief shall certify that finding to the permit official.
- H. If the director of the department of public health determines that the place of business complies with all applicable provisions of the city or state health code that are enforced by the department of public health, the director shall certify that finding to the permit official.
- I. If the departments listed in subsections F., G. and H. are unable to provide the required certifications because a structure, or retrofit or remodeling at the proposed place of business has not been completed, then the departments may provide an interim certification to the permit official, and the permit official may certify the application. However, occupancy and the conduct of business at the place of business is prohibited until a certificate of occupancy for the place of business, a city alcoholic beverage permit or license and a food license have been issued.
- J. When the permit official receives the certifications required in subsections F., G., and H., the permit official shall certify on the application that the place of business is in a "wet area" and that the sale of alcoholic beverages for which the permit or license is sought is not prohibited at that location by any provisions of the El Paso City Charter or City Code. The permit official shall forward the certified application to the Texas Alcoholic Beverage Commission.
- K. If the permit official does not receive the certifications required in subsections F., G., and H., or the permit official cannot otherwise certify on the application that the sale of alcoholic beverages at the place of business is authorized by city charter or city code, the permit official shall not certify the application.
- L. The applicant may appeal the permit official's denial of the certification of the application to the city council by written notice filed with the city clerk within ten days of the applicant's receipt of the notice of denial of the certification from the permit official.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012; Ord. No. 18968 , § 5, 9-3-2019)

5.02.080 Resubmission of application.

Once a permit or license has been denied by the city council for a specific place of business, an applicant shall not be allowed to resubmit an application for that same location until twelve months has elapsed from the date the city council denied the previous permit or license application.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.090 City protest of permit/license.

- A. The city manager for the City of El Paso may protest the issuance of ~~state beer licenses, wine and beer permits, beer distributor's and beer manufacturer's alcoholic beverage~~ licenses to the county judge and the Texas Alcoholic Beverage Commission in accordance with Texas Alcoholic Beverage Code Section ~~61.32.~~ **61.314**. Evidence supporting the protest shall be presented by the city manager with the assistance of the city attorney if necessary.

-
- B. The city manager may protest the issuance or renewal of a state permit or license in compliance with Texas Alcoholic Beverage Commission Code Sections ~~11.41~~ 11.432 and ~~61.32~~ 61.314. Evidence supporting the protest shall be presented by the city manager with the assistance of the city attorney if necessary.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.100 City Liquor license/permit—Fee.

- A. Once an applicant has obtained a license or permit from the Texas Alcoholic Beverage Commission, they must also obtain the corresponding license or permit from the City **prior to operations**. There shall be charged and collected by the city the established fee from every licensee or permittee issued any license or permit by the state or its authorized agents, and from which licensee or permittee the city is given the power by the Texas Alcoholic Beverage Code to collect a fee. The city license or permit shall correspond to the same class of license or permit issued such licensee or permittee by the state.
- B. No person may manufacture, distill, brew, sell, import, export, transport, distribute, possess, possess for the purpose of sale, warehouse, store, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages without first paying the established fee and obtaining **the following** applicable license(s) or permit(s) from the city **in accordance with the Texas Alcoholic Beverage Code**.

- ~~A. Once an applicant has obtained a license or permit from the Texas Alcoholic Beverage Commission, they must also obtain the corresponding license or permit from the city. There shall be charged and collected by the city the established fee from every licensee or permittee issued any license or permit by the state or its authorized agents, and from which licensee or permittee the city is given the power by the Texas Alcoholic Beverage Code to collect a fee. The city license or permit shall correspond to the same class of license or permit issued such licensee or permittee by the state.~~
- ~~B. No person may manufacture, distill, brew, sell, import, export, transport, distribute, possess, possess for the purpose of sale, warehouse, store, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages without first paying the established fee and obtaining the following applicable license(s) or permit(s) from the city:~~
- ~~1. Brewer's permit, as defined by Chapter 12 of the Texas Alcoholic Beverage Code.~~
 - ~~2. Nonresident brewer's permit, as defined by Chapter 13 of the Texas Alcoholic Beverage Code.~~
 - ~~3. Distiller's and rectifier's permit, as defined by Chapter 14 of the Texas Alcoholic Beverage Code.~~
 - ~~4. Winery permit, as defined by Chapter 16 of the Texas Alcoholic Beverage Code.~~
 - ~~5. Wine bottlers permit, as defined by Chapter 18 of the Texas Alcoholic Beverage Code.~~
 - ~~6. Wholesaler's permit, as defined by Chapter 19 of the Texas Alcoholic Beverage Code.~~
 - ~~7. General class B wholesaler's permit, as defined by Chapter 20 of the Texas Alcoholic Beverage Code.~~
 - ~~8. Local class B wholesaler's permit, as defined by Chapter 21 of the Texas Alcoholic Beverage Code.~~
 - ~~9. Package store permit, as defined by Chapter 22 of the Texas Alcoholic Beverage Code.~~
 - ~~10. Local distributor's permit, as defined by Chapter 23 of the Texas Alcoholic Beverage Code.~~
 - ~~11. Wine only package store permit, as defined by Chapter 24 of the Texas Alcoholic Beverage Code.~~
 - ~~12. Wine and beer retailer's permit, as defined by Chapter 25 of the Texas Alcoholic Beverage Code.~~

-
- ~~13. Wine and beer retailer's off-premise permit, as defined by Chapter 26 of the Texas Alcoholic Beverage Code.~~
 - ~~14. Mixed beverage permit, as defined by Chapter 28 of the Texas Alcoholic Beverage Code.~~
 - ~~15. Mixed beverage late hours permit, as defined by Chapter 29 of the Texas Alcoholic Beverage Code.~~
 - ~~16. Daily temporary mixed beverage permit, as defined by Chapter 30 of the Texas Alcoholic Beverage Code.~~
 - ~~17. Caterer's permit, as defined by Chapter 31 of the Texas Alcoholic Beverage Code.~~
 - ~~18. Other private club late hours permits, as defined by Chapter 33 of the Texas Alcoholic Beverage Code.~~
 - ~~19. Reserved.~~
 - ~~20. Beverage cartage permit, as defined by Chapter 44 of the Texas Alcoholic Beverage Code.~~
 - ~~21. Bonded warehouse permit, as defined by Chapter 46 of the Texas Alcoholic Beverage Code.~~
 - ~~22. Manufacturer's license, as defined by Chapter 62 of the Texas Alcoholic Beverage Code. A manufacturer's license holder shall pay the established fee for:
 - ~~a. The first establishment.~~
 - ~~b. The second establishment.~~
 - ~~c. The third, fourth and fifth establishments.~~
 - ~~d. Each establishment in excess of five.~~~~
 - ~~23. General distributor's license, as defined by Chapter 64 of the Texas Alcoholic Beverage Code.~~
 - ~~24. Local distributor's license, as defined by Chapter 65 of the Texas Alcoholic Beverage Code.~~
 - ~~25. Branch distributor's license, as defined by Chapter 66 of the Texas Alcoholic Beverage Code.~~
 - ~~26. Importer's license, as defined by Chapter 67 of the Texas Alcoholic Beverage Code.~~
 - ~~27. Importer's carrier's license, as defined by Chapter 68 of the Texas Alcoholic Beverage Code.~~
 - ~~28. Retail dealer's on-premise license, as defined by Chapter 69 of the Texas Alcoholic Beverage Code.~~
 - ~~29. Retail dealer's on-premise late hours license, as defined by Chapter 70 of the Texas Alcoholic Beverage Code.~~
 - ~~30. Retail dealer's off-premise license, as defined by Chapter 71 of the Texas Alcoholic Beverage Code.~~
 - ~~31. Brewpub license, as defined by Chapter 74 of the Texas Alcoholic Beverage Code.~~

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.110 Issuance of permit or license.

Upon the payment of the established fee to the city, the approval of any required reviews and inspections and exhibition to the permit official of the permit or license duly issued by the state to the applicant or person paying such fee, the permit official shall, in the name of the city, issue and deliver to such applicant or person a permit or license to engage in the business in the city of the character described in and authorized by the permit or license from the state held by such applicant or person. The permit or license so issued in the name of the city shall authorize the conduct of such business upon the premises described in the permit or license from the state, and shall be void upon expiration or revocation of the state license or permit.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.120 License/Permit application processing.

No license or permit required under this chapter shall be issued until the proper application, on a form approved by the permit official accompanied by all required documents, has been filed with the permit official.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.130 Separate permit required.

A separate permit shall be obtained and a separate fee paid for each outlet of liquor in the city.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.140 Liquor license/permit—Term.

A license or permit issued under this chapter expires on the second anniversary of the date it is issued. ~~If the city issues a permit with an expiration date less than two years after the date the permit is issued, the city shall prorate the license or permit fee on a monthly basis so that the license or permit holder pays only that portion of the license or permit fee that is allocable to the number of months during which the license or permit is valid.~~

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.150 Licenses/Permits expired for two months or more.

The permit official shall report to the Texas Alcoholic Beverage Commission all licenses or permits expired for two months or more.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.160 Renewal, assignment and transfer of licenses.

The provisions of the Texas Alcoholic Beverage Code Chapter 11 and Chapter 61 relating to renewal, assignment and transfer of a license or permit, and relating to refund of license and permit fees, shall apply to licenses, permits and fees of the city.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.170 Violations and penalties.

Any person, firm, corporation or agent who shall violate a provision of this chapter, or fail to comply therewith, or with any of the requirements thereof, shall be deemed guilty of a misdemeanor and punished by a fine not to exceed two thousand dollars. Each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed or continued.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)



Legislation Text

File #: 22-521, 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 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 amending the Future Land Use Map (FLUM) contained in "Plan El Paso" for the properties legally described as Tract 1C, Block 1 and Tract 1A, Block 2, Ysleta Grant, 9879 North Loop Drive, City of El Paso, El Paso County, Texas, from O-3, Agriculture to G-7, Industrial and/or Railyards.

Subject Property: 9879 North Loop Drive

Applicant: BRE Development, LLC. PLCP21-00004

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

AGENDA DATE: May 10, 2022
PUBLIC HEARING DATE: June 7, 2022

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 Improve the visual impression of the community

SUBJECT:

An Ordinance amending the Future Land Use Map (FLUM) contained in "Plan El Paso" for the properties legally described as Tract 1C, Block 1 and Tract 1A, Block 2, Ysleta Grant, 9879 North Loop Drive, City of El Paso, El Paso County, Texas, from O-3, Agriculture to G-7, Industrial and/or Railyards.

Subject Property: 9879 North Loop Drive
Applicant: BRE Development, LLC. PLCP21-00004

BACKGROUND / DISCUSSION:

The applicant is requesting to revise the Future Land Use Map designation from O-3, Agriculture to G-7, Industrial and/or Railyards. City Plan Commission recommended 8-0 to approve the proposed amendment on April 21, 2022. 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 AMENDING THE FUTURE LAND USE MAP (FLUM) CONTAINED IN “PLAN EL PASO” FOR THE PROPERTIES LEGALLY DESCRIBED AS TRACT 1C, BLOCK 1 AND TRACT 1A, BLOCK 2, YSLETA GRANT, 9879 NORTH LOOP DRIVE, CITY OF EL PASO, EL PASO COUNTY, TEXAS, FROM O-3, AGRICULTURE TO G-7, INDUSTRIAL AND/OR RAILYARDS.

WHEREAS, *Plan El Paso*, as subsequently amended, was initially adopted by the El Paso City Council on March 6, 2012 pursuant to provisions of the Texas Local Government Code as the Comprehensive Plan for the City; and

WHEREAS, the Comprehensive Plan provides a basis for the City’s regulations and policies that directs its physical and economic development; and

WHEREAS, the Future Land Use Map (FLUM) is one of the policies adopted by the El Paso City Council contained within the Comprehensive Plan which identifies desired land use patterns; and

WHEREAS, the City’s Future Land Use Map serves as a guide to the type and manner of future development for the City of El Paso; and

WHEREAS, when changes and amendments to the zoning map are requested, the reviewing City departments and the City Plan Commission must make recommendations regarding the conformity of the proposed change to the City’s Comprehensive Plan; and

WHEREAS, in some instances when a request to amend the zoning map does not conform to the Future Land Use Map, an amendment to that map may be required; and

WHEREAS, the City Plan Commission, after conducting a public hearing, recommended the proposed amendment to the Future Land Use Map; and

WHEREAS, after conducting a public hearing, the proposed amendment to the Future Land Use Map of *Plan El Paso* will have no negative impact upon the public health, safety, morals, and general welfare of the City, and will carry out the purpose and spirit of the policies expressed in *Plan El Paso*.

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

1. That the areas identified in "Exhibit A" and legally described Tract 1C, Block 1 and Tract 1A, Block 2, Ysleta Grant, 9879 North Loop Drive, City of El Paso, El Paso County, Texas, be incorporated into the City's Comprehensive Plan, *Plan El Paso*, for all the purposes, including amending the Future Land Use Map from O-3, Agriculture to G-7, Industrial and/or Railyards.
2. That *Plan El Paso* and its related documents, as herein modified, shall remain in full force and effect as to the long range general policies for guiding growth and development in the City.

ADOPTED this _____ day of _____, 2022.

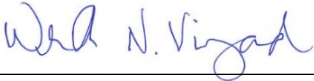
THE CITY OF EL PASO:

ATTEST:

Oscar Leeser
Mayor

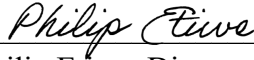
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Philip Etiwe, Director
Planning & Inspections Department

Exhibit "A"

Tract 1C, Block 1 and Tract 1A, Block 2,
Ysleta Grant,
City of El Paso, El Paso County, Texas
June 14, 2021

METES AND BOUNDS DESCRIPTION

North Loop Drive
Exhibit "A"

FIELD NOTE DESCRIPTION of Tract 1C, Block 1 and Tract 1A, Block 2, Ysleta Grant, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at a set iron rod located at the common boundary corner of Tract 1A, Block 2, Ysleta Grant and Tract 13A, Block 5, Socorro Grant, same being the northerly right-of-way line of North Loop Drive and the **POINT OF BEGINNING** of the herein described parcel;

THENCE, leaving said common boundary corner and along the northerly right-of-way line of North Loop Drive, North 38°11'22" West, a distance of 710.71 feet to a found iron rod for corner at the easterly right-of-way of Via Maria Drive;

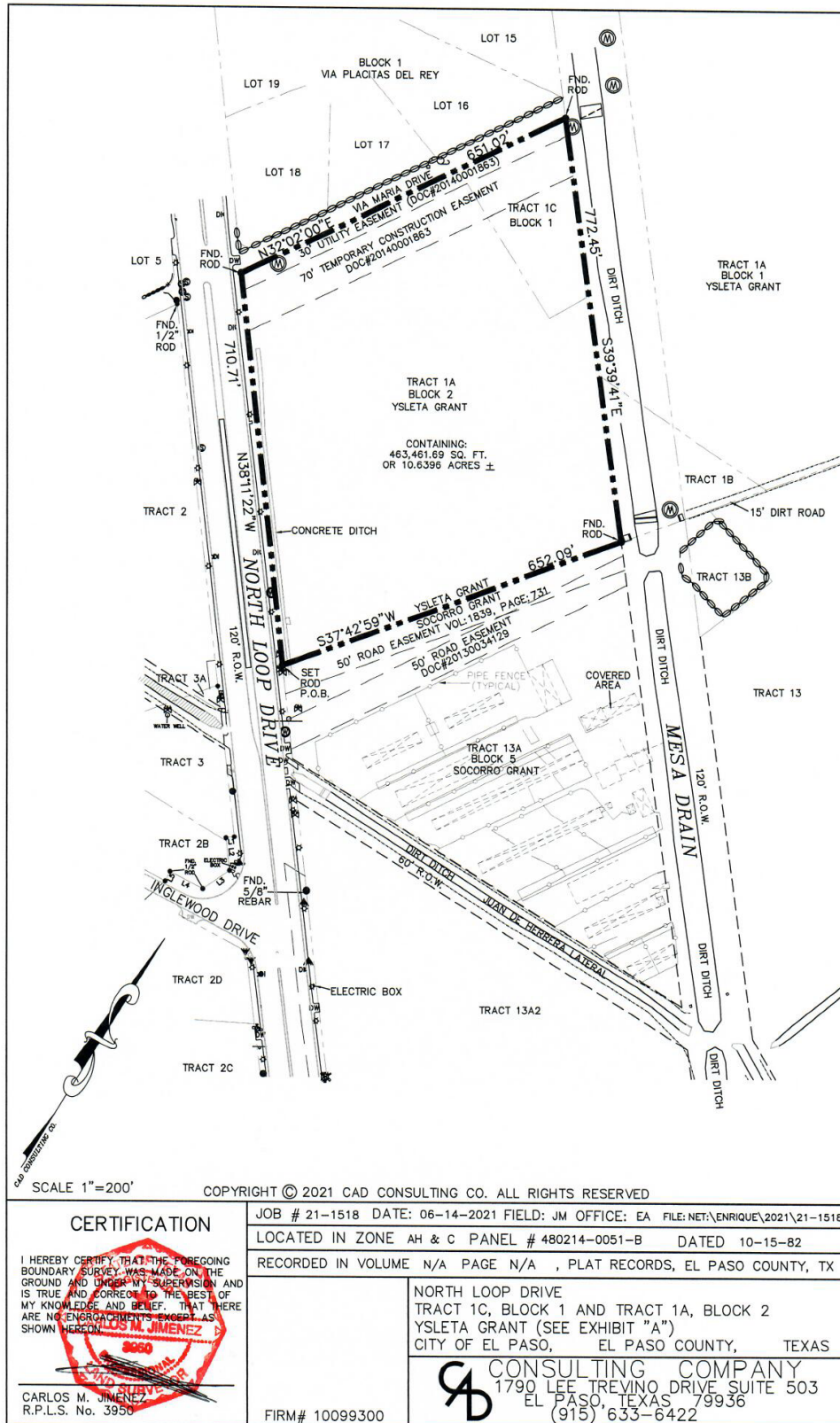
THENCE, leaving said northerly right-of-way line of North Loop Drive and along the easterly right-of-way of Via Maria Drive, North 32°02'00" East, a distance of 651.02 feet to a found iron rod for corner at the southerly right-of-way line of Mesa Drain;

THENCE, leaving said easterly right-of-way of Via Maria Drive and along the southerly right-of-way line of Mesa Drain, South 39°39'41" East, a distance of 772.45 feet to a found iron rod for corner at the common boundary corner of Tract 1A, Block 2, Ysleta Grant and Tract 13A, Block 5, Socorro Grant;

THENCE, leaving said southerly right-of-way line of Mesa Drain and along the common boundary line of Tracts 1A and 13A, South 37°42'59" West, a distance of 652.09 feet to the **POINT OF BEGINNING** of the herein described parcel and containing 463,461.69 square feet or 10.6396 acres of land more or less.

Carlos M. Jimenez
R.P.L.S. # 3950
CAD Consulting Co.
1790 Lee Trevino Drive, Suite 309
El Paso, Texas 79936
(915) 633-6422
I:\M&B\2021\21-1518_North Loop-Hunt.wpd





9879 North Loop Dr.

City Plan Commission — April 21, 2022

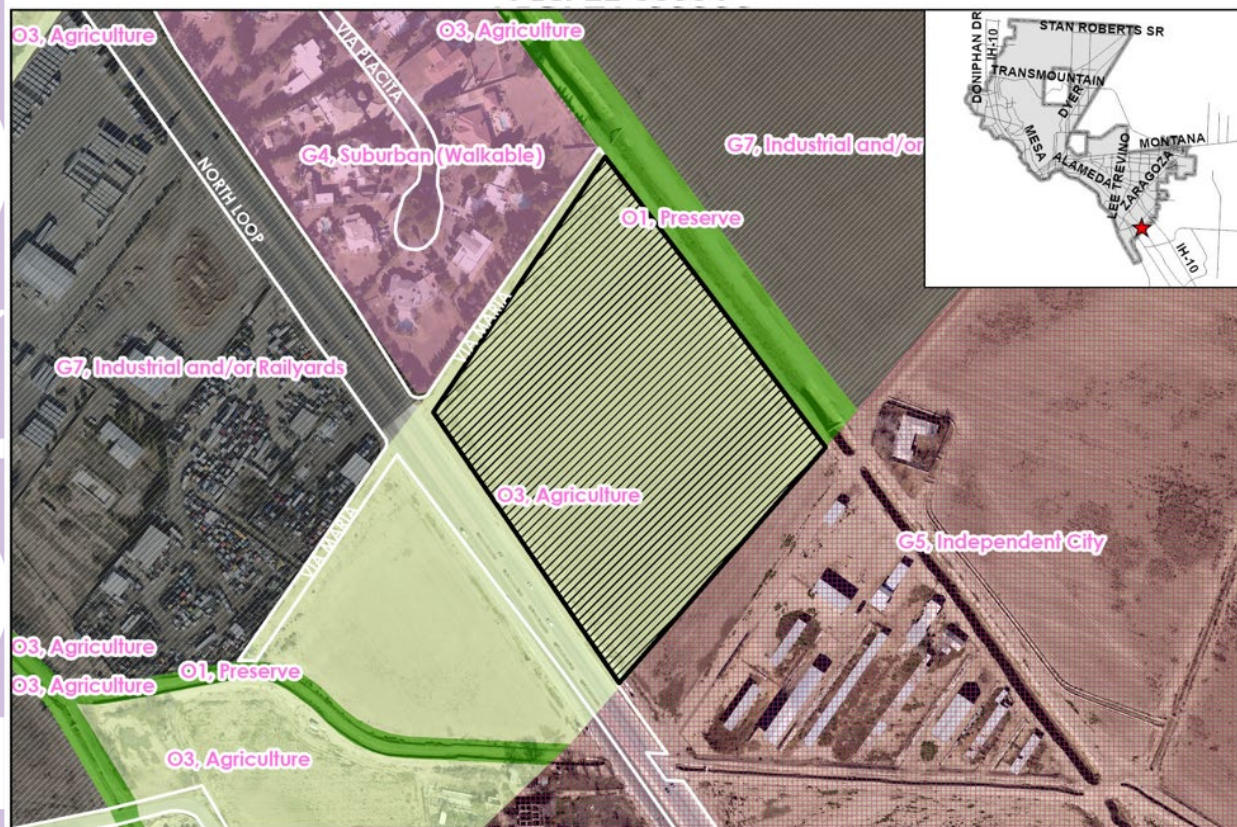


CASE NUMBER: PLCP21-00004
CASE MANAGER: David Samaniego, (915) 212-1608, SamaniegoDC@elpasotexas.gov
PROPERTY OWNER: Hunt Eastlake Industrial, LLC
REPRESENTATIVE: CEA Group
LOCATION: 9879 North Loop Drive (District 6)
PROPERTY AREA: 10.55 acres
REQUEST: Adjust the Future Land Use designation from O-3, Agriculture to G-7, Industrial and/or Railyards
RELATED APPLICATIONS: PZR21-00017, Rezoning
PUBLIC INPUT: N/A

SUMMARY OF REQUEST: The applicant is requesting an amendment to *Plan El Paso*, the City's comprehensive plan, to amend the Future Land Use designation from O-3, Agriculture to G-7, Industrial and/or Railyards, to accommodate a proposed industrial and general warehouse development.

SUMMARY OF STAFF RECOMMENDATION: Staff recommends **APPROVAL** of the request. The proposed development is in keeping with the character of the adjacent development and the policies of *Plan El Paso* for the G-7, Industrial and/or Railyards Future Land Use designation.

PLCP21-00004



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.



Subject Property

0 87.5 175 350 525 700 Feet



Figure A. Subject Property & Immediate Surroundings

DESCRIPTION OF REQUEST: The applicant is proposing to amend the Future Land Use designation on a 10.55-acre property to allow for industrial and general warehouse development. The subject property is currently inactive farmland. The existing O-3 Agriculture Use designation is no longer appropriate for the area as agricultural uses have ceased and there is increased development within the area. The G-7 designation is most in character with the proposed development for the property, which is similar in scale and character to nearby industrial development along North Loop Drive and Inglewood Drive. This case is related to rezoning case PZRZ21-00017, which requests to rezone the subject property from R-F (Ranch and Farm) to C-4 (Commercial) to allow for a proposed warehouse and industrial development.

COMPATIBILITY WITH NEIGHBORHOOD CHARACTER: Properties in the City limits to the north of the subject property has the G-4, Suburban (Walkable), O-1, Preserve and G-7, Industrial and/or Railyards designation and are currently vacant farmland and residential development. To the west, properties have the G-4, Suburban (Walkable) and G-7, Industrial and/or Railyards designation and consist of heavy truck storage and repair uses. To the south, the property is inactive farmland and has the O-3, Agriculture designation. All properties to the east are outside El Paso City limits and inactive farmland.

COMPLIANCE WITH PLAN EL PASO – When evaluating whether a proposed adjustment is in accordance with Plan El Paso, consider the following factors:	
Criteria	Does the Request Comply?
Future Land Use Map: Proposed Future Land Use designation for the property: G-7 – Industrial: This sector applies to industrial parks, large free-standing industrial uses, refineries, non-military airfields, trucking terminals, and mines, all on large tracts in areas dominated by vehicles. This sector is essential to El Paso’s economy; however, when an industrial use becomes obsolete, there can be potential for mixed-use redevelopment of the site. This sector also includes the existing rail yards which could be redeveloped as mixed-use communities if the rail yards were moved out of town	<i>Yes.</i> <i>Plan El Paso</i> identifies the G-7 designation as appropriate for industrial parks and industrial uses, which is in keeping with the proposed industrial and general warehouse uses. The associated rezoning to C-4 (Commercial) will ensure that any future proposed uses will remain compatible with the G-7 designation. In addition, the subject property is accessed from North Loop Drive which is classified as a major arterial per the City of El Paso’s Major Thoroughfare Plan and is adequate to serve the proposed uses.
Preferred Development Locations: 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.	Yes, the subject property has access from North Loop Drive, which is classified as a major arterial on the City of El Paso’s Major Thoroughfare Plan (MTP).

THE PROPOSED DESIGNATION’S EFFECT ON THE PROPERTY AND SURROUNDING PROPERTY, AFTER EVALUATING THE FOLLOWING FACTORS:	
Historic District or Special Designations & Study Area Plans: Any historic district or other special designations that may be applicable. Any adopted small area plans, including land-use maps in those plans.	N/A, this property is not within any historic districts or other special designations.
Potential Adverse Effects: Potential adverse effects that might be caused by approval or denial of the requested change.	Development of the subject property will bring higher intensity uses into close proximity with existing residential, commercial, and agricultural uses.

Natural Environment: Anticipated effects on the natural environment.	The subject property is currently inactive farmland. The existing irrigation canals and drainage laterals will be buffered from development.
Stability: Whether the area is stable or in transition.	The surrounding area is in transition from farmland to employment supportive uses.
Socioeconomic & Physical Conditions: Any changed social, economic, or physical conditions that make the existing designation no longer suitable for the property.	Agricultural uses have ceased on the subject property and there is increased development in the area. The area is in transition.

CITY PLAN COMMISSION OPTIONS:

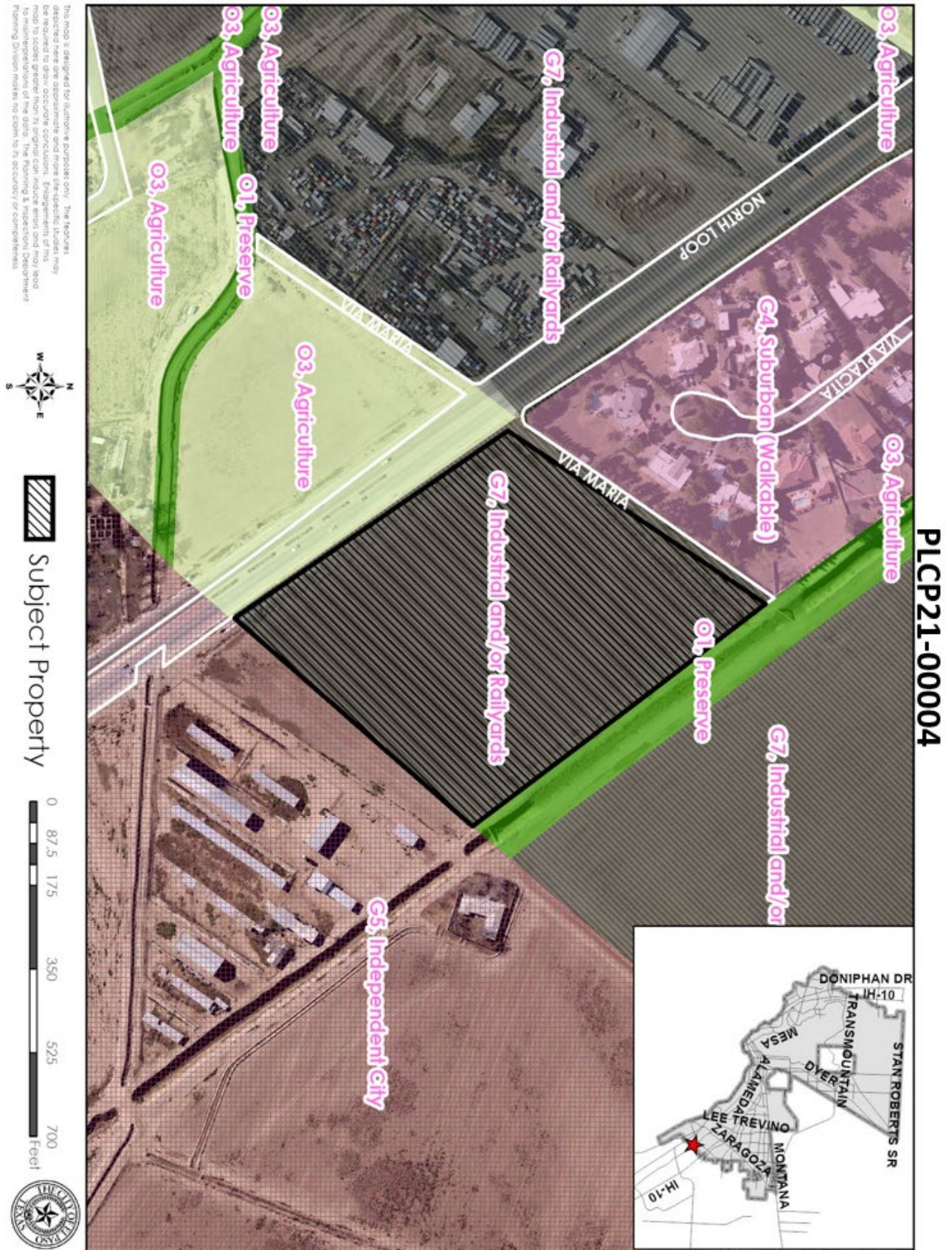
The City Plan Commission (CPC) has the authority to advise City Council on changes to the Comprehensive Plan. In evaluating the request, the CPC may take any of the following actions:

1. **Recommend Approval** of the 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. **(Staff Recommendation)**
2. **Recommend Approval of the 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.
3. **Recommend Denial** of the 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. Proposed Future Land Use Map

ATTACHMENT 1





Legislation Text

File #: 22-522, 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 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 Tract 1C, Block 1 and Tract 1A, Block 2, Ysleta Grant, 9879 North Loop Drive, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) to C-4/c (Commercial/condition) 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: 9879 North Loop Drive

Applicant: City of El Paso, PZRZ21-00017

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

AGENDA DATE: May 10, 2022
PUBLIC HEARING DATE: June 7, 2022

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 Tract 1C, Block 1 and Tract 1A, Block 2, Ysleta Grant, 9879 North Loop Drive, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) to C-4/c (Commercial/condition) 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: 9879 North Loop Drive
Applicant: City of El Paso, PZRZ21-00017

BACKGROUND / DISCUSSION:

The applicant is requesting to rezone from R-F (Ranch and Farm) to C-4 (Commercial) to allow for warehouse and industrial development. City Plan Commission recommended 8-0 to approve the proposed rezoning with four conditions on April 21, 2022. The Mission Valley Civic Association President and Corridor 20 Civic Association President were present and spoke in favor of this item at the CPC hearing. As of May 2, 2022, the Planning Division did not receive any communications in support or opposition to the 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 TRACT 1C, BLOCK 1 AND TRACT 1A, BLOCK 2, YSLETA GRANT, 9879 NORTH LOOP DRIVE, CITY OF EL PASO, EL PASO COUNTY, TEXAS FROM R-F (RANCH AND FARM) TO C-4/C (COMMERCIAL/CONDITION) 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 *Tract 1C, Block 1 and Tract 1A, Block 2, Ysleta Grant, 9879 North Loop Drive 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)** to **C-4/c (Commercial/condition)**, 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 change in 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. Prior to the issuance of building permits a detailed site development plan shall be submitted and approved as per the El Paso City Code.
2. Access for semi-trailer trucks and cabs shall be prohibited to and from Via Maria Drive. Upon the extension and construction of Via Maria northeasterly toward Interstate-10, access for semi-trailer trucks and cabs to and from Via Maria Drive shall be authorized.
3. That prior to issuance of any certificates of occupancy, a six foot (6') high combination masonry/wrought iron wall be constructed along the property line abutting Via Maria Drive.
4. That prior to issuance of any certificates of occupancy, a temporary traffic barricade be installed on Via Maria Drive where it intersects with North Loop Drive.

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 _____, 2022.


THE CITY OF EL PASO:

ATTEST:

Laura D. Prine
City Clerk

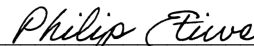
Oscar Leoser
Mayor

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Philip F. Etiwe, Director
Planning & Inspections Department

ORDINANCE NO. _____

Zoning Case No: PZRZ21-00017

Tract 1C, Block 1 and Tract 1A, Block 2,
Ysleta Grant,
City of El Paso, El Paso County, Texas
June 14, 2021

METES AND BOUNDS DESCRIPTION

North Loop Drive
Exhibit "A"

FIELD NOTE DESCRIPTION of Tract 1C, Block 1 and Tract 1A, Block 2, Ysleta Grant, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at a set iron rod located at the common boundary corner of Tract 1A, Block 2, Ysleta Grant and Tract 13A, Block 5, Socorro Grant, same being the northerly right-of-way line of North Loop Drive and the **POINT OF BEGINNING** of the herein described parcel;

THENCE, leaving said common boundary corner and along the northerly right-of-way line of North Loop Drive, North $38^{\circ}11'22''$ West, a distance of 710.71 feet to a found iron rod for corner at the easterly right-of-way of Via Maria Drive;

THENCE, leaving said northerly right-of-way line of North Loop Drive and along the easterly right-of-way of Via Maria Drive, North $32^{\circ}02'00''$ East, a distance of 651.02 feet to a found iron rod for corner at the southerly right-of-way line of Mesa Drain;

THENCE, leaving said easterly right-of-way of Via Maria Drive and along the southerly right-of-way line of Mesa Drain, South $39^{\circ}39'41''$ East, a distance of 772.45 feet to a found iron rod for corner at the common boundary corner of Tract 1A, Block 2, Ysleta Grant and Tract 13A, Block 5, Socorro Grant;

THENCE, leaving said southerly right-of-way line of Mesa Drain and along the common boundary line of Tracts 1A and 13A, South $37^{\circ}42'59''$ West, a distance of 652.09 feet to the **POINT OF BEGINNING** of the herein described parcel and containing 463,461.69 square feet or 10.6396 acres of land more or less.

Carlos M. Jimenez
R.P.L.S. # 3950
CAD Consulting Co.
1790 Lee Trevino Drive. Suite 309
El Paso, Texas 79936
(915) 633-6422
I:\M&B\2021\21-1518_North Loop-Hunt.wpd



9879 North Loop Drive

City Plan Commission — April 21, 2022

REZONING



CASE NUMBER: PZRZ21-00017
CASE MANAGER: Andrew Salloum, (915) 212-1603, SalloumAM@elpasotexas.gov
PROPERTY OWNER: Hunt Eastlake Industrial, LLC
REPRESENTATIVE: CEA Group
LOCATION: 9879 North Loop Drive (District 6)
PROPERTY AREA: 10.55 acres
REQUEST: Rezone from R-F (Ranch and Farm) to C-4 (Commercial)
RELATED APPLICATIONS: PLCP21-00004 Comprehensive Plan Amendment
PUBLIC INPUT: None received as of April 14, 2022

SUMMARY OF REQUEST: The applicant is requesting to rezone from R-F (Ranch and Farm) to C-4 (Commercial) to allow for general warehouse and industrial development.

SUMMARY OF STAFF RECOMMENDATION: Staff recommends **APPROVAL WITH CONDITIONS** of the request. The recommendation is based on the compatibility of the proposed zoning district with the surrounding residential and commercial districts in the immediate area. The proposed rezoning is consistent with *Plan El Paso*, the City's adopted Comprehensive Plan. The conditions are the following:

1. Prior to the issuance of building permits a detailed site development plan shall be submitted and approved as per the El Paso City Code.
2. Access for semi-trailer trucks and cabs shall be prohibited to and from Via Maria Drive. Upon the extension and construction of Via Maria northeasterly toward Interstate-10, access for semi-trailer trucks and cabs to and from Via Maria Drive shall be authorized.
3. That prior to issuance of any certificates of occupancy, a six foot (6') high combination masonry/wrought iron wall be constructed along the property line abutting Via Maria Drive.
4. That prior to issuance of any certificates of occupancy, a temporary traffic barricade be installed on Via Maria Drive where it intersects with North Loop Drive.

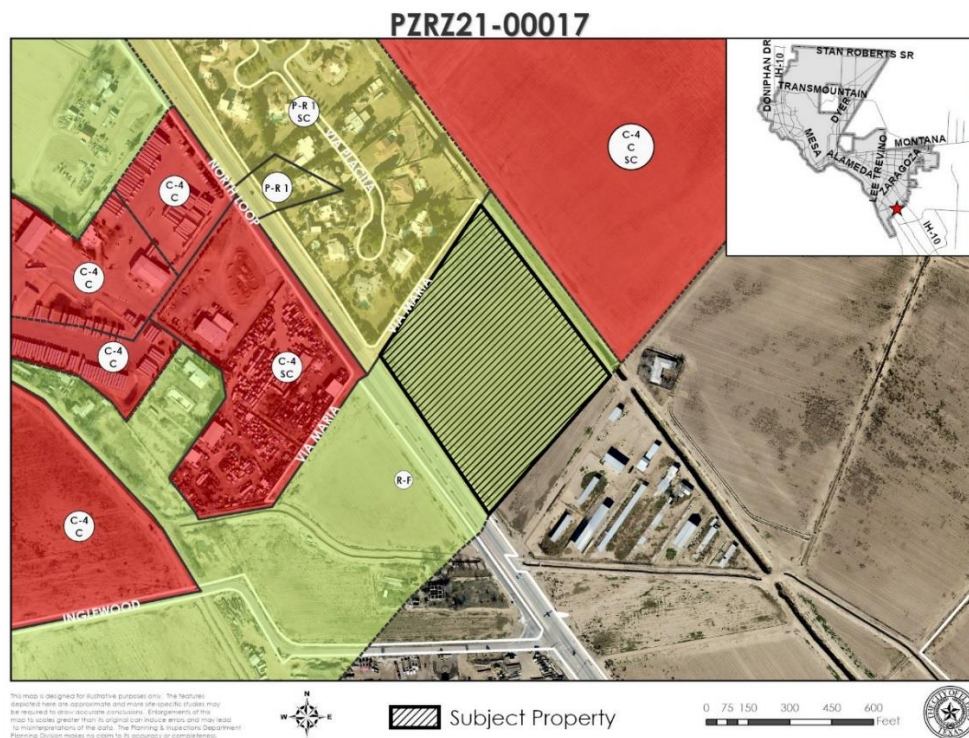


Figure A. Subject Property & Immediate Surroundings

DESCRIPTION OF REQUEST: The applicant is requesting to rezone from R-F (Ranch and Farm) to C-4 (Commercial) to allow for proposed general warehouse and industrial development. The conceptual site plan shows a new 130,000 square-foot warehouse and industrial building. Access to the subject property is proposed from North Loop Drive.

COMPATIBILITY WITH NEIGHBORHOOD CHARACTER: The proposed C-4 district is consistent with the surrounding residential and heavy commercial districts in the immediate area, and consistent with the established character of the neighborhood. This development is part of a much larger area within the abutting City of Socorro which is currently zoned for light industrial uses. Furthermore, the proposed development meets the intent of the proposed G-7, Industrial and/or Railyards designation of *Plan El Paso* in the Mission Valley planning area.

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:	
Criteria	Does the Request Comply?
<p>Future Land Use Map: Proposed zone change is compatible with the Future Land Use designation for the property:</p> <p>G-7, Industrial and/or Railyards: This sector applies to industrial parks, large free-standing industrial uses, refineries, non-military airfields, trucking terminals, and mines, all on large tracts in areas dominated by vehicles. This sector is essential to El Paso's economy; however, when an industrial use becomes obsolete, there can be potential for mixed-use redevelopment of the site. This sector also includes the existing railyards which could be redeveloped as mixed-use communities if the rail yards were moved out of town.</p>	<p>Yes, the subject property and the proposed developments meet the intent of the proposed G-7 Industrial and/or Railyards Future Land Use designation of <i>Plan El Paso</i>. The proposed development is adjacent to residential and commercial lots; therefore, has the potential to repurpose the lot for commercial and industrial employment for the area.</p>
<p>Compatibility with Surroundings: The proposed zoning district is compatible with those surrounding the site:</p> <p>C-4 (Commercial) District: The purpose of this district 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. Within the central business district, more intensive commercial uses are allowed, the predominant of which are retail trade and service uses, providing less restrictive height and area regulations.</p>	<p>Yes, the proposed commercial development is consistent with the commercial development in the neighborhood. Commercial uses are common and appropriate in this sector. The surrounding properties are zoned P-R I (Planned-Residential I) and C-4 (Commercial). Therefore, the proposed development has the potential to provide employment opportunities.</p>

COMPLIANCE WITH PLAN EL PASO/REZONING POLICY – When evaluating whether a proposed rezoning is in accordance with <i>Plan El Paso</i>, consider the following factors:	
Preferred Development Locations: 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.	Yes, the property is located on North Loop Drive which is classified as a major arterial on the City of El Paso's Major Thoroughfare Plan. Additionally, Via Maria Drive is designated a minor arterial as per the City of El Paso's Major Thoroughfare Plan. It will need to be improved as required at the subdivision stage since it is substandard.
THE PROPOSED ZONING DISTRICT'S EFFECT ON THE PROPERTY AND SURROUNDING PROPERTY, AFTER EVALUATING THE FOLLOWING FACTORS:	
Historic District or Special Designations & Study Area Plans: Any historic district or other special designations that may be applicable. Any adopted small areas plans, including land-use maps in those plans.	N/A. The proposed development is not within any historic districts or study area plan boundaries.
Potential Adverse Effects: 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. The proposed development will match development immediately surrounding the subject property.
Natural Environment: Anticipated effects on the natural environment.	Subject property does not involve greenfield/environmentally sensitive land or arroyo disturbance.
Stability: Whether the area is stable or in transition.	The area is in transition and the proposed development is compatible with the existing commercial zoning properties to the north.
Socioeconomic & Physical Conditions: Any changed social, economic, or physical conditions that make the existing zoning no longer suitable for the property.	The area is in transition from inactive agricultural uses for the property. The established neighborhood is comprised of a mix of residential and commercial development. There have been recent rezoning requests for this area to the northwest and northeast in 1982 and 2021, respectively.

ADEQUACY OF PUBLIC FACILITIES, SERVICES AND INFRASTRUCTURE: The subject property borders North Loop Drive, which is designated a major arterial as per the City of El Paso's Major Thoroughfare Plan. Access is proposed from North Loop Drive and is adequate to serve the development. Additionally, Via Maria Drive is designated a minor arterial as per the City of El Paso's Major Thoroughfare Plan. It will need to be improved as required at the subdivision stage since it is substandard.

SUMMARY OF DEPARTMENTAL REVIEW COMMENTS: No objections to the proposed rezoning. Per Streets and Maintenance Department, the traffic impact analysis (TIA) can be deferred to the platting/subdivision stage, however, a Detailed Site Development Plan (DSDP) will be needed during the platting/subdivision stage when the TIA requirement will be determined. Applicant is responsible for obtaining all applicable permits and approvals prior to construction.

PUBLIC COMMENT: The subject property lies within the boundaries of the Mission Valley Civic Association and Corridor 20 Civic Association, which were notified by the applicant prior to submittal of the Rezoning Application. The Planning & Inspections Department of the City of El Paso, in conjunction with the office of Representative Claudia Rodriguez, held a virtual community meetings January 24, 2022 providing information on the proposed rezoning however no residents from the community attended the meeting. As required, public notices were mailed to property owners within 300 feet on February 10, 2022. Additionally, on March 14, 2022 the applicants met with the

presidents of the Corridor 20 Civic Association and Mission Valley Civic Association. A follow up meeting was held on April 13, 2022. As of April 14, 2022, the Planning Division did not receive any communication in support or opposition to the request from the public.

RELATED APPLICATIONS: PLCP21-00004 Comprehensive Plan Amendment.

CITY PLAN COMMISSION OPTIONS:

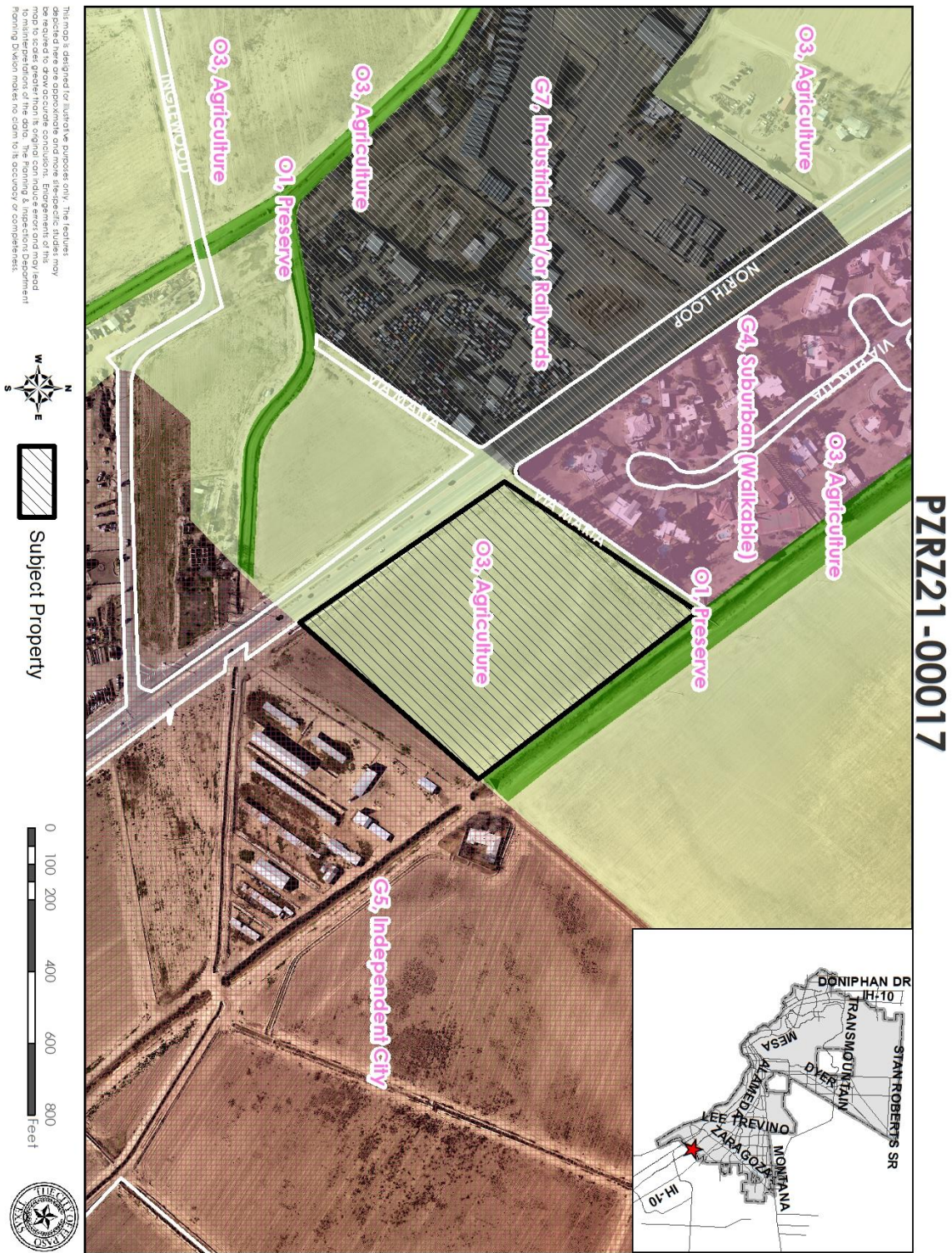
The purpose of the Zoning Ordinance is to promote the health, safety, morals and general welfare of the City. The City Plan Commission has the authority to advise City Council on Zoning matters. In evaluating the request, the CPC may take any of the following actions:

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.

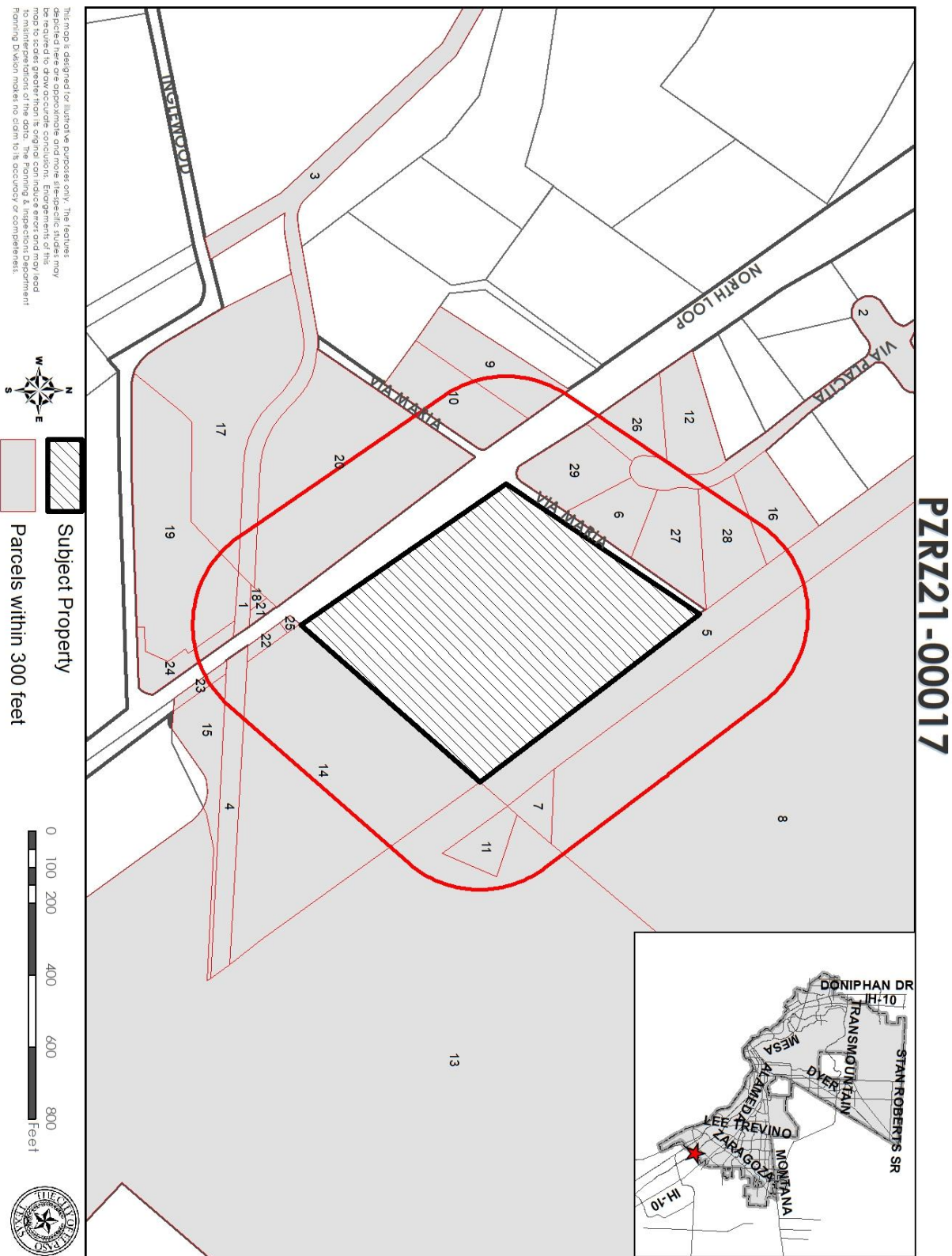
ATTACHMENTS:

1. Future Land Use Map
2. Neighborhood Notification Boundary Map
3. Conceptual Site Plan
4. Department Comments

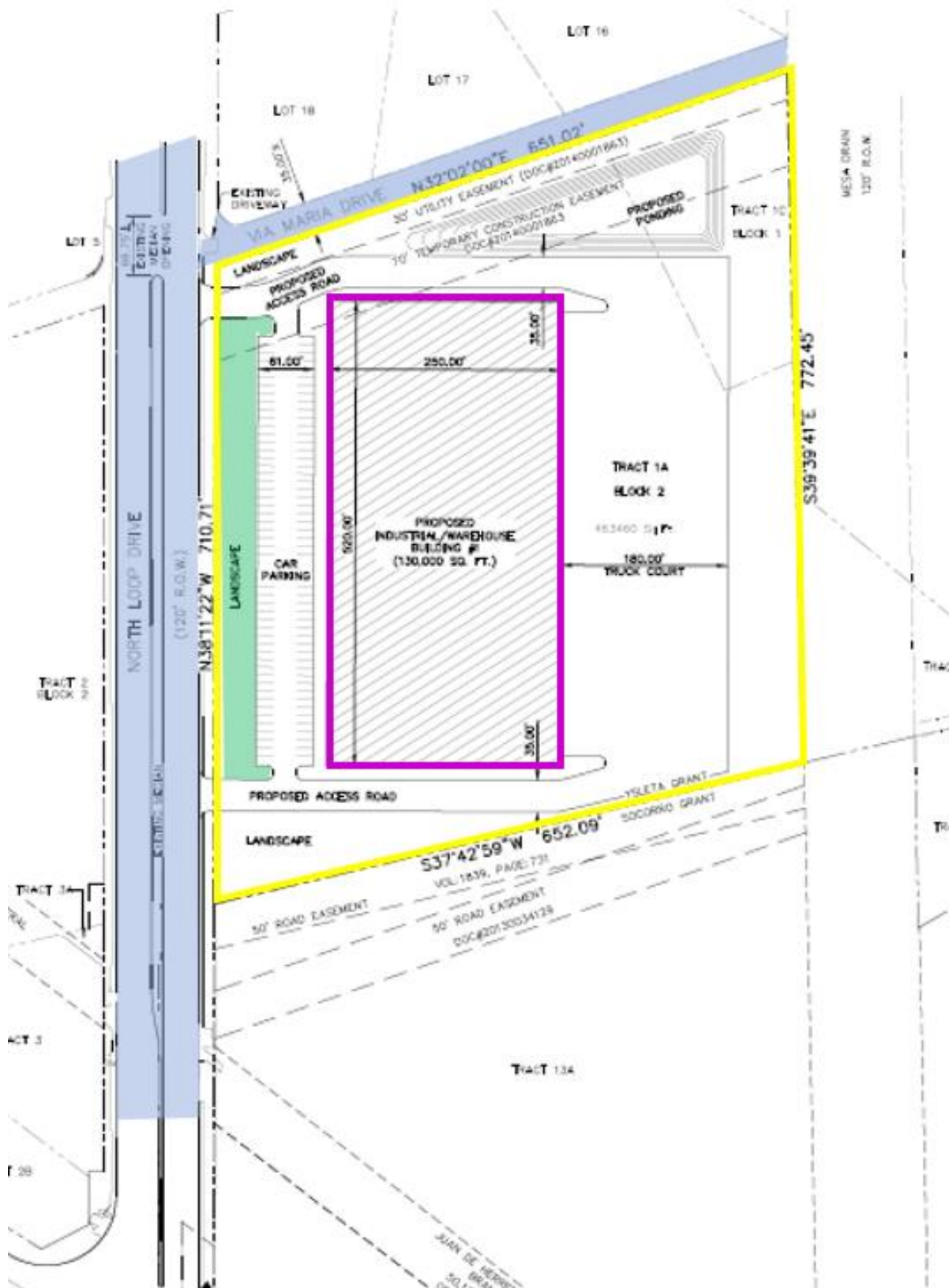
ATTACHMENT 1



ATTACHMENT 2



ATTACHMENT 3



ATTACHMENT 4

Planning and Inspections Department – Planning Division

Staff recommends APPROVAL WITH CONDITIONS of the request. The recommendation is based on the compatibility of the proposed zoning district with the surrounding residential and commercial districts in the immediate area. The proposed rezoning is consistent with Plan El Paso, the City's adopted Comprehensive Plan. The conditions are the following:

1. Prior to the issuance of building permits a detailed site development plan shall be submitted and approved as per the El Paso City Code.
2. Access for semi-trailer trucks and cabs shall be prohibited to and from Via Maria Drive.

Planning and Inspections Department – Plan Review

No objections to rezoning.

Planning and Inspections Department – Land Development

No objections to rezoning.

Street and Maintenance Department

The TIA can be deferred to the platting/subdivision stage, however, a DSDP will be needed during the platting/subdivision stage when the TIA requirement will be determined.

Note: All driveway and sidewalk improvements shall be constructed in current compliance with all applicable City of El Paso Municipal Codes / Ordinances

Texas Department of Transportation (TxDOT)

- Please adhere to the TxDOT access management manual for driveway spacing minimums (the minimum spacing is 360 feet for this location)

-Submit for a TxDOT permit for all work on state ROW

Note: the comments will be addressed at Subdivision stage.

Fire Department

No adverse comments.

Sun Metro

No objections.

El Paso Water

El Paso Water (EPWU) does not object to this request.

North Loop Rd. is a Texas Department of Transportation (TxDOT) right-of-way. All proposed water and sanitary sewer work to be performed within North Loop Rd. right-of-way requires written permission from TxDOT.

Water:

There is an existing 12-inch diameter water main along North Loop Rd., approximately 5-feet south of the property. This main is available for Service.

Previous water pressure from fire hydrant #6634 located on North Loop Rd. approximately 270 feet east of the intersection of North Loop Rd. and Via Maria, has yielded a static pressure of 104 psi, a residual pressure of 90 psi, and a discharge of 1,061 gallons per minute. 13. The owner should, for his own protection and at his own expense, install at the discharge side of each water meter a pressure regulator, strainer and relief valve, to be set for pressure as desired by the customer. The Lot owner shall be responsible for the operation and maintenance of the above-described water pressure regulating device.

Sanitary Sewer:

There is an existing 60-inch sanitary sewer interceptor along a 25-foot PSB easement East of Via Maria Rd. No direct service connections are allowed to this main as per the El Paso Water – Public Service Board (EPWater-PSB) Rules and Regulations.

There is a 48-inch diameter sanitary sewer interceptor along Via Maria, approximately 15 feet west of the property. No direct service connections are allowed to this main as per the El Paso Water – Public Service Board (EPWater-PSB) Rules and Regulations.

There is a 60-inch diameter sanitary sewer interceptor along Mesa Drain, approximately 10 feet north of the property. No direct service connections are allowed to this main as per the El Paso Water – Public Service Board (EPWater-PSB) Rules and Regulations.

General:

Sanitary sewer main extensional along an easement will be required to provide service. Owner is responsible for main extension costs and easement acquisition and costs.

Mesa Drain is an El Paso County Water Improvement District No. 1 facility. Permits for installation of sanitary sewer main and manholes within the right of way are required. Owner/Developer is responsible for permit, survey and consideration fees.

During the site improvement work, the Owner/Developer shall safeguard all existing water mains, sewer mains, and appurtenant structures. The Owner/Developer shall minimize changes in grade above or near the vicinity of the existing PSB facilities and is responsible for the cost of setting appurtenant structures to final grade.

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, buildings, curbs or any structure that will interfere with the access to the PSB easements. There shall be at least 5-foot setback from the easement line to any building, sign or structure. All easements dedicated for public water and sanitary sewer facilities shall comply with the EPWater-PSB Easement Policy. The PSB easements shall be improved to allow the operation of EPWater maintenance vehicles. EPWater-PSB requires access to the proposed water, sanitary sewer facilities, appurtenances, and meters within the easement 24 hours a day, seven (7) days a week.

An application for 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, 3rd 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.

El Paso Water – Stormwater Engineering

The proposed pond shown shall be able to retain the runoff generated by a 100yr. storm event.

El Paso County Water Improvement District #1

EPCWID1 has no comments on the above mentioned item.



Legislation Text

File #: 22-523, 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 7

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 amending the Future Land Use Map (FLUM) contained in "Plan El Paso" for the properties legally described as Tract 2, 2B, and 3D, Block 2, Ysleta Grant, City of El Paso, El Paso County, Texas, from O-3, Agriculture to G-4, Suburban (Walkable).

Subject Property: North of Inglewood Drive and West of North Loop Drive

Applicant: BRE Development, LLC. PLCP21-00005

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

AGENDA DATE: May 10, 2022
PUBLIC HEARING DATE: June 7, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553
Andrew Salloum, (915) 212-1603

DISTRICT(S) AFFECTED: District 7

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

SUBGOAL: 3.2 Improve the visual impression of the community

SUBJECT:

An Ordinance amending the Future Land Use Map (FLUM) contained in "Plan El Paso" for the properties legally described as Tract 2, 2B, and 3D, Block 2, Ysleta Grant, City of El Paso, El Paso County, Texas, from O-3, Agriculture to G-4, Suburban (Walkable).

Subject Property: North of Inglewood Drive and West of North Loop Drive
Applicant: BRE Development, LLC. PLCP21-00005

BACKGROUND / DISCUSSION:

The applicant is requesting to revise the Future Land Use Map designation from O-3, Agriculture to G-4, Suburban (Walkable). City Plan Commission recommended 6-0 to approve the proposed amendment on February 24, 2022. 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 AMENDING THE FUTURE LAND USE MAP (FLUM) CONTAINED IN “PLAN EL PASO” FOR THE PROPERTIES LEGALLY DESCRIBED AS TRACT 2, 2B, AND 3D, BLOCK 2, YSLETA GRANT, CITY OF EL PASO, EL PASO COUNTY, TEXAS, FROM O-3, AGRICULTURE TO G-4, SUBURBAN (WALKABLE).

WHEREAS, *Plan El Paso*, as subsequently amended, was initially adopted by the El Paso City Council on March 6, 2012 pursuant to provisions of the Texas Local Government Code as the Comprehensive Plan for the City; and

WHEREAS, the Comprehensive Plan provides a basis for the City’s regulations and policies that directs its physical and economic development; and

WHEREAS, the Future Land Use Map (FLUM) is one of the policies adopted by the El Paso City Council contained within the Comprehensive Plan which identifies desired land use patterns; and

WHEREAS, the City’s Future Land Use Map serves as a guide to the type and manner of future development for the City of El Paso; and

WHEREAS, when changes and amendments to the zoning map are requested, the reviewing City departments and the City Plan Commission must make recommendations regarding the conformity of the proposed change to the City’s Comprehensive Plan; and

WHEREAS, in some instances when a request to amend the zoning map does not conform to the Future Land Use Map, an amendment to that map may be required; and

WHEREAS, the City Plan Commission, after conducting a public hearing, recommended the proposed amendment to the Future Land Use Map; and

WHEREAS, after conducting a public hearing, the proposed amendment to the Future Land Use Map of *Plan El Paso* will have no negative impact upon the public health, safety, morals, and general welfare of the City, and will carry out the purpose and spirit of the policies expressed in *Plan El Paso*.

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

ORDINANCE NO. _____

[location] [district] to [district]

22-1007-2871 | 1163252 | WNV

PLCP21-00005

1. That the areas identified in “Exhibit A” and legally described Tract 2, 2B, and 3D, Block 2, Ysleta Grant, City of El Paso, El Paso County, Texas, be incorporated into the City’s Comprehensive Plan, *Plan El Paso*, for all the purposes, including amending the Future Land Use Map from O-3, Agriculture to G-4, Suburban (Walkable).
2. That *Plan El Paso* and its related documents, as herein modified, shall remain in full force and effect as to the long range general policies for guiding growth and development in the City.

ADOPTED this _____ day of _____, 2022.

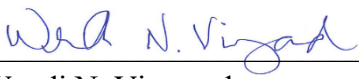
THE CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

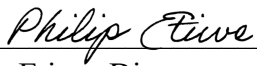
Laura D. Prine, City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Philip Etiwe, Director
Planning & Inspections Department

ORDINANCE NO. _____

[location] [district] to [district]

22-1007-2871 | 1163252 | WNV

PLCP21-00005

Being All of Tracts 2, 2B and 3D, Block 2
Ysleta Grant,
El Paso County, Texas
February 26, 2021

METES AND BOUNDS DESCRIPTION

North Loop Drive
Exhibit "A"

FIELD NOTE DESCRIPTION of Tracts 2, 2B and 3D, Block 2, Ysleta Grant, El Paso County, Texas being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at a found 1/2 rebar at the notherwest boundary corner of Tract 2, same being the westerly right-of-way line of North Loop Drive and the southerly right-of-way line of Via Maria Drive (35' R.O.W.) and the **POINT OF BEGINNING** of the herein described parcel;

THENCE, leaving said southerly right-of-way line of Via Maria Drive and along the westerly right-of-way line of North Loop Drive, South 38°16'00" East, a distance of 691.95 feet to a point for corner along the westerly right-of-way line of North Loop Drive;

THENCE, leaving said westerly right-of-way line of North Loop Drive, South 37°44'00" West, a distance of 475.83 feet to a point for corner at the northerly right-of-way line of Inglewood Drive;

THENCE, along said northerly right-of-way line of Inglewood Drive, South 86°06'06" West, a distance of 297.23 feet to a 1/2 rebar for corner;

THENCE, continuing along said northerly right-of-way line of Inglewood Drive, South 68°20'15" West, a distance of 42.81 feet to a point for corner;

THENCE, continuing along said easterly right-of-way line of Inglewood Drive, North 35°22'00" West, a distance of 305.05 feet to a found 5/8 rebar for corner at the common boundary corner of Tracts 3D, 19B1 and the easterly right-of-way line of Inglewood Drive;

THENCE, leaving said easterly right-of-way line of Inglewood Drive, North 75°01'00" East, a distance of 6.10 feet to a found 1/2 rebar for corner;

THENCE, North 31°29'00" West, a distance of 207.00 feet to a found 1/2 rebar for corner at the southerly right-of-way line of Juan De Herrera Lateral;

THENCE, along said southerly right-of-way line of Juan De Herrera Lateral, North 76°36'00" East, a distance of 186.35 feet to a point for corner;

THENCE, leaving said southerly right-of-way line of Juan De Herrera Lateral, North 24°27'00" West, a distance of 7.34 feet to a point for corner;

THENCE, crossing Juan De Herrera Lateral and along the southerly right-of-way line of Via Maria Drive and the common boundary line of Tract 2, North 32°01'35" East, a distance of 564.84 feet to the **POINT OF BEGINNING** of the herein described parcel and containing 457,109.94 square feet or 10.4938 acres of land more or less.

CAD Consulting Co.
1790 Lee Trevino Drive. Suite 503
El Paso, Texas 79936
(915) 633-6422
I:\M&B\2021\21-0557_ N. Loop (Tracts 2,2B and 3D)



PARCEL 2: TRACTS 2B, 3 AND 34, BLOCK 6, SOCORRO GRANT, AND TRACTS 2, 2B AND 3D BLOCK 2, YSLETA GRAN, EL PASO COUNTY, TX: SAVE AND EXCEPT 1.1185 ACRES, MORE OR LESS, OUT OF THE JUAN DE HERRERA LATERAL CONTAINING: 550,135.08 SQ. FT. OR 12.6293 ACRES +

SEE EXHIBIT "C"
NET ACREAGE: 11.5108 ACRES +

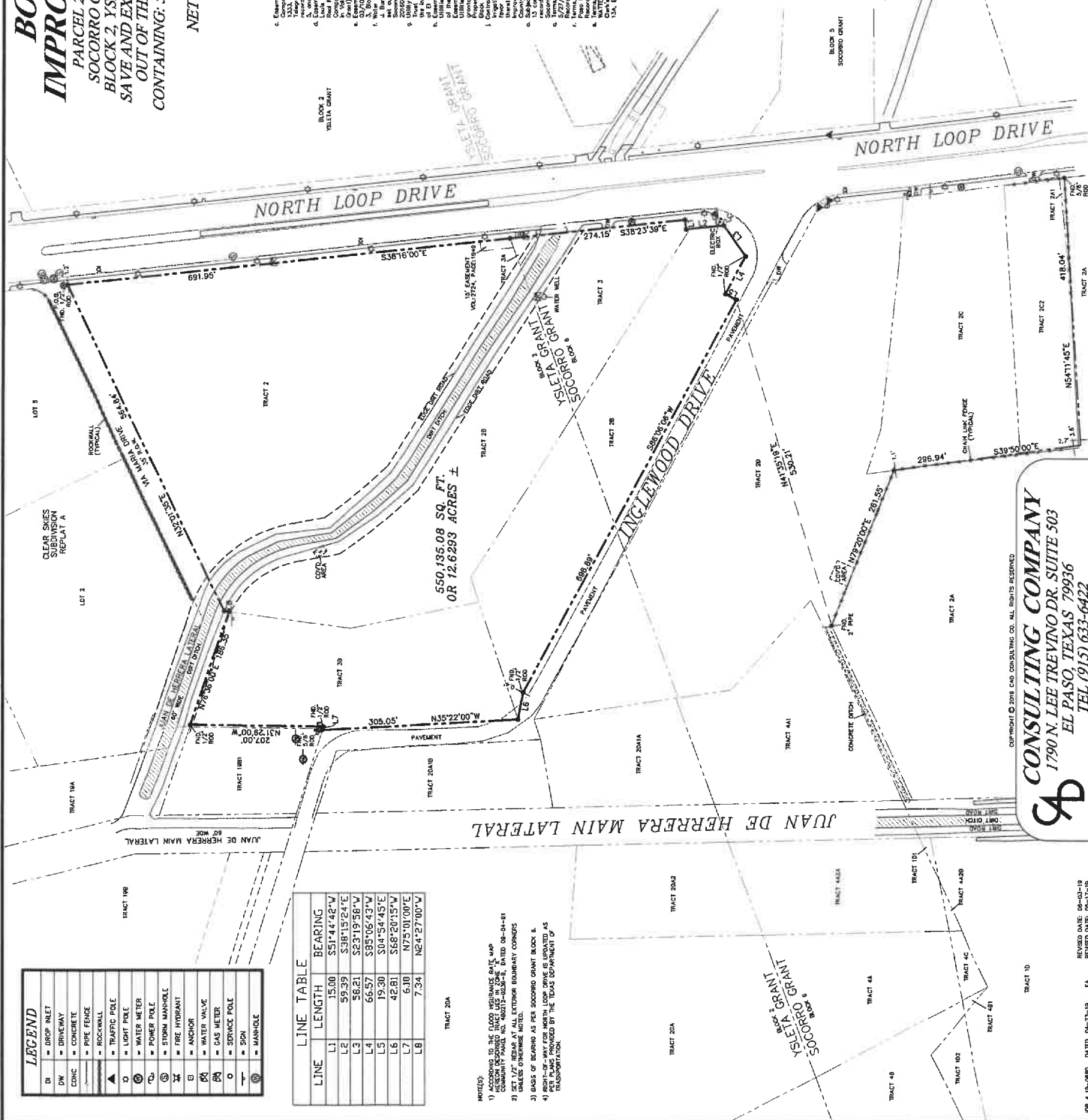
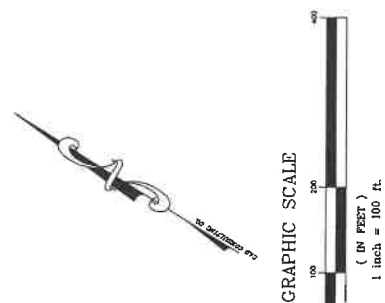
NOTES CORRESPONDING TO SCHEDULE B ITEMS:

[illegible]

CERTIFICATION

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.

CARLOS M. JIMENEZ R.P.L.S No. 3950



CONSULTING COMPANY
1790 N. LEE TREVINO DR. SUITE 503
EL PASO, TEXAS 79936
TEL (915) 633-6422

OFFICE DATE: 06-03-10

North of Inglewood Drive and West of North Loop Drive

City Plan Commission — February 24, 2022



CASE NUMBER:	PLCP21-00005
CASE MANAGER:	David Samaniego, (915)212-1608, SamaniegoDC@elpasotexas.gov
PROPERTY OWNER:	BRE Development, LLC
REPRESENTATIVE:	CEA Group
LOCATION:	North of Inglewood Drive and West of North Loop Drive (District 6)
PROPERTY AREA:	10.49 acres
REQUEST:	Adjust the Future Land Use designation from O-3, Agriculture to G-4, Suburban (Walkable)
RELATED APPLICATIONS:	PZRZ21-00035, Rezoning
PUBLIC INPUT:	N/A

SUMMARY OF REQUEST: The applicant is requesting an amendment to *Plan El Paso*, the City's comprehensive plan, to amend the Future Land Use designation from O3, Agriculture to G-4, Suburban (Walkable), to accommodate a proposed apartment and office development.

SUMMARY OF STAFF RECOMMENDATION: Staff recommends **APPROVAL** of the request. The proposed development is in keeping with the character of the adjacent residential, industrial, and agricultural development and the policies of *Plan El Paso* for the G-4, Suburban (Walkable) Future Land Use designation.

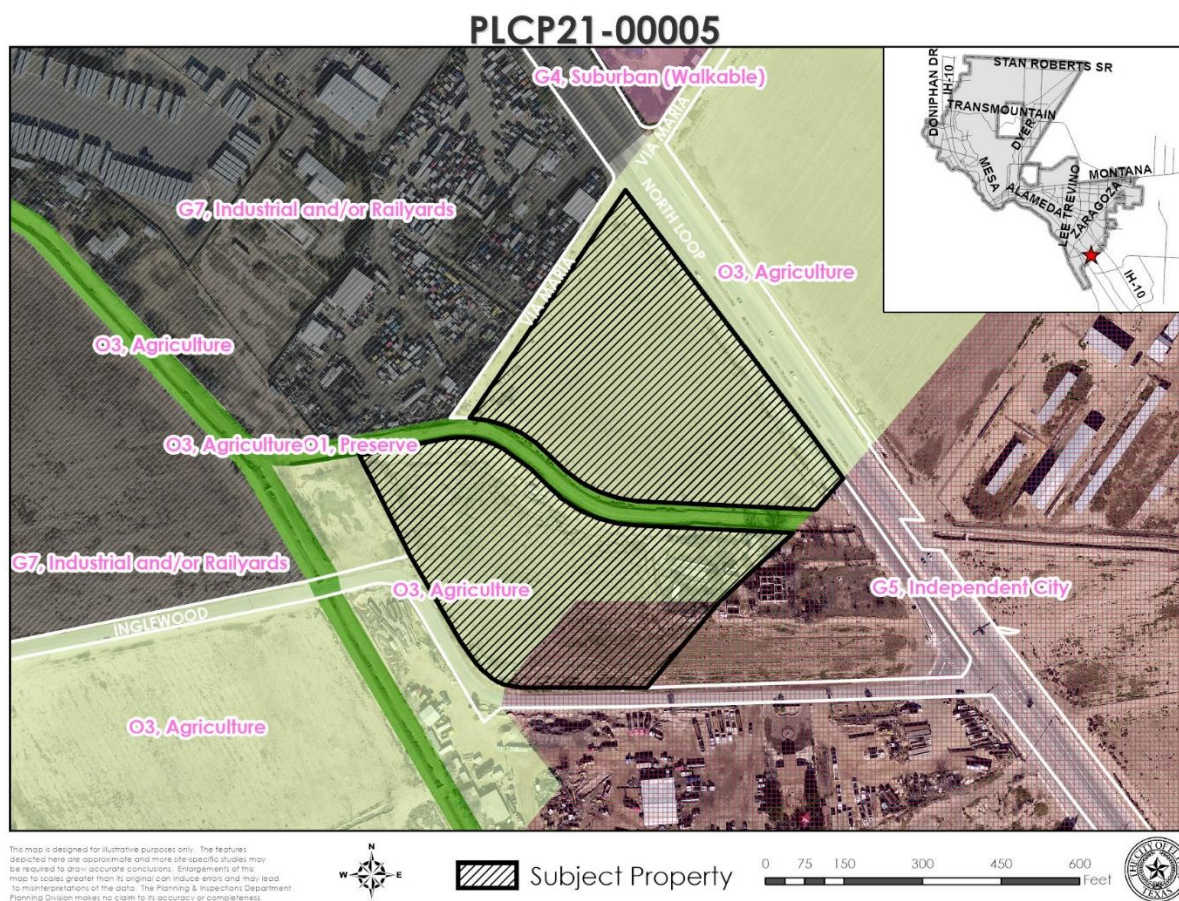


Figure A. Subject Property & Immediate Surroundings

DESCRIPTION OF REQUEST: The applicant is proposing to amend the Future Land Use designation on a 10.49-acre property in order to allow for development of apartment and office. The existing O-3 Agriculture Use designation is no longer appropriate for the area. The G-4, Suburban designation is in character with the proposed development for the property, which is similar in scale and character to the nearby industrial development along North Loop Drive and Inglewood Drive. This case is related to application number PZR221-00035, which requests to rezone part of the subject area from R-F (Ranch and Farm) to A-O (Apartment/Office) to allow for a proposed apartment and office development.

COMPATIBILITY WITH NEIGHBORHOOD CHARACTER: Properties in the City limits to the north of the subject property has the G-4, Suburban (Walkable), O-1, Preserve and G-7, Industrial and/or Railyards designation and are currently vacant farmland, residential development and consist of heavy truck storage and repair uses. To the west, properties has the G-7, Industrial and/or Railyards and future proposed general warehouse and industrial development. All properties to the south are outside El Paso City limits and feature farmland uses.

COMPLIANCE WITH PLAN EL PASO – When evaluating whether a proposed adjustment is in accordance with Plan El Paso, consider the following factors:	
Criteria	Does the Request Comply?
Future Land Use Map: Proposed Future Land Use designation for the property: G-4, Suburban (Walkable): This sector applies to modern single-use residential subdivisions and office parks, large schools and parks, and suburban shopping centers. 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.	<i>Plan El Paso</i> identifies the G-4 designation as appropriate for apartment and office uses, which is in keeping with the proposed uses. The associated rezoning to A-O will ensure that any future proposed uses will remain compatible with the G-4 designation. In addition, the subject property is accessed from North Loop Drive and Inglewood Drive which are classified as a major arterial and collector street, respectively, per the City of El Paso's Major Thoroughfare Plan and is adequate to serve the proposed uses.
Preferred Development Locations: Is the property in a "Compact Urban" area?	N/A

THE PROPOSED DESIGNATION'S EFFECT ON THE PROPERTY AND SURROUNDING PROPERTY, AFTER EVALUATING THE FOLLOWING FACTORS:	
Historic District or Special Designations & Study Area Plans: Any historic district or other special designations that may be applicable. Any adopted small area plans, including land-use maps in those plans.	N/A
Potential Adverse Effects: Potential adverse effects that might be caused by approval or denial of the requested change.	Development of the subject property will bring higher intensity uses into close proximity with existing residential, commercial, and agricultural uses.
Natural Environment: Anticipated effects on the natural environment.	The subject property is currently inactive farmland. The existing irrigation canals and drainage laterals will be buffered from development.
Stability: Whether the area is stable or in transition.	The surrounding area is in transition from farmland to employment supportive uses.
Socioeconomic & Physical Conditions: Any changed social, economic, or physical conditions that make the existing designation no longer suitable for the property.	Agricultural uses have ceased on the subject property and there is increased development in the area. The area is in transition.

CITY PLAN COMMISSION OPTIONS:

The City Plan Commission (CPC) has the authority to advise City Council on changes to the Comprehensive Plan. In evaluating the request, the CPC may take any of the following actions:

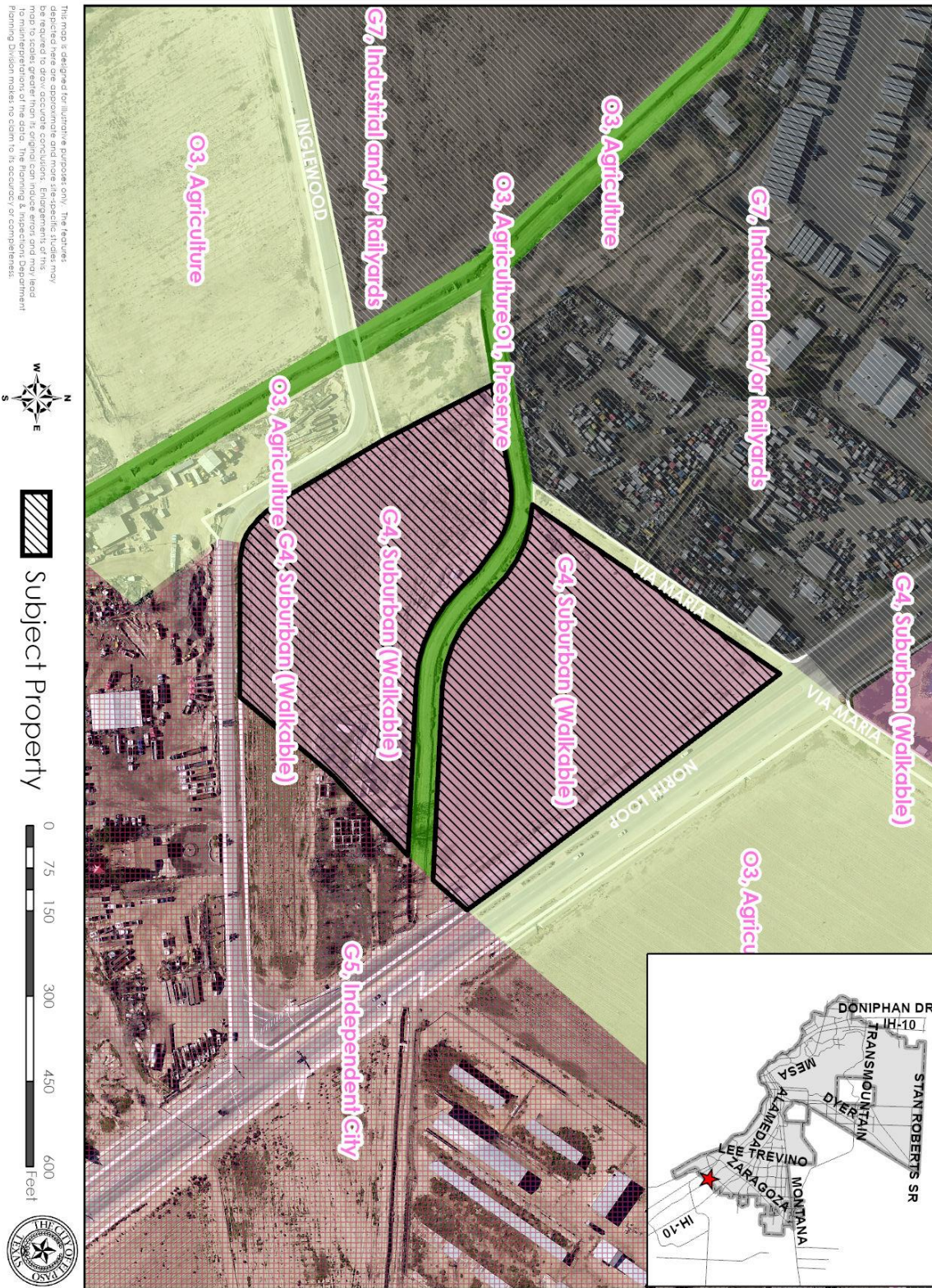
1. **Recommend Approval** of the request, finding that the request is in conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or that the request is in conformance with other criteria that the CPC identifies from the Comprehensive Plan. **(Staff Recommendation)**
2. **Recommend Approval of the 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.
3. **Recommend Denial** of the 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. Proposed Future Land Use Map

ATTACHMENT 1

PLCP21-00005





Legislation Text

File #: 22-524, 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 7

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 Tracts 2, 2B, and 3D, Block 2, Ysleta Grant, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) to A-O/c (Apartment/Office/condition), 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 Inglewood Drive and West of North Loop Drive

Applicant: BRE Development, LLC. PZRZ21-00035

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

AGENDA DATE: May 10, 2022
PUBLIC HEARING DATE: June 7, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553
Andrew Salloum, (915) 212-1603

DISTRICT(S) AFFECTED: District 7

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 Tracts 2, 2B, and 3D, Block 2, Ysleta Grant, City of El Paso, El Paso County, Texas from R-F (Ranch and Farm) to A-O/c (Apartment/Office/condition), 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 Inglewood Drive and West of North Loop Drive
Applicant: BRE Development, LLC. PZRZ21-00035

BACKGROUND / DISCUSSION:

The applicant is requesting to rezone from R-F (Ranch and Farm) to A-O (Apartment/Office) to allow for apartment and office development. City Plan Commission recommended 6-0 to approve the proposed rezoning with three conditions on February 24, 2022. The Mission Valley Civic Association President was present and spoke in favor of this item at the CPC hearing. As of April 4, 2022, the Planning Division did not receive any communications in support or opposition to the request from the public.

Additionally, on April 21, 2022, this item was reconsidered by the City Plan Commission to reconsider revised language for condition number 2. On April 21, 2022, the City Plan Commission recommended 8-0 to approve the proposed amended condition language. The Mission Valley Civic Association President was present and spoke in favor of this item at the CPC hearing. As of May 2, 2022, the Planning Division received a letter via email in opposition to the 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

Revised 04/09/2021

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING OF TRACTS 2, 2B, AND 3D, BLOCK 2, YSLETA GRANT, CITY OF EL PASO, EL PASO COUNTY, TEXAS FROM R-F (RANCH AND FARM) TO A-O/C (APARTMENT/OFFICE/CONDITION), 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 *Tracts 2, 2B and 3D, Block 2, Ysleta Grant, 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)** to **A-O/c (Apartment/Office/condition)**, 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 change in 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) Prior to the issuance of building permits a detailed site development plan shall be submitted and approved as per the El Paso City Code; and,*
- 2) Prior to the issuance of building permits, land shall be dedicated and improvements be constructed for the extension of Via Maria, improvements shall be in accordance with Title 19, the City's Subdivision Ordinance.*
- 3) Access for semitrailer trucks and cabs shall be prohibited to and from Via Maria Drive.*

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 _____, **2022.**


THE CITY OF EL PASO:

ATTEST:

Oscar Leaser
Mayor

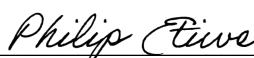
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Philip F. Etiwe, Director
Planning & Inspections Department

ORDINANCE NO. _____

Zoning Case No: PZRZ21-00035

Being All of Tracts 2, 2B and 3D, Block 2
Ysleta Grant,
El Paso County, Texas
February 26, 2021

METES AND BOUNDS DESCRIPTION

North Loop Drive
Exhibit "A"

FIELD NOTE DESCRIPTION of Tracts 2, 2B and 3D, Block 2, Ysleta Grant, El Paso County, Texas being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at a found 1/2 rebar at the notherwest boundary corner of Tract 2, same being the westerly right-of-way line of North Loop Drive and the southerly right-of-way line of Via Maria Drive (35' R.O.W.) and the **POINT OF BEGINNING** of the herein described parcel;

THENCE, leaving said southerly right-of-way line of Via Maria Drive and along the westerly right-of-way line of North Loop Drive, South 38°16'00" East, a distance of 691.95 feet to a point for corner along the westerly right-of-way line of North Loop Drive;

THENCE, leaving said westerly right-of-way line of North Loop Drive, South 37°44'00" West, a distance of 475.83 feet to a point for corner at the northerly right-of-way line of Inglewood Drive;

THENCE, along said northerly right-of-way line of Inglewood Drive, South 86°06'06" West, a distance of 297.23 feet to a 1/2 rebar for corner;

THENCE, continuing along said northerly right-of-way line of Inglewood Drive, South 68°20'15" West, a distance of 42.81 feet to a point for corner;

THENCE, continuing along said easterly right-of-way line of Inglewood Drive, North 35°22'00" West, a distance of 305.05 feet to a found 5/8 rebar for corner at the common boundary corner of Tracts 3D, 19B1 and the easterly right-of-way line of Inglewood Drive;

THENCE, leaving said easterly right-of-way line of Inglewood Drive, North 75°01'00" East, a distance of 6.10 feet to a found 1/2 rebar for corner;

THENCE, North 31°29'00" West, a distance of 207.00 feet to a found 1/2 rebar for corner at the southerly right-of-way line of Juan De Herrera Lateral;

THENCE, along said southerly right-of-way line of Juan De Herrera Lateral, North 76°36'00" East, a distance of 186.35 feet to a point for corner;

THENCE, leaving said southerly right-of-way line of Juan De Herrera Lateral, North 24°27'00" West, a distance of 7.34 feet to a point for corner;

THENCE, crossing Juan De Herrera Lateral and along the southerly right-of-way line of Via Maria Drive and the common boundary line of Tract 2, North 32°01'35" East, a distance of 564.84 feet to the **POINT OF BEGINNING** of the herein described parcel and containing 457,109.94 square feet or 10.4938 acres of land more or less.

CAD Consulting Co.
1790 Lee Trevino Drive. Suite 503
El Paso, Texas 79936
(915) 633-6422
I:\M&B\2021\21-0557_ N. Loop (Tracts 2,2B and 3D)



North of Inglewood Drive and West of North Loop Drive

City Plan Commission — April 21, 2022 (RECONSIDERATION)



CASE NUMBER: PZRZ21-00035 (REVISED)
CASE MANAGER: Andrew Salloum, (915) 212-1603, SalloumAM@elpasotexas.gov
PROPERTY OWNER: BRE Development, LLC
REPRESENTATIVE: CEA Group
LOCATION: North of Inglewood Drive and West of North Loop Drive (District 6)
PROPERTY AREA: 10.49 acres
REQUEST: Rezone from R-F (Ranch and Farm) to A-O (Apartment/Office)
RELATED APPLICATIONS: PLCP21-00005 (Comprehensive Amendment)
PUBLIC INPUT: Received a letter of inquiry as of February 24, 2022. As of April 21, 2022, received a letter of inquiry after renotification.

SUMMARY OF REQUEST: The applicant is requesting to reconsider the wording for condition number two. The request to rezone from R-F (Ranch and Farm) to A-O (Apartment/Office) to allow for apartment and office development remains unchanged.

SUMMARY OF STAFF RECOMMENDATION: Staff recommends **APPROVAL** of the request with the following conditions:

1. Prior to the issuance of building permits a detailed site development plan shall be submitted and approved as per the El Paso City Code; and,

Previous condition 2:

2. Prior to the issuance of building permits, land shall be dedicated and improvements be constructed for the extension of Via Maria over the lateral and to connect to Inglewood Dr., improvements shall be in accordance with Title 19, the City's Subdivision Ordinance.

Proposed condition 2:

2. Prior to the issuance of building permits, land shall be dedicated and improvements be constructed for the extension of Via Maria, improvements shall be in accordance with Title 19, the City's Subdivision Ordinance.
3. Access for semi-trailer trucks and cabs shall be prohibited to and from Via Maria Drive.

The proposed zoning district is compatible with the surrounding residential and commercial districts in the immediate area and consistent with *Plan El Paso*, the City's adopted Comprehensive Plan.

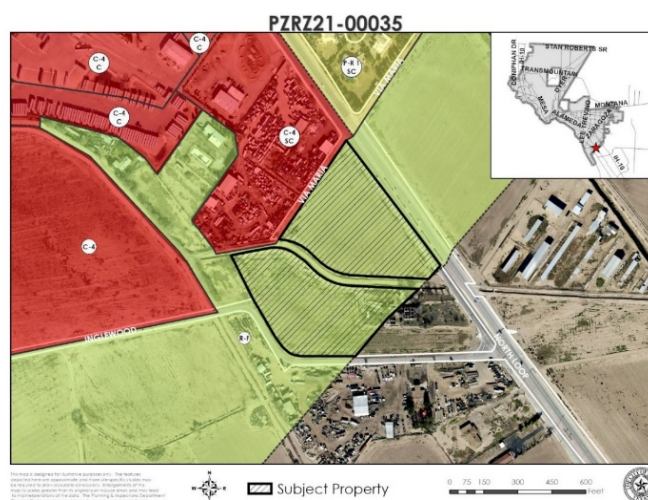


Figure A. Subject Property & Immediate Surroundings

DESCRIPTION OF REQUEST: The applicant is requesting to reconsider the wording for condition number 2. The revised condition wording will allow Via Maria to be extended in a more safe and sensible engineering based alignment, and will also allow for the future opportunity to re-align Inglewood Dr. in a more sensible and safe manner.

The request to rezone from R-F (Ranch-Farm) to A-O (Apartment/Office) remains unchanged. The rezoning request remains to allow for proposed apartment complex and office development. The conceptual site plan shows a new twenty-five (25) apartment complex, clubhouse, and three (3) office buildings. Access to the subject property is provided from North Loop Drive and Inglewood Drive.

PREVIOUS CASE HISTORY: On February 24, 2022, City Plan Commission (CPC) recommended approval of rezoning request for the subject property from R-F (Ranch and Farm) to A-O (Apartment/Office) to allow for proposed apartment complex and office development with the following conditions:

1. *Prior to the issuance of building permits a detailed site development plan shall be submitted and approved as per the El Paso City Code; and,*
2. *Prior to the issuance of building permits, land shall be dedicated and improvements be constructed for the extension of Via Maria over the lateral and to connect to Inglewood Dr., improvements shall be in accordance with Title 19, the City's Subdivision Ordinance.*
3. *Access for semi-trailer trucks and cabs shall be prohibited to and from Via Maria Drive.*

Additionally, CPC recommended approval of the proposed comprehensive amendment from O-3, Agriculture to G-4, Suburban (Walkable) to accommodate a proposed apartment and office development.

COMPATIBILITY WITH NEIGHBORHOOD CHARACTER: The proposed district is consistent with the surrounding residential and heavy commercial districts in the immediate area, and in character with the established neighborhood surrounding the subject property. Furthermore, the proposed development meets the intent of the proposed G-4, Suburban (Walkable) designation of *Plan El Paso* in the Mission Valley planning area.

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:	
Criteria	Does the Request Comply?
<p>Future Land Use Map: Proposed zone change is compatible with the Future Land Use designation for the property:</p> <p><u>G-4, Suburban (Walkable):</u> This sector applies to modern single-use residential subdivisions and office parks, large schools and parks, and suburban shopping centers. 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 residential and office developments, which are in character with the future land use designation of <i>Plan El Paso</i>.</p> <p>The proposed development is adjacent to residential and commercial lots; therefore, has the potential to repurpose the lot for residential and provide employment to the area. The proposed development addresses the need a mixed use of apartment and office. and has the potential to reduce travel and infrastructure needs.</p>
<p>Compatibility with Surroundings: The proposed zoning district is compatible with those surrounding the site:</p> <p><u>A-O (Apartment/Office) District:</u> The purpose of the district is to promote and preserve residential development within the city associated with a landscape more urban in appearance and permitting a mixture of housing types. It is intended that the district regulations allow for medium densities of dwelling units supported by higher intensity land uses located at the periphery of single-family neighborhoods providing that the overall character and architectural integrity of the neighborhood is preserved. The regulations of the districts will permit building types designed for transition from areas of low density residential neighborhoods to other residential areas, and certain nonresidential uses and support facilities.</p>	<p>Yes, the proposed apartment and office development uses are consistent with the residential and commercial neighborhood. Apartment and office uses are common and appropriate in this sector. The surrounding properties are zoned C-4 (Commercial) and R-F (Ranch and Farm). Therefore, has the potential to repurpose the lot for apartment and office development and provide employment opportunities.</p>
<p>Preferred Development Locations: 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</p>	<p>Yes, the property is located on North Loop Drive and Inglewood Drive, and Via Maria Drive which are classified as a major arterial, collector, and local respectively on the City of El Paso's Major Thoroughfare Plan.</p>

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:	
being the only property on the block with an alternative zoning district, density, use and/or land use.	
THE PROPOSED ZONING DISTRICT’S EFFECT ON THE PROPERTY AND SURROUNDING PROPERTY, AFTER EVALUATING THE FOLLOWING FACTORS:	
Historic District or Special Designations & Study Area Plans: Any historic district or other special designations that may be applicable. Any adopted small areas plans, including land-use maps in those plans.	N/A. The proposed development is not within any historic districts or study area plan boundaries.
Potential Adverse Effects: 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. The proposed development will match development immediately surrounding the subject property.
Natural Environment: Anticipated effects on the natural environment.	Subject property does not involve greenfield/environmentally sensitive land or arroyo disturbance.
Stability: Whether the area is stable or in transition.	The area is transition and the proposed development is compatible with the existing commercial zoning properties to the northwest, northeast, and west.
Socioeconomic & Physical Conditions: Any changed social, economic, or physical conditions that make the existing zoning no longer suitable for the property.	The proposed development is in transition from inactive agricultural uses for the property. The established neighborhood is comprised of a residential and commercial development. There have been recent rezoning requests for this area to the northwest, north and west in 1975, 1979 and 2021 respectively.

ADEQUACY OF PUBLIC FACILITIES, SERVICES AND INFRASTRUCTURE: The subject property borders North Loop Drive, Inglewood Drive, and Via Maria Drive which are designated a major arterial, collector, and local street respectively as per the City of El Paso’s Major Thoroughfare Plan. Access is proposed from North Loop Drive. It is adequate to serve the development.

SUMMARY OF DEPARTMENTAL REVIEW COMMENTS: No objections to the proposed rezoning. There were no adverse comments received. Applicant is responsible for obtaining all applicable permits and approvals prior to construction.

PUBLIC COMMENT: The subject property lies within the boundaries of the Mission Valley Civic Association and Corridor 20 Civic Association, which was notified prior to submittal of the Rezoning Application. As required, public notices were mailed to property owners within 300 feet on February 10, 2022. As of February 24, 2022, the Planning Division did not receive any communication in support or opposition to the request from the public. However, staff received a letter of inquiry, see attachment 5.

Additionally, as required for reconsideration, public notices were mailed to property owners within 300 feet on April 7, 2022. As of April 21, 2022, the Planning Division did not receive any communication in support or opposition to the request from the public. Staff did receive a letter of inquiry, see attachment 6.

RELATED APPLICATIONS: PLCP21-00005 Comprehensive Plan Amendment.

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:

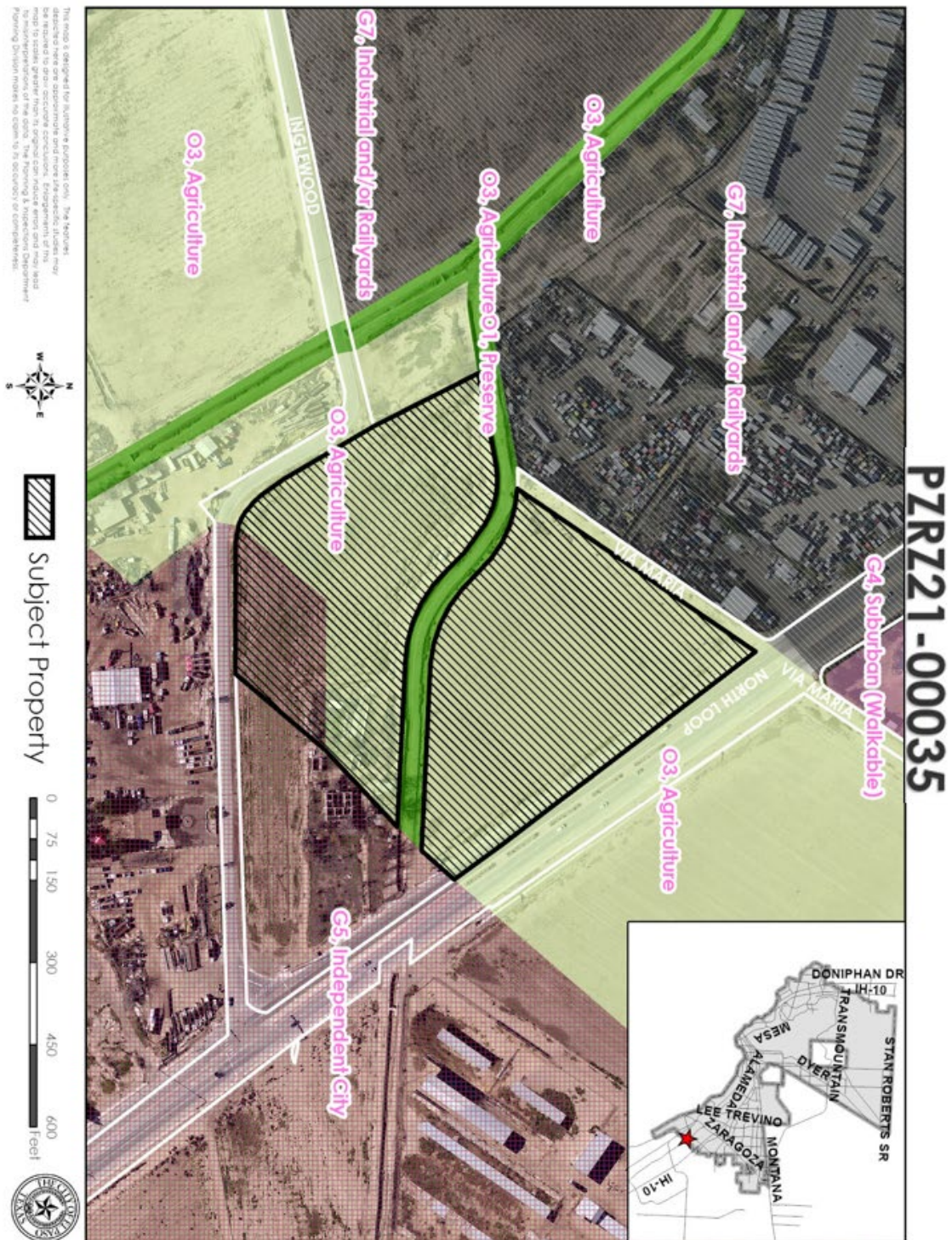
1. **Recommend Approval** of the rezoning request, finding that the request is in conformance with the review criteria of *Plan El Paso* as reflected in the Staff Report, or that the request is in conformance with other criteria that the CPC identifies from the Comprehensive Plan.
2. **Recommend Approval 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.

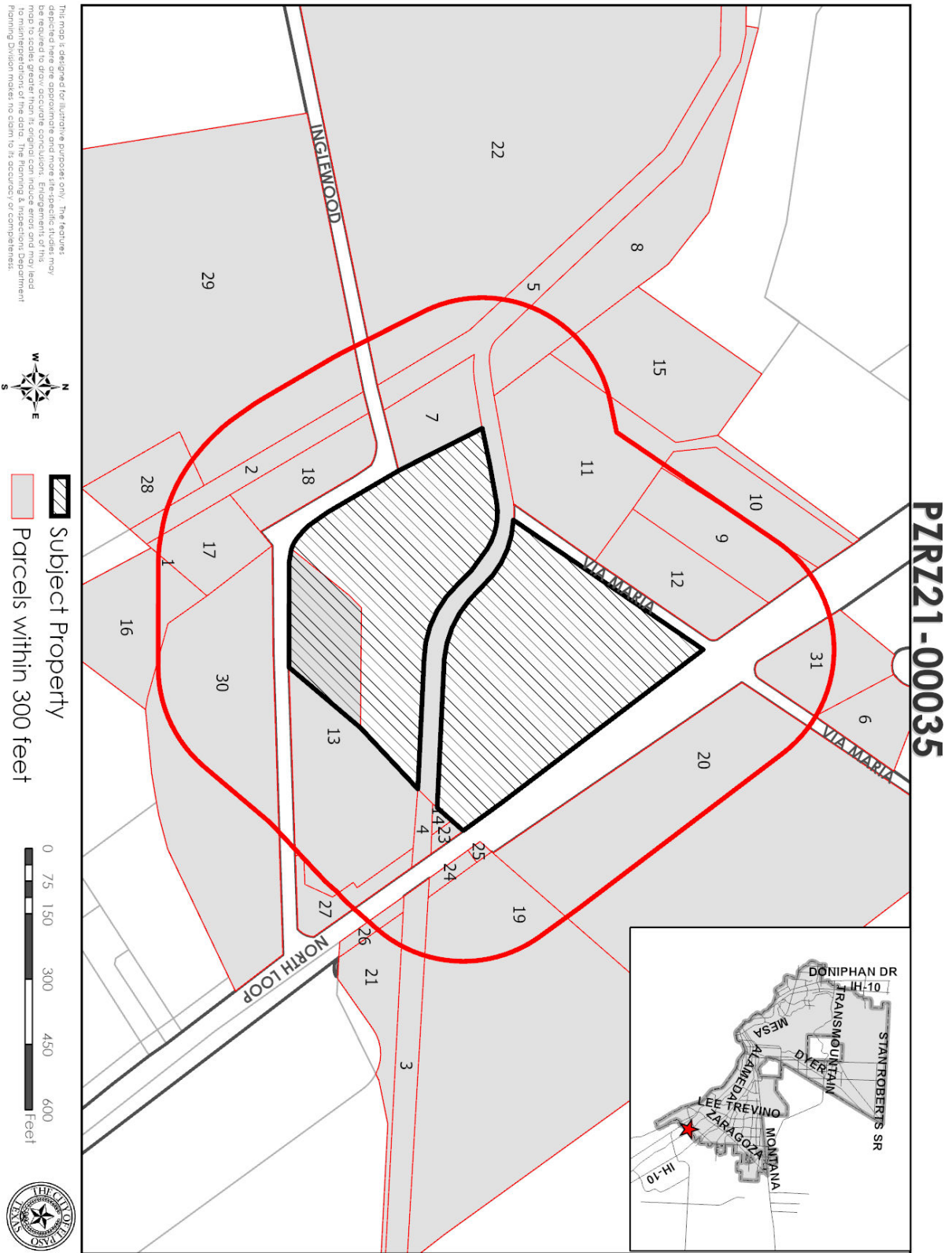
ATTACHMENTS:

1. Future Land Use Map
2. Neighborhood Notification Boundary Map
3. Conceptual Site Plan
4. Department Comments
5. Letter of inquiry
6. Letter of inquiry

ATTACHMENT 1



ATTACHMENT 2



ATTACHMENT 3



ATTACHMENT 4

Planning and Inspections Department – Planning Division

Staff recommends **APPROVAL** of the request with the following conditions:

1. Prior to the issuance of building permits a detailed site development plan shall be submitted and approved as per the El Paso City Code; and,

Previous condition 2:

2. Prior to the issuance of building permits, land shall be dedicated and improvements be constructed for the extension of Via Maria over the lateral and to connect to Inglewood Dr., improvements shall be in accordance with Title 19, the City's Subdivision Ordinance.

New condition 2:

2. Prior to the issuance of building permits, land shall be dedicated and improvements be constructed for the extension of Via Maria, improvements shall be in accordance with Title 19, the City's Subdivision Ordinance.
3. Access for semi-trailer trucks and cabs shall be prohibited to and from Via Maria Drive.

Planning and Inspections Department – Plan Review and Landscaping Division

The generalized site plan is not being reviewed for conformance due to conceptual nature.

No objections to proposed rezoning.

Note: 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

No objections to proposed rezoning.

Street and Maintenance Department

Reviewing the TIA report we noticed that the latest edition of the ITE trip generation manual was not used for the pick hours trip generated at the location.

TIA scoping meeting must be conducted prior to the submittal of the TIA report.

Please provide traffic signal timing sheets for the study intersections and the appendix.

Please provide the complete information, number of units, apartments floors/ levels /stories and the area of the commercial building size.

There is a discrepancy on the area described on the application (10.49 AC) and the plat (12.60 AC).

Note: All driveway and sidewalk improvements shall be constructed in current compliance with all applicable City of El Paso Municipal Codes / Ordinances.

Note: The comments will be addressed at Subdivision stage.

Note: No issues with the proposed re-alignment of Via Maria (as per meeting held 4/6/2022).

Texas Department of Transportation (TxDOT)

- Please adhere to the TxDOT access management manual for driveway spacing minimums (the minimum spacing is 360 feet for this location)

-Submit for a TxDOT permit for all work on state ROW

Note: the comments will be addressed at Subdivision stage.

Fire Department

Fire plan review may have issue with the R-2 access drives to the property. They appear to be too close together and the turning radius for right-hand turn from the angled drive on the left may not meet code. Turn-arounds for fire department vehicles may be needed if dead end drives exceed 250' per 2015 EPFD amendments. New 2021 codes to be adopted later this year. Unsure if that amendment will carry over to new codes.

El Paso County 911 District

The 911 District has no comments/concerns regarding this zoning.

El Paso Police Department

My only comment if/and when the property is developed that the COEP/Socorro boundaries are clearly marked somehow. This so that residents and emergency response personnel can clearly see what agency is responsible for a response. Also this will help 911 determine quickly who to dispatch. Seconds matter. This will also help with tracking statistical information.

El Paso Water

Juan De Herrera Lateral is an El Paso County Improvement District No. 1 facility. Licenses for installation of water main within the lateral are required. Lot owner is responsible for permit, survey and consideration fees.

EPWater-PSB anticipates providing water and sanitary sewer service by on-site main extensions. Water mains are to be extended to create a looped system. EPWater-PSB requests that site be graded so that sanitary sewer may be provided by gravity. All water and sanitary sewer main extension costs are the responsibility of the Owner/Developer.

Water:

There is an existing 8-inch diameter water main extending along Via Maria Ln., located approximately 5-feet north of the south right-of-way line. This main is available for extension.

There is an existing 12-inch diameter water main extending along North Loop Dr., located approximately 5-feet west of the east right-of-way line.

EPWater records indicate a master meter for the El Paso Lower Valley Water District Authority located in an easement at the southeast corner of Tract 2.

Previous water pressure from fire hydrant #6634, located on North Loop Dr. approximately 253-feet south of Via Maria Ln., has yielded a static pressure of 104 (psi), a residual pressure of 90 (psi), and a discharge of 1,061 (gpm). The owner should, for his own protection and at his own expense, install at the discharge side of each water meter a pressure regulator, strainer, and relief valve, to be set for pressure as desired by the customer. The Lot owner shall be responsible for the operation and maintenance of the above-described water pressure regulating device.

Sewer:

There is an existing 48-inch diameter sanitary sewer main extending along Via Maria Ln., located approximately 15-feet north of the south right-of-way line. No direct service connections are allowed to this main as per the El Paso Water – Public Service Board (EPWater-PSB) Rules and Regulations.

There is an existing 60-inch diameter sanitary sewer main extending along a 30-foot easement on the western portions of Tract 2, 2B, and 3D. No direct service connections are allowed to this main as per the El Paso Water – Public Service Board (EPWater-PSB) Rules and Regulations.

General:

Water mains are to be extended to create a looped system. Owner is responsible for all main extensions' costs.

North Loop Dr. is a Texas Department of Transportation (TxDOT) right-of-way. All proposed water and sanitary sewer work to be performed within North Loop Dr. 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 EPWU-PSB easement without the written consent of EPWU-PSB. The Developer shall refrain from constructing rock walls, signs, buildings, curbs or any structure that will interfere with the access to the PSB easements. There shall be at least 5-foot setback from the easement line to any building, sign or structure. All easements dedicated for public water and sanitary sewer facilities shall comply with the EPWU-PSB Easement Policy. The PSB easements shall be improved to allow the operation of EPWU maintenance vehicles. EPWU-PSB requires access to the proposed water, sanitary sewer facilities, appurtenances, and meters within the easement 24 hours a day, seven (7) days a week.

EPWater 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.

El Paso Water – Stormwater Engineering

- As per Municipal Code: new developments and redevelopments are required to maintain the pre-development hydrologic response in their post-development state as nearly as practicable in order to reduce flooding. The code also encourages the use of nonstructural storm water management such as the preservation of greenspace, water harvesting, and other conservation efforts, to the maximum extent practicable, per Chapter 19.19, Section 19.19.010, and Subparagraph A-2 & A-5.
- The proposed ponding areas shown, shall have enough capacity to hold the developed runoff for a designated 100-yr. storm event. Label the ponds as "Private".

El Paso County Water Improvement District #1

EPCWID1 has no comments on the above mentioned item.

ATTACHMENT 5

Salloum, Andrew M.

From: Salloum, Andrew M.
Sent: Monday, February 21, 2022 7:12 AM
To: Lawrence Angus
Subject: RE: Case: PZR221-00035

Good morning Ms. Angus,

Received your letter. It will be provided to the City Plan Commissioners. Thank you.

Regards,

Andrew Salloum | Senior Planner

P: 915.212.1603

A: 801 Texas Ave. El Paso, TX 79901

E: SalloumAM@elpasotexas.gov

ElPasoTexas.gov | [Take Our Survey](#)



Planning & Inspections Department
City of El Paso

From: Lawrence Angus <lantana45@att.net>
Sent: Sunday, February 20, 2022 1:57 PM
To: Salloum, Andrew M. <SalloumAM@elpasotexas.gov>
Subject: Case: PZR221-00035

You don't often get email from lantana45@att.net. [Learn why this is important](#)

CAUTION: This email originated from outside of the City of El Paso. Do not click links or open attachments unless you recognize the sender and know the content is safe. If suspicious, use Phish Alert or forward to SpamReport@elpasotexas.gov.

Dear Mr. Salloum,

I would be obliged if you would relay the attached letter to the City Plan Commission for the meeting scheduled on February 24, 2022.

Please let me know that you have received this.

Sincerely,

Barbara J. Angus
601 Inglewood Drive
El Paso, TX 79927
(915) 859-7928

601 Inglewood Drive
El Paso, TX 79927

February 20, 2022

City Plan Commission
c/o Planning Division
PO Box 1890
El Paso, TX 79950-1890

Ref. Case: PZRZ21-00035

Dear City Plan Commission Members:

My name is Barbara J. Angus. I am writing in regard to the request for changing the zoning of Tracts 2, 2B, and 3D, Block 2, Ysleta Grant, from R-F (Ranch and Farm) to A-O (Apartment/Office). I am the owner (my husband, Lawrence S. Angus, having died in November 2021) of the properties marked 7 and 8 on your map.

My personal opinion is that gravity fed, irrigated farmland in this county is a limited resource and should not be built upon. El Paso Water does its best to anticipate future water needs and shortages. Given the empty shelves I have occasionally seen the last few years at Walmart, the City and County may eventually need to do the same for food. One hundred or so years ago, during World War I, the farmers of El Paso produced, and local businesses processed, enough food for the County's residents. I would like "my" El Paso to have a fighting chance to do the same.

I attended Rep. Rodriguez' neighborhood meeting last fall regarding this project.

I would like to reiterate that:

1. The City water line to my property runs down Via Maria, outside the walls of the properties marked 11 and 12. As Via Maria is not currently a paved street, I am concerned about possible water line breakage during any construction.
2. There is a stormwater drain that runs down Via Maria, crosses the property under discussion, then enters and crosses my property marked 7.

I would like to ask:

1. Why property number 13 has now been separated out from the project?
2. How will BRE Development, LLC mark the limits of their property as it touches my property 7? Will they be erecting a fence, and if so, what kind?
3. Will BRE Development, LLC be putting any gates across the canal, and if so, will they prevent me from directly checking my waterline?
4. What are the plans for straightening, widening or otherwise "improving" Inglewood Drive? I would like to see these plans on paper, and I would like to know in advance if I will have to provide a right of way or pay for curbing/sidewalks on my property. (I am retired and on a fixed income, so I may need to save for this.) The various entities that work on the street also have a

tendency (since my house is somewhat hidden) to not let me know when the street is closed for construction work.

5. How "concrete" are TexDOT's plans for extending Nuevo Huaco Tanks to Nevarez, and then intersecting at Alameda? How will this effect the portion of Nevarez that connects with Inglewood Drive? Do they anticipate extending this new "Loop" to Socorro Road? (If this happens, and they follow Nevarez, the new road will be too close to Socorro Mission.)

I will attempt to watch this Thursday's meeting via the limited capabilities of my computer. Thank you for the opportunity to comment on this topic.

Sincerely,

Barbara J. Angus

ATTACHMENT 6

Salloum, Andrew M.

From: Richard Dayoub <Richard.Dayoub@outlook.com>
Sent: Monday, April 18, 2022 2:56 PM
To: Lawrence Angus; Salloum, Andrew M.
Cc: jazcarate@ceagroup.net; Enrique Escobar
Subject: RE: PZR221-00035

Importance: High

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Good Afternoon Ms. Angus,

Thank you for sharing your concerns regarding the proposed new development. You expressed a desire to have the wall separating the development property to be made of wrought iron instead of rock. The concept of the wall is being considered per your request. The wall does not have to be a 6-foot stonewall but can also be a wrought iron fence. A wall/fence is recommended to keep people from entering the apartment complex at various locations but rather at controlled access points.

The wall and the other issues will be addressed during the design phase of the improvements, not during the zoning process. My client has agreed to provide the wall separating the properties as you mentioned. If you determine that the wrought iron fencing is preferred over the rock wall, you will be able to make those arrangements with my client at that time.

We appreciate and share your concerns regarding the safety of Via Maria and Inglewood, and understand that the current Inglewood alignment is not ideal. Mr. Escobar has attempted to get the adjacent property owners to re-align the street to make it more practical. The City agrees that Inglewood needs to be straightened out, and the City will do so as the adjacent properties come in for development.

I hope that our responses have answered your concerns. Please don't hesitate to contact us at any time during the process if you have additional questions or concerns.

Respectfully,

Richard Dayoub

Richard E. Dayoub
Thunderbird Management Consulting, LLC
5823 North Mesa Street
#714
El Paso, Texas 79912

www.thunderbirdmanagementconsulting.com

www.richarddayoub.com

From: Lawrence Angus <lantana45@att.net>
Sent: Monday, April 18, 2022 10:33 AM
To: Andrew M. Salloum <salloumam@elpasotexas.gov>; Richard Dayoub <richard.dayoub@outlook.com>
Subject: PZRZ21-00035

Dear Sirs:

I am in receipt of the latest public notice for the April 21, 2022 City Plan Commission meeting.

At the last meeting, I was surprised to find that the City was proposing to pave and connect Via Maria from North Loop Drive to Inglewood Drive. As I understand it, this will not physically impact my property. It does affect vehicle access to my home, as I enter and leave Inglewood Drive close to the proposed intersection.

I am concerned about the safety of this intersection. The current dogleg on Inglewood certainly makes the semi-truck traffic slow down and look before they enter that stretch, but it does not seem to have the same effect on car drivers - in fact the straight stretch from the Ysleta Extension canal to the intersection with Nevarez is apparently a good place to test how fast a sports car can go, so many cars are speeding as they enter the first sharp turn. We had a car accident just past the dogleg (North Loop side) - I believe it was last Thursday. No sirens, so I trust no-one was hurt, but the one car was definitely smashed up.

As it stands now, there is a "gentleman's" agreement between myself and the developers of the apartment complex that they will build a fence between our two properties. The implication - and custom - would be a stone wall.

If Via Maria is to go through to Inglewood, I believe that a stone wall at that location would severely limit visibility of traffic about to enter Inglewood from Via Maria. It would certainly block my view as I try to enter or turn off of Inglewood Drive.

Please, this is something that the traffic engineers need to consider for this new intersection. I would certainly put my life and my daughter's life above the need of having a solid fence along that property line.

Sincerely,

Barbara J. Angus

Salloum, Andrew M.

From: Lawrence Angus <lantana45@att.net>
Sent: Thursday, April 21, 2022 6:08 PM
To: Salloum, Andrew M.
Cc: Richard Dayoub; District #6
Subject: Re: City Plan Commission meeting Case PZRZ21-00035

CAUTION: This email originated from outside of the City of El Paso. Do not click links or open attachments unless you recognize the sender and know the content is safe. If suspicious, use Phish Alert or forward to SpamReport@elpasotexas.gov.

Sir:

I just spent the past 3 1/2 hours glued to my flip phone, waiting for the item I was interested in to come up.

For the third time for a remote Plan Commission meeting, I was unable to communicate with the Commission by phone, even though I thought I had un-muted the call. Apparently I still had to sign up - somewhere - before I was allowed to comment.

Some suggestions for your mail outs on future public hearings regarding zoning issues:

1. Include precise directions for how to "sign up" to comment over the phone.
2. Include a link to the agenda for that meeting.
3. Understand that listening to the meeting by phone provides "real time" information, but the images coming over the computer in the video are delayed. Plus, the computer images are blurry.
4. Understand that not everyone owns a "smart" phone!
5. Please, do not "speak" for the people who write in but are not able to speak by phone or in person at the meeting. I am trying to be a good neighbor, but my personal views do not necessarily correspond with what you are claiming I believe.

Based on the addendum to the agenda item, I now know that the plan for Via Maria is for it to cross my property. My daughter and I do not plan to ask for any changes in zoning on our front field, so is the City going to be content to stop the road at our boundary line for the next 30 + years? I thought at the last meeting that Via Maria was going to exit directly out of PZRZ21-00035 on to Inglewood, and had sent a letter in regarding the visibility of the proposed intersection. I imagine none of you could figure out what I was talking about.

I concur with Mr. Cummings that the City needs to come up with best practices to fight the loss of farmland. A few years ago, the Planning Department appeared to support my efforts to protest additional truck parking on farmland close to me. Now, it seems that any impediment to the smooth operation of the Amazon Fulfillment Center will not be tolerated. Not that I am against more jobs, but it would seem like there would be enough property east of I-10 and towards Horizon City that could support this addition to the business community - all on land that cannot be irrigated.

Sincerely,

Barbara J. Angus

Registered voter and property owner in District 6

On Thursday, April 21, 2022, 01:56:33 PM MDT, Lawrence Angus <lantana45@att.net> wrote:



Legislation Text

File #: 22-530, 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.

All Districts

Police, Chief Gregory Allen, (915) 212-4302

Purchasing and Strategic Sourcing, Claudia A. Garcia, (915) 212-1218

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: 2.3 - Increase public safety operational efficiency.

Award Summary:

Discussion and action on the request that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue a Purchase Order(s) to LexisNexis Coplogic Solutions Inc dba LexisNexis Risk Solutions, the sole distributor for the Desk Officer Reporting System for a term of two (2) years for an estimated amount of \$135,000.00 with the stipulation that the vendor provides an updated sole source letter and affidavit each year. The award of the contract for the Desk Officer Reporting System will allow citizens to submit police incident reports to be posted into the existing automated Records Management System (RMS).

Contract Variance:

New contract, no contract variance.

Department:	Police
Award to:	LexisNexis Coplogic Solutions Inc dba LexisNexis Risk Solutions
	Alpharetta, GA
Term:	2 years
Annual Estimated Amount:	\$67,500.00
Total Estimated Award:	\$135,000.00
Account No.:	321-2710-21230-522020-P2104-GT2121EJAG
	321-2814-21270-522150
Funding Source:	EJAG Grant & Confiscated Funds
Districts(s):	All
Sole Source No.:	2022-0400

This is a Sole Source, service contract.

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

AGENDA DATE: May 10, 2022
PUBLIC HEARING DATE: NA

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Chief Gregory Allen, El Paso Police Department (915) 212-4302
Claudia A. Garcia, Interim Director of Purchasing & Strategic Sourcing, (915) 212-1218

DISTRICT(S) AFFECTED: All

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

SUBGOAL: 2.3 – Increase public safety operational efficiency.

SUBJECT:

Discussion and action on the request that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue a Purchase Order(s) to LexisNexis Coplogic Solutions Inc dba LexisNexis Risk Solutions, the sole distributor for the Desk Officer Reporting System for a term of two (2) years for an estimated amount of \$135,000.00 with the stipulation that the vendor provides an updated sole source letter and affidavit each year. The award of the contract for the Desk Officer Reporting System will allow citizens to submit police incident reports to be posted into the existing automated Records Management System (RMS).

BACKGROUND / DISCUSSION:

EPPD is seeking to obtain the LexisNexis Citizen Online Reporting System- Desk Officer Reporting System (DORS) software as a service for a state-of-the-art system. Individuals, retail companies, and other organizations will be able to file reports, crime tips and other forms online directly into our agency RMS database (OnCall Records).

SELECTION SUMMARY:

NA

CONTRACT VARIANCE:

New contract, no contract variance.

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

NA

AMOUNT AND SOURCE OF FUNDING:

Amount: \$135,000.00

Funding Source: EJAG Grant & Confiscated Funds

Account: \$82,128.01 - 321-2710-21230-522020-P2104-GT2121EJAG

\$52,871.99 - 321-2814-21270-522150

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

PRIMARY DEPARTMENT: Police

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

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

DEPARTMENT HEAD:

A/C [Signature] for

Chief Gregory Allen, El Paso Police Department

**COUNCIL PROJECT FORM
(SOLE SOURCE)**

*******POSTING LANGUAGE BELOW*******

Please place the following item on the **REGULAR** agenda for the Council Meeting of May 10, 2022.

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

The linkage to the Strategic Plan is subsection: 2.3 – Increase public safety operational efficiency.

Award Summary:

Discussion and action on the request that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue a Purchase Order(s) to LexisNexis Coplogic Solutions Inc dba LexisNexis Risk Solutions, the sole distributor for the Desk Officer Reporting System for a term of two (2) years for an estimated amount of \$135,000.00 with the stipulation that the vendor provides an updated sole source letter and affidavit each year. The award of the contract for the Desk Officer Reporting System will allow citizens to submit police incident reports to be posted into the existing automated Records Management System (RMS).

Contract Variance:

New contract, no contract variance.

Department:	Police
Award to:	LexisNexis Coplogic Solutions Inc dba LexisNexis Risk Solutions Alpharetta, GA
Term:	2 years
Annual Estimated Amount:	\$67,500.00
Total Estimated Award:	\$135,000.00
Account No.:	321-2710-21230-522020-P2104-GT2121EJAG 321-2814-21270-522150
Funding Source:	EJAG Grant & Confiscated Funds
Districts(s):	All
Sole Source No.:	2022-0400

This is a Sole Source, service contract.

*******ADDITIONAL INFO BELOW*******



PURCHASING & STRATEGIC SOURCING DEPARTMENT

SOLE SOURCE AFFIDAVIT

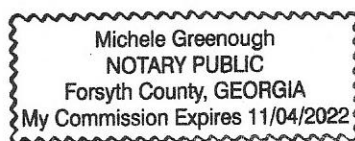
THIS IS AN OFFICIAL PURCHASING DOCUMENT-RETAIN WITH PURCHASE ORDER FILE

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 Roy Marler. 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: LexisNexis Coplogic Solutions, Inc.
3. The above named company or firm is the sole source for the following item(s), product(s) or service(s):
LexisNexis® Desk Officer Reporting System ("DORS")
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.**

Roy Marler
Signature

SUBSCRIBED AND SWORN to before me on this 14th day of January 2022



NOTARY PUBLIC Michele Greenough
PRINTED NAME Michele Greenough
MY COMMISSION EXPIRES 11/04/2022

Company Name: LexisNexis Coplogic Solutions, Inc.

Address, City, State, Zip: 1000 Alderman Drive, Alpharetta, Georgia 30005

Phone: (678) 694-6000

Contact Name: Anthony Gonzales, Law Enforcement Specialist, 210-296-6530, Anthony.Gonzales@lexisnexisrisk.com

Federal ID: 81-1745068

City 1 / 300 N. Campbell, 1st Floor / El Paso, Texas 79901 | (915) 212-1183 / WWW.ELPASOTEXAS.GOV/PURCHASING

Texas Sales ID Number:

January 5, 2022

El Paso Police Department
911 E. Raynor
El Paso, Texas 79903

RE: Sole Source Letter for El Paso Police Department

Dear Terry Manson,

The LexisNexis® Desk Officer Reporting System (“**DORS**”) is the wholly owned, intellectual property of LexisNexis Coplogic™ Solutions Inc. (“**LexisNexis**”). LexisNexis is the sole source for DORS licenses, ongoing support and maintenance services. DORS is able to interface with the Records Management Systems (RMS) vendors of most law enforcement agencies, including Hexagon On Call RMS.

Designed for law enforcement, DORS automates the reporting process for incidents occurring within a law enforcement agency’s jurisdiction. DORS collects and gathers information from a wide variety of report types – such as minor vehicle accidents and other incident reports – from members of the general public (“**Users**”). All reports filed using DORS can be automatically imported into most records management systems, with accurate and appropriate UCR and NIBRS compliant coding. DORS also has the ability to provide a separate secure filing area and login to allow agency-designated personnel such as loss prevention officers, to file dynamically created agency report types (e.g., shoplifting report).

DORS was created with security in mind. All information submitted by Users is collected and transferred via a 128 bit encrypted SSL connection and uses the J2EE standard. An email is generated to the Users once the report has been submitted. The system does not rely on cookies or User permissions. DORS issues a temporary report number to the Users and places the temporary report into an administrative holding area for review and modification by the appropriate administrator within your department. The administrator logs into the system via a 128 bit encrypted SSL connection to approve, reject, edit or print reports as appropriate. Rejecting a report deletes it from the system and sends an appropriate email to the User. Approving the report issues an official case number that is pulled from an upper-block of reserved case numbers, places it in a queue to be exported to your designated records management systems, and sends an appropriate email to the user. DORS also allows agency administrators to download and print approved reports.

To the best of our knowledge, DORS is the only online reporting solution with the *Report Merge* functionality – a process that actively monitors inbound reports for possible duplicates or supplements, and enables the agency reviewer to either merge the report as a supplement, mark as a duplicate or continue as an original.

DORS is configurable and gives the agency the ability to allow citizens to choose from several languages including English, Spanish, and Simplified Chinese. DORS also has the ability to include additional languages at the agency’s discretion.

CONFIDENTIAL AND PROPRIETARY INFORMATION OF LEXISNEXIS

1000 Alderman Drive | Alpharetta, GA 30005 | lexisnexis.com/risk

There is currently no other off the shelf solution on the market that provides the exact same features, configurability, capabilities, and security framework as DORS. DORS and related services are not available from any other vendor.

If you have any questions or require additional information, please do not hesitate to contact **Anthony Gonzales**. **Anthony Gonzales** can be reached by phone at 210-296-6530 or via email at Anthony.Gonzales@lexisnexisrisk.com.

Respectfully,

Roy Marler

Roy Marler
VP and General Manager, LexisNexis Coplogic Solutions
678.694.3872 (direct)
roy.marler@lexisnexisrisk.com



CONFIDENTIAL AND PROPRIETARY INFORMATION OF LEXISNEXIS

1000 Alderman Drive | Alpharetta, GA 30005 | lexisnexis.com/risk



Legislation Text

File #: 22-527, 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.

All Districts

Municipal Courts, Lilia Worrell (915) 212-5822

Purchasing and Strategic Sourcing, Claudia A. Garcia, (915) 212-1218

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: 2.7 - Maximize Municipal Court efficiency and enhance customer experience.

Award Summary:

Discussion and action, that after having provided adequate notice as required by Sec. 2254.1036 of the Texas Government Code, the Agreement for Delinquent Court Fines and Fees Services, pursuant to Solicitation 2022-0007R Collection Services for Delinquent Fines and Fees - Municipal Court, is awarded to Delgado Acosta Spencer Linebarger & Perez, LLP and that the City Manager, or his designee, is authorized to execute the Agreement and any related documents with Delgado Acosta Spencer Linebarger & Perez, LLP required to effectuate this award.

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

AGENDA DATE: May 10, 2022
PUBLIC HEARING DATE: Not Applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Lilia Worrell, Director of El Paso Municipal Court, (915) 212-5822
 Claudia A. Garcia, Interim Director of Purchasing & Strategic Sourcing, (915) 212-1218

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 2 – Set the Standard for a Safe and Secure City

SUBGOAL: 2.7 – Maximize Municipal Court efficiency and enhance customer experience.

SUBJECT:

That after having provided adequate notice as required by Sec. 2254.1036 of the Texas Government Code, the Agreement for Delinquent Court Fines and Fees Services, pursuant to Solicitation 2022-0007R Collection Services for Delinquent Fines and Fees - Municipal Court, is awarded to Delgado Acosta Spencer Linebarger & Perez, LLP and that the City Manager, or his designee, is authorized to execute the Agreement and any related documents with Delgado Acosta Spencer Linebarger & Perez, LLP required to effectuate this award.

BACKGROUND / DISCUSSION:

Since 2003, the Municipal Court has contracted with an outside collection agency as approved by the Texas Code of Criminal Procedures, Section 103.0031. The Court refers delinquent Class C warrants, warrant fees, and parking citations to the agency for collection. Each vendor submitted a minimum recovery rate for each account category, as well as a penalty fee associated with each category of accounts if the vendor fails to meet the guaranteed recovery rates.

It is important to note that no City money is paid to the collection agency. Section 103.0031 of the Texas Code of Criminal Procedure authorizes municipalities to pass on to the defendants and vehicle owners a 30% collection fee when an outside collection agency or firm is used.

SELECTION SUMMARY:

N/A

CONTRACT VARIANCE:

N/A

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Municipal Court

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

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

DEPARTMENT HEAD:

 on behalf of

Lilia Worrell – Director of El Paso Municipal Court

**COUNCIL PROJECT FORM
(REQUEST FOR PROPOSAL)**

*******POSTING LANGUAGE BELOW*******

Please place the following item on the **REGULAR** agenda for the Council Meeting of **MAY 10, 2022**.

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

The linkage to the Strategic Plan is subsection: 2.7 – Maximize Municipal Court efficiency and enhance customer experience.

Award Summary:

That after having provided adequate notice as required by Sec. 2254.1036 of the Texas Government Code, the Agreement for Delinquent Court Fines and Fees Services, pursuant to Solicitation 2022-0007R Collection Services for Delinquent Fines and Fees - Municipal Court, is awarded to Delgado Acosta Spencer Linebarger & Perez, LLP and that the City Manager, or his designee, is authorized to execute the Agreement and any related documents with Delgado Acosta Spencer Linebarger & Perez, LLP required to effectuate this award.

*******ADDITIONAL INFO BELOW*******

RESOLUTION

WHEREAS, there is a substantial need for the legal services to be provided pursuant to the Agreement for Delinquent Court Fines and Fees Services;

WHEREAS, these legal services cannot be adequately performed by the attorneys and supporting personnel of the City of El Paso at a reasonable cost;

WHEREAS, these legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of delinquent court fines and fees penalties provided by Texas Code of Criminal Procedure 103.0031 and because the City of El Paso does not desire to allocate the additional funds to pay the estimated amounts required under a contract only for the payment of hourly fees;

WHEREAS, Delgado Acosta Spencer Linebarger & Perez, LLP, is well qualified and competent to perform the legal services required to comply with the terms of the contract;

WHEREAS, Delgado Acosta Spencer Linebarger & Perez, LLP has provided these specialized legal services to the City of El Paso in the past and has been well satisfied with the quality and outcome of the legal services provided, and;

WHEREAS, the contract with Delgado Acosta Spencer Linebarger & Perez, LLP is the result of a procurement issued by the City of El Paso and to which Delgado Acosta Spencer Linebarger & Perez, LLP submitted a proposal to provide the requested services; and

WHEREAS, the parties agree that the contract for delinquent court fines and fees penalties is fair and reasonable.

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

That after having provided adequate notice as required by Sec. 2254.1036 of the Texas Government Code, the Agreement for Delinquent Court Fines and Fees Services, pursuant to Solicitation 2022-0007R Collection Services for Delinquent Fines and Fees - Municipal Court, is awarded to Delgado Acosta Spencer Linebarger & Perez, LLP and that the City Manager, or his designee, is authorized to execute the Agreement and any related documents with Delgado Acosta Spencer Linebarger & Perez, LLP required to effectuate this award.

(SIGNATURE PAGE FOLLOWS)

APPROVED this _____ day of _____, 2022.

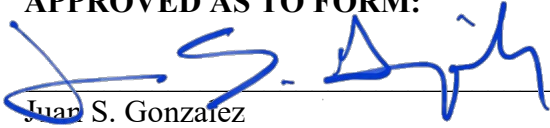
THE CITY OF EL PASO:

Oscar Leaser,
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Claudia A. Garcia

Claudia Garcia, Interim Director
Purchasing and Strategic Sourcing

NOTICE OF A PUBLIC MEETING

Notice is hereby given that a meeting of the City of El Paso City Council will be held on Tuesday, April 26th, 2022 at 9:00 AM for the purpose of considering and taking action on all matters on the agenda for the meeting, including approval of an agreement with the law firm of Delgado Acosta Spencer Linebarger & Perez, LLP as special counsel to perform all legal services necessary to collect delinquent court fines and fees and authorizing the execution of such agreement.

The agreement to be considered is necessary for the collection of delinquent fines and fees owed to the City of El Paso to be collected in the most effective manner. The City of El Paso desires that such delinquent court fines and fees be collected as provided in the Texas Code of Criminal Procedure.

The Delgado Acosta Spencer Linebarger & Perez, LLP firm is fully qualified to provide this representation, being partner with the largest delinquent court fines and fees law firm in the State of Texas, and having been engaged in this specialized legal service for more than 40 years. In addition, the Delgado Acosta Spencer Linebarger & Perez, LLP firm possesses infrastructure and technology, such as call center technology, that the City of El Paso does not currently possess.

Delgado Acosta Spencer Linebarger & Perez, LLP has and continues to represent the City of El Paso with competence and professionalism, in the collection of delinquent property taxes as well as court fines and fees.

The specialized legal services required by this agreement cannot be adequately performed by the attorneys and supporting personnel of the City of El Paso due to the high cost of implementing the appropriate infrastructure and technology and employing sufficient in-house attorneys and staff with the level of experience and competence necessary to perform these activities.

Delgado Acosta Spencer Linebarger & Perez, LLP will be compensated on a contingent fee basis as provided in the Texas Code of Criminal Procedure 103.0031. These Texas Code of Criminal Procedure sections specifically provide for an additional penalty on delinquent court fines and fees to compensate collection attorneys. A contract to pay inside or outside attorneys on an hourly basis would represent an additional cost to the City of El Paso.

Entering into the proposed agreement is in the best interests of the residents of the City of El Paso because the delinquent court fines and fees will be professionally and competently collected without the additional costs to the City of El Paso of implementing infrastructure and technology, and employing in-house personnel or paying outside counsel on an hourly fee basis which would otherwise be required.



Legislation Text

File #: 22-513, 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.

All Districts

Municipal Courts, Lilia Worrell (915) 212-5822

Purchasing and Strategic Sourcing, Claudia A. Garcia, (915) 212-1218

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: 2.7 - Maximize Municipal Court efficiency and enhance customer experience.

Award Summary:

Discussion and action on the award of Solicitation 2022-0007R Collection Services for Delinquent Fines and Fees - Municipal Court to Delgado Acosta Spencer Linebarger & Perez, LLP for an initial four (4) year term for an estimated amount of \$3,796,035.80. The award also includes, three (3), one (1) year options for an estimated amount of \$2,847,026.85. The total value of the contract is, including the initial term plus the options, for a total of seven (7) years, for an estimated amount of \$6,643,062.65. This contract will allow collection services for the Municipal Court.

Contract Variance:

No contract variance

Department:	Municipal Court
Award to:	Delgado Acosta Spencer Linebarger & Perez, LLP El Paso, TX
Item(s):	All
Annual Estimated Award:	\$949,008.95
Initial Term:	\$3,796,035.80 (4 years)
Option to Extend:	\$2,847,026.85 (3 years)
Total Estimated Award:	\$6,643,062.65 (7 years)
Account No.:	111-1000-11030-203400
Funding Source:	Collection Agency Payable
Districts(s):	All

This is a Request for Proposal (RFP), service contract.

The Purchasing & Strategic Sourcing and Municipal Court Departments recommend award as indicated to

Delgado Acosta Spencer Linebarger & Perez, LLP, the sole highest ranked proposer based on evaluation factors established for this procurement. 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 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: May 10, 2022
PUBLIC HEARING DATE: Not Applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Lilia Worrell, Director of El Paso Municipal Court, (915) 212-5822
Claudia A. Garcia, Interim Director of Purchasing & Strategic Sourcing, (915) 212-1218

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 2 – Set the Standard for a Safe and Secure City

SUBGOAL: 2.7 – Maximize Municipal Court efficiency and enhance customer experience.

SUBJECT:

Discussion and action on the award of solicitation 2022-0007R Collection Services for Delinquent Fines and Fees – Municipal Court to Delgado Acosta Spencer Linebarger & Perez, LLP for an initial four (4) year term for an estimated amount of \$3,796,035.80. The award also includes, three (3), one (1) year options for an estimated amount of \$2,847,026.85. The total value of the contract is, including the initial term plus the options, for a total of seven (7) years, for an estimated amount of \$6,643,062.65. This contract will allow collection services for the Municipal Court.

BACKGROUND / DISCUSSION:

Since 2003, the Municipal Court has contracted with an outside collection agency as approved by the Texas Code of Criminal Procedures, Section 103.0031. The Court refers delinquent Class C warrants, warrant fees, and parking citations to the agency for collection. Each vendor submitted a minimum recovery rate for each account category, as well as a penalty fee associated with each category of accounts if the vendor fails to meet the guaranteed recovery rates.

It is important to note that no City money is paid to the collection agency. Section 103.0031 of the Texas Code of Criminal Procedure authorizes municipalities to pass on to the defendants and vehicle owners a 30% collection fee when an outside collection agency or firm is used.

SELECTION SUMMARY:

Solicitation was advertised on November 30, 2021 and December 7, 2021. The solicitation was posted on City website on November 30, 2021. The email (Purmail) notification was sent out on December 2, 2021. There were a total twenty (20) viewers online; one (1) proposal was received; one (1) from a local vendor. An Inadequate Competition Survey was conducted.

CONTRACT VARIANCE:

N/A

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

N/A

2022-0007R Collection Services for Delinquent Fines and Fees

Revised 2/23/2022-V2 – Previous Versions Obsolete

AMOUNT AND SOURCE OF FUNDING:

Amount: \$6,643,062.65

Funding Source: Collection Agency Payable

Account: 111-1000-11030-203400

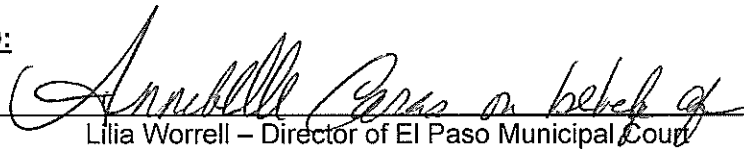
HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Municipal Court

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

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

DEPARTMENT HEAD:


Lilia Worrell – Director of El Paso Municipal Court

**COUNCIL PROJECT FORM
(REQUEST FOR PROPOSAL)**

*******POSTING LANGUAGE BELOW*******

Please place the following item on the **REGULAR** agenda for the Council Meeting of **MAY 10, 2022**.

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

The linkage to the Strategic Plan is subsection: 2.7 – Maximize Municipal Court efficiency and enhance customer experience.

Award Summary:

Discussion and action on the award of solicitation 2022-0007R Collection Services for Delinquent Fines and Fees – Municipal Court to Delgado Acosta Spencer Linebarger & Perez, LLP for an initial four (4) year term for an estimated amount of \$3,796,035.80. The award also includes, three (3), one (1) year options for an estimated amount of \$2,847,026.85. The total value of the contract is, including the initial term plus the options, for a total of seven (7) years, for an estimated amount of \$6,643,062.65. This contract will allow collection services for the Municipal Court.

Contract Variance:

No contract variance

Department:	Municipal Court
Award to:	Delgado Acosta Spencer Linebarger & Perez, LLP El Paso, TX
Item(s):	All
Annual Estimated Award:	\$949,008.95
Initial Term:	\$3,796,035.80 (4 years)
Option to Extend:	\$2,847,026.85 (3 years)
Total Estimated Award:	\$6,643,062.65 (7 years)
Account No.:	111-1000-11030-203400
Funding Source:	Collection Agency Payable
Districts(s):	All

This is a Request for Proposal (RFP), service contract.

The Purchasing & Strategic Sourcing and Municipal Court Departments recommend award as indicated to Delgado Acosta Spencer Linebarger & Perez, LLP, the sole highest ranked proposer based on evaluation factors established for this procurement. 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 be authorized to execute any related contract documents and agreements necessary to effectuate this award.

*******ADDITIONAL INFO BELOW*******

CITY OF EL PASO RFP SCORESHEET

PROJECT: 2022-0007R Collection Services for delinquent fines and fees

Delgado Acosta Spencer
Linebarger & Perez, LLP
El Paso, TX

MAX POINTS

Factor A - Proposed Minimum Recovery Rate

35

31.50

Factor B - Experience – Comparable Contracts

10

10.00

Factor C - References

10

2.99

Factor D – Employee Medical Benefit and Incentives

10

2.00

Factor E - Penalty Fee Proposal

35

33.00

TOTAL SCORE

100

79.49

Rank

1



CITY OF EL PASO
REQUEST FOR PROPOSALS TABULATION FORM



Bid Opening Date: January 19, 2022

Solicitation #: 2022-0007R

Project Name: Collection Services for Delinquent Fines and Fees

Department: Municipal Court

BIDDER'S NAME:	LOCATION:	AMENDMENT(S) ACKNOWLEDGED:
Delgado Acosta Spencer Linebarger & Perez, LLP	El Paso, TX	Yes
RFPs SOLICITED: 7 LOCAL RFPs SOLICITED: 1 RFPs RECEIVED: 1 LOCAL RFPs RECEIVED: 1 NO BIDS: 0		

NOTE: The information contained in this RFP tabulation is for information only and does not constitute actual award/execution of contract.

Approved: *LS*
514 e: 2/8/2022

Bidders list
2022-0007R Collection Services for Delinquent Fines and Fees

1465742128600 / 512134
Agility Net LLC
12005 Ford Rd Ste 400 Farmers Branch, Tx
75234-7230
CESAR HERENANDEZ

1752435999300 / 56115
Credit Systems International, Inc.
1277 Country Club Ln
Fort Worth, Tx 76112-2304
Darlene Mead

1742013959800 / 84379
Data Search Collection, Inc.
Po Box 461289
San Antonio, Tx 78246-1289
Vice President/Bill San Marco

1822743868800 / 527697
Basocom, LLC
3206 Coronado St
Irving, Tx 75062-4604
Michael Basoco

1752279921600 / 517701
Collectech Diversified Inc
1721 45th St
Lubbock, Tx 79412-1731
Judy Jordan

Delgado, Acosta, Spencer, Linebarger &
Perez, LLP
Attn: Carmen Perez
221 North Kansas St. Suite 1400
El Paso, TX 79901

Advanced Data Processing, Inc.
a Subsidiary of Intermedix Corporation
Attn: Mark SchiowE
480 Bedford Rd, Building 600 2nd Floor
Chappaqua, NY 10514

RESOLUTION

WHEREAS, there is a substantial need for the legal services to be provided pursuant to the Agreement for Delinquent Court Fines and Fees Services;

WHEREAS, these legal services cannot be adequately performed by the attorneys and supporting personnel of the City of El Paso at a reasonable cost;

WHEREAS, these legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of delinquent court fines and fees penalties provided by Texas Code of Criminal Procedure 103.0031 and because the City of El Paso does not desire to allocate the additional funds to pay the estimated amounts required under a contract only for the payment of hourly fees;

WHEREAS, Delgado Acosta Spencer Linebarger & Perez, LLP, is well qualified and competent to perform the legal services required to comply with the terms of the contract;

WHEREAS, Delgado Acosta Spencer Linebarger & Perez, LLP has provided these specialized legal services to the City of El Paso in the past and has been well satisfied with the quality and outcome of the legal services provided, and;

WHEREAS, the contract with Delgado Acosta Spencer Linebarger & Perez, LLP is the result of a procurement issued by the City of El Paso and to which Delgado Acosta Spencer Linebarger & Perez, LLP submitted a proposal to provide the requested services; and

WHEREAS, the parties agree that the contract for delinquent court fines and fees penalties is fair and reasonable.

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

That after having provided adequate notice as required by Sec. 2254.1036 of the Texas Government Code, the Agreement for Delinquent Court Fines and Fees Services, pursuant to Solicitation 2022-0007R Collection Services for Delinquent Fines and Fees - Municipal Court, is awarded to Delgado Acosta Spencer Linebarger & Perez, LLP and that the City Manager, or his designee, is authorized to execute the Agreement and any related documents with Delgado Acosta Spencer Linebarger & Perez, LLP required to effectuate this award.

(SIGNATURE PAGE FOLLOWS)

APPROVED this _____ day of _____, 2022.

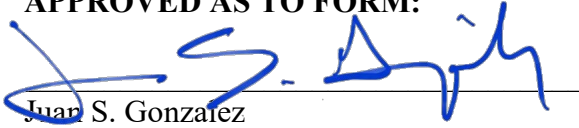
THE CITY OF EL PASO:

Oscar Leaser,
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Claudia A. Garcia

Claudia Garcia, Interim Director
Purchasing and Strategic Sourcing



Legislation Text

File #: 22-525, 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 6

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

Purchasing and Strategic Sourcing, Claudia A. Garcia, (915) 212-1218

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.

Discussion and action that the Purchasing Director is authorized to notify J.A.R. CONCRETE, INC. DBA J.A.R. CONSTRUCTION, INC., that the City is terminating Solicitation 2021-1037 Rojas Drive Widening without cause, pursuant to the provisions and requirements of section 3L of the Contract Clauses at the request from the contractor effective May 10, 2022.

Department: Capital Improvement

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

AGENDA DATE: May 10, 2022

PUBLIC HEARING DATE: Not Applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Sam Rodriguez, Chief Operations and Transportation Officer, Aviation Director
and City Engineer, (915) 212-1845
Claudia A. Garcia, Interim Director of Purchasing & Strategic Sourcing,
(915) 212-1218

DISTRICT(S) AFFECTED: 6

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

SUBGOAL: 7.2: Improve competitiveness through infrastructure improvements impacting the quality of life.

SUBJECT:

That the Purchasing Director is authorized to notify J.A.R. CONCRETE, INC. DBA J.A.R. CONSTRUCTION, INC., that the City is terminating Solicitation 2021-1037 Rojas Drive Widening without cause, pursuant to the provisions and requirements of section 3L of the Contract Clauses at the request from the contractor effective May 10, 2022

BACKGROUND / DISCUSSION:

City Council authorized award of Contract 2021-1037 Rojas Drive Widening to J.A.R. CONCRETE, INC. DBA J.A.R. CONSTRUCTION, INC., for \$8,312,690.32 on December 7, 2021. Following contract award, J.A.R. notified the City that they were requesting to terminate the contract. The City requested approval from TxDOT to terminate at J.A.R.'s request. TxDOT approved rescinding and rebidding the contract as per provisions in the solicitation, JAR will not be allowed to bid on the Rojas Drive Widening project when it is re-advertised.

The City anticipates re-advertising the project for bid in summer 2022.

SELECTION SUMMARY:

N/A

CONTRACT VARIANCE:

N/A

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

Contract 2021-1037 Rojas Drive Widening was awarded by City Council on December 7, 2021

AMOUNT AND SOURCE OF FUNDING:

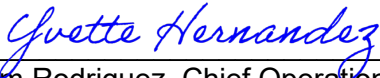
N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? _X_ YES ___ NO

PRIMARY DEPARTMENT: Capital Improvement
SECONDARY DEPARTMENT: Purchasing and Strategic Sourcing

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

DEPARTMENT HEAD:

 Yvette Hernandez/ for Sam Rodriguez

Sam Rodriguez, Chief Operations and Transportation Officer, Aviation Director and City Engineer

**COUNCIL PROJECT FORM
(Termination)**

*******POSTING LANGUAGE BELOW*******

Please place the following item on the **Consent agenda** for the Council Meeting of **May 10, 2022.**

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.

That the Purchasing Director is authorized to notify J.A.R. CONCRETE, INC. DBA J.A.R. CONSTRUCTION, INC., that the City is terminating Solicitation 2021-1037 Rojas Drive Widening without cause, pursuant to the provisions and requirements of section 3L of the Contract Clauses at the request from the contractor effective May 10, 2022.

RESOLUTION

WHEREAS, on December 7, 2021 the City of El Paso (“City”) awarded Contract No. 2021-1037 Rojas Dr. Widening to J.A.R CONCRETE, INC. DBA J.A.R CONSTRUCTION, INC. for \$8,312,690.32 (“Vendor”); and

WHEREAS, the City desires to terminate the Contract without cause and for convenience, pursuant to the provisions and requirements of section 3L of the Contract.

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

That the Purchasing Director is authorized to notify Vendor that City is terminating awarded Contract No. 2021-1037 Rojas Dr. Widening for convenience, pursuant to the provisions and requirements of the Contract, and that the termination shall be effective as of May 10, 2022.

PASSED AND APPROVED this _____ day of _____, 2022.

THE CITY OF EL PASO:

Oscar Lesser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO CONTENT:

Claudia A. Garcia

Claudia A. Garcia, Interim Director
Purchasing & Strategic Sourcing

APPROVED AS TO FORM:

Russell T. Abeln

Russell T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:

Gvette Hernandez

For Sam Rodriguez, Chief Operations and
Transportation Officer, Aviation
Director and City Engineer



Legislation Text

File #: 22-176, 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.

All Districts

Police, Assistant Chief Peter Pacillas, (915) 212-4308

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 9.40 (Noise), Section 9.40.020 (Applicability) to clarify the Reasonable Sensibilities Standard; Section 9.40.030 (Sound Level Violations) to clarify the maximum sound level, that sound levels apply to properties producing the noise, and the locations of sound readings; Section 9.40.040 (Vibration) to clarify that Vibration Violations can occur on any affected property; Section 9.40.070 (Penalties) to clarify that the city may seek civil action and penalties of up to \$1,000 per day; Section 9.40.080 (Enforcement) to clarify which departments have authority to enforce; the penalty as provided in Section 9.40.070 of the City Code. [POSTPONED FROM 03-01-2022 AND 04-26-2022]

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

AGENDA DATE: 02/15/22

PUBLIC HEARING DATE: 03/01/2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Assistant Chief Peter Pacillas, 915-212-4308

DISTRICT(S) AFFECTED: All

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

SUBGOAL: 2.1-Maintain standing as one of the nation's top safest cities.

SUBJECT:

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.40 (NOISE), SECTION 9.40.020 (APPLICABILITY) TO CLARIFY THE REASONABLE SENSIBILITIES STANDARD; SECTION 9.40.030 (SOUND LEVEL VIOLATIONS) TO CLARIFY THE MAXIMUM SOUND LEVEL, THAT SOUND LEVELS APPLY TO PROPERTIES PRODUCING THE NOISE, AND THE LOCATION OF SOUND READINGS; SECTION 9.40.040 (VIBRATION) TO CLARIFY THAT VIBRATION VIOLATIONS CAN OCCUR ON ANY AFFECTED PROPERTY; SECTION 9.40.070 (PENALTIES) TO CLARIFY THAT THE CITY MAY SEEK CIVIL ACTION AND PENALTIES OF UP TO \$1,000 PER DAY; SECTION 9.40.080 (ENFORCEMENT) TO CLARIFY WHICH DEPARTMENTS HAVE AUTHORITY TO ENFORCE; THE PENALTY AS PROVIDED IN SECTION 9.40.070 OF THE CITY CODE.

BACKGROUND / DISCUSSION:

PRIOR COUNCIL ACTION:

City Council passed and approved Ordinance No. 018908 on February 26, 2019, amending Chapter 9.40 of the El Paso City Code relating to noise nuisance.

AMOUNT AND SOURCE OF FUNDING:

N/A

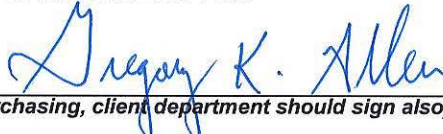
HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Police

SECONDARY DEPARTMENT: City Attorney's Office

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

DEPARTMENT HEAD: Chief Gregory K. Allen



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

ORDINANCE NO. ____

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.40 (NOISE), SECTION 9.40.020 (APPLICABILITY) TO CLARIFY THE REASONABLE SENSIBILITIES STANDARD; SECTION 9.40.030 (SOUND LEVEL VIOLATIONS) TO CLARIFY THE MAXIMUM SOUND LEVEL, THAT SOUND LEVELS APPLY TO PROPERTIES PRODUCING THE NOISE, AND THE LOCATION OF SOUND READINGS; SECTION 9.40.040 (VIBRATION) TO CLARIFY THAT VIBRATION VIOLATIONS CAN OCCUR ON ANY AFFECTED PROPERTY; SECTION 9.40.070 (PENALTIES) TO CLARIFY THAT THE CITY MAY SEEK CIVIL ACTION AND PENALTIES OF UP TO \$1,000 PER DAY; SECTION 9.40.080 (ENFORCEMENT) TO CLARIFY WHICH DEPARTMENTS HAVE AUTHORITY TO ENFORCE; THE PENALTY AS PROVIDED IN SECTION 9.40.070 OF THE CITY CODE.

WHEREAS, the El Paso City Council passed and approved Ordinance No. 018908 on February 26, 2019, amending Chapter 9.40 of the El Paso City Code relating to noise nuisance; and

WHEREAS, the El Paso Police Department has responded to 131 calls for police service regarding noise disturbances from April 2021 to January 2022; and

WHEREAS, the El Paso Police Department and Code Enforcement has taken approximately 2,062 readings from various business establishments from April 2021 to January 2022; and

WHEREAS, approximately 50 of the 2,062 readings, or 2.42% of total readings, resulted in violations of the El Paso City Code; and

WHEREAS, the El Paso City Council wishes to further amend Chapter 9.40 of the El Paso City Code, to clarify the requirements of the Chapter.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS THAT:

Section 1. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.020 (Applicability), Subsection B.5. shall be amended as follows:

5. Exterior loudspeakers. Operating or permitting to be operated any loudspeaker or sound-amplifying equipment in a fixed or movable position in or upon any street, alley, sidewalk, park, place, or public or private property for the purpose of commercial advertising, giving instructions, directions, talks, addresses, lectures, or transmitting music to any persons or assemblages of persons in such a manner as to unreasonably disturb or interfere with the sleep, peace, comfort, or repose of a person of reasonable sensibilities.

Section 2. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.030 (Sound level violations), Subsections A. and B. shall be amended and Subsection D. added as follows:

- A. It shall be unlawful for any person to conduct, permit, allow, or produce a sound that is discernable beyond the property lines of the property on which the sound is

ORDINANCE NO. _____

22-1152-1154 | PL#1146122

TITLE 9.40 – Amendment - Noise

being produced that, when measured with a sound level meter using the standardized frequency weighting as specified by the American National Standards Institute, exceeds sixty-five dB(A) between the hours of 10:00 p.m. and 7:00 a.m. daily for the property on which the sound is produced.

- B. The dB(A) levels set forth in this section apply to a property where the sound is being produced. Any sound that when measured at the property where the sound is being produced exceeds the dB(A) level set forth in this section is a violation of this chapter.
- C. Procedure. Sound levels regulated in this chapter shall be measured in accordance with a city-adopted policy.
- D. Reading Locations. The location selected for measuring noise levels shall be at the property line of the property producing the noise.

Section 3. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.040 (Vibration), shall be amended as follows:

It shall be unlawful for any person to create, maintain or cause any ground or airborne vibration which is perceptible without instruments by a person at any point on any affected property, in such a manner as to unreasonably disturb or interfere with the sleep, peace, comfort and repose of a person of reasonable sensibilities, unless such activity is otherwise regulated under other applicable law.

Section 4. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.070 (Penalties), Subsection 9.40.070.C. shall be amended as follows:

- C. In addition to proceeding under authority of subsections A. and B. of this section, the city is entitled to pursue all other criminal and civil remedies to which it is entitled under authority of statutes, including a civil action in accordance with Chapter 54 of the Texas Local Government Code to recover a civil penalty not to exceed \$1,000 for each day or portion of a day during which the violation is committed, continued, or permitted, or other ordinances against a person that remains in violation of this chapter.

Section 5. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.080 (Enforcement), shall be amended as follows:

The director of the planning and inspections department, the director of code enforcement, or the police chief or their designated representatives, shall be responsible for the enforcement of this chapter.

Section 6. Except as herein amended, Title 9 (Health and Safety), Chapter 9.40 (Noise) of the El Paso City Code shall remain in full force and effect.

(Signatures begin on following page)

ORDINANCE NO. _____

22-1152-1154 | PL#1146122

TITLE 9.40 – Amendment - Noise

ADOPTED this ____ day of _____, 2022.

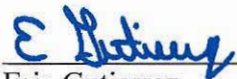
CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

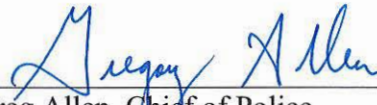
Laura D. Prine
City Clerk

APPROVED AS FORM:



Eric Gutierrez
Assistant City Attorney

APPROVED AS TO CONTENT:



Greg Allen, Chief of Police
El Paso Police Department

ORDINANCE NO. _____
22-1152-1154 | PL#1146122
TITLE 9.40 – Amendment - Noise



Ordinances Amending
TITLE 9 – Health and Safety
Noise Nuisance

TITLE 5 – Business License and Permit Regulations
Sound Amplification Permit

GOAL 2 – Set Standard for a Safe & Secure City

Strategic Goal Alignment

- 2.1 Maintain standing as one of the nation's top safest cities
- 2.2 Strengthen community involvement in resident safety
- 2.3 Increase public safety operational efficiency
- 2.8 Implement effective code enforcement strategies to reduce nuisances, enhance visual appearance and improve overall health and safety
- 6.4 Implement leading-edge practices for achieving quality and performance excellence
- 6.5 Deliver services timely and efficiently with focus on continual improvement



Review:

- Current law
- Benchmarking other cities
- Existing data and data gathering processes
- Proposed amendments

2 Sources of Current Law

- EP Code Chapter 9.40 Noise Nuisance
 - Amended in 2019
 - General noise nuisance
 - Three categories of violations: 1) noise higher than 70 dB between 10 p – 7 a
 - 2) reasonable sensibilities standard 3) vibrations
 - Violations: max fine of \$500/day
- EP Code Chapter 5.03 - Amplified Sound Permit
 - Created in 2019
 - Only if business is within 350 feet of a residence
 - Permit allows for amplified sound up to 70 dB from 10 pm to midnight
 - No outdoor amplified sound after midnight
 - Violations: max fine of \$2,000/day

Texas Cities – Noise Ordinances

City	Max Decibel Level	Location of Reading	Time Restrictions
El Paso (current)	70 dB	Property receiving the noise	10 p – 7 a
El Paso (pre-2019)	60-65 dB for commercial properties	Property producing the noise	10 p – 7 a (65 dB) 7 a – 10 p (60 dB)
Austin	85 dB 70 dB (if property is a restaurant)	Property producing the noise	10 a – 2 a
Dallas	Greater of 49 dB or 5 dB above background (if adjacent to residential); greater of 49-63 dB or 5 dB above background (if not adjacent)	Property producing the noise	10 p
Houston	Nonresidential: 68 dB Residential: 65 dB (day); 58 dB (night)	Property receiving the noise	Enforceable 24/7
San Antonio	Business: 70 dB; residential: 63 dB (day) Business: 63 dB; Residential: 56 dB (night) (Riverwalk District allows 72/80)	Property receiving the noise	10 p

Texas Cities – Permits for Sound Amp

City	Max Decibel Level	Location of Reading	Time Restrictions	Distance from Residential
El Paso (current)	70 dB	Property producing the noise	Permit required 10 p – midnight; no sound amp after midnight	350 ft
Austin	85 dB	At commercial property line	Sun – Thurs: 8 p Fri – Sat: 10 p	600 ft
Dallas	N/A	N/A	N/A	N/A
Houston	75 dB	At nearest receiving property line	Sun – Thurs: 8 a – 10 p; Friday – Sat: 8 am – 11p	Permit required for all businesses playing amp sound
San Antonio	N/A	N/A	N/A	N/A

Timeline

- 2/26/2019
 - Amendments to both chapters passed
 - Floor Amendments passed:
 - Excluding DMD (from Chapter 5 permit)
 - Adding 350 distance requirement from residence (for Chapter 5 permit)
 - Chapter 5 permitting appeal to City Council
 - Revisit in six months
- 8/20/19, 9/3/19: postponed
- 10/15/19
 - Proposed amendments: to extend permit time frame to 2 am with sound impact plan and mitigation equipment installed
 - Not passed, revisit in six months
- COVID
- Reopening of businesses



Outreach

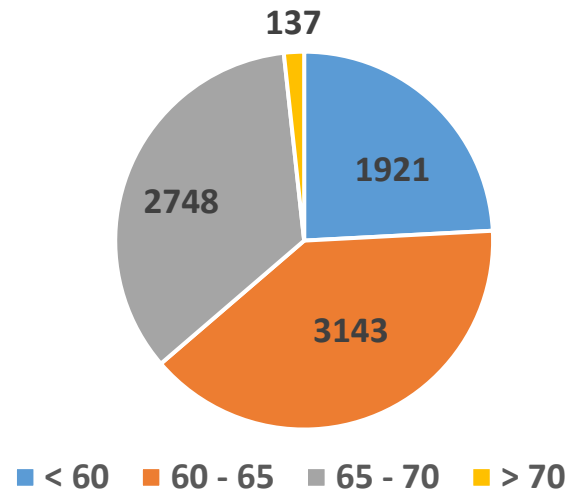
- Neighborhood meetings
- Citizen calls
- El Paso Police Department – Regional Command meetings
 - Citizens – Neighborhood Associations - Businesses
- Entertainment District Cross Functional Team
 - Operational Departments:
 - Police Department
 - Code Enforcement
 - Planning and Inspections
 - Streets and Maintenance
 - City Attorney's Office
 - District Representatives #1, 2, 5, and 7

“Entertainment Districts” Noise Enforcement

Number of Noise Readings – 4/22/21-1/22/22

Count of Violation				
Command	Code Enforcement	PD	None	Grand Total
Central	17	1	2,108	2,269
Mission Valley	0	0	283	283
Pebble Hills	4	0	3,423	3,143
Westside	38	12	2,061	2,113
Grand Total	59	13	7,875	7,947

Over 70 db = 1.72%
 65 to 70 db = 34.57%
 60 to 65 db = 39.54%
 60 db or less = 24.17%



Total
Readings:
7,949

“Entertainment Districts” Noise Enforcement

2021:

PD Commands	# Readings	# Venues	Ave dB	# Violations
Westside • 200 Cincinnati	1,625	16	66 dB	50
Pebble Hills • 3000 Zaragoza • 2100 Zaragoza • 1700 Zaragoza • 1400 Zaragoza • 1100 Airway • 1500 G. Dieter • 12000 Tierra Este • 11400 Montana • 10700 Pebble Hills	2,878	31	62 dB	4
Central • Downtown-DMD	374	13	60 dB	1
Central • 5 Points	1,544	15	62 dB	17
Total	6,421	75	62.5 dB	72

Cincinnati Area Special Operations

Noise Enforcement

April 22, 2021 – Jan 22, 2022

- Noise Violations – Cincinnati Entertainment District: 50
- **DB Actual Average = 63.03**
- **DB Ambient Average = 59.86**

April 22, 2021 – Jan 22, 2022

Noise Disturbance Calls:

- 131 Calls for Police Service:
- Noise Disturbance / Nuisance Calls

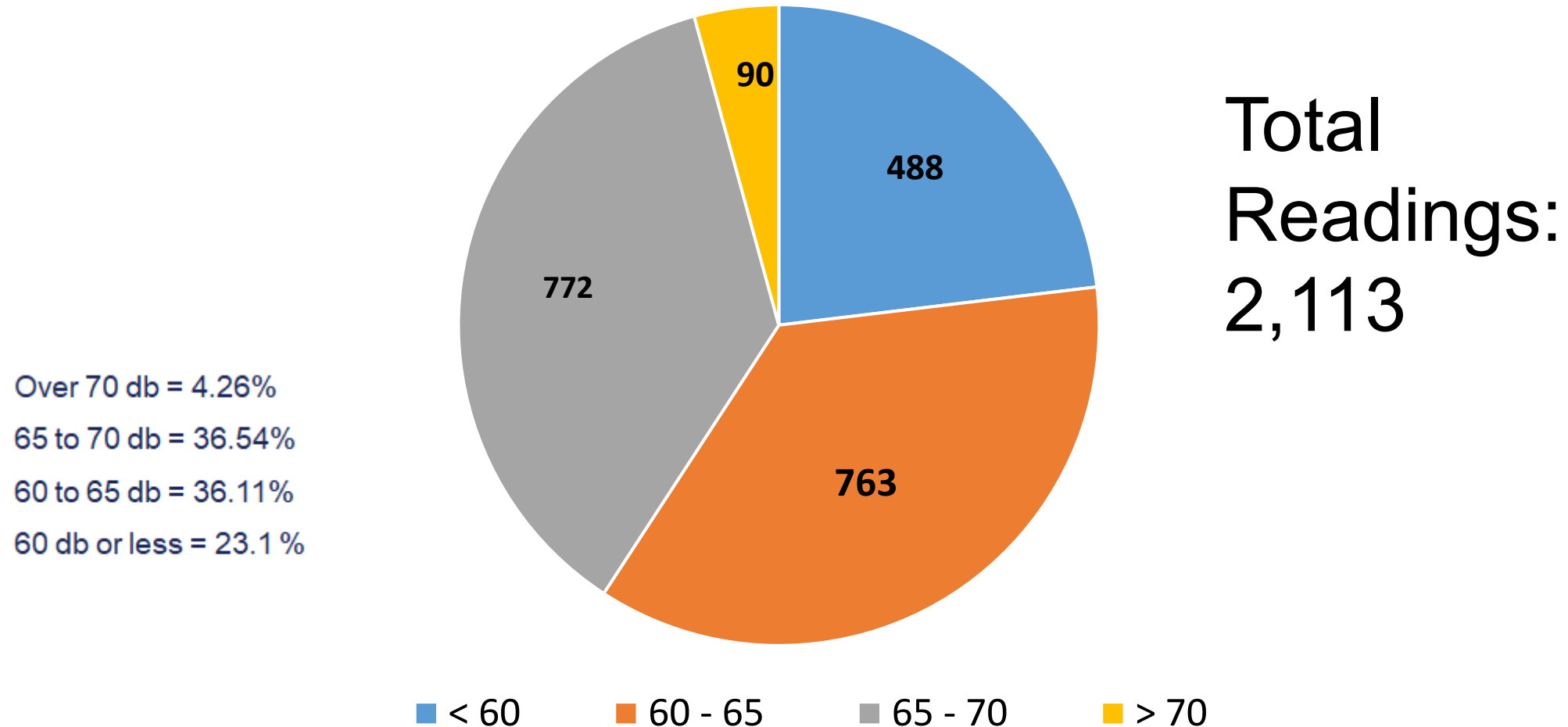
Cincinnati Area Special Operations

Noise Readings and Violations

Count of Violation				
Business	Code Enforcement	Police	None	Grand Total
Champagne Villain	1		218	219
Chino Chido			78	78
College Dropout	4	2	185	191
Ditzy Duck	6	1	121	128
El Rey Muerto			2	2
Faded Barber	1		6	7
Fools Gold	3		195	198
Geogeske G2			169	169
Good Times	4		213	217
Lost And Found Bar	3	1	225	229
Palomino	8	4	208	220
Profe	5	4	154	163
Rockin Cigar			208	208
Sister Esthers Bar	3		80	83
Spirit Of 66			1	1
Grand Total	38	12	2063	2113

Cincinnati Area Special Operations

Number of Noise Readings – 4/22/21 - 1/22/22





Proposed Changes

TITLE 9, CHAPTER 9.40

Noise

Proposed Revisions – Ch. 9.40

- Reasonable Sensibilities standard
 - Clarifying violations can occur at any time of the day if noise unreasonably disturbs or interferes with the sleep, peace, comfort, or repose of a person of reasonable sensibilities
- Location of Reading
 - Revising location from property line of the property receiving the noise to property line of the property producing the noise
- Decibel Level
 - Lowering from 70 dB to 65 dB
- Vibration Violations
 - Revising requirement from adjoining properties to affected property.

Penalties – 9.40.070

- Class C Citation: max of \$500/day
- Additionally, the city may, in accordance with Chapter 54 of the Texas Local Government Code, bring a civil action against a person violating a provision of this chapter.
- The civil action may include civil penalties of up to \$1,000/day



TITLE 5, CHAPTER 5.03

Amplified **Sound** Permit

Sound Amplification Permit

- Any business entity that utilizes amplification equipment at a non-residential property within 350 feet of a residential property must get a sound amplification permit
 - Outdoor Area
 - 10:00PM to 12:00AM
 - 70 Decibels



Sound Amplification Permits

- # of businesses with sound amp permit as of 1/20/22: 2
- # of businesses with pending applications: 0
- # of businesses denied: 0



Proposed Revisions – Ch. 5.03

- Revise definition of "Outdoor Area" to clarify that roll-up style doors, open doors, and windows constitute an outdoor area.
- Lowering decibel level from 70 dB to 65 dB
- Expand location requirement from 350 ft. to 500 ft. from residences.
- Written notice to neighbors expanded to 500 ft. (from 300 ft.); written responses expanded to 300 ft. (from 150 ft.).
- Lower revocation threshold from ten citations to two citations.
- Clarify that the City may seek injunctive relief for violations under the Texas Local Government Code.
- ***Not applicable to Downtown Management District – no change.



Sound Amplification Permit Process

Application submitted and reviewed for completeness If incomplete returned to applicant for corrections to applicant	2 days
If complete Routed to GIS planner to develop mailing labels of parcels within 150' and 350' to be notified.	2 days
Site Inspection conducted to verify on-site posting and location of outdoor amplification equipment	2 days
Notification of intent to acquire permit mailed	2 days
30 day response allowance for notified parties	30 days
Review of responses from notified parties	2 days
Permit issuance If less than 25% of residential properties within 150' object – permit issued If more than 25% of residential properties within 150' object – permit denied	1 day
Approximate time for permit issuance/denial	40-45 days



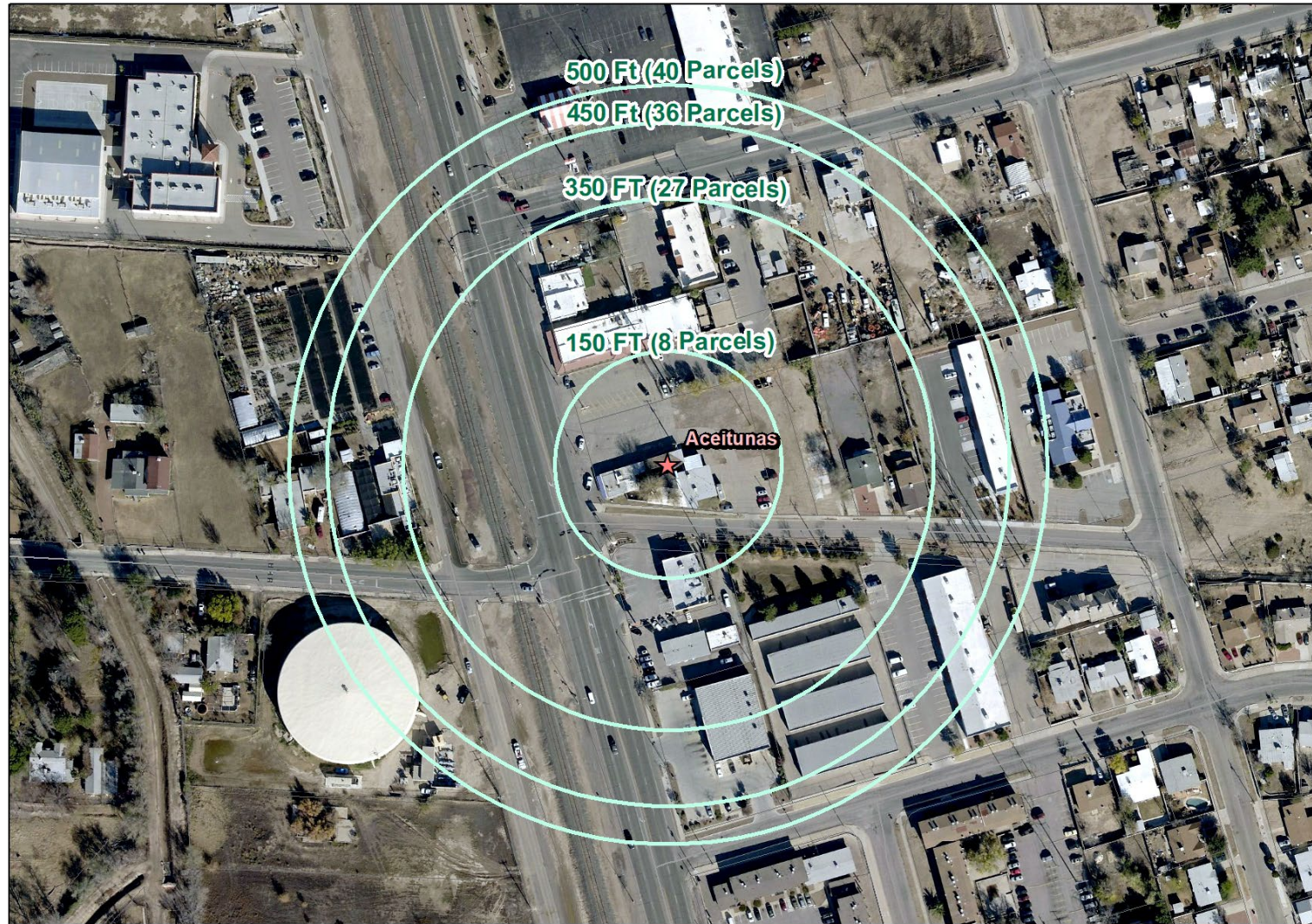
Establishment Survey

Police Regional Command Area	Outdoor Sound Amp	No Outdoor Sound Amp	Total
Central	50 (11 DMD exempt)	78	128
Mission Valley	8	26	34
West Side	59	113	172
Pebble Hills	88	183	271
Northeast	17	16	33
	222	416	638

34 % of establishments have outdoor sound amplification ability



Westside Regional Command



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.



★ Patio Center
□ Buffers

0 75 150 300 450 600 Feet



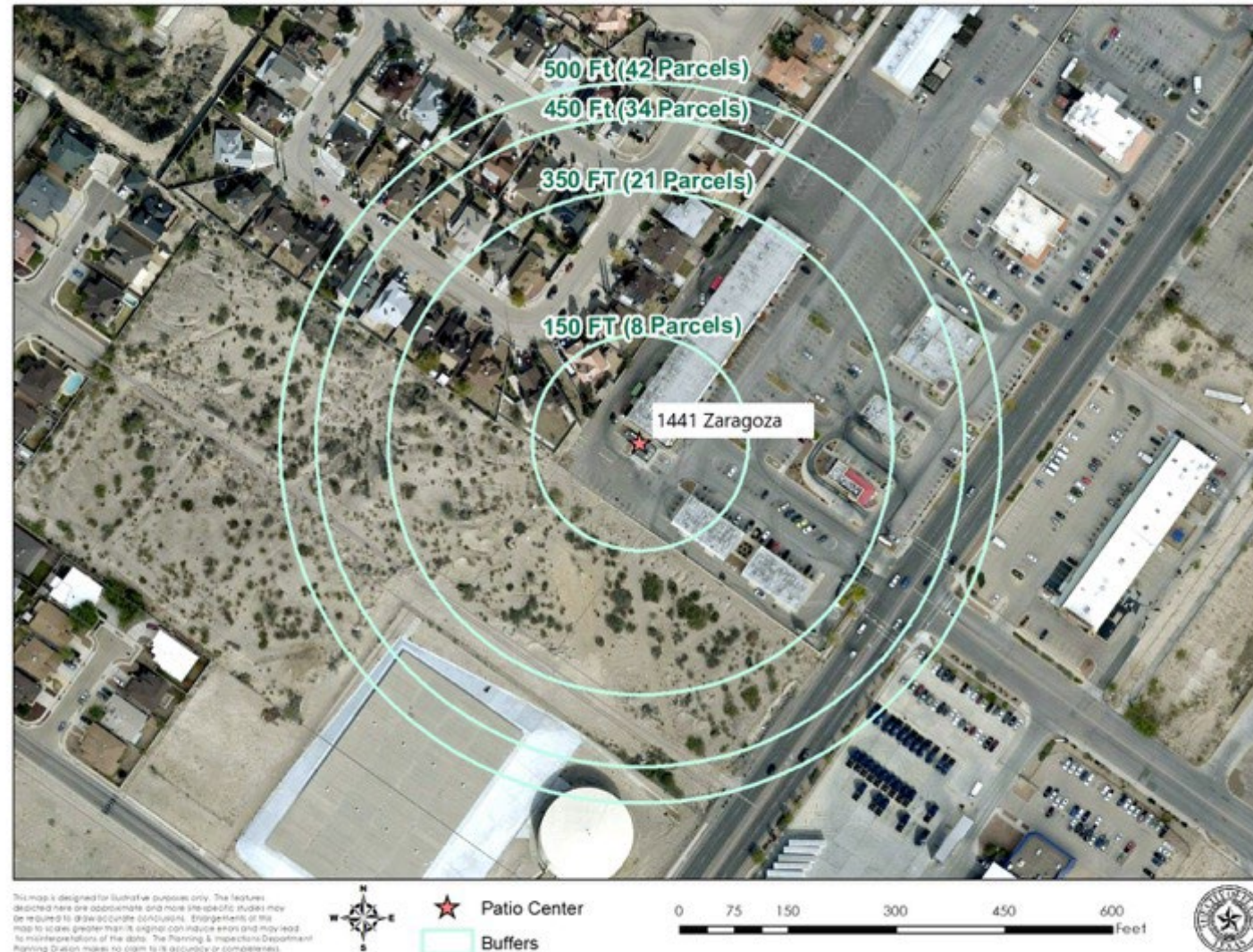
Pebble Hills Regional Command



Westside Regional Command



Pebble Hills Regional Command



Pebble Hills Regional Command



Central Regional Command





City Attorney's Office Prosecutors

Citizen Complaint Packets

- Reasonable Sensibilities Cases
- Now available to the public at the CAO website
 - <https://www.elpasotexas.gov/city-attorney/complaint-forms/>
- Videos strongly encouraged
- Identification of violating party and other elements of offense

Municipal Court Cases

- Citations/Notices of Violations from Police/Code:92
 - Violations: Max decibel level, no permit, vibrations
 - Plea/paid fine: 4
 - Reset: 59
 - Warrants: 28
 - Dismiss: 1
- City Attorney's Office cases under Reasonable Sensibilities standard in 2021-Feb 2022: 39
 - 31 Accepted
 - 6 reset
 - 25 awaiting first setting
 - 8 rejected

Questions?

Mission

Deliver exceptional services to support a high quality of life and place for our community

Values

Integrity, **R**espect, **E**xcellence,
Accountability, **P**eople

Vision

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government



Legislation Text

File #: 22-216, 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.

All Districts

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

Planning and Inspections, Tony De La Cruz, (915) 212-1589

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 5.03 (Amplified Sound Permit), Article I (General Provisions), Section 5.03.020 (A) and Section 5.03.020 (E) (Definitions), Article II (Permit Application Process) Section 5.03.040 (B) (3) (Permit Application Processing), Article III (Denial, Suspension, Revocation, and Appeals) Section 5.03.080 (B) (5) and Section 5.03.090 (A) (2), Article IV (Permit Standards), Section 5.03.110 (A) (Permit Standards), Article VI (Violation; Penalty) Section 5.03.130 (C) Violation and adding Section 5.03.130 (E); The penalty as provided in 5.03.130 of the El Paso City Code.
[POSTPONED FROM 03-01-2022 AND 04-26-2022]

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

AGENDA DATE: February 15, 2022
PUBLIC HEARING DATE: March 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553
Tony De La Cruz, (915) 212-1589

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

SUBGOAL: 3.1 Provide business friendly permitting and inspection process
3.2 Set one standard for infrastructure across the city

SUBJECT:

AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.03 (AMPLIFIED SOUND PERMIT), ARTICLE I (GENERAL PROVISIONS), SECTION 5.03.020(A) AND SECTION 5.03.020(E) (DEFINITIONS), ARTICLE II (PERMIT APPLICATION PROCESS) SECTION 5.03.040(B)(3) (PERMIT APPLICATION PROCESSING), ARTICLE III (DENIAL, SUSPENSION, REVOCATION, AND APPEALS) SECTION 5.03.080(B)(5) AND SECTION 5.03.090(A)(2), ARTICLE IV (PERMIT STANDARDS), SECTION 5.03.110(A) (PERMIT STANDARDS), ARTICLE VI (VIOLATION; PENALTY) SECTION 5.03.130(C) VIOLATION AND ADDING SECTION 5.03.130(E); THE PENALTY AS PROVIDED IN 5.03.130 OF THE EL PASO CITY CODE.

BACKGROUND / DISCUSSION:

Council direction to review and update the sound amplification permit ordinance for applicability and enforcement.

PRIOR COUNCIL ACTION:

City Council passed and approved Ordinance No. 018907 on February 26, 2019, amending Chapter 5.03 of the El Paso City Code relating to outdoor sound amplification.

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES ___ NO

PRIMARY DEPARTMENT: Planning & Inspections, Planning Division

SECONDARY DEPARTMENT: City Attorney's Office

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

DEPARTMENT HEAD:

Philip Etiwe

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.03 (AMPLIFIED SOUND PERMIT), ARTICLE I (GENERAL PROVISIONS), SECTION 5.03.020(A) AND SECTION 5.03.020(E) (DEFINITIONS), ARTICLE II (PERMIT APPLICATION PROCESS) SECTION 5.03.040(B)(3) (PERMIT APPLICATION PROCESSING), ARTICLE III (DENIAL, SUSPENSION, REVOCATION, AND APPEALS) SECTION 5.03.080(B)(5) AND SECTION 5.03.090(A)(2), ARTICLE IV (PERMIT STANDARDS), SECTION 5.03.110(A) (PERMIT STANDARDS), ARTICLE VI (VIOLATION; PENALTY) SECTION 5.03.130(C) VIOLATION AND ADDING SECTION 5.03.130(E); THE PENALTY AS PROVIDED IN 5.03.130 OF THE EL PASO CITY CODE.

WHEREAS, City Code Title 5 (business License and Permit Regulations), contains various sections regarding permits for various topics;

WHEREAS, On February 26, 2019 City Council enacted Ordinance 018907 establishing a Sound Amplification Permit; and

WHEREAS, City Council now desires to amend Title 5 of the City Code in order to make revisions to improve the Sound Amplification Permit function and process.

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 5.03 (Amplified Sound Permit) Article I (General Provisions) Section 5.03.020(A) and Section 5.03.020(E) (Definitions) be amended and replaced as follows:

5.03.020 (Definitions)

A. “Establishment” means any business entity in the City that utilizes amplification equipment at a non-residential property located within five hundred feet of a residential property as defined in this chapter, measured from the center of the outdoor area closest to the residential property, for the purpose of emitting sound to any outdoor area on the premises between the hours of 10:00 p.m. and 12:00 a.m.

E. “Outdoor Area” means any portion of the establishment premises that is not fully enclosed by permanent, solid walls and a roof, (including open roll-up-style doors, open windows, or open doors) where sound amplification equipment will be utilized for the enjoyment of establishment customers, includes fixed, non-portable structures used in conjunction with sound amplification equipment, including but not limited to stages, decks, risers, and lighting support structures.

Section 2. That Title 5 (Business License and Permit Regulations) Chapter 5.03 (Amplified Sound Permit) Article II (Permit Application Process) Section 5.03.040(B)(3) (Permit Application Processing) be amended and replaced as follows:

5.03.040 (Permit Application Processing)

B. Notification

1. On behalf of the applicant, the City must issue written notice of intent to acquire a permit to any property owner and any neighborhood association within a five hundred foot radius, measured from the center point of the outdoor area of the establishment. Each notification shall provide recipients with pertinent information to inform the city of the recipients' opportunity to provide comment on the application,

3. On behalf of the applicant, the permit official shall notify every abutting residential property owner and any other residential property owner(s) within a three hundred foot radius, measured from the center point of the outdoor area of the establishment, for the purpose of securing a written response from each notified property owner. Each notification shall provide recipients with pertinent information regarding his or her opportunity to contest an application. The written response to an opportunity to contest shall allow a person to submit evidence and specific reasons why the issuance of the permit would be detrimental to the community.

Section 3. That Title 5 (Business License and Permit Regulations) Chapter 5.03 (Amplified Sound Permit) Article III (Denial, Suspension, Revocation, and Appeals) Section 5.03.080(B)(5) (Denial) be amended and replaced as follows:

5.03.080 (Denial)

B. The permit official finds:

5. That more than twenty-five percent of the notified residential property owners within three hundred feet of the outdoor area provide the permit official with a written response contesting the permit;

Section 4. That Title 5 (Business License and Permit Regulations) Chapter 5.03 (Amplified Sound Permit) Article III (Denial, Suspension, Revocation, and Appeals) Section 5.03.090(A)(2) (Suspension and Revocation) be amended and replaced as follows:

2. Except in the case of a compliance plan approved by the permit official, during the time frame covered by the plan, the permit holder is found, after notice to the permit holder and opportunity for hearing, to be in violation of a provision of this chapter or a rule adopted under this chapter, including, but not limited to the issuance of more than two citations resulting from Chapter 9.40 of the City Code, or more than two issued violations of the permit at the establishment;

Section 5. That Title 5 (Business License and Permit Regulations) Chapter 5.03 (Amplified Sound Permit) Article IV (Permit Standards) Section 5.03.110(A) (Permit Standards) be amended and replaced as follows:

5.03.110 (Permit Standards)

A. An establishment under a permit shall be allowed to emit sound up to 65 dB(A), measured by a sound meter at the property boundary.

Section 6. That Title 5 (Business License and Permit Regulations) Chapter 5.03 (Amplified Sound Permit) Article VI (Violations; Penalty) Section 5.03.130(C) (Violation) be amended and replaced as follows:

5.03.130 (Violation)

C. The City may suspend or revoke the permit when more than two violations of Chapter 9.40 have been documented and citations issued to the permit holder at the establishment to either the establishment owner, employee, or individual in control of the establishment at the time of issuing the citation.

Section 7. That Title 5 (Business License and Permit Regulations) Chapter 5.03 (Amplified Sound Permit) Article VI (Violations; Penalty) Section 5.03.130 (Violation) be amended to add Section 5.03.130(E) as follows:

5.03.130(E) (Violation)

E. The city may, in accordance with Chapter 54 of the Texas Local Government Code, bring a civil action against a person violating a provision of this chapter. The civil action may include, but is not limited to, a suit to recover a civil penalty pursuant to Section 54.017 of the Texas Local Government Code not to exceed \$1,000 for each day or portion of a day during which the violation is committed, continued, or permitted.

Except as herein amended, Title 5 of the El Paso City Code shall remain in full force and effect.

ADOPTED this _____ day of _____, 2022.

THE CITY OF EL PASO:

Oscar Leaser, Mayor

ATTEST:

Laura D. Prine, City Clerk

(Signatures Continued on Following Page)

APPROVED AS TO FORM:

Russell Abeln

Russell T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT

Philip Etiwe

Philip F. Etiwe, Director
Planning & Inspections Department

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.03 (AMPLIFIED SOUND PERMIT), ARTICLE I (GENERAL PROVISIONS), SECTION 5.03.020(A) AND SECTION 5.03.020(E) (DEFINITIONS), ARTICLE II (PERMIT APPLICATION PROCESS) SECTION 5.03.040(B)(3) (PERMIT APPLICATION PROCESSING), ARTICLE III (DENIAL, SUSPENSION, REVOCATION, AND APPEALS) SECTION 5.03.080(B)(5) AND SECTION 5.03.090(A)(2), ARTICLE IV (PERMIT STANDARDS), SECTION 5.03.110(A) (PERMIT STANDARDS), ARTICLE VI (VIOLATION; PENALTY) SECTION 5.03.130(C) VIOLATION AND ADDING SECTION 5.03.130(E); THE PENALTY AS PROVIDED IN 5.03.130 OF THE EL PASO CITY CODE.

WHEREAS, City Code Title 5 (business License and Permit Regulations), contains various sections regarding permits for various topics;

WHEREAS, On February 26, 2019 City Council enacted Ordinance 018907 establishing a Sound Amplification Permit; and

WHEREAS, City Council now desires to amend Title 5 of the City Code in order to make revisions to improve the Sound Amplification Permit function and process.

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 5.03 (Amplified Sound Permit) Article I (General Provisions) Section 5.03.020(A) and Section 5.03.020(E) (Definitions) be amended and replaced as follows:

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E. “Outdoor Area” means any portion of the establishment premises that is not fully enclosed by permanent, solid walls and a roof, ~~and is identified in the sound impact plan~~ **(including open roll-up-style doors, open windows, or open doors)** where sound amplification equipment will be utilized for the enjoyment of establishment customers, includes fixed, non-portable structures used in conjunction with sound amplification equipment, including but not limited to stages, decks, risers, and lighting support structures.

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22-1152-1154/RTA

Title 5- Sound Amplification Permit

A. An establishment under a permit shall be allowed to emit sound up to ~~65 70~~ dB(A), measured by a sound meter at the property boundary.

Section 6. That Title 5 (Business License and Permit Regulations) Chapter 5.03 (Amplified Sound Permit) Article VI (Violations; Penalty) Section 5.03.130(C) (Violation) be amended and replaced as follows:

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Except as herein amended, Title 5 of the El Paso City Code shall remain in full force and effect.

ADOPTED this _____ day of _____, 2022.

THE CITY OF EL PASO:

Oscar Leeser, Mayor

ATTEST:

Laura D. Prine, City Clerk

APPROVED AS TO FORM:

Russell T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT

Philip F. Etiwe, Director
Planning & Inspections Department



Ordinances Amending
TITLE 9 – Health and Safety
Noise Nuisance

TITLE 5 – Business License and Permit Regulations
Sound Amplification Permit

GOAL 2 – Set Standard for a Safe & Secure City

Strategic Goal Alignment

- 2.1 Maintain standing as one of the nation's top safest cities
- 2.2 Strengthen community involvement in resident safety
- 2.3 Increase public safety operational efficiency
- 2.8 Implement effective code enforcement strategies to reduce nuisances, enhance visual appearance and improve overall health and safety
- 6.4 Implement leading-edge practices for achieving quality and performance excellence
- 6.5 Deliver services timely and efficiently with focus on continual improvement



Review:

- Current law
- Benchmarking other cities
- Existing data and data gathering processes
- Proposed amendments

2 Sources of Current Law

- EP Code Chapter 9.40 Noise Nuisance
 - Amended in 2019
 - General noise nuisance
 - Three categories of violations: 1) noise higher than 70 dB between 10 p – 7 a
 - 2) reasonable sensibilities standard 3) vibrations
 - Violations: max fine of \$500/day
- EP Code Chapter 5.03 - Amplified Sound Permit
 - Created in 2019
 - Only if business is within 350 feet of a residence
 - Permit allows for amplified sound up to 70 dB from 10 pm to midnight
 - No outdoor amplified sound after midnight
 - Violations: max fine of \$2,000/day

Texas Cities – Noise Ordinances

City	Max Decibel Level	Location of Reading	Time Restrictions
El Paso (current)	70 dB	Property receiving the noise	10 p – 7 a
El Paso (pre-2019)	60-65 dB for commercial properties	Property producing the noise	10 p – 7 a (65 dB) 7 a – 10 p (60 dB)
Austin	85 dB 70 dB (if property is a restaurant)	Property producing the noise	10 a – 2 a
Dallas	Greater of 49 dB or 5 dB above background (if adjacent to residential); greater of 49-63 dB or 5 dB above background (if not adjacent)	Property producing the noise	10 p
Houston	Nonresidential: 68 dB Residential: 65 dB (day); 58 dB (night)	Property receiving the noise	Enforceable 24/7
San Antonio	Business: 70 dB; residential: 63 dB (day) Business: 63 dB; Residential: 56 dB (night) (Riverwalk District allows 72/80)	Property receiving the noise	10 p

Texas Cities – Permits for Sound Amp

City	Max Decibel Level	Location of Reading	Time Restrictions	Distance from Residential
El Paso (current)	70 dB	Property producing the noise	Permit required 10 p – midnight; no sound amp after midnight	350 ft
Austin	85 dB	At commercial property line	Sun – Thurs: 8 p Fri – Sat: 10 p	600 ft
Dallas	N/A	N/A	N/A	N/A
Houston	75 dB	At nearest receiving property line	Sun – Thurs: 8 a – 10 p; Friday – Sat: 8 am – 11p	Permit required for all businesses playing amp sound
San Antonio	N/A	N/A	N/A	N/A

Timeline

- 2/26/2019
 - Amendments to both chapters passed
 - Floor Amendments passed:
 - Excluding DMD (from Chapter 5 permit)
 - Adding 350 distance requirement from residence (for Chapter 5 permit)
 - Chapter 5 permitting appeal to City Council
 - Revisit in six months
- 8/20/19, 9/3/19: postponed
- 10/15/19
 - Proposed amendments: to extend permit time frame to 2 am with sound impact plan and mitigation equipment installed
 - Not passed, revisit in six months
- COVID
- Reopening of businesses



Outreach

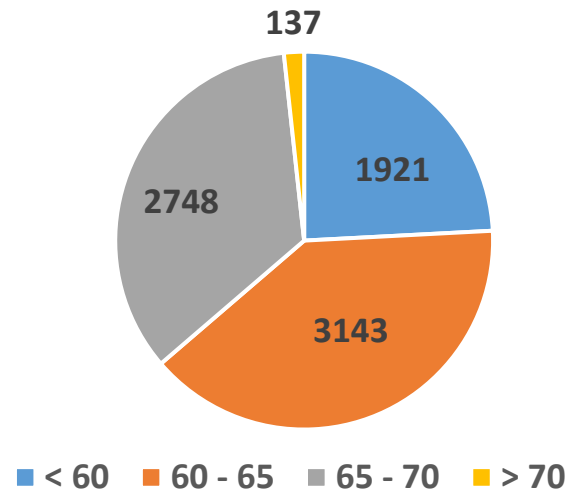
- Neighborhood meetings
- Citizen calls
- El Paso Police Department – Regional Command meetings
 - Citizens – Neighborhood Associations - Businesses
- Entertainment District Cross Functional Team
 - Operational Departments:
 - Police Department
 - Code Enforcement
 - Planning and Inspections
 - Streets and Maintenance
 - City Attorney's Office
 - District Representatives #1, 2, 5, and 7

“Entertainment Districts” Noise Enforcement

Number of Noise Readings – 4/22/21-1/22/22

Count of Violation				
Command	Code Enforcement	PD	None	Grand Total
Central	17	1	2,108	2,269
Mission Valley	0	0	283	283
Pebble Hills	4	0	3,423	3,143
Westside	38	12	2,061	2,113
Grand Total	59	13	7,875	7,947

Over 70 db = 1.72%
 65 to 70 db = 34.57%
 60 to 65 db = 39.54%
 60 db or less = 24.17%



Total
Readings:
7,949

“Entertainment Districts” Noise Enforcement

2021:

PD Commands	# Readings	# Venues	Ave dB	# Violations
Westside • 200 Cincinnati	1,625	16	66 dB	50
Pebble Hills • 3000 Zaragoza • 2100 Zaragoza • 1700 Zaragoza • 1400 Zaragoza • 1100 Airway • 1500 G. Dieter • 12000 Tierra Este • 11400 Montana • 10700 Pebble Hills	2,878	31	62 dB	4
Central • Downtown-DMD	374	13	60 dB	1
Central • 5 Points	1,544	15	62 dB	17
Total	6,421	75	62.5 dB	72

Cincinnati Area Special Operations

Noise Enforcement

April 22, 2021 – Jan 22, 2022

- Noise Violations – Cincinnati Entertainment District: 50
- **DB Actual Average = 63.03**
- **DB Ambient Average = 59.86**

April 22, 2021 – Jan 22, 2022

Noise Disturbance Calls:

- 131 Calls for Police Service:
- Noise Disturbance / Nuisance Calls

Cincinnati Area Special Operations

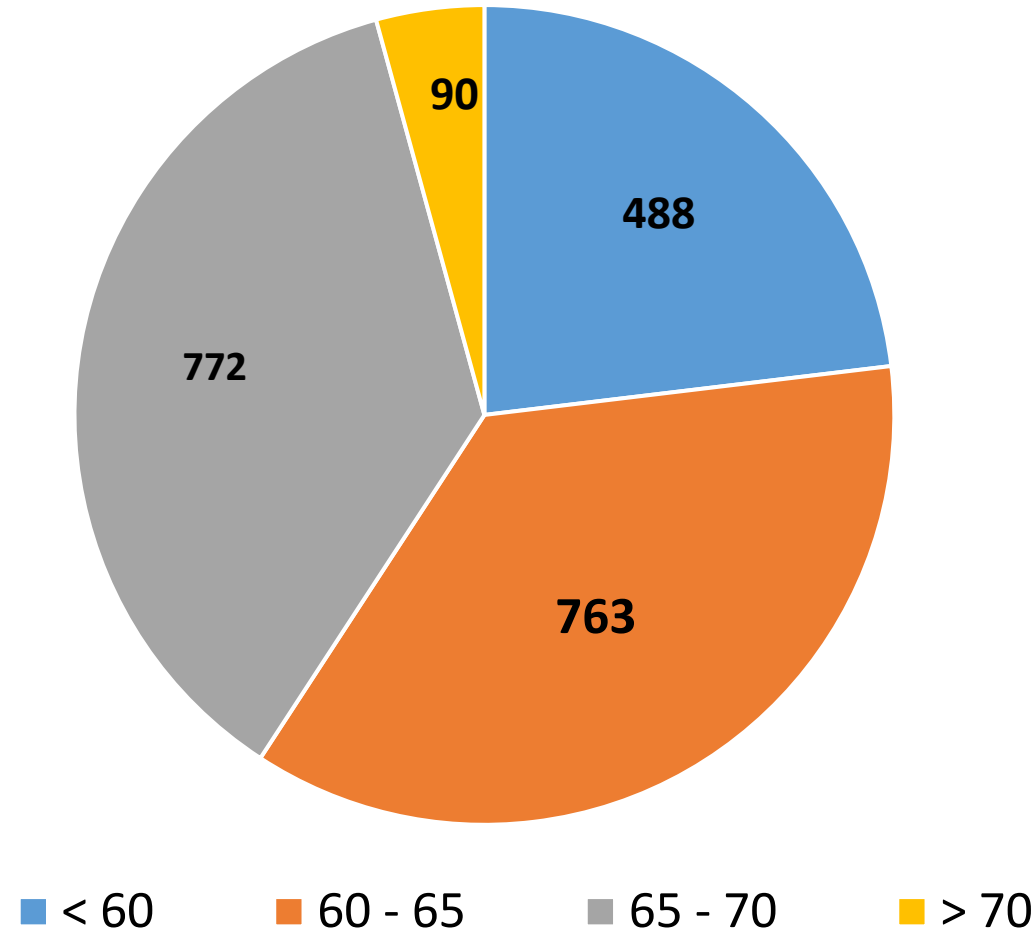
Noise Readings and Violations

Count of Violation				
Business	Code Enforcement	Police	None	Grand Total
Champagne Villain	1		218	219
Chino Chido			78	78
College Dropout	4	2	185	191
Ditzy Duck	6	1	121	128
El Rey Muerto			2	2
Faded Barber	1		6	7
Fools Gold	3		195	198
Geogeske G2			169	169
Good Times	4		213	217
Lost And Found Bar	3	1	225	229
Palomino	8	4	208	220
Profe	5	4	154	163
Rockin Cigar			208	208
Sister Esthers Bar	3		80	83
Spirit Of 66			1	1
Grand Total	38	12	2063	2113

Cincinnati Area Special Operations

Number of Noise Readings – 4/22/21 - 1/22/22

Total
Readings:
2,113



Over 70 db = 4.26%
65 to 70 db = 36.54%
60 to 65 db = 36.11%
60 db or less = 23.1 %



Proposed Changes TITLE 9, CHAPTER 9.40 Noise

Proposed Revisions – Ch. 9.40

- Reasonable Sensibilities standard
 - Clarifying violations can occur at any time of the day if noise unreasonably disturbs or interferes with the sleep, peace, comfort, or repose of a person of reasonable sensibilities
- Location of Reading
 - Revising location from property line of the property receiving the noise to property line of the property producing the noise
- Decibel Level
 - Lowering from 70 dB to 65 dB
- Vibration Violations
 - Revising requirement from adjoining properties to affected property.

Penalties – 9.40.070

- Class C Citation: max of \$500/day
- Additionally, the city may, in accordance with Chapter 54 of the Texas Local Government Code, bring a civil action against a person violating a provision of this chapter.
- The civil action may include civil penalties of up to \$1,000/day



TITLE 5, CHAPTER 5.03

Amplified **Sound** Permit

Sound Amplification Permit

- Any business entity that utilizes amplification equipment at a non-residential property within 350 feet of a residential property must get a sound amplification permit
 - Outdoor Area
 - 10:00PM to 12:00AM
 - 70 Decibels



Sound Amplification Permits

- # of businesses with sound amp permit as of 1/20/22: 2
- # of businesses with pending applications: 0
- # of businesses denied: 0



Proposed Revisions – Ch. 5.03

- Revise definition of "Outdoor Area" to clarify that roll-up style doors, open doors, and windows constitute an outdoor area.
- Lowering decibel level from 70 dB to 65 dB
- Expand location requirement from 350 ft. to 500 ft. from residences.
- Written notice to neighbors expanded to 500 ft. (from 300 ft.); written responses expanded to 300 ft. (from 150 ft.).
- Lower revocation threshold from ten citations to two citations.
- Clarify that the City may seek injunctive relief for violations under the Texas Local Government Code.
- ***Not applicable to Downtown Management District – no change.



Sound Amplification Permit Process

Application submitted and reviewed for completeness If incomplete returned to applicant for corrections to applicant	2 days
If complete Routed to GIS planner to develop mailing labels of parcels within 150' and 350' to be notified.	2 days
Site Inspection conducted to verify on-site posting and location of outdoor amplification equipment	2 days
Notification of intent to acquire permit mailed	2 days
30 day response allowance for notified parties	30 days
Review of responses from notified parties	2 days
Permit issuance If less than 25% of residential properties within 150' object – permit issued If more than 25% of residential properties within 150' object – permit denied	1 day
Approximate time for permit issuance/denial	40-45 days



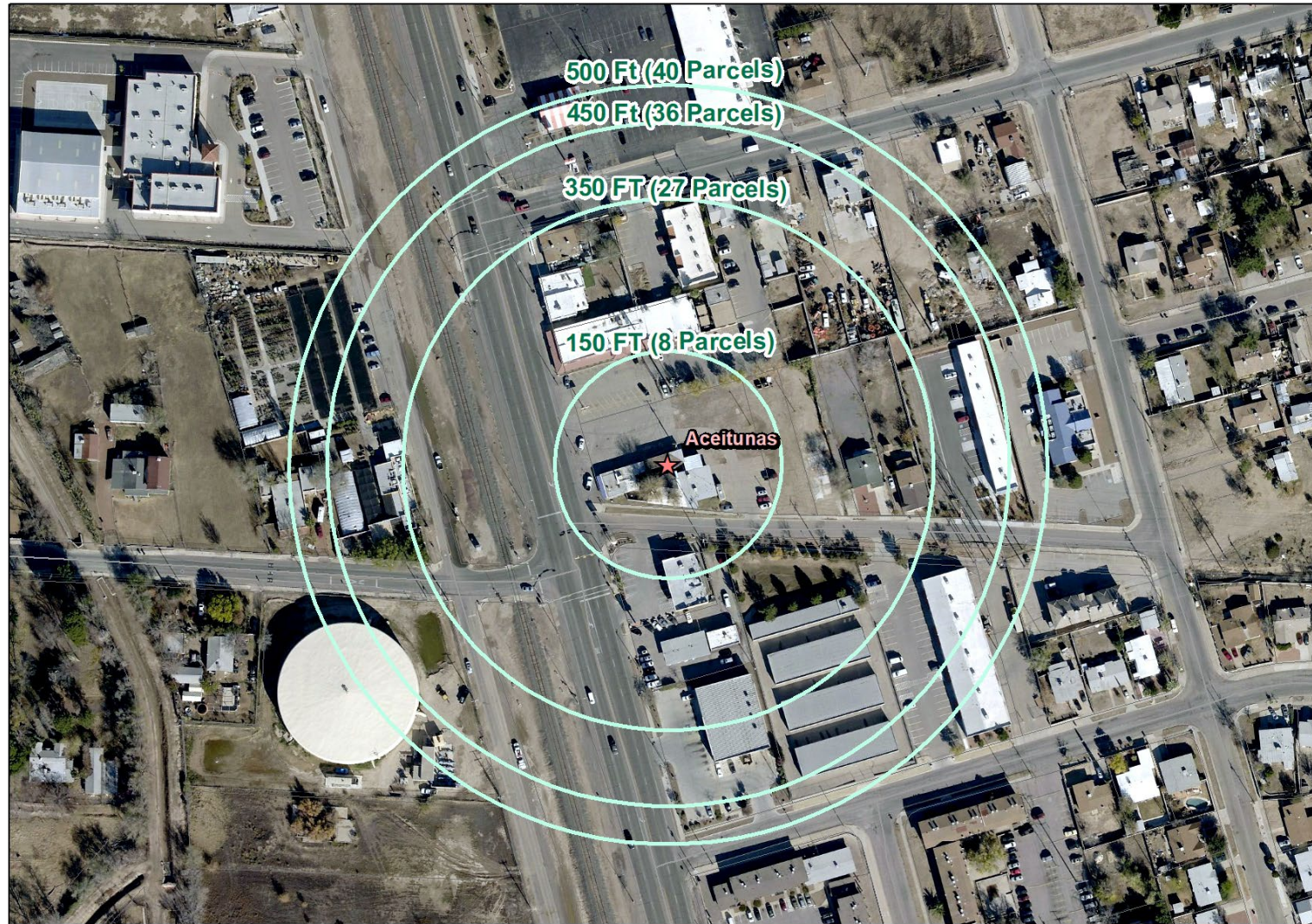
Establishment Survey

Police Regional Command Area	Outdoor Sound Amp	No Outdoor Sound Amp	Total
Central	50 (11 DMD exempt)	78	128
Mission Valley	8	26	34
West Side	59	113	172
Pebble Hills	88	183	271
Northeast	17	16	33
	222	416	638

34 % of establishments have outdoor sound amplification ability



Westside Regional Command



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.



★ Patio Center
□ Buffers

0 75 150 300 450 600 Feet



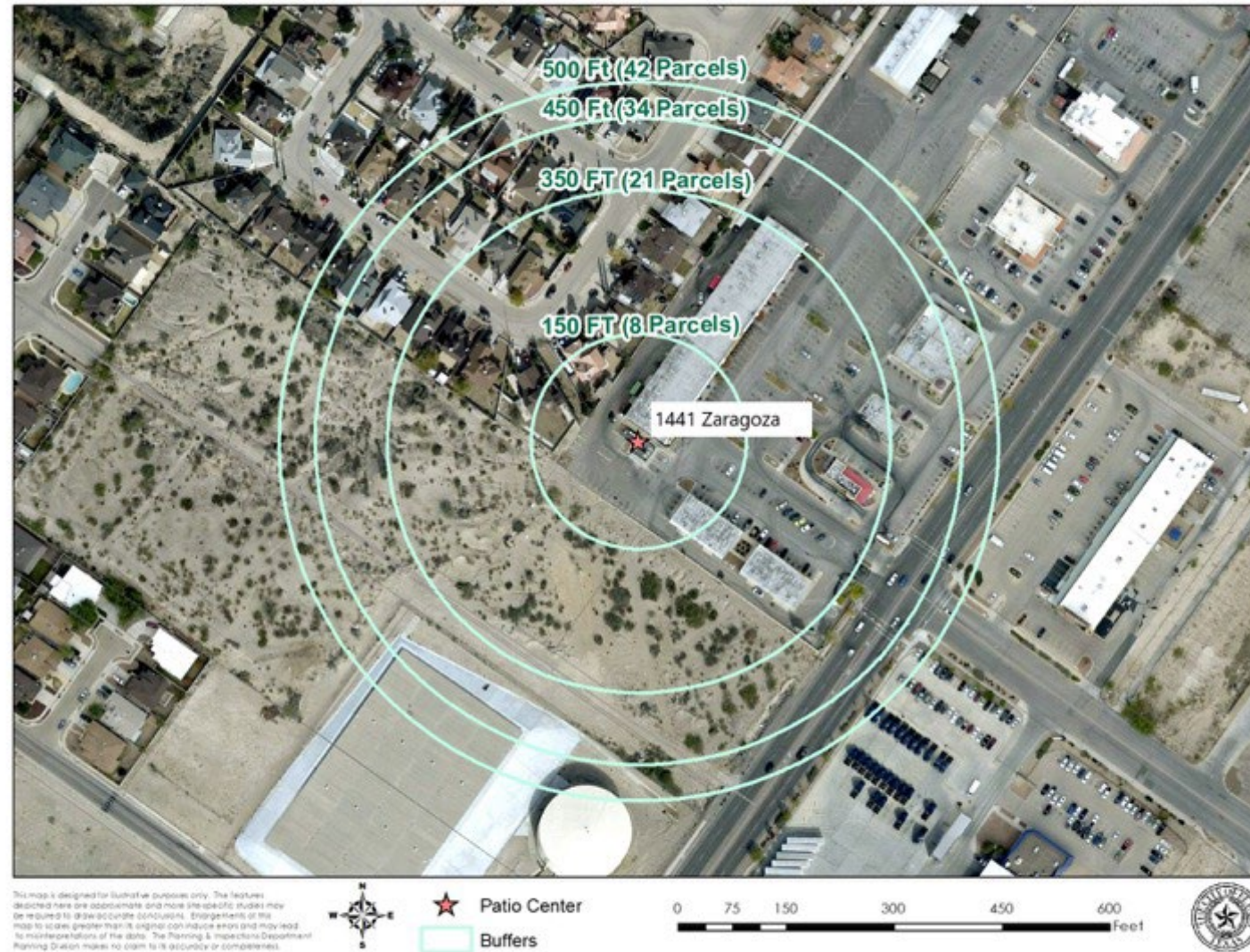
Pebble Hills Regional Command



Westside Regional Command



Pebble Hills Regional Command



Pebble Hills Regional Command



Central Regional Command



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★ Patio Center
□ Buffers

0 75 150 300 450 600 Feet





City Attorney's Office Prosecutors

Citizen Complaint Packets

- Reasonable Sensibilities Cases
- Now available to the public at the CAO website
 - <https://www.elpasotexas.gov/city-attorney/complaint-forms/>
- Videos strongly encouraged
- Identification of violating party and other elements of offense

Municipal Court Cases

- Citations/Notices of Violations from Police/Code:92
 - Violations: Max decibel level, no permit, vibrations
 - Plea/paid fine: 4
 - Reset: 59
 - Warrants: 28
 - Dismiss: 1
- City Attorney's Office cases under Reasonable Sensibilities standard in 2021-Feb 2022: 39
 - 31 Accepted
 - 6 reset
 - 25 awaiting first setting
 - 8 rejected

Questions?

Mission

Deliver exceptional services to support a high quality of life and place for our community

Values

Integrity, **R**espect, **E**xcellence,
Accountability, **P**eople

Vision

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government



Legislation Text

File #: 22-510, 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.

All Districts

Economic and International Development, Anne Guayante, (915) 479-0341

Economic and International Development, Elizabeth Triggs, (915) 212-1619

AGENDA LANGUAGE:

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

Discussion and action requesting City Council support for the staff recommended project that has been selected to submit for an Infrastructure for Rebuilding America (INFRA) Grant under the Multimodal Projects Discretionary Grant Program (MPDG) for the Department of Transportation (DOT) to invest in road, rail, transit and port projects that promise to achieve national objectives.

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

AGENDA DATE: May 10, 2022
PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Anne Guayante, 915-479-0341
GuayanteAM@elpasotexas.gov,
Elizabeth Triggs, 915-212-1619
TriggsEK@elpasotexas.gov

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBGOAL:

SUBJECT:

Discussion and action requesting City Council support for the staff recommended project that has been selected to submit for an INFRA Grant under the Multimodal Projects Discretionary Grant Program (MPDG) for the Department of Transportation (DOT) to invest in road, rail, transit and port projects that promise to achieve national objectives

BACKGROUND / DISCUSSION:

This item will provide an overview of the proposed project for this grant. This project is anticipated to significantly improve infrastructure and economic development.

On November 15, 2021, President Joseph R. Biden signed the Infrastructure and Jobs Act of 2021 into law and appropriated \$2.85 billion to be awarded by the Department of Transportation for fiscal year 2022 for transportation infrastructure projects under the MPDG Program. As part of the City's commitment to the success of our infrastructure, the City wishes to apply to the Multimodal Projects program to secure funding for a modernization and expansion feasibility study for the Ysleta Port of Entry (POE). The study would serve to support and guide future investments in the Ysleta-Zaragoza international port of entry.

The proposed feasibility study would explore a number of expansion scenarios including overall port expansion into adjacent vacant properties for added capacity and increased throughput commensurate with demand across all modes of travel. The proposed feasibility study would examine how to best configure the POE for projected future needs, add multimodal capacity, and would conduct structural assessments of existing infrastructure. It would evaluate the layout of the campus to include local, state and federal properties and facilities; and evaluate bridge structure expansion opportunities to add capacity for all crossing modes, including personal vehicle, pedestrian, and commercial vehicles.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

\$1,400,000 in required grant matching funds from International Bridges Revenues – Dept. 564 - Fund 3302 - Division 64880.

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: International Bridges Department

SECONDARY DEPARTMENT: Capital Improvements Department

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

DEPARTMENT HEAD:



David Coronado,
Director, International Bridges Department

Revised 04/09/2021



Legislation Text

File #: 22-529, 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.

All Districts

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

AGENDA LANGUAGE:

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

Discussion and action on the appointment of 4 candidates to fill 5 Part Time On call Associate Judge vacancies. Six candidates applied; 1 did not meet qualifications; 1 non-responsive. Four candidates' names were submitted by a city representative to the City Manager's office. These positions serve as substitutes for the elected municipal court trial judges at trial and other court hearings; they preside over arraignments; they serve as magistrates on graveyard shifts. The candidates are:

1. Elia Garcia
2. Jose Gonzalez
3. Leonel Nunez
4. Manuel Parra

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

DEPARTMENT: Municipal Court
AGENDA DATE: May 10, 2022
CONTACT PERSON NAME AND PHONE NUMBER: Lilia Worrell, 212-5822
DISTRICT(S) AFFECTED: All
STRATEGIC GOAL: NO. 2: Set the Standard for Safe and 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 on the appointment of 4 candidates to fill 5 Part Time On call Associate Judge vacancies. Six candidates applied; 1 did not meet qualifications; 1 non-responsive. Four candidates' names were submitted by a city representative to the City Manager's office. These positions serve as substitutes for the elected municipal court trial judges at trial and other court hearings; they preside over arraignments; they serve as magistrates on graveyard shifts. The candidates are:

1. Elia Garcia
2. Jose Gonzalez
3. Leonel Nunez
4. Manuel Parra

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?

Council will appoint the candidates to serve as Associate Judges in accordance with City Code 2.44.030. Although the City Code 2.44.030 does not require the inclusion of the Presiding Judge, a recommendation was solicited from Presiding Judge Daniel Robledo. The Presiding Judge is more familiar with the legal community and since he will supervise the associates, his input is valuable. City Council is not bound by the Judge's recommendation. The Presiding Judge does not have any objection to the appointment of any of the candidates.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes, it is City Council who appoints Associate Municipal Court Judges in accordance with City Code 2.44.030 and the City Charter.

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?

The item has been budgeted in the **Judiciary budget** -
General Fund. Dept # 111 Fund 1000 Division 11060 Account 50100

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A

N/A

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

DEPARTMENT HEAD:

Michelle Carr on behalf of John Howell

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

Information copy to appropriate Deputy City Manager

EMPLOYMENT APPLICATION



CITY OF EL PASO
300 N. Campbell
El Paso, Texas 79901
915-212-0045
<http://www.elpasotexas.gov>
Garcia, Elia
A7718-0322 ASSOCIATE MUNICIPAL JUDGE

Received: 3/17/22 10:54 PM
For Official Use Only:
QUAL: _____
DNQ: _____
☐ Experience
☐ Training
☐ Other: _____

PERSONAL INFORMATION

POSITION TITLE: ASSOCIATE MUNICIPAL JUDGE		EXAM ID#: A7718-0322
NAME: (Last, First, Middle) Garcia, Elia		SOCIAL SECURITY NUMBER: N/A
ADDRESS: (Street, City, State/Province, Zip/Postal Code) [REDACTED]		EMAIL ADDRESS: [REDACTED]
HOME PHONE: [REDACTED]		
DRIVER'S LICENSE: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DRIVER'S LICENSE: State: TX Number: [REDACTED]	LEGAL RIGHT TO WORK IN THE UNITED STATES? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
What is your highest level of education? Doctorate		

PREFERENCES

MINIMUM COMPENSATION: \$45.00 per hour; \$93,600.00 per year	ARE YOU WILLING TO RELOCATE? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Maybe
WHAT TYPE OF JOB ARE YOU LOOKING FOR? Regular	
TYPES OF WORK YOU WILL ACCEPT: Full Time, Part Time	
SHIFTS YOU WILL ACCEPT: Day, Evening, Night, Rotating, Weekends, On Call (as needed)	
OBJECTIVE: My objective is to practice law in the State of Texas and to serve the public interest.	

EDUCATION

DATES: From: 9/2009 To: 5/2012	SCHOOL NAME: University of Wisconsin Law School	
LOCATION: (City, State/Province) Madison, Wisconsin	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Professional
MAJOR: Law	UNITS COMPLETED: 90 - Semester	
DATES: From: 8/2006 To: 5/2009	SCHOOL NAME: University of Texas at El Paso	
LOCATION: (City, State/Province) El Paso, Texas	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Bachelor's
MAJOR: Political Science/ Spanish Minor	UNITS COMPLETED: 124 - Semester	
DATES: From: 7/2002 To: 5/2006	SCHOOL NAME: Socorro High School	
LOCATION: (City, State/Province) El Paso, Texas	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: High School Diploma

WORK EXPERIENCE

DATES: From: 10/2013 To: Present	EMPLOYER: Law Office of Elia Garcia	POSITION TITLE: Attorney
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 250 Horizon Blvd., Socorro, Texas, 79927		
PHONE NUMBER: [REDACTED]	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 40		
DUTIES: -Solo practitioner with a focus in the area of criminal defense and immigration law		
DATES: From: 9/2017 To: 12/2020	EMPLOYER: City of Socorro, TX	POSITION TITLE: Mayor

ADDRESS: (Street, City, State/Province, Zip/Postal Code) 124 S. Horizon Blvd., Socorro, Texas, 79927		COMPANY URL: http://ci.socorro.tx.us
PHONE NUMBER: [REDACTED]	SUPERVISOR: Adriana Rodarte - City Manager	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 20	SALARY: \$1,250.00/month	# OF EMPLOYEES SUPERVISED: 0
DUTIES: -Collaborate with City staff and constituents to provide municipal services		
REASON FOR LEAVING: Term ended.		
DATES: From: 5/2015 To: 9/2017	EMPLOYER: Town of Clint	POSITION TITLE: Municipal Court Judge
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 200 N. San Elizario Rd., Clint, Texas, 79836		
PHONE NUMBER: [REDACTED]	SUPERVISOR: Charles Gonzalez - Mayor	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 5	SALARY: \$150.00/month	# OF EMPLOYEES SUPERVISED: 0
DUTIES: -Preside over Class C citations and City Ordinances -Review probable cause affidavits, sign arrest warrants, and provide magistrate warnings as needed		
REASON FOR LEAVING: I got elected as Mayor for the City of Socorro.		
DATES: From: 12/2013 To: 12/2016	EMPLOYER: City of Socorro	POSITION TITLE: Municipal Court Judge
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 124 S. Horizon Blvd., Socorro, Texas, 79927		COMPANY URL: http://ci.socorro.tx.us/
PHONE NUMBER: [REDACTED]	SUPERVISOR: Adriana Rodarte - City Manager/HR	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 25	SALARY: \$3,541.67/month	# OF EMPLOYEES SUPERVISED: 0
DUTIES: -Preside over cases filed or pending in Municipal Court -Ensure that all necessary procedures are followed -Consider search warrants, emergency writs and orders, and other emergency items		
REASON FOR LEAVING: Contract terminated.		
DATES: From: 5/2013 To: 9/2013	EMPLOYER: Diocesan Migrant and Refugee Services, Inc.	POSITION TITLE: LOP Caseworker
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 2400 E. Yandell, El Paso, Texas, 79903		COMPANY URL: http://www.dmr-s-ep.org
PHONE NUMBER: (915) 532-3975	SUPERVISOR: Michelle R. Martinez - Staff Attorney	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 35	SALARY: \$3,500.00/month	# OF EMPLOYEES SUPERVISED: 0
DUTIES: -Provide "Know Your Rights" presentations -Perform client interviews to screen for possible legal defenses -Conduct legal research to find relief for detained adults in immigration proceedings -Provide legal information for adult detainees		
REASON FOR LEAVING: Temporary assignment terminated.		
DATES: From: 2/2012 To: 4/2012	EMPLOYER: Dane County Circuit Court	POSITION TITLE: Legal Intern to the Honorable Juan B. Colas
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 215 S. Hamilton St., Room 7103, Madison, Wisconsin, 53703		COMPANY URL: http://www.countyofdane.com/court/
PHONE NUMBER: [REDACTED]	SUPERVISOR: David Schultz - Professor of Law	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 10	SALARY: \$0.00/month	# OF EMPLOYEES SUPERVISED: 0
DUTIES: -Observe all hearings, trials, and other court proceedings		
REASON FOR LEAVING: Internship ended.		

DATES: From: 9/2010 To: 4/2012		EMPLOYER: Community Immigration Law Center	POSITION TITLE: Legal Volunteer/Translator
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 810 W. Badger Road, Madison, Wisconsin, 53713		COMPANY URL: http://cpcmadison.org/internationals/immigration-counseling/	
PHONE NUMBER: [REDACTED]	SUPERVISOR: Jean-René Watchou - Director of International Outreach	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 5	SALARY: \$0.00/month	# OF EMPLOYEES SUPERVISED: 0	
DUTIES: -Assist with client intakes, ensuring that the Spanish-speaking clients understand the process			
REASON FOR LEAVING: Semester ended.			
DATES: From: 9/2011 To: 12/2011		EMPLOYER: University of Wisconsin Economic Justice Institute	POSITION TITLE: Legal Volunteer in the Family Court Assistance Project Restraining Order Clinic
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 975 Bascom Mall, Law School Room 1342, Madison, Wisconsin, 53706		COMPANY URL: http://www.law.wisc.edu/eji/familycourt/index.html	
PHONE NUMBER: [REDACTED]	SUPERVISOR: Rosa Frazier - Clinical Assistant Professor	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 5	SALARY: \$0.00/month	# OF EMPLOYEES SUPERVISED: 0	
DUTIES: -Help walk-in, pro se litigants complete forms and provide information on court procedures			
REASON FOR LEAVING: Semester ended.			
DATES: From: 9/2011 To: 11/2011		EMPLOYER: Wisconsin Department of Justice	POSITION TITLE: Legal Extern in the Civil Litigation Unit
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 120 Martin Luther King Jr. Blvd., Madison, Wisconsin, 53702		COMPANY URL: http://www.doj.state.wi.us/dls/civil-litigation-unit	
SUPERVISOR: Joanne Kloppenburg - Assistant Attorney General		MAY WE CONTACT THIS EMPLOYER? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
HOURS PER WEEK: 10	SALARY: \$0.00/month	# OF EMPLOYEES SUPERVISED: 0	
DUTIES: -Conduct legal research on issues related to incarcerated individuals, including medical negligence and excessive force, as well as employment-related matters -Draft internal memoranda with findings			
REASON FOR LEAVING: Semester ended.			
DATES: From: 12/2010 To: 3/2011		EMPLOYER: The Law Firm of Felipe D.J. Millan, P.C.	POSITION TITLE: Law Clerk
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 1147 Montana Ave., El Paso, Texas, 79902		COMPANY URL: http://www.felipemillan.com/	
PHONE NUMBER: (915) 566-9977	SUPERVISOR: Felipe D.J. Millan - Attorney at Law	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 40	SALARY: \$0.00/month	# OF EMPLOYEES SUPERVISED: 0	
DUTIES: -Conducted legal research in immigration topics under the INA and prepared legal memoranda -Drafted motions for immigration proceedings and federal court			
REASON FOR LEAVING: Returned to school.			
DATES: From: 9/2010 To: 12/2010		EMPLOYER: University of Wisconsin Economic Justice Institute	POSITION TITLE: Student Attorney/Translator in the Domestic Violence Immigration Clinic

ADDRESS: (Street, City, State/Province, Zip/Postal Code) 975 Bascom Mall, Law School Room 1342, Madison, Wisconsin, 53706		COMPANY URL: http://www.law.wisc.edu/eji/dvic/index.html
PHONE NUMBER: [REDACTED]	SUPERVISOR: Rosa Frazier - Clinical Assistant Professor	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 10	SALARY: \$0.00/month	# OF EMPLOYEES SUPERVISED: 0
DUTIES: -Presented "Know Your Rights" seminars to the community -Implemented client interview and counseling procedures -Conducted legal research and submitted documents for U-Visa and VAWA cases		
REASON FOR LEAVING: Semester ended.		
DATES: From: 2/2009 To: 4/2009	EMPLOYER: Eighth Court of Appeals of Texas	POSITION TITLE: Legal Intern to the Honorable Guadalupe Rivera
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 500 E. San Antonio Ave., Room 1203, El Paso, Texas, 79901		COMPANY URL: http://www.8thcoa.courts.state.tx.us/court/justices.asp
PHONE NUMBER: [REDACTED]	SUPERVISOR: Rachel Serrano - UTEP LSPI Administrative Services Coordinator	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 20	SALARY: \$0.00/month	# OF EMPLOYEES SUPERVISED: 0
DUTIES: -Contributed to the preparation of draft opinions and observed hearings and trials -Conducted legal research and writing in the area of appellate law and prepared legal memoranda		
REASON FOR LEAVING: Internship ended.		
DATES: From: 9/2008 To: 11/2008	EMPLOYER: United States District Court for the Western District of Texas	POSITION TITLE: Legal Intern to the Honorable Philip R. Martinez
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 525 Magoffin Avenue, Suite 105, El Paso, Texas, 79901		COMPANY URL: http://www.txwd.uscourts.gov/default1.asp
PHONE NUMBER: (915) 747-8866	SUPERVISOR: Rachel Serrano - UTEP LSPI Administrative Services Coordinator	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 20	SALARY: \$0.00/month	# OF EMPLOYEES SUPERVISED: 0
DUTIES: -Accompanied judge to all trials and hearings -Performed research in the are of federal civil procedure and prepared legal memoranda -Assisted with various administrative duties, including filing case folders and keeping the library updated		
REASON FOR LEAVING: Internship ended.		
DATES: From: 11/2006 To: 12/2006	EMPLOYER: Socorro Independent School Distrcit-Food Services	POSITION TITLE: Administrative Assistant
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 12440 Rojas Drive, El Paso, Texas, 79928		COMPANY URL: http://www.sisd.net/page/120
PHONE NUMBER: [REDACTED]	SUPERVISOR: Sylvia Holguin - CNS Supervisor/Trainer	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 40	SALARY: \$960.00/month	# OF EMPLOYEES SUPERVISED: 0
DUTIES: -Assisted with inputting nutritional data and recipes into CNS program		
REASON FOR LEAVING: Returned to school.		

CERTIFICATES AND LICENSES

TYPE: Law License	
LICENSE NUMBER: 24085322	ISSUING AGENCY: State Bar of Texas
TYPE: Law License	
LICENSE NUMBER: 1090619	ISSUING AGENCY: State Bar of Wisconsin

Skills
OFFICE SKILLS: Typing: 40 Data Entry: 8000
OTHER SKILLS:
LANGUAGE(S): Spanish - <input type="checkbox"/> Speak <input type="checkbox"/> Read <input type="checkbox"/> Write

ADDITIONAL INFORMATION
<p>Interests & Activities Dancing Folklorico: 10+ years' experience, member of Grupo Folklorico Quetzales and Viva! El Paso cast member 2016 through 2019</p> <p>Miscellaneous International: Organization of American States (OAS), International Observer Electoral Observation Mission-Peru 2nd Round Elections (June 5, 2011)</p> <p>Honors & Awards Latino Law Student Association-Outstanding 3L of the Year Award, 2012</p> <p>Honors & Awards Pro Bono Society, 2012</p> <p>Interests & Activities Women's Law Student Association</p> <p>Volunteer Experience Legal Information Center, Madison, WI</p> <p>Volunteer Experience Language Academic Friendship Program, Madison, WI</p> <p>Volunteer Experience Incoming Student Mentorship Program, Mentor, Madison, WI</p> <p>Interests & Activities Students for Equal Access to Law School, Mentor, Madison, WI</p> <p>Interests & Activities Wisconsin Journal of Law, Gender & Society, Cite Checker</p> <p>Additional Information Study Abroad: Pontificia Universidad Catolica del Peru in Lima, Peru (Spring 2011)</p>

REFERENCES		
REFERENCE TYPE: Professional	NAME: Michelle R. Martinez	POSITION: County Attorney
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 500 E. San Antonio St., Suite 503, El Paso, Texas 79901		
EMAIL ADDRESS: mimartinezsq@gmail.com		PHONE NUMBER: [REDACTED]
REFERENCE TYPE: Professional	NAME: Ivan Martinez	POSITION: Assistant City Attorney
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 300 N. Campbell, El Paso, Texas 79901		
EMAIL ADDRESS: martinezvi@elpasotexas.gov		PHONE NUMBER: [REDACTED]
REFERENCE TYPE: Professional	NAME: Ruben Nunez	POSITION: Attorney at Law
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 3224 Montana Ave., El Paso, Texas 79903		
EMAIL ADDRESS: rubennunezatty@yahoo.com		PHONE NUMBER: [REDACTED]

The following terms were accepted by the applicant upon submitting the online application:

By clicking on the 'Accept' button, I hereby certify that every statement I have made in this application is true and complete to the best of my knowledge. I understand that any false or incomplete answer may be grounds for not employing me or for dismissing me after I begin work. I understand that I will have to produce documentation verifying identity and employment eligibility in the U.S. I understand that I may be required to verify any and all information given on this application. I understand that this completed application is the property of the City of El Paso and will not be returned. I understand that the City of El Paso may contact prior employers and other references.

I understand that completion of this Application for Employment does not guarantee that I will be employed by the City of El Paso.

I hereby affirm that my answers to these statements and questions are true and correct to the best of my knowledge. I have not knowingly withheld any fact or circumstance that would, if disclosed, affect my application unfavorably.

I understand that any misrepresentation, deception, or false statement made in this Employment Application may result in my not being considered for employment, and if not discovered by the Company until after my becoming employed, is grounds for, and may result in, my immediate termination.

Application time limit: I understand that application forms are active for the length of the eligible list which is normally six months unless otherwise stated. All persons must reapply after that period.

Falsification: I understand that falsification of information listed on my application or presented to the City of El Paso can be grounds for serious reprimand or termination.

Employment testing: I understand that all required drug tests, pencil-and-paper tests, physical exams, or electronic or other tests will be used in the employment decision.

Condition of Employment: I understand that I must provide official proof of Education (transcripts, diplomas, certificates), driver's license (if required), within 3 days of being contacted with a job offer.

This application was submitted by Elia Garcia on 3/17/22 10:54 PM

ELIA GARCIA

March 17, 2022

RE: Associate Municipal Court Judge

Dear Selection Committee:

I am a law graduate of the University of Wisconsin Law School, and I am a member of the State Bar of Wisconsin as well as the State Bar of Texas. I am a practicing criminal defense attorney in the borderland area, and I am writing to express my sincere interest in working with the City of El Paso as an Associate Municipal Court Judge. As you will note from my resume, I have gained considerable experience as I served as the Municipal Court Judge for the City of Socorro for three years, as well as the Municipal Court Judge for the Town of Clint. I have been a solo practitioner with a focus in the area of criminal defense for over 6 years, and I am an exceptional candidate for this position because it couples my practical interests and experience nicely.

I have the necessary skills needed to be beneficial to the City of El Paso. I am fluent in both English and Spanish, which will allow me to communicate well with clients in their native language. I am able to relate well with others due to my personal background. I was born in Las Cruces, New Mexico, but raised in Socorro, Texas, as the first daughter of immigrant parents. Growing up and working in the borderland community has widened my horizons. I am able to interact with a variety of people from different backgrounds.

Furthermore, I served as the Municipal Court Judge for the City of Socorro for three years; and as the Municipal Court Judge for the Town of Clint for two years. In this capacity, I had the duty to oversee all Class C citations, consisting mostly of traffic violations. I worked closely with the Town Clerk and Court Coordinator to move the dockets along. During my time in service, I was on call and assisted a number of local law enforcement agencies with the signing of arrest warrants, magistrate warnings, and blood search warrants. I signed over 1,200 warrants for: the City of Socorro Police Department, Horizon Police Department, Clint Police Department, Sheriff's Office, and Texas Department of Public Safety, amongst others. In my role as Judge, I took pride in ensuring that each individual was treated with dignity and respect, and that the court process was as simple as possible and above all fair for all the parties. Then, as a defense attorney, I take pride in assisting those most in need and to be able to walk my clients through the unfamiliar process a step at a time. I have many goals and aspirations, and I am confident that my experience and my desire to help others will allow me to be an asset to the City of El Paso.

I am determined to expand my experience and provide an exceptional service to the City of El Paso. Please let me know if I can provide any additional information in support of my candidacy. Thank you for your time and consideration. I look forward to hearing from you soon.

Respectfully,

Elia Garcia

ELIA GARCIA

Admitted to the State Bar of Texas (May 2013)
Admitted to the State Bar of Wisconsin (October 2012)

EDUCATION

University of Wisconsin Law School

Madison, WI

Juris Doctor

May 2012

- Journal:** *Wisconsin Journal of Law, Gender & Society*, Cite Checker
- Leadership:** Latino Law Student Association (LLSA), *Treasurer*
- Honors:** LLSA-Outstanding 3L of the Year Award, 2012
Pro Bono Society, 2012
- Activities:** Women's Law Student Association
- Volunteer:** Legal Information Center
Language Academics Friendship Program
Incoming Student Mentorship Program, *Mentor*
Students for Equal Access to Law School, *Mentor*
- Study Abroad:** Pontificia Universidad Católica del Perú in Lima, Perú (Spring 2011)

The University of Texas at El Paso

El Paso, TX

Bachelor of Arts, Political Science; Minor: Spanish

May 2009

- Honors:** Graduated *cum laude*; University Honors Program,
Mortar Board Honor Society; Alpha Lambda Delta Honor Society
Men and Women of Mines Award (2009)--Recognizes students who demonstrate
outstanding service to the University
- Activities:** Law School Preparation Institute (Summer 2008); Chicano Pre-Law Society

LEGAL EXPERIENCE

Clint Municipal Court Judge

Clint, TX

Preside over Class C citations and City Ordinances;

May 13, 2015 to September 5, 2017

Socorro Municipal Court Judge

Socorro, TX

- Preside over Class C citations and City Ordinances December 20, 2013 to December 1, 2016
- Review probable cause affidavits, sign arrest warrants, and provide magistrate warnings as needed

Law Office of Elia Garcia

El Paso, TX

Attorney at Law

October 1, 2013 to Present

- Solo practitioner with a focus in the area of criminal defense and immigration law

Diocesan Migrant and Refugee Services, Inc.

El Paso, TX

Legal Orientation Program Caseworker

May 2013 to September 2013

Legal Intern in the Unaccompanied Minors Program and Trial Unit

Summer 2010, 2011, and 2012

- Provided "Know Your Rights" presentations
- Performed client interviews to screen for possible legal defenses
- Conducted legal research to find relief for detained immigrant children and adults in immigration proceedings
- Assisted with Special Immigrant Juvenile Visa, Asylum cases, and DACA Applications
- Compiled motions for change of venue and motions to accelerate
- Represented juveniles in immigration court proceedings (Juvenile Docket)

- Dane County Circuit Court** **Madison, WI**
Legal Intern to the Honorable Juan B. Colás *Spring 2012*
 - Observe all hearings, trials, and other court proceedings
- Community Immigration Law Center** **Madison, WI**
Legal Volunteer / Translator *Fall 2010 and 2011; Spring 2012*
 - Assist with client intakes, ensuring that the Spanish-speaking clients understand the process
- Wisconsin Department of Justice** **Madison, WI**
Legal Extern in the Civil Litigation Unit *Fall 2011*
 - Conduct legal research on issues related to incarcerated individuals, including medical negligence and excessive force, as well as employment-related matters
 - Draft internal memoranda with findings
- University of Wisconsin Economic Justice Institute** **Madison, WI**
Legal Volunteer in the Family Court Assistance Project Restraining Order Clinic *Fall 2011*
 - Help walk-in, pro se litigants complete forms and provide information on court procedures
- The Law Firm of Felipe D.J. Millan, P.C.** **El Paso, TX**
Law Clerk *Winter 2010- 2011*
 - Conducted legal research in immigration topics under the INA and prepared legal memoranda
 - Drafted motions for immigration proceedings and federal court
- University of Wisconsin Economic Justice Institute** **Madison, WI**
Student Attorney / Translator in the Domestic Violence Immigration Clinic *Fall 2010*
 - Presented “Know Your Rights” seminars to the community
 - Implemented client interview and counseling procedures
 - Conducted legal research and submitted documents for U-Visa and VAWA cases
- Eighth Court of Appeals of Texas** **El Paso, TX**
Legal Intern to the Honorable Guadalupe Rivera *Spring 2009*
 - Contributed to the preparation of draft opinions and observed hearings and trials
 - Conducted legal research and writing in the area of appellate law and prepared legal memoranda
- United States District Court for the Western District of Texas** **El Paso, TX**
Legal Intern to the Honorable Philip R. Martinez *Fall 2008*
 - Accompanied judge to all trials and hearings
 - Performed research in the area of federal civil procedure and prepared legal memoranda
 - Assisted with various administrative duties, including filing case folders and keeping the library updated

ADDITIONAL INFORMATION

- Languages:** Spanish: Native fluency (reading, writing, and speaking)
- Government:** Civil Service Commissioner of the City of Socorro (June 6, 2013-December 2, 2013)
Ethics Commissioner of the City of Socorro (October 3, 2013-December 2, 2013)
- International:** Organization of American States (OAS), *International Observer*
Electoral Observation Mission – Peru 2nd Round Elections (June 5, 2011)
- Volunteer:** University of Texas at El Paso Center for Civic Engagement
Tutoring Engagement and Mentoring or TEAM (Spring 2007; Spring 2008)
Tutored elementary and middle school students in reading, writing, and math
- Employment:** Socorro Independent School District – Food Services, *Administrative Assistant*
(November-December 2006, June-July 2005)
- Interests:** Dancing Folklorico: 10+ years’ experience and member of *Grupo Folklorico Quetzales*
and cast member of *Viva! El Paso 2016, 2017, 2018, and 2019*

EMPLOYMENT APPLICATION



CITY OF EL PASO
300 N. Campbell
El Paso, Texas 79901
915-212-0045
<http://www.elpasotexas.gov>
Gonzalez, Jose Luis
A7718-0322 ASSOCIATE MUNICIPAL JUDGE

Received: 3/17/22 5:21 PM
For Official Use Only:
QUAL: _____
DNQ: _____
☐ Experience
☐ Training
☐ Other: _____

PERSONAL INFORMATION

POSITION TITLE: ASSOCIATE MUNICIPAL JUDGE		EXAM ID#: A7718-0322
NAME: (Last, First, Middle) Gonzalez, Jose Luis		SOCIAL SECURITY NUMBER: N/A
ADDRESS: (Street, City, State/Province, Zip/Postal Code) [REDACTED]		EMAIL ADDRESS: [REDACTED]
HOME PHONE: [REDACTED]		
DRIVER'S LICENSE: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DRIVER'S LICENSE: State: TX Number: [REDACTED]	LEGAL RIGHT TO WORK IN THE UNITED STATES? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
What is your highest level of education? Doctorate		

PREFERENCES

ARE YOU WILLING TO RELOCATE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Maybe
WHAT TYPE OF JOB ARE YOU LOOKING FOR? Regular
TYPES OF WORK YOU WILL ACCEPT: Full Time, Part Time
SHIFTS YOU WILL ACCEPT: Day, Evening, Night, Rotating, Weekends, On Call (as needed)
OBJECTIVE: Obtain employment in the legal field.

EDUCATION

DATES: From: 8/1981 To: 5/1984	SCHOOL NAME: University of Texas School of Law	
LOCATION: (City, State/Province) Austin, Texas	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Professional
MAJOR: Law		

WORK EXPERIENCE

DATES: From: 6/1992 To: 2/2021	EMPLOYER: Dept. Of Justice	POSITION TITLE: Asst. U. S. Atty
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 700 E. San Antonio, suite 200, El Paso, Texas, 79901		
PHONE NUMBER: [REDACTED]	SUPERVISOR: Christina Playton - Criminal Chief	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 40	SALARY: \$12.00/month	# OF EMPLOYEES SUPERVISED: 85
DUTIES: Oversee and manage the El Paso Division of the United States Attorneys Office for the Western District of Texas. Duties included but were not limited to the review of proposed indictments, informations, making presentations to the grand jury. I also review plea agreements and tried numerous criminal case to juries. Discussed trial strategy with other federal prosecutors and ensured they were in compliance with Department of Justice guidelines. Also, reviewed search warrants for legal sufficiency. Implemented policy proposed by the Department of Justice as well as by the United States Attorney for the Western District of Texas.		
REASON FOR LEAVING: Retirement		

CERTIFICATES AND LICENSES

TYPE: JD	
LICENSE NUMBER: 08129200	ISSUING AGENCY: State Bar of Texas

Skills

OFFICE SKILLS: Typing: Data Entry:
OTHER SKILLS:
LANGUAGE(S): Spanish - <input checked="" type="checkbox"/> Speak <input checked="" type="checkbox"/> Read <input type="checkbox"/> Write

ADDITIONAL INFORMATION
Honors & Awards I have been recognized by the Department of Justice on several occasions for the work done on the prosecution of the Columbia Healthcare System and Dr. Arthur Bleganowski et.al., receiving prestigious awards as well as cash bonuse. Also, have been recognized by the Western District of Texas for work done on local investigations and have received substantial monetary awards.
Volunteer Experience I have volunteered in the training of prosecutors in Colombia, Venezuela and Mexico. Taught criminal trial advocacy to these attorneys as some of their countries transitioned to oral advocacy.

REFERENCES									
<table border="1"> <tr> <td>REFERENCE TYPE: Professional</td> <td>NAME: Stephen Garcia</td> <td>POSITION: Asst. U. S. Atty</td> </tr> <tr> <td colspan="3">ADDRESS: (Street, City, State/Province, Zip/Postal Code) 918 Via Monte, El Paso, 79912</td> </tr> <tr> <td>EMAIL ADDRESS:</td> <td colspan="2">PHONE NUMBER: [REDACTED]</td> </tr> </table>	REFERENCE TYPE: Professional	NAME: Stephen Garcia	POSITION: Asst. U. S. Atty	ADDRESS: (Street, City, State/Province, Zip/Postal Code) 918 Via Monte, El Paso, 79912			EMAIL ADDRESS:	PHONE NUMBER: [REDACTED]	
REFERENCE TYPE: Professional	NAME: Stephen Garcia	POSITION: Asst. U. S. Atty							
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 918 Via Monte, El Paso, 79912									
EMAIL ADDRESS:	PHONE NUMBER: [REDACTED]								

The following terms were accepted by the applicant upon submitting the online application:

By clicking on the 'Accept' button, I hereby certify that every statement I have made in this application is true and complete to the best of my knowledge. I understand that any false or incomplete answer may be grounds for not employing me or for dismissing me after I begin work. I understand that I will have to produce documentation verifying identity and employment eligibility in the U.S. I understand that I may be required to verify any and all information given on this application. I understand that this completed application is the property of the City of El Paso and will not be returned. I understand that the City of El Paso may contact prior employers and other references.

I understand that completion of this Application for Employment does not guarantee that I will be employed by the City of El Paso. I hereby affirm that my answers to these statements and questions are true and correct to the best of my knowledge. I have not knowingly withheld any fact or circumstance that would, if disclosed, affect my application unfavorably.

I understand that any misrepresentation, deception, or false statement made in this Employment Application may result in my not being considered for employment, and if not discovered by the Company until after my becoming employed, is grounds for, and may result in, my immediate termination.

Application time limit: I understand that application forms are active for the length of the eligible list which is normally six months unless otherwise stated. All persons must reapply after that period.

Falsification: I understand that falsification of information listed on my application or presented to the City of El Paso can be grounds for serious reprimand or termination.

Employment testing: I understand that all required drug tests, pencil-and-paper tests, physical exams, or electronic or other tests will be used in the employment decision.

Condition of Employment: I understand that I must provide official proof of Education (transcripts, diplomas, certificates), driver's license (if required), within 3 days of being contacted with a job offer.

This application was submitted by Jose Luis Gonzalez on 3/17/22 5: 21 PM

EMPLOYMENT APPLICATION



CITY OF EL PASO
300 N. Campbell
El Paso, Texas 79901
915-212-0045
<http://www.elpasotexas.gov>
Nunez, Leonel
A7718-0322 ASSOCIATE MUNICIPAL JUDGE

Received: 3/29/22 4:44 PM
For Official Use Only:
QUAL: _____
DNO: _____
☐ Experience
☐ Training
☐ Other: _____

PERSONAL INFORMATION

POSITION TITLE: ASSOCIATE MUNICIPAL JUDGE		EXAM ID#: A7718-0322
NAME: (Last, First, Middle) Nunez, Leonel		SOCIAL SECURITY NUMBER: N/A
ADDRESS: (Street, City, State/Province, Zip/Postal Code) [REDACTED]		EMAIL ADDRESS: [REDACTED]
HOME PHONE: [REDACTED]		
DRIVER'S LICENSE: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DRIVER'S LICENSE: State: TX Number: [REDACTED]	LEGAL RIGHT TO WORK IN THE UNITED STATES? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
What is your highest level of education? Master's Degree		

PREFERENCES

MINIMUM COMPENSATION: \$130,000.00 per year	ARE YOU WILLING TO RELOCATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
WHAT TYPE OF JOB ARE YOU LOOKING FOR? Regular	
TYPES OF WORK YOU WILL ACCEPT: Full Time	
SHIFTS YOU WILL ACCEPT: Day	

EDUCATION

DATES: From: 8/2013 To: 12/2015	SCHOOL NAME: Arizona Summit Law School	
LOCATION: (City, State/Province) Phoenix, Arizona	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Professional
MAJOR: JD		
DATES: From: 8/2011 To: 5/2013	SCHOOL NAME: St. Mary's University	
LOCATION: (City, State/Province) San Antonio, Texas	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Master's
MAJOR: Public Administration		
DATES: From: 8/2008 To: 5/2012	SCHOOL NAME: St. Mary's University	
LOCATION: (City, State/Province) San Antonio, Texas	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Bachelor's
MAJOR: Political Science and International Relations		

WORK EXPERIENCE

DATES: From: 2/2017 To: Present	EMPLOYER: Law Offices of Felix Valenzuela	POSITION TITLE: Associate
ADDRESS: (Street, City, State/Province, Zip/Postal Code) Wells Fargo Plaza, 221 N Kansas St # 1200, El Paso, Texas, 79901		
PHONE NUMBER: (915) 209-2719	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 30		
DUTIES: <ul style="list-style-type: none"> Felix Valenzuela specializes in criminal defense, white-collar crime, and appeals Assisted Mr. Valenzuela in preparation of trial materials Drafted memorandums and conducted in-depth research Assisted with Spanish speaking client 		
DATES: From: 6/2019 To: 2/2022	EMPLOYER: Benjamin Law Firm	POSITION TITLE: Attorney

ADDRESS: (Street, City, State/Province, Zip/Postal Code) 609 Myrtle, El Paso, Texas, 79901		
PHONE NUMBER: [REDACTED]	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 70		
DUTIES: - Represented clients in trial and other court matters in the U.S. Western District of Texas and in the County and District Courts of the State of Texas - Managed a team of paralegals and support staff - Drafted legal documents for court hearings and negotiated with US Attorneys and State Attorneys - Managed billing for both regained and appointed clients.		
DATES: From: 5/2017 To: 6/2019	EMPLOYER: El Paso District Attorneys Office	POSITION TITLE: Assistant District Attorney
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 500 E San Antonio, El Paso, Texas, 79901		
PHONE NUMBER: 915-546-2059	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 40		
DUTIES: - Analyze, prepare, and present criminal cases in contested and non-contested hearings. - Interview witnesses, law enforcement, and victims to collect evidence to prosecute - Draft legal documents for court settings and negotiated with defense counsels - present witnesses, cross examine witnesses and make arguments in court.		
DATES: From: 8/2016 To: 12/2016	EMPLOYER: Lopez Molinar & Saroldi PLLC	POSITION TITLE: Legal Clerk
ADDRESS: (Street, City, State/Province, Zip/Postal Code) El Paso, Texas		
SUPERVISOR: Mario Ortiz Saroldi - Partner	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 30		
DUTIES: • Met and advised current and prospect clients under the supervision of Partner Mario Ortiz Saroldi • Assisted Partner in preparation of pre trial and trial materials • Drafted memorandums • Conducted in depth legal research		
DATES: From: 12/2015 To: 3/2016	EMPLOYER: Molera Alvarez Group	POSITION TITLE: Fellowship
ADDRESS: (Street, City, State/Province, Zip/Postal Code) Phoenix , Arizona		
SUPERVISOR: James Ahlers - General Counsel and VP of Global Initiatives	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 25		
DUTIES: • Research Assistant for James Ahlers, General Counsel & Vice President of Global Initiatives • Worked with client on extensive project research and drafted memorandum for proposal		
REASON FOR LEAVING: Relocated		
DATES: From: 8/2012 To: 5/2013	EMPLOYER: St. Mary's University, Public Administration Department	POSITION TITLE: Graduate / Research Assistant
ADDRESS: (Street, City, State/Province, Zip/Postal Code) San Antonio , Texas		
PHONE NUMBER: (210) 431-8028	SUPERVISOR: Arturo Vega - Professor and Chair of St. Mary's University Pubic Administration Graduate Program	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 30		
DUTIES: • Conducted extensive research primarily on census and demographic studies through the use databases, including Lexus/Nexus and JSTOR • Data bank management with statistical software such as SPSS Statistics for statistical analysis • Helped coordinate and manage on-campus events with DNC Keynote Speaker Julian Castro and Red McCombs		
REASON FOR LEAVING: Graduated		

CERTIFICATES AND LICENSES

TYPE: Texas Licensed Attorney	
LICENSE NUMBER: 24104056	ISSUING AGENCY: Texas Supreme Court

Skills
OFFICE SKILLS: Typing: 55 Data Entry: 0
OTHER SKILLS:
LANGUAGE(S): Spanish - <input type="checkbox"/> Speak <input type="checkbox"/> Read <input type="checkbox"/> Write

ADDITIONAL INFORMATION
Nothing Entered For This Section

REFERENCES		
REFERENCE TYPE: Professional	NAME: Omar Carmona	POSITION: Esq.
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 221 N. Franklin Suite 1200, El Paso, Texas		
EMAIL ADDRESS:		PHONE NUMBER: [REDACTED]
REFERENCE TYPE: Professional	NAME: Arturo Vega	POSITION: Dr.
ADDRESS: (Street, City, State/Province, Zip/Postal Code)		
EMAIL ADDRESS:		PHONE NUMBER: [REDACTED]
REFERENCE TYPE: Professional	NAME: James Ahlers	POSITION: Esq.
ADDRESS: (Street, City, State/Province, Zip/Postal Code)		
EMAIL ADDRESS:		PHONE NUMBER: [REDACTED]
REFERENCE TYPE: Professional	NAME: Daniel Robledo	POSITION: Presiding Municipal Court Judge
ADDRESS: (Street, City, State/Province, Zip/Postal Code)		
EMAIL ADDRESS:		PHONE NUMBER: [REDACTED]

The following terms were accepted by the applicant upon submitting the online application:

By clicking on the 'Accept' button, I hereby certify that every statement I have made in this application is true and complete to the best of my knowledge. I understand that any false or incomplete answer may be grounds for not employing me or for dismissing me after I begin work. I understand that I will have to produce documentation verifying identity and employment eligibility in the U.S. I understand that I may be required to verify any and all information given on this application. I understand that this completed application is the property of the City of El Paso and will not be returned. I understand that the City of El Paso may contact prior employers and other references.

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Employment testing: I understand that all required drug tests, pencil-and-paper tests, physical exams, or electronic or other tests will be used in the employment decision.

Condition of Employment: I understand that I must provide official proof of Education (transcripts, diplomas, certificates), driver's license (if required), within 3 days of being contacted with a job offer.

This application was submitted by Leonel Nunez on 3/29/22 4:44 PM

Leonel Nunez Jr. Esq.

Education

Arizona Summit Law School, Phoenix Arizona

Juris Doctor

Graduated December 2015

St. Mary's University, San Antonio Texas

Masters in Public Administration

Graduated May 2013

Bachelor of Arts in Political Science

Graduated May 2012

Bachelor of Arts in International Relations

- Honors:
 - Presidential Scholarship Award
 - National Honor Society of Leadership
- Activities:
 - St. Mary's University NCAA Soccer Scholarship
 - Phi Alpha Delta Pre – Law Fraternity
 - Mexican Student Association

Skills

- Fluent in Spanish
- Federal Court
- Legal Research
- Litigation
- Communication
- Negotiation

Professional Experience

Then Benjamin Law Firm

June 2019 – February 2022

Attorney

- Represented clients in trial and other court matters in the U.S. Western District of Texas and in the County and District Courts of the State of Texas
- Managed a team of paralegals and support staff
- Drafted legal documents for court hearings and negotiated with US Attorneys and State Attorneys
- Managed billing for both retained and appointed clients

El Paso County District Attorney's Office

May 2017 – June 2019

Assistant District Attorney

- Analyze, prepare and present criminal cases in contested and non-contested hearings
- Interview witnesses, law enforcement, and victims to collect evidence to prosecute
- Draft legal documents for court settings and negotiated with defense counsels
- Present witnesses, cross examine witnesses and make arguments in court

The Law Office of Felix Valenzuela, El Paso, Texas

February 2017 – May 2017

Legal Clerk

- Felix Valenzuela specializes in criminal defense, white-collar crime, and appeals
- Assisted Mr. Valenzuela in preparation of trial materials
- Drafted memorandums and conducted in-depth research
- Assisted with Spanish speaking client

Leonel Nunez Jr. Esq.

Lopez Molinar & Saroldi PLLC, El Paso, Texas

August 2016 – December 2016

Legal Clerk

- Met with current and prospect clients under the supervision of Partner Mario Ortiz Saroldi
- Assisted Partner in preparation of pre-trial and trial materials
- Drafted memorandums and conducted in-depth legal research

Molera Alvarez Group, Phoenix, Arizona

December 2015 – March 2016

Fellowship

- Research Assistant for James Ahlers, General Counsel & Vice President of Global Initiatives
- Worked with client on extensive project research and drafted memorandum for proposal

Guajardo, Johnson, & Associates, LLC Phoenix, Arizona

May 2014 – August 2014

Legal Extern

- Advised clients on completion of immigration forms
- Assisted attorneys in preparation of pre-trial materials
- Drafted memoranda regarding family based immigration
- Researched immigration law issues
- Wrote motions and memoranda for criminal defense matters

St. Mary's University, Public Administration Department, San Antonio, Texas

August 2012 – May 2013

Graduate Research Assistant

- Conducted extensive research primarily on census and demographic studies through the use databases, including Lexus/Nexus and JSTOR
- Data bank management with statistical software such as SPSS Statistics for statistical analysis
- Helped coordinate and manage on-campus events with DNC Keynote Speaker Julian Castro and Red McCombs

Denton, Navarro, Rocha, Bernal, Hyde & Zech, P.C. San Antonio, Texas

May 2012 – August 2012

Office Assistant

- Worked in a fast paced environment and successfully met deadlines
- Created and enhanced "Operating Policies and Procedures" book for all employees to create efficiency and organization
- Helped address problems found in procedures book and generate new ideas of enhancing the workflow of the office

Office of Bexar County Judge Nelson Wolff, San Antonio, Texas

May 2011- December 2011

Assistant

- Researched a variety of topics regarding the San Antonio area and the city's political issues
- Maintained and organized files of each department that work with the Office of the County Judge
- Managed office correspondence flows
- Attended events such as the South West Voters Registration Project on behalf of County Judge

EMPLOYMENT APPLICATION



CITY OF EL PASO
300 N. Campbell
El Paso, Texas 79901
915-212-0045
<http://www.elpasotexas.gov>
Parra, Manuel
A7718-0322 ASSOCIATE MUNICIPAL JUDGE

Received: 3/31/22 2:17 PM
For Official Use Only:
QUAL: _____
DNQ: _____
☐ Experience
☐ Training
☐ Other: _____

PERSONAL INFORMATION

POSITION TITLE: ASSOCIATE MUNICIPAL JUDGE		EXAM ID#: A7718-0322
NAME: (Last, First, Middle) Parra, Manuel		SOCIAL SECURITY NUMBER: N/A
ADDRESS: (Street, City, State/Province, Zip/Postal Code) [REDACTED]		EMAIL ADDRESS: [REDACTED]
HOME PHONE: [REDACTED]		ALTERNATE PHONE: [REDACTED]
DRIVER'S LICENSE: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DRIVER'S LICENSE: State: TX Number: [REDACTED]	LEGAL RIGHT TO WORK IN THE UNITED STATES? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
What is your highest level of education? Doctorate		

PREFERENCES

Nothing Entered For This Section

EDUCATION

DATES: From: 8/2005 To: 5/2008	SCHOOL NAME: New York University School of Law	
LOCATION: (City, State/Province) New York, New York	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Professional
MAJOR: JD		
DATES: From: 6/2002 To: 5/2005	SCHOOL NAME: University of Texas at El Paso	
LOCATION: (City, State/Province) El Paso, Texas	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Bachelor's
MAJOR: Biology		

WORK EXPERIENCE

DATES: From: 11/2008 To: Present	EMPLOYER: Parra Law	POSITION TITLE: Attorney
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 3226 Pershing, El Paso, Texas, 79903		COMPANY URL: www.parralaw.com
PHONE NUMBER: 9157990700	SUPERVISOR: (self)	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 60	# OF EMPLOYEES SUPERVISED: 2	
DUTIES: Private practice with a focus in criminal defense. Trial experience in a variety of cases ranging from Class B misdemeanors to 1st degree felonies (eligible for every appointment wheel).		

CERTIFICATES AND LICENSES

TYPE: Texas State Bar	
LICENSE NUMBER: 24065875	ISSUING AGENCY: Texas State Bar

Skills

OFFICE SKILLS: Typing: Data Entry:
OTHER SKILLS:
LANGUAGE(S): Spanish - <input checked="" type="checkbox"/> Speak <input checked="" type="checkbox"/> Read <input checked="" type="checkbox"/> Write English - <input checked="" type="checkbox"/> Speak <input checked="" type="checkbox"/> Read <input checked="" type="checkbox"/> Write

ADDITIONAL INFORMATION

Nothing Entered For This Section

REFERENCES

REFERENCE TYPE: Professional	NAME: Victor Parra	POSITION: Attorney
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 3100 E Yandell, El Paso, Texas 79903		
EMAIL ADDRESS:		PHONE NUMBER: [REDACTED]

The following terms were accepted by the applicant upon submitting the online application:

By clicking on the 'Accept' button, I hereby certify that every statement I have made in this application is true and complete to the best of my knowledge. I understand that any false or incomplete answer may be grounds for not employing me or for dismissing me after I begin work. I understand that I will have to produce documentation verifying identity and employment eligibility in the U.S. I understand that I may be required to verify any and all information given on this application. I understand that this completed application is the property of the City of El Paso and will not be returned. I understand that the City of El Paso may contact prior employers and other references.

I understand that completion of this Application for Employment does not guarantee that I will be employed by the City of El Paso.

I hereby affirm that my answers to these statements and questions are true and correct to the best of my knowledge. I have not knowingly withheld any fact or circumstance that would, if disclosed, affect my application unfavorably.

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Falsification: I understand that falsification of information listed on my application or presented to the City of El Paso can be grounds for serious reprimand or termination.

Employment testing: I understand that all required drug tests, pencil-and-paper tests, physical exams, or electronic or other tests will be used in the employment decision.

Condition of Employment: I understand that I must provide official proof of Education (transcripts, diplomas, certificates), driver's license (if required), within 3 days of being contacted with a job offer.

This application was submitted by Manuel Parra on 3/31/22 2:17 PM

MANUEL PARRA, J.D.

LICENSES/EDUCATION

TEXAS STATE BAR, Texas

Licensed to practice law November 2008-Present

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

Juris Doctor, May 2008

Honors: Dean's Scholarship—*full tuition scholarship based upon academic merit*

Activities: High School Law Institute, Instructor
Latino Law Student Association, Admissions Chair

UNIVERSITY OF TEXAS AT EL PASO, El Paso, TX

B.S. in Biology – Ecology/Evolution, *magna cum laude*, May 2005 (graduated in 3 years)

Minor: Psychology

Cumulative GPA: 3.88 GPA in Major: 4.0

Honors: Outstanding Biology Major
Presidential Scholarship Recipient

EXPERIENCE

PARRA LAW OFFICES, El Paso, TX

Criminal Defense Attorney (Licensed in Texas), November, 2008—Present

Defend state-appointed and non-appointed defendants in misdemeanor and felony cases. Investigate and research factual and legal bases of charges. Negotiate plea agreements with prosecution. Conduct pre-trial hearings and jury trials, and prepare pleadings and other legal documents in connection therewith. Jury trial experience includes successful (not guilty verdicts or sentences lower than the State's plea offer going into jury trial) defenses against charges for Intoxication Manslaughter, Continuous and Aggravated Sexual Offense of a Child, Aggravated Assault with Deadly Weapon, Aggravated Kidnapping, Aggravated Robbery, Assault Family Violence, and felony Possession of Marijuana.

HIGH SCHOOL LAW INSTITUTE, NEW YORK UNIVERSITY, New York, NY

Instructor, Fall 2005—Spring 2007

Taught criminal law and mock trial theory and strategy to high school students representing each of New York City's boroughs, as well as various ethnic, cultural, social, and economic backgrounds. Provided career and school-oriented counseling and mentoring.

LAW SCHOOL PREPARATION INSTITUTE, UNIVERSITY OF TEXAS AT EL PASO, El Paso, TX

Assistant Instructor, June, 2004—July, 2005, 2009

Taught symbolic logic courses. Helped students develop analytical skills through use of lecture and interactive activities. Conducted LSAT preparation courses and tutoring for a wide range of students seeking admission to law school, from undergraduates to experienced professionals.

ADDITIONAL INFORMATION

Fluent in spoken and written Spanish.



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-468, 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.*

All Districts

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

AGENDA LANGUAGE:

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

Discussion and action on the results of the Public Engagement related to the Community Progress Bond.

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

DEPARTMENT: Capital Improvement Department

AGENDA DATE: May 10, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Sam Rodriguez, P.E., City Engineer, 212-0065

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: Goal 3 -Promote the Visual Image of the City,
Goal 4- Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments
Goal 7-Enhance and Sustain El Paso's Infrastructure Network
Goal 8- Nurture and Promote a Healthy, Sustainable Community

SUBJECT:

Discussion and action on the results of the Public Engagement related to the Community Progress Bond.

BACKGROUND / DISCUSSION:

On December 2, 2021, Mayor and Council adopted an updated Strategic Plan. As part of this action, five additional strategic goals were included to be part of an overall 30 strategic goals to be implemented by 2030. One of the new strategic goals identified within the Strategic Plan is:

“Develop a bond package focused on addressing identified community priorities and needs aligned with targeted areas of investment.”

To implement this goal, extensive public engagement was conducted to get feedback on the various initiatives and programs discussed at the Strategic Planning Session.

PRIOR COUNCIL ACTION:

Adoption of an updated Strategic Plan, December 2, 2021.

AMOUNT AND SOURCE OF FUNDING:

N/A

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

DEPARTMENT HEAD:

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



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-502, 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.*

All Districts

Office of the Comptroller, Margarita Munoz, (915) 212-1174

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 adopt the Post-Issuance Compliance Policy for the City of El Paso.

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

DEPARTMENT: Office of the Comptroller

AGENDA DATE: May 10, 2022

PUBLIC HEARING DATE: N/A

CONTACT PERSON NAME AND PHONE NUMBER: Margarita Munoz – Comptroller – 915-212-1174

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 6: Set the Standard for sound governance and fiscal management

SUBGOAL: 6.6 Ensure continued financial stability and accountability through sound financial management, budgeting and reporting

SUBJECT:

APPROVE a resolution to adopt the Post-Issuance Compliance Policy for the City of El Paso.

BACKGROUND / DISCUSSION:

The Post-Issuance Compliance Policy applies to tax exempt bonds. It establishes guidelines to develop and maintain compliance with the Internal Revenue Code of 1986 as amended, meet the requirements of the Securities and Exchange Commission Rule 15 (c) 2-12 and meet bond covenants obligation.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING: N/A

BOARD/COMMISSION ACTION: N/A

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

DEPARTMENT HEAD:

Margarita Maria Munoz, Comptroller
Name


Signature

05/10/2022
Date

RESOLUTION

WHEREAS, the purpose of this Post-Issuance Compliance Policy and Procedure manual is to adopt policies and procedures to guide the City of El Paso (the City) in meeting the requirements of the Internal Revenue Code of 1986, as amended, and applicable Treasury Regulations (collectively, the “Tax Code”) concerning tax-exempt and tax-advantaged debt (“TE Debt Issuances”), as well as continuing disclosure requirements described in the United States Securities and Exchange Commission Rule 15(c) 2-12, as amended (the “Rule”), and other covenants and related obligations of the City concerning all outstanding issuances of debt; and

WHEREAS, Non-compliance with the Tax Code may result in fines and/or loss of the preferential status of the debt issuances; and

WHEREAS, the City will review this policy at regular intervals to assure each debt issuance of the City is compliant with the Tax Code; and

WHEREAS, the Post-Issuance Compliance Policy applies to tax exempt bonds and will serve to establish guidelines to develop and maintain compliance with the Internal Revenue Code of 1986 as amended, meet the requirements of the Securities and Exchange Commission Rule 15 (c) 2-12 and meet bond covenants obligation.

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

That the City hereby adopts the Post-Issuance Compliance Policy for the City of El Paso which is attached hereto as ***Exhibit A*** and incorporated herein by reference.

APPROVED this _____ day of _____, 2022.

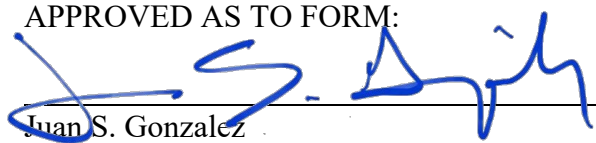
CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

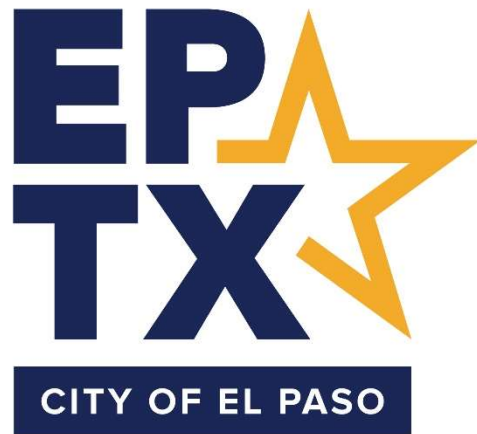
APPROVED AS TO CONTENT:



Margarita M. Munoz
Comptroller of the City of El Paso

EXHIBIT A

**POST-ISSUANCE COMPLIANCE POLICY
FOR THE CITY OF EL PASO**



City of El Paso

Post-Issuance Compliance Policy
April 2022

Prepared by:
Office of the Comptroller



The mission of the Office of the Comptroller is to provide fiscal management and financial reporting, administer treasury services and provide grant accounting information to City Management and elected officials so that they can make informed decisions regarding the provisions of City services.

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1. PURPOSE:

The purpose of this post-issuance compliance policy and procedure manual is to adopt policies and procedures to guide the City of El Paso (the City) in meeting the requirements of the Internal Revenue Code of 1986, as amended, and applicable Treasury Regulations (collectively, the "Tax Code") concerning tax-exempt and tax-advantaged debt ("TE Debt Issuances"), as well as continuing disclosure requirements described in the United States Securities and Exchange Commission Rule 15(c) 2-12, as amended (the "Rule"), and other covenants and related obligations of the City concerning all outstanding issuances of debt. Non-compliance with the Tax Code may result in fines and/or loss of the preferential status of the debt issuances.

2. COMPLIANCE OFFICER:

The Chief Financial Officer (CFO) as the designated compliance officer (the "Compliance Officer") under this policy shall be the person primarily responsible for ensuring that the City successfully carries out its post-issuance compliance requirements under applicable provisions of the Rule and the Tax Code with regard to all TE Debt Issuances of the City. The Compliance Officer shall be assisted by other City staff when appropriate. The Compliance Officer will also be assisted in carrying out post-issuance compliance requirements by contracted entities including Bond Counsel, Financial Advisor, Arbitrage Consultant, and/or other consultants deemed necessary.

The Compliance Officer shall be responsible for assigning post-issuance compliance responsibilities to other City staff, Bond Counsel, the Financial Advisor and the Arbitrage Consultant. The Compliance Officer shall utilize such other professional service organizations as are necessary to ensure compliance with the post-issuance compliance requirements of the City.

3. GENERAL OVERVIEW OF ARBITRAGE, YIELD RESTRICTION AND REBATE REQUIREMENTS

Overview

The purpose of this section is to introduce the concept of arbitrage and its requirements. There are exceptions to many of the arbitrage rules. Advice from the City's Arbitrage Consultant and/or Bond Counsel is strongly recommended before any action is taken. Under the Compliance Officer's direction, Office of the Comptroller should establish and maintain a system of record keeping and reporting to meet the arbitrage rebate compliance requirements of the federal tax code. Arbitrage calculations should be completed by an independent firm every year for all tax-exempt or tax-advantage debt issues to ensure rebate payments if any are remitted to the federal government in a timely manner.

It is the responsibility of the capital improvement department or any other user department for which bonds proceeds have been issued to use the bond proceeds according to the purpose of the bonds and to provide sufficient backup to substantiate payments made with bond proceeds. Office of the Comptroller will ensure proper reporting of the uses and sources of bond proceeds and will provide proper accounting records for arbitrage calculation. The following information should be considered by the City in regard to Arbitrage and Yield Restriction rules:

Definition

Arbitrage is the price differential, or profit made, from investing inherently lower yielding debt issuance proceeds in higher yielding taxable investments. In other words, arbitrage is the difference between the yield on an issuer's debt issuance and the investment income earned on the proceeds invested in taxable instruments. Arbitrage rebate refers to the positive or negative amount that must be paid (rebated) to the federal government.

<i>Debt Yield</i>	<i>Overall Investment Yield for Gross Proceeds</i>	<i>Result</i>
4.0%	5.0%	<i>Positive Arbitrage</i>
5.0%	5.0%	<i>No Arbitrage</i>
6.0%	5.0%	<i>Negative Arbitrage</i>

A. Areas of arbitrage compliance that must be addressed:

1. The arbitrage rebate requirements identify what must be done with any arbitrage (profits or earnings) above the debt issuance's yield earned on the investment of the gross proceeds of the debt issuance. Arbitrage on gross proceeds must be rebated to the federal government every five years after the date of issuance (or earlier if elected) through and including the final maturity ("filing date").
2. The yield restriction requirements set forth various investment yield limitation conditions for different categories of gross proceeds from a debt issuance (e.g., construction, refunding escrow, debt service, and reserve funds). The issuer should meet these various yield restriction conditions to avoid compromising the tax-exempt or tax-advantaged status of the debt issuance. Since the yield restriction requirements are specific to a debt issuance it is recommended that the City consult with the Arbitrage Consultant and/or Bond Counsel to determine the specific yield restriction requirements on a per debt issuance basis.

Construction Fund: In order to avoid potential classification as a taxable "hedge bond," at least 85% or more of the bond proceeds must be spent within three years of the bond issuance. In addition to this expenditure requirement, if there are unexpended project/construction proceeds at the end of the initial 3-year temporary period in excess of the **minor portion** (the lesser of \$100,000 or 5% of the sale proceeds of the debt issuance), an issuer may no longer invest the remaining proceeds above the bond yield, taking into account permitted "yield reduction payments" as determined by the City's Arbitrage Consultant.

B. Purpose of the Tax Code regarding arbitrage:

The Tax Code was put into place to minimize the benefits of investing tax-exempt or tax-advantaged debt proceeds, thus encouraging expenditures for the governmental purpose of the debt issuance and to remove the incentive to:

1. Issue debt earlier than needed,
2. Leave debt outstanding longer than necessary, and/or
3. Issue more debt than necessary for a governmental purpose.

C. Type of debt issuances and funds subject to arbitrage compliance:

1. As of 8/31/1986, governmental debt issuances are subject to arbitrage compliance.
2. The following funds and proceeds of a debt issuance are defined as **Gross Proceeds** of a debt issuance:
 - a. Capital project funds
 - b. Debt service funds
 - c. Reserve funds
 - d. Transferred proceeds (if an old debt issuance has been refunded by a new debt issuance and the old debt issuance has unspent funds, such funds may transfer to the new debt issuance)

Note of Concern: An often misunderstood concept is that monies received upon closing of a debt issuance are the only monies subject to arbitrage rebate. One of the most common funds found to be subject to arbitrage rebate that is not funded from debt issuance proceeds is the debt service fund. The debt service fund receives a majority of its funding from tax or use revenues. The debt service fund is required to be included in the arbitrage rebate calculation unless the fund balance is depleted at least once each bond year, except for a reasonable carryover amount not to exceed the greater of:

- a. The earnings on the fund for the immediately preceding bond year; **or**
- b. One-twelfth of the principal and interest payments on the Debt Issuance for the immediately preceding bond year.

D. Exceptions to the rebate requirements:

The Tax Code sets forth general arbitrage and rebate requirements for debt issuances. The general rule is that any arbitrage earned must be determined and reported to the federal government every fifth anniversary date after the date of issuance of the debt issuance and on the final maturity, or as elected. Arbitrage rebate is essentially 100% of investment earnings in excess of the debt issuance's yield. There are several exceptions to the arbitrage and rebate requirements, and if any one of these exceptions are met, all or a portion of the debt issuance's proceeds are not subject to the arbitrage and rebate requirements. The City consults with an Arbitrage Consultant and/or Bond Counsel to determine if the debt issuance is eligible for a particular exception, to establish the appropriate investment plan for the debt issuance proceeds, and to assess whether the exception requirements were met. Below are descriptions of the various exceptions:

1. **6-month spending exception:** If all gross proceeds and actual interest earnings are spent within 6-months after issuance, the interest earned during that period is not subject to the rebate requirements. Intermediate expenditure requirements are necessary (95% by 6 months and 100% within 12 months).

If there are unspent proceeds remaining at the end of the 6-month period, an issuer may still qualify for the spending exception under the following condition:

- a. If the remaining amount is 5% or less and is spent within 6 months from the end of the 6-month spending date.
2. **18-month spending exception:** If a debt issuance *does not* qualify as a construction issuance (75% of the debt issuance actually spent on construction) then the debt issuance is eligible for the 18-month spending exception, but *not* the 2-year spending exception. If all gross proceeds and expected interest earnings for the 6-month and 12-month period and actual interest for the 18-month period is spent within 18-months according to a strict timetable, the interest earned

during that period is not subject to the rebate requirements. Intermediate expenditure requirements are necessary (at least 15% by 6 months, 60% by 12 months, 100% by 18 months).

If there are unspent proceeds remaining at the end of the 18-month period, an issuer may still qualify for the spending exception under the following conditions:

- a. A reasonable retainage amount of 5% or less is allowed for business purposes and the retainage is spent within 12 months from the end of the 18-month spending date, **or**;
 - b. If the remaining amount does not exceed the lesser of \$250,000 or 3% of the issue price and due diligence is exercised to complete the project and spend the remaining project/construction proceeds.
3. **2-year spending exception:** If a debt issuance qualifies as a construction issuance (75% of the debt issuance is actually spent on construction) and all gross proceeds and expected interest earnings for the 6-month, 12-month, and 18-month period and actual interest for the 24-month period are spent within 2 years according to a strict timetable, then interest earned during that period is not subject to the rebate requirements. Intermediate expenditure requirements are necessary (at least 10% by 6 months, 45% by 12 months, 75% by 18 months and 100% by 2-years).

If there are unspent project/construction proceeds remaining at the end of the 2-year period, an issuer may still qualify for the spending exception under the following conditions:

- a. A reasonable retainage amount of 5% or less is allowed for business purposes and the retainage is spent within 12 months from the end of the 2-year spending date, **or**;
- b. If the remaining amount does not exceed the lesser of \$250,000 or 3% of the issue price and due diligence is exercised to complete the project and spend the remaining project/construction proceeds.

4. **CONTINUING DISCLOSURE:** The City will comply with its contractual continuing disclosure undertakings (CDUs) entered into in accordance with Rule 15(c) 2-12 of the Securities and Exchange Commission by timely filing with the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access (EMMA) System (a) an annual report and annual financial information, including audited financial statements if and when available, (Annual Report) and (b) notices of events specified in the CDUs (Reportable Events). The City may also employ the services of firms that improve the availability of or supplement the City's EMMA filings.

Continuing disclosures undertaking involves identifying the following:

- a. The date by which the Annual Report must be filed. The City must file the Annual Report by the last day of February of each year.
- b. The contents that need to be included in the Annual Report. The required contents are described in the CDUs. The City hires a Financial Advisor to complete and submit this report to EMMA. The Compliance Officer should receive confirmation from the City's Financial Advisor or City staff that each Annual Report includes all required information.
- c. Reportable Events, as they occur; what must be included in notices that must be filed and that are required to be filed; and the date by which notices must be made (not more than 10 business days after the Reportable Event). Reportable Events are described in Exhibit A to this policy. The CFO as Compliance Officer should evaluate each potential Reportable Event as it occurs, ask department heads to report potential Reportable Events to the Compliance Officer, and periodically remind them of that duty. The City hires a Financial Advisor to complete and submit notices to EMMA when an event takes place.

The City works closely with the Financial Advisor to ensure notice of the occurrence of a Reportable Event is timely and properly reported to EMMA.

- d. The format in, and accompanying identifying information with, which filings must be made, which are as prescribed by the MSRB and described in its EMMA instructions.
- e. Whether Annual Reports or notices of Reportable Events contain any misstatement or misleading omission of a material fact, taking into account cautionary statement included in them. The CFO will oversee diligence measures for each filing comparable to those required for the City's securities offerings.

Prior to the date by which the Annual Report must be submitted to EMMA, the City will complete the Annual Comprehensive Financial Report and obtain the opinion letter from the external auditors.

The City will work with the Financial Advisor to complete all other tables and relevant information as required by the continuing disclosure report. The Financial Advisor will submit all information to EMMA and notify the City when this is completed.

The CFO should seek advice from the City's bond counsel when uncertain about whether an event is a Reportable Event (e.g., whether it is material, if applicable) or the information that must be contained in notice of a Reportable Event as well as whether filings contain any misstatement or misleading omission of a material fact.

- 5. COMPLIANCE WITH OTHER BOND COVENANTS:** In addition of financial disclosure and arbitrage compliance, once the bonds are issued, the Compliance Officer or his designee is responsible for verifying compliance with all undertakings, covenants, and agreements of each bond issuance on an ongoing basis. This typically includes ensuring:

- a. Annual appropriation of revenues to meet debt service payments
- b. Taxes/fees are levied and collected where applicable
- c. Timely transfer of debt service payments to the trustee or paying agent
- d. Compliance with other bond covenants

6. DUE DILIGENCE REVIEW AT REGULAR INTERVALS

This policy and its related procedures start with a review of the due diligence measures that will take place at regular intervals, as well as each filing date to ensure that each debt issuance is compliant with the requirements of the Tax Code or the Rule. The City will complete the annual due diligence review with respect to (i) the Annual Report to be filed in accordance with its CDUs no later than February 25 of each year and (ii) TE Debt Issuances every April.

7. IDENTIFYING ADDITIONAL RESPONSIBLE EMPLOYEES

The Compliance Officer is primarily responsible for the administration of this policy. The Office of the Comptroller will assist with the annual due diligence review for all debt issuances.

8. RETENTION OF ADEQUATE RECORDS TO SUBSTANTIATE COMPLIANCE

A. General overview

1. **Debt not refunded:** Currently the IRS record retention requirements are to keep all records, data and documents associated with non-refunded debt issuances for three years past the final maturity date for the debt issuance (or longer if required by local or state law.)
2. **Refunded debt:** Since the refunding debt issuance (new debt issuance) is dependent on the tax-exempt or tax-advantaged status of the refunded debt issuance (old debt issuance), all records

are required to be maintained for three years past the final maturity of both debt issuances (or longer if required by local or state law).

3. **Electronic data storage requirements:** Electronic records may be stored in an electronic format in lieu of hard copies if certain requirements are satisfied, for example:

- a. The system must ensure an accurate and complete transfer of the hard copy books and records to the electronic storage system and contain a retrieval system that indexes, stores, preserves, retrieves and reproduces all transferred information.
- b. The system must include reasonable controls and quality assurance programs.
- c. The information maintained in the system must be cross-referenced with the books and records in a manner that provides an audit trail to the source documents.
- d. Upon request by the IRS, a complete description of the electronic storage system, including all procedures relating to its use and the indexing system must be provided.
- e. Upon request by the IRS, the issuer must retrieve and reproduce hard copies of all electronically stored records.
- f. The system must not be subject to any agreement that would limit the IRS' access to the use of the system.

B. Electronic file storage and backup: Financial/accounting transactions will be retained in PeopleSoft and will be backed up by the IT Department. Access will be restricted to persons authorized by the Compliance Officer.

C. Storage of hard copies: A storage box will be labeled with a listing of all debt issuances contained inside. The storage box will contain the documents mentioned in Section E below for each issuance. Access will be restricted to persons authorized by the Compliance Officer.

D. Destruction of records: A log will be kept of all debt issuances whose records are destroyed after the IRS mandated retention period detailing the debt issuance description, allowable destruction date, date records were destroyed, the Compliance Officer's signature authorizing the record destruction, and witness signature. Access to this information will be restricted as authorized by the Compliance Officer and stored at City Hall Office of the Comptroller.

E. Required information to be stored for each debt issuance

1. **Documents:** All resolutions (including reimbursement resolutions) and minutes pertaining to the projects financed if not included in the bond Transcript. Bond Counsel shall send a Transcript for the debt issuance to the CFO. If a Transcript was not compiled, then copies of the following documents will be forwarded or made available to the CFO's office:

- a. Bond Counsel Opinion
- b. Final Official Statement or Private Placement Memorandum
- c. Insurance Documents, if applicable
- d. Council Certificate for Ordinance
- e. Copy of Ordinance Authorizing Debt Issuance
- f. IRS Form 8038-G, Form 8038-GC, Form 8038, Form 8308-TC or Form 8038-B, as applicable
- g. CPA Verification Report (for refunding debt issuances only), if applicable
- h. Non-Arbitrage Tax Certificate or similar document, if applicable
- i. All Debt Service Schedules not included in the Official Statement
- j. Letter of Credit Agreement (generally for variable rate debt issuances only), if applicable
- k. Swap Agreement (generally for variable rate debt issuances only), if applicable
- l. Winning Bid Forms, if a competitive bid
- m. Trust Indenture, if applicable
- n. Investment Banker's Closing Memorandum

- o. Investment Banker's Notice of Delivery Memorandum
- p. Investment Banker's Sources and Uses of Funds Memorandum

2. Reports completed after issuance if applicable

- a. Rebate calculation reports
- b. Yield restriction reports
- c. Spending exception reports
- d. Penalty in lieu of rebate reports
- e. CPA verification report for restructuring of escrow
- f. Payment documentation to include:
 - i. Form 8038-T
 - ii. Cancelled check
 - iii. Proof of mailing
- g. Refund claims
- h. Other reports related to the Debt Issuance

3. Correspondence

- a. Bond Counsel
- b. Board Meetings
- c. Financial Advisor
- d. Arbitrage Consultant
- e. Underwriter
- f. Investment Firms
- g. Other correspondence concerning any other aspect of the debt issuance to include but not limited to expenditures, investments, allowable projects, etc.

4. Investment activity: Trust statements (or equivalent) with detailed investment activity for the entire computation period for each fund/account in which gross proceeds of the debt issuance were held. Investment information must be recorded on a daily transactional level. This information is required to compute the yield on the investments and to comply with archive requirements. Investment activity details should include such items as:

- a. General ledgers
- b. Subsidiary ledgers
- c. Investment statements (state pools, bank statements, etc.)
- d. Type of investment
- e. Date of purchase and purchase price
- f. Interest rate
- g. Interest payment amounts
- h. Maturity date
- i. Interest payment dates
- j. Interest calculation methodology
- k. Date of sale and sales price

5. Expenditure information: The Capital Improvement Department (CID) or department using the bond proceeds will capture expenditure information. The following expenditure information must be captured and stored in accordance with the above mentioned record retention requirements to include:

- a. Description of expenditure
- b. Date of expenditure
- c. Amount of expenditure
- d. Invoices

e. Proof of payment (canceled check, wire information, etc.)

6. **Initial letter of credit information to include:**

- a. Payment amounts
- b. Date of payment
- c. Terms

7. **Actual letter of credit information to include:**

- a. Actual amount paid
- b. Actual date payment is made
- c. Invoices
- d. Statements

8. **Allocation of gross proceeds to expenditures:** Any allocation of gross proceeds to expenditures must involve a current outlay of cash for the governmental purpose of the debt issuance. A current outlay of cash is an outlay reasonably expected to occur within five banking days after the date of an allocation. If expenditure is paid by check, the outlay is the date the check is mailed, provided that it is expected to be cashed in five days.

- a. **Allocation:** The first in, first out (FIFO) method permits the City to put the proceeds of more than one debt issuance into a single account (commingle) and treat all expenditures as coming from proceeds of the first debt issuance until they are fully spent.
- b. **Timing:** An issuer must account for the allocation of proceeds to expenditures not more than 18 months after the later of: the date the expenditure is paid or the date the project, if any, that is financed by the debt issuance is placed in service. This allocation must be made in any event by the date 60 days after the fifth anniversary of the issuance date or the date 60 days after the retirement of the debt issuance, if earlier. This paragraph applies to debt issuances issued on or after May 16, 1997.

9. **Allocation of investments in a commingled investment fund:** Investment earnings on bond proceeds are allocated into each capital project fund in accordance to the percentage contributed into the commingled investment fund. A commingled fund is defined as any fund or account that contains both bond proceeds and any amount in excess of \$25,000 that are not gross proceeds of the bond issue. The City allocates investment earnings on a monthly basis. The City Council has the authority to determine the usage of the investment earnings to pay debt service or to be spent in approved capital projects of the same nature of those covered by the bond proceeds.

10. **Qualified use of proceeds, financed property, private business use:** The qualified use of proceeds, property financed, and private business use limitations by the debt issuance should be identified and continually monitored to ensure compliance with the limitations as defined in the debt issuance documents or if more restrictive, state law or the Tax Code's limitations. Supporting documentation is required to support qualified use of proceeds, property financed, and private business use. As a general rule, property financed with tax-exempt or tax-advantaged bonds must be owned, operated and managed by the city or another state or local governmental entity, with limited exceptions. Consequently, the sale or lease of a bond-financed property to a non-governmental entity may cause the bonds to become taxable. In addition, there are detailed IRS rules on permitted terms for a management agreement for bond-financed property with a private entity. For purpose of these rules, the federal government is treated as a private entity. The Compliance Officer, in consultation with Bond Counsel, will ensure such limitations are in

compliance with debt issuance documents or if more restrictive, state law or the Tax Code's limitations.

11. Fair market value of investments: The City is to provide information to support that the investments were purchased or sold at a fair value. The City may not purchase an investment at a price in excess of fair market value with gross proceeds of the debt issuance. Nor may the City sell an investment purchased with gross proceeds at a price lower than fair market value. Treasury Regulations Section 1.148-6(c). In dealing with fair market value requirements, the Tax Code specifically provides three safe harbor categories of investments:

- a. Securities traded on an established market from a willing seller in a bona fide arm's-length transaction.
- b. Certificates of deposit purchased using a safe harbor under the applicable Tax Code. The safe harbor is available only for certificates that have a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal.
- c. Guaranteed investment contracts purchased used a three-bid safe harbor under the Tax Code.

9. PROCEDURES TO IDENTIFY NON-COMPLIANCE

This policy and its related procedures begin with a review of the due diligence measures that will take place at regular intervals to ensure that each debt issuance is compliant with the Tax Code.

Date due diligence review completed: _____

Person(s)/Contractor(s) completing review:

CFO:	_____	_____	_____
	Name/Title	Signature/Date	Sections Completed

Arbitrage Consultant:	_____	_____	_____
	Name/Title	Signature/Date	Sections Completed

Office of the Comptroller:	_____	_____	_____
	Name/Title	Signature/Date	Sections Completed

Other:	_____	_____	_____
	Name/Title	Signature/Date	Sections Completed

Other:	_____	_____	_____
	Name/Title	Signature/Date	Sections Completed

Results accepted by:	_____	_____	_____
	Name/Title	Signature	Date

Date of next due diligence review: _____

The following pages contain items that are required to be verified for compliance. For all "no" responses, provide an explanation in Schedule A.

A. GENERAL OVERVIEW OF ARBITRAGE, YIELD RESTRICTION AND REBATE REQUIREMENTS	Yes/No	Responsibility
1. Debt Facts		
a. Has a debt listing been prepared identifying all debt issuances issued on and after August 31, 1986? Include the following facts: i. Debt issuance description ii. Date of issuance iii. Maturity date iv. Subjectivity to arbitrage rebate v. Subjectivity to project fund yield restriction		
2. Debt Issuances that are Subject to Arbitrage Rebate		
a. Have arbitrage reports been completed for each filing date?		
3. Debt Issuances Subject to Project Fund Yield Restriction		
a. Have all project proceeds been spent before the end of the three year temporary period for each debt issuance? If no, proceed with questions 3.b. and 3.c. below.		
b. Have yield restriction calculations been completed for all filing dates until the project monies were spent below the minor portion? If no, provide the following information on Schedule A: i. End date of temporary period ii. Balance remaining on temporary period end date iii. Balance remaining as date of the review (if known) iv. Explanation of compliance measures taken		
c. Have at least 85% or more of the project proceeds been spent before the end of the three year temporary period: If no, consult with Bond Counsel on appropriate action.		

B. TRAINING OF COMPLIANCE OFFICER AND OTHER RESPONSIBLE PARTIES	
Provide the following information for training sessions attended since the last due diligence review.	
Name(s) of Attendees:	_____
Name of Program:	_____
Program Provider's Organization:	_____
Date of Training:	_____
Hours of Training:	_____

C. RETENTION OF ADEQUATE RECORDS	Yes/No	Responsibility
1. Retention of Adequate Records in Adherence to Policy Manual Guidelines		
a. Electronic data storage requirements met?		
b. Electronic file storage and backup requirements met?		
c. Storage of hard copy requirements met?		
d. Destruction of records requirements met?		
e. Document data storage requirements met?		
f. Report storage requirements met?		
g. Correspondence storage requirements met?		
2. Recording of Financial Transactions in Adherence to Policy Manual Guidelines		
a. Investment activity recording requirements met?		
b. Expenditure activity recording requirements met?		
c. Allocation of gross proceeds to expenditure requirements met?		
3. Qualified Use of Proceeds, Financed Property, Private Business Use		
a. Have proceeds been properly spent on allowable uses?		
b. Has the financed property been used in accordance with the allowable uses including Private Business Use limitations?		
c. Have there been any sales, leases, or management contracts of the financed property with private entities or the federal government?		
4. Fair Market Value of Investments		
a. Have all investments purchased since the last due diligence review qualified under the safe harbor rules for purchasing investments at fair market value?		
5. Continuing Disclosure		
a. Has an Annual Report been filed with the content, by the time, in the form, and with the identifying information required by the CDU for each debt issuance? b. Have any Reportable Events occurred in the prior 12 months? c. Have notices of such Reportable Events been timely filed in accordance with the CDUs?		

Schedule A (Exceptions and Explanations)

12. POST ISSUANCE COMPLIANCE POLICY REVIEW

This Post Issuance Compliance Policy shall be reviewed at least biennially by the Compliance Officer or his designee.

Exhibit A

REPORTABLE EVENTS

Reportable Events are any of the following events with respect to the securities described in any CDU:

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 IRS 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 securities, or other material events affecting the tax status of the securities;
7. Modifications to rights of holders of the securities, if material;
8. Calls of the securities for redemption, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the securities, material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the City;
13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a 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 City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the City, any of which affect the holders of the City, if material;
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the City, any of which reflect financial difficulties; and
17. Any failure by the City to provide a complete Annual Report to EMMA by the time required by the CDUs.

For these purposes, (i) any event described in paragraph 12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding

under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or 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 City, and (ii) "*financial obligation*" as used in paragraphs 15 and 16 means (a) a debt obligation, (b) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, or (c) a guarantee of a debt obligation or any such derivative instrument, except that "*financial obligation*" excludes municipal securities as to which a final official statement (as defined in Rule 15c2-12) has been provided to the MSRB consistent with Rule 15c2-12.



Post-Issuance Compliance Policy

Office of the Comptroller
May 10, 2022



Strategic Plan Alignment

Goal 6. Set the Standard for Sound Governance and Fiscal Management

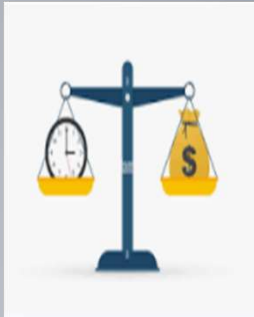
- *6.6 Ensure continued financial stability and accountability through sound financial management, budgeting and reporting*



Purpose of the Policy

- Meet requirements of the IRC of 1986 as amended
- Meet requirements of the SEC Rule 15(c) 2-12 for continuing disclosures
- Meet bond covenants obligation

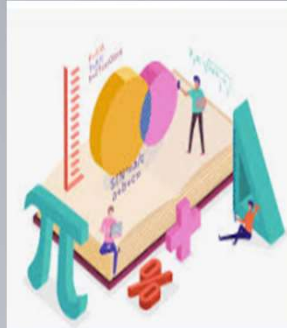




Issue debt
earlier than
needed



Leave debt
outstanding
longer than
necessary



Issue more
debt than
necessary

Purpose of the Tax Code regarding Arbitrage and Yield Restrictions

- Arbitrage on gross proceeds must be rebated to the federal government every five years after the date of issuance
- Yield restrictions requirements need to be met in order to avoid compromising the tax – exempt status of the debt issuance

Continuing Disclosures SEC Rule 15 (c) 2-12

Requires the City to file with the Municipal Securities Rulemaking Board the following disclosures:

- Annual report and annual information
- Notices of events (reportable events)

CITY OF EL PASO, TEXAS

**ANNUAL COMPREHENSIVE
FINANCIAL REPORT**



**FOR THE FISCAL YEAR ENDED
AUGUST 31, 2021**

Compliance with Bond Covenants



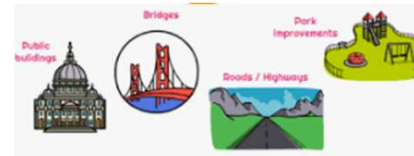
1

Ensure annual appropriation of revenues to meet debt service payment



2

Timely transfer debt service payments to trustee or paying agent



3

Ensure compliance with the uses and purposes of the bond

Compliance Officer

- The Chief Financial Officer (CFO) is designated as the Compliance Officer
- Responsible for ensuring the City carries out its post-issuance compliance requirements
- Comptroller will assist with the review



Due Diligence Review

- The City will complete the annual due diligence review with respect to the annual report no later than February 28 of each year
- The City will review bond issuances spending, annual budget appropriation, debt service payments and compliance with bond covenants as applicable annually during the month of April.
- The review will be documented and available upon request.

Review of Post Issuance Compliance Policy

- The policy should be reviewed at least biennially by the Compliance Officer or his designee.

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, **R**espect, **E**xcellence,
Accountability, **P**eople

MISIÓN



Brindar servicios excepcionales
para respaldar una vida y un
lugar de alta calidad para
nuestra comunidad

VISIÓN



Desarrollar una economía regional
vibrante, vecindarios seguros y
hermosos y oportunidades
recreativas, culturales y educativas
excepcionales impulsadas por un
gobierno de alto desempeño



VALORES

Integridad, Respeto, Excelencia,
Responsabilidad, Personas



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-503, 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.

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 that the City hereby adopts the revised City of El Paso Budget Policy, which allows for the establishment of a Pension Stabilization Fund and amends the language of the Stabilization Fund created on March 3, 2020.

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

DEPARTMENT: City Manager's Office

AGENDA DATE: May 10, 2022

CONTACT PERSON NAME/PHONE: Robert Cortinas, Chief Financial Officer (915) 212-1067

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL NO. 6: Set the Standard for Sound Governance and Fiscal Management

SUBJECT:

That the City hereby adopts the revised City of El Paso Budget Policy, which allows for the establishment of a Pension Stabilization Fund and amends the language of the Stabilization Fund created on March 3, 2020.

BACKGROUND / DISCUSSION:

On March 3, 2020, the City Council approved the revised Budget Policy that established the Budget Stabilization Fund. This proposed amendment to the policy will define the original budget stabilization fund as the Operating and Debt Stabilization Fund. This amendment also establishes a Pension Stabilization Fund as a vehicle to reduce the current unfunded pension liability. The Council action is in line with the strategic plan alignment to create and implement a plan to address long term liabilities, sustain and improve the City's bond rating and create savings in future debt services.

SELECTION SUMMARY:

PROTEST

☒ No protest received for this requirement.

☐ Protest received.

CONTRACT VARIANCE:

None

PRIOR COUNCIL ACTION:

March 3, 2020

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: Robert Cortinas

RESOLUTION

WHEREAS, on March 3, 2020, the City Council approved the revised Budget Policy; and

WHEREAS, the City desires to amend the Budget Policy to allow for the establishment of a Pension Stabilization Fund and amend the language of the Stabilization Fund created on March 3, 2020.

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

That the City hereby approves the adoption the revised City of El Paso Budget Policy attached to this resolution as Exhibit A, which allows for the establishment of a Pension Stabilization Fund and amends the language of the Stabilization Fund created on March 3, 2020.

APPROVED this _____ day of May, 2022.

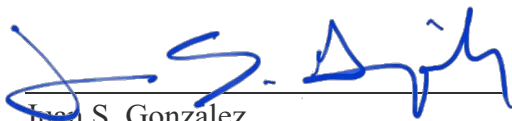
CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



K. Nicole Cote
Managing Director of Office of
Management and Budget and Purchasing
and Strategic Sourcing

Exhibit A

City of El Paso

Budget Policy (2022)

City of El Paso



BUDGET POLICIES

Office of Management and Budget

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 - a. REVENUE DIVERSIFICATION
 - b. ONE-TIME REVENUES
 - c. UNPREDICTABLE REVENUE
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 - e. SETTING CHARGES/FEEES
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- VIII. EXPENDITURE POLICIES
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 - c. REPLACEMENT OF ROLLING STOCK
- IX. OPERATING CONTINGENCY
- X. RESERVES
- XI. OPERATING AND DEBT STABILIZATION FUND
- XII. PENSION STABILIZATION FUND
- XIII. BUDGET ADOPTION
- XIV. BUDGET CONTROLS AND ACCOUNTABILITY
- XV. AMENDMENTS TO THE BUDGET
- XVI. REPORTING

I. PURPOSE

The following policies outline the City of El Paso's (the "City") guidelines for budgetary decision-making and set standards for sound budgetary practices and fiscal performance. Budget Policies that are consistently followed will assist the City in achieving its current and future goals in a fiscally responsible and sustainable manner.

II. SCOPE

The scope of this policy spans areas of both operating and capital projects budgeting, revenue management, forecasting, internal controls, and reporting.

III. OBJECTIVES

These policies serve to guide the development of the City's budget and outline standards for revenue generation and the execution of operating expenditures as recommended by the Government Finance Officers Association (GFOA). The budget policies will also help manage financial pressures to address growing demands upon City resources, while preserving long-term fiscal stability.

IV. BUDGET PROCESS

The purpose of the budget process is to help decision makers make prudent choices about the provision of services and capital assets and to promote stakeholder participation in the process. The following is a summary of policies that will guide the process.

1. The City Manager and City Council will set parameters/priorities at the beginning of each budget cycle.
2. The Office of Management and Budget will publish annually a Budget Preparation Manual guiding departments with the development of their budgets. The manual will include an operating budget preparation calendar.
3. The budget process should include a five-year financial forecast to assess long-term financial implications of current and proposed policies, programs, and assumptions that develop appropriate strategies to achieve City Council's goals.
4. Upon submission of the departmental requests, the City Manager reviews and evaluates all baseline budget requests to determine whether they fulfill City Council goals and objectives, improve management effectiveness, and service delivery.

5. The City Manager submits a Proposed Budget to City Council for approval which includes the City Manager's Budget Message, a concise summary of the budget, shall include:
 - a) Summary of the major changes in priorities or service levels from the current year and the factors leading to those changes.
 - b) The priorities and key issues for the new budget period.
 - c) Identify and summarize major financial factors and trends affecting the budget, such as economic factors; long-range outlook; significant changes in revenue collections, tax rates, or other changes; current and future debt obligations; and significant use of or increase in unreserved fund balance.
 - d) Provide financial summary data on revenues, other resources, and expenditures for at least a five-year period, including prior year actual, current year budget and/or estimated current year actual and the proposed budget.

V. BALANCED BUDGET

The general fund, which is the main operating fund of the City, is required to annually have a balanced budget. The City's goal is to balance the operating budget with current revenues, whereby, current revenues would match and fund on-going expenditures/expenses. The City considers the budget balanced when total expenditures/expenses are equal to total revenues.

However, the budget is also balanced in situations where total expenditures/expenses are less than total revenues, which is technically a surplus. There are also instances when the City might plan to spend excess fund balances accumulated from previous years (while maintaining established reserves) on one-time or non-routine expenditures. The City considers the budget to be balanced in this case also, provided the funding from previous years is available, and a plan is in place to not include ongoing expenditures/expenses into this type of funding. This type of balanced budget is especially prevalent when capital projects are budgeted using proceeds from the issuance of bonds.

VI. LONG-TERM PLANNING

It is the policy of the City to maintain a multi-year forecast of revenues, expenditures, and reserves to help guide the decisions of City officials where the decisions impact the long-term finances of the City. The multi-year revenue and expenditure forecast shall be

reviewed at least once prior to the budget process and after adoption of the budget. The multi-year forecast will also be updated upon the approval of any capital improvement plan submitted to City Council and should be updated based on any dramatic changes in policy, legislation and the economy. The projection will cover a minimum of three years.

The Office of Management and Budget is responsible for presenting the multi- year forecast to the City Manager and City Council as part of the Proposed Operating Budget cycle. It will outline general approaches the City should follow over the long-term to maintain and increase the ability of the City to provide services through maintaining and increasing revenues, growing the City's economy for the purpose of revenue generation, and controlling and managing the cost of services and the method of delivery of services.

VII. REVENUE POLICIES

A. REVENUE DIVERSIFICATION

The City shall maintain a broad revenue base to distribute the revenue burden equitably to minimize the risk exposure of unforeseen down turns in any one-revenue stream supporting the City budget.

During each year of a budget process OMB will review current property tax exemptions approved by City Council and will submit recommendations to City Administration identifying possible increases or decreases in the approved exemptions or any new exemptions being proposed. OMB will also identify both the short and long-range effects on City resources available to fund existing and proposed programs. City Council will review tax exemptions only during the budget process.

Based on economic conditions, OMB will identify specific revenue sources that may be severely impacted. Revenue sources are reviewed on a monthly basis to report any significant changes that may impact the budget and identify corrective action if necessary to City administration. Potential new revenue sources, when identified and evaluated, are to be submitted during the budget process.

Revenue directly related to a restricted fund shall only be used for purposes legally permissible and in a fiscally responsible manner for that fund. Programs and services funded by restricted revenue will be clearly designated as such.

B. ONE-TIME REVENUES

The City shall limit the use of one-time revenues for purposes other than to maintain sustained operating expenses due to the disruptive effects on services due to the non-recurrence of these sources. Such one-time revenue sources shall be solely

utilized for the purchase of one-time expenditures, such as capital items or short-term contractual obligations of duration of less than twelve months.

C. UNPREDICTABLE REVENUE

The City shall identify major revenue sources it considers unpredictable. Unpredictable revenue sources are those revenues with a more than normal risk of varying from budget by more than \$50,000. The collection of revenue shall be considered when determining whether revenue is unpredictable.

It is important to consider how significant a variation in revenue receipts will affect the City's financial outlook and ability to operate programs in the current and future budget periods. The City should decide, in advance, on a set of tentative actions to be taken if one or more of these sources generate revenues substantially higher or lower than projected. The plans should be publicly discussed and used in budget decision-making.

D. REVENUE ESTIMATES

City departments that generate revenue are required to submit revenue estimates on a monthly basis in order to prepare for the preceding fiscal year's budget. OMB will review the estimates and any supporting documentation identifying the methodology utilized in preparing revenue estimates.

Revenues should be estimated using a conservative approach to avoid any budget shortfalls during the fiscal year. Departments should provide estimates annually during the budget process of the revenue generated by their department. There should be a consensus by the Department, the Office of Management and Budget, and the Chief Financial Officer on the estimate prior to inclusion in the proposed budget submitted to City Council for adoption.

E. SETTING CHARGES/FEES

Departments will review at least annually any fees associated with their department and make changes based on factors such as the impact of inflation, indirect cost adjustments, and any other related expenses that impact the cost of providing services to the public. Proposed changes must be submitted to City Attorney for review and OMB during the budget process with full disclosure on proposed changes.

New fees are to be included as part of the budget process and if approved by administration, included in the proposed budget submitted to City Council for adoption.

Fees will be set at a level to fully recover costs, except where there is a greater public benefit through use of a lower fee, such as where full recovery may adversely impact overall revenue or may discourage participation in programs where the participation benefits the overall community. In the event that a fee or license amount is limited by state statute, said fee or license will be established accordingly.

Enterprise Funds shall be self-supporting so that the relationship between costs and revenues is clearly identified.

F. COLLECTION

The City monitors recognized revenue throughout the fiscal year. When revenue is less than estimated, OMB notifies administration with expected impact on the current fiscal year budget and provides recommended corrective action. The City Manager initiates action consistent with prudent financial management and notifies City Council of such action.

G. INDIRECT COSTS

Indirect costs should be recovered from other funds. This is done in accordance with the A-87 Indirect Cost Recovery Plan developed each year by outside consultants.

VIII. EXPENDITURE POLICIES

A. EXPENDITURE ESTIMATES

Expenditures shall be sufficient to provide quality services at a reasonable cost and within available financial resources. All new requests for program funding should be accompanied with concise statements of program's mission, objectives, and intended measurable outcomes.

B. SALARIES & BENEFITS "PERSONAL SERVICES"

The budget resolution shall specify the authority Department Heads will have in respect to changing their personal services budgets.

Benefits such as health insurance, life insurance, worker's compensation, and pension will be budgeted in the department.

During budget process, all personnel requests must be fully justified to show that they will either meet new program purposes or maintain or enhance service delivery. The City Manager shall approve all position additions.

C. REPLACEMENT OF ROLLING STOCK

The City has a major investment in its fleet of cars, trucks, tractors, and other similar equipment. The City anticipates having to replace the existing equipment as necessary and budgets to that end each year. Vehicle and equipment maintenance is also funded in this manner. Vehicles and equipment will be replaced when it is cost effective to do so. Vehicles and equipment purchased will be suitable for their purpose but not exceed the necessary features and capabilities required to meet the day-to-day requirements of the vehicle/equipment. When an existing vehicle is replaced by a new vehicle, every effort is made to utilize the outgoing vehicle somewhere else in the City fleet as long as its condition is suitable for the new purpose.

IX. OPERATING CONTINGENCY

The City will establish as per budget resolution, an operating contingency account, to offset expenditures for unexpected maintenance or other unanticipated expenses that might occur throughout the fiscal year. Expending from the contingency account must have approval from the City Manager or Chief Financial Officer.

X. RESERVES

Each year an amount equal to five percent of the prior year's adopted general fund operating expenditure budget shall be appropriated for the purpose of creating a cash reserve fund to provide coverage for unexpected expenses. Borrowing from the Cash Reserve Fund for unanticipated expenditures requires that funds be paid in full within a year, according to the City Charter.

Per the City Charter, each year an amount equal to five percent of the prior year's adopted general fund operating expenditure budget shall be appropriated for the purpose of creating a cash reserve fund; provided the funds are maintained and may be used in accordance with Section 7.4 of the City Charter. B. The cash reserve fund must be maintained as a separate entity in accounting records. Additionally, the balance on deposit in the cash reserve fund must be invested in accordance with state guidelines and income from such investments will remain within the fund, except as may be expended in accordance with Section 7.4 of the City Charter. C. Withdrawals from the cash reserve fund, whether it has attained the required size or not, may be made from time to time to meet current expenses until sufficient taxes are collected. Such withdrawals must be approved by city council action.

As soon as practical after collection of taxes, the amount so withdrawn shall be repaid to the cash reserve fund so as to keep the fund available for use in the following year.

The reserved and unreserved general fund balance will be maintained to respond to emergencies of general fund expenditures. The City shall have a plan in place to maintain reserves level.

Flexibility will be allowed in the use of fund balance but its use should be prioritized in the following order:

1. Unforeseen events or emergencies
2. Capital Expenditures
3. Future year budgets

Funding of this reserve will come from one-time revenues, excess fund balance and revenues in excess of expenditures.

XI. OPERATING AND DEBT STABILIZATION FUND

The City will establish an operating and debt stabilization fund as a reserve of surplus revenues to be used with the purpose of 1) minimizing future tax rate impact for maintenance and operations as well as debt service, 2) protecting against raising charges for services and fees and 3) providing available funding for specific circumstances as needed to maintain the same levels of service. In such case, the use of the fund resources will be determined and approved by Council action.

The operating and debt stabilization fund serves as a source of financial support for the City's budget in times of slow or declining revenue growth, as a safeguard to continue funding priorities included in the strategic plan, and as the primary source of protection against having to make drastic cuts in City services in periods of economic downturns.

The amount of funds to be committed and transferred will be recommended by the Chief Financial Officer or designee to the City Council during the year. The City Council will have final approval of the amount maintained in the fund, as well as the planned uses of the fund.

XII. PENSION STABILIZATION FUND

The City will establish a pension stabilization fund as a reserve of surplus revenues from all City's funds (governmental and enterprise funds), to the extent permitted by law, to be used with the sole purpose of making payments to the civilian, firemen and policemen's retirement pension plans on an annual basis commencing in the fiscal year 2023.

The pension stabilization fund is created to fund additional contributions to the City Employees Retirement Trust and to the Firemen and Policemen's Pension Fund. The goal is to reduce the current unfunded pension liability and sustain the City's bond rating.

The amount of funds to be committed and transferred will be recommended by the Chief Financial Officer or designee to the City Council for approval during the year. The balance in the fund should be invested in accordance with the City's investment policy and all investment earnings should be used for the purpose of the fund.

XIII. BUDGET ADOPTION

The budget shall be adopted by resolution, subject to the Mayor's veto, not later than the day before the first day of the City's fiscal and budget year; but, in the event the budget is not adopted, the appropriation for personnel and essential operating supplies made in the previous year shall be extended until the new budget is adopted.

XIV. BUDGET CONTROLS AND ACCOUNTABILITY

Each department director, appointed by the City Manager, will be responsible for the strategic plan and goals adopted by City Council as part of the budget and for monitoring their individual departmental budget for compliance with spending limitations.

The Chief Financial Officer and the City Manager may transfer funds within the operations and maintenance or capital line items of a departmental budget category, in accordance with the budget resolution. All other transfers of appropriation or budget amendments that alter the original adopted budgets at the fund level require City Manager and City Council approval as outlined in the following section.

XV. AMENDMENTS TO THE BUDGET

Before adoption:

After the public hearing, the City Council may adopt the budget with or without amendments. In amending the proposed budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service, provided that no amendment to the proposed budget shall increase expenditures to an amount greater than the estimated income (including the use of available Fund Balance).

After adoption:

- a. Department Heads are authorized to make budget transfers not exceeding an established dollar limit. Those exceeding this limit will require City Council or City Manager approval, as per Budget Resolution.
- b. A budget transfer of personal services appropriations or impacting revenue accounts requires the approval of the City Manager or his/her designee.
- c. A budget transfer must be approved prior to the occurrence of the expenditure except for emergency expenditures when approved by the City Manager or his/her designee and ratified by the City Council.
- d. The City Manager shall have the authority to establish the budget for any capital projects that are approved by the City Council.
- e. Budget transfers submitted to City Council shall be accompanied by an explanation from the department, approval by OMB, and a recommendation from the City Manager or his/her designee. The department's explanation must be sufficiently clear and provide sufficient detail for the members of City Council to determine the need for the transfer.
- f. The City Manager or his/her designee is authorized to establish budgets and staffing table changes for grants and similar awards when the applications for such grants and awards have been previously approved by the City Council or the City Manager. All grant applications requiring City Council approval shall be prepared in accordance with established procedures. The agenda item shall state clearly the type and amount of the required City match and the funding source of the grant match.

XVI. REPORTING

Departments will submit to the Office of Management and Budget an expenditure and revenue analysis, if necessary, no later than 10 days after the accounting period has been closed.

The Office of Management and Budget will monitor expenditures monthly and report to City Council on a quarterly basis. Quarterly reports will be made available through OMB's homepage: <http://www.elpasotexas.gov/omb>. These reports will include the current status of revenues and expenditures to-date compared with the corresponding budgets for each fund.



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-535, 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 8

City Attorney's Office, Karla M. Nieman, (915) 212-0033

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 authorize the Mayor to sign a Certificate of Approval of the Highest Elected Official in conjunction with the proposed issuance by the Housing Opportunity Management Enterprises PFC (the "Issuer"), a non-profit public facility corporation created by the Housing Authority of the City of El Paso, in an aggregate principal amount not to exceed \$20,000,000.00, for the Multifamily Housing Revenue Bonds RAD (Rental Assistance Demonstration) Conversion Program, Cielo Tower Apartments Project.

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

DEPARTMENT: City Attorney

AGENDA DATE: May 10, 2022

PUBLIC HEARING DATE: N/A

CONTACT PERSON NAME AND PHONE NUMBER: Karla M. Nieman (915) 212-0033

DISTRICT(S) AFFECTED: District 2

STRATEGIC GOAL: GOAL 6

SUBGOAL: N/A

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 on a Resolution to authorize the Mayor to sign a Certificate of Approval of the Highest Elected Official in conjunction with the proposed issuance by the Housing Opportunity Management Enterprises PFC (the "Issuer"), a nonprofit public facility corporation created by the Housing Authority of the City of El Paso, in an aggregate principal amount not to exceed \$20,000,000.00, for the Multifamily Housing Revenue Bonds RAD Conversion Program, Cielo Tower Apartments Project.

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?

Section 147(f) of the Internal Revenue Code of 1986 requires that before the bonds are issued, the issuance of such tax exempt bonds must be approved by the highest elected official of the local government unit having jurisdiction over the arena in which such facility is located after a public hearing following reasonable notice to the public.

The Housing Opportunity Management Enterprises PFC published Notice of Public Hearing in the El Paso Times as required by Section 147(f) of the Internal Revenue Code on Friday, March 11, 2022 and held public hearing on Friday, March 18, 2022.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes, a similar item was approved by Council on October 1, 2019 proposed revenue bonds issued by the Alamito Public Facilities Corporation.

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?

Not applicable.

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

DEPARTMENT HEAD:

A handwritten signature in blue ink, appearing to read "J. Flores", is written over a horizontal line.

(for City Attorney, Karla Nieman)

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

RESOLUTION

WHEREAS, the Housing Opportunity Management Enterprises PFC, a public facility corporation of the Housing Authority of the City of El Paso, Texas, is in the process of issuing one or more issues or series following Multi-Family Housing Revenue Bonds:

\$20,000,000 for the “Cielo Tower Apartments Project” (the “Project”), for the Project covering a total of 123 units.

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986 requires that before the bonds are issued, the issuance of such tax exempt bonds must be approved by the highest elected official of the local governmental unit having jurisdiction over the area in which such facility is located after a public hearing following reasonable notice to the public;

WHEREAS, Housing Opportunity Management Enterprises PFC published a Notice of Public Hearing in the El Paso Times as required by Section 147(f) of the Internal Revenue Code on March 11, 2022, and held a public hearing on Tuesday, March 18, 2022;

WHEREAS, Housing Opportunity Management Enterprises PFC now requests that the Mayor sign a Certificate of Approval of the Highest Elected Official;

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

That the Mayor be authorized to sign the Certificate of Approval of the Highest Elected Official attached to this Resolution for the sole purpose of compliance with Section 147(f) of the Internal Revenue Code of 1986.

(SIGNATURE PAGE FOLLOWS)

APPROVED this ____ day of _____, 2022

CITY OF EL PASO, TEXAS:

Oscar Leeser
Mayor

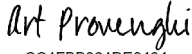
ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

DocuSigned by:

CC4FBB864DE8484...
Art Provenghi

Alamito Public Facilities Corporation, a
public facility corporation of the Housing
Authority of the City of El Paso, Texas

APPROVAL OF APPLICABLE ELECTED REPRESENTATIVE

I, the duly elected Mayor of the City of El Paso, Texas (the "City"), certify with respect to the obligations (the "Bonds") described in the published Notice of Public Hearing (the "Notice of Public Hearing") attached as part of Annex A to the Minutes, and an opportunity for the members of the public to appear ("List of Attendees") attached as Annex B, and Certification of Public Hearing attached hereto as Exhibit A, which Bonds are proposed to be issued by the Housing Opportunity Management Enterprises PFC, a public facility corporation of the Housing Authority of the City of El Paso, Texas, that:

Based upon the evidence presented to me, for the sole purpose of satisfying the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and for no other purpose, I hereby approve the Bonds and the facilities to be financed with a portion of the proceeds of the Bonds and located within the City, all as described in the Notice of Public Hearing.

This approval is not to be construed as (i) a representation or warranty by the City or the undersigned that the Bonds will be paid or that any obligations assumed by any of the parties will, in fact, be performed, (ii) as a pledge of the faith and credit of or by the City; further, the fact that the undersigned has approved the Bonds as required by the Code may not, in any event, be used as a sales device with respect to the Bonds, or (iii) this approval shall not be construed as a representation or warranty by the City concerning the validity of the Bonds.

In Witness Whereof, I have set my hand this _____, 2022.

(Signatures appear on following page)


CITY OF EL PASO, TEXAS

Oscar Leeser
Mayor

ATTEST:

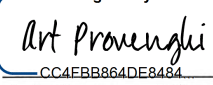
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Karla M. Nieman
City Attorney

APPROVED AS TO CONTENT:

DocuSigned by:

CC4FBB864DE8484

Art Provenghi
Housing Opportunity Management Enterprises
PFC, a public facility corporation of the
Housing Authority
of the City of El Paso, Texas

EXHIBIT A

Minutes and Certifications of Public Hearing

MINUTES OF PUBLIC HEARING

I, Art Provenghi (the "Hearing Officer"), called to order the public hearing of Housing Opportunity Management Enterprises PFC (the "Issuer"), a non-profit public facility corporation created by the Housing Authority of the City of El Paso, Texas (the "Authority"), on Friday, March 18, 2022, at 10:00 a.m., in the Authority's Board Room located at 304 Texas Avenue, Suite 1600, El Paso, Texas 79901 on the proposed issuance by the Issuer of obligations (the "Bonds") in an aggregate principal amount not to exceed \$20,000,000.

The Hearing Officer stated that the public hearing required under Section 147(f) of the Internal Revenue Code of 1986, as amended, was open for purposes of discussing the proposed issuance of the Bonds, all as described in the Notice of Public Hearing published in the El Paso Times on March 11, 2022, as set forth in the Affidavit of Publication attached as Annex A hereto.

A summary of the comments is shown on Annex B attached hereto.

After sufficient time was given for all present to make their comments with respect to the proposed issuance of the Bonds, the Hearing Officer declared the public hearing closed.

WITNESS MY HAND this the 18th day of March, 2022.



Art Provenghi, Hearing Officer
Housing Opportunity Management Enterprises PFC

ANNEX A

AFFIDAVIT OF PUBLICATION
(see attached)

El Paso Times

PART OF THE USA TODAY NETWORK

Affidavit of Publication

Ad # 0005166033

This is not an invoice

HOUSING AUTHORITY - LEGALS
5300 E PAISANO DR

EL PASO, TX 79905


I, being duly sworn say: El Paso Times, a daily newspaper of general circulation published in the City and County El Paso, State of Texas, which is a newspaper of general circulation and which has been continuously and regularly published for the period of not less than one year in the said County of El Paso, and that he/she was upon the dates herein mentioned in the EL PASO TIMES.

That the LEGAL copy was published in the EL PASO TIMES for the date(s) of such follows DAY(s) to wit

03/11/2022


Legal Clerk

Subscribed and sworn before me this March 11, 2022:


State of WI, County of Brown
NOTARY PUBLIC

1-7-25
My commission expires

NOTICE OF PUBLIC HEARING
HOUSING OPPORTUNITY MANAGEMENT ENTERPRISES PFC
Notice is hereby given of a public hearing to be held by Housing Opportunity Management Enterprises ("HOME") PFC (the "Issuer"), a non-profit public facility corporation created by the Housing Authority of the City of El Paso, Texas (the "Authority"), on Friday, March 18, 2022, at 10:30 a.m., in HOME's Board Room located at 304 Texas Avenue, Suite 1600, El Paso, Texas 79901.
The public hearing is regarding the issuance of obligations by the Issuer, which may be issued in one or more series, in an aggregate principal amount not to exceed \$20,000,000 (the "Bonds"). The Bonds will be issued as exempt facilities bonds for the qualified residential rental projects (collectively, the "Development") described below pursuant to section 142(a)(7) of the Internal Revenue Code of 1986, as amended (the "Code").
The Development will consist of the following:
• A qualified residential rental project located at or near 201 Cortez, El Paso, El Paso County, Texas 79905 financed with proceeds of the Bonds in an aggregate principal amount not to exceed \$20,000,000, the initial owner and principal user of which project will be EP Cielo Tower, LP, a Texas limited partnership (or a related person or affiliate thereof).
All interested persons are invited to attend such public hearing to express their views with respect to the Development and the Issuance of the Bonds. Questions or requests for additional information may be directed to Mr. William T. Avila, Bracewell LLP, 300 Convent Street, Suite 2700, San Antonio, Texas 78205-3723 (210-299-3415). Any interested persons unable to attend the hearing, but who would like to express their views with respect to the Development and the Bonds, may submit their views in writing to Mr. Avila prior to the date scheduled for the hearing.
This notice is published, and the above-described hearing is to be held in satisfaction of the requirements of Section 147(f) of the Code
#5166033, El Paso Times,
March 11, 2022

Ad # 0005166033
PO #: Public hearing
of Affidavits 1

This is not an invoice

KATHLEEN ALLEN
Notary Public
State of Wisconsin

ANNEX B

There were no outside participants participating in the public hearing, and thus no comments were made.

FRIDAY, MARCH 18, 2022
10:00 AM

[illegible]



Legislation Text

File #: 22-536, 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 2

City Attorney's Office, Karla M. Nieman, (915) 212-0033

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 authorize the Mayor to sign a Certificate of Approval of the Highest Elected Official in conjunction with the proposed issuance by the Alamito Public Facilities Corporation (the "Issuer"), a public facility of the Housing Authority of the City of El Paso, in an aggregate principal amount not to exceed \$76,125,000, for the following residential rental projects Salazar Apartments; Cien Palmas Apartments; Mesa Place Townhomes; and Franklin Place Townhomes.

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

DEPARTMENT: City Attorney

AGENDA DATE: May 10, 2022

PUBLIC HEARING DATE: N/A

CONTACT PERSON NAME AND PHONE NUMBER: Karla M. Nieman (915) 212-0033

DISTRICT(S) AFFECTED: District 8

STRATEGIC GOAL: Goal 6

SUBGOAL: N/A

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 on a Resolution to authorize the Mayor to sign a Certificate of Approval of the Highest Elected Official in conjunction with the proposed issuance by the Alamito Public Facilities Corporation (the "Issuer"), a public facility of the Housing Authority of the City of El Paso, in an aggregate principal amount not to exceed \$76,125,000, for the following residential rental projects Salazar Apartments; Cien Palmas Apartments; Mesa Place Townhomes; and Franklin Place Townhomes.

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?

Section 147(f) of the Internal Revenue Code of 1986 requires that before the bonds are issued, the issuance of such tax exempt bonds must be approved by the highest elected official of the local government unit having jurisdiction over the arena in which such facility is located after a public hearing following reasonable notice to the public.

The Alamito Public Facilities Corporation published Notice of Public Hearing in the El Paso Times as required by Section 147(f) of the Internal Revenue Code on Friday, March 11, 2022 and held public hearing on Friday, March 18, 2022.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes, a similar item was approved by Council on October 1, 2019 proposed revenue bonds issued by the Alamito Public Facilities Corporation.

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?

Not applicable.

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

DEPARTMENT HEAD:



(for City Attorney, Karla Nieman)

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

RESOLUTION

WHEREAS, the Alamito Public Facilities Corporation (“Alamito”), a public facility corporation of the Housing Authority of the City of El Paso, Texas, is in the process of issuing one or more issues or series following Multi-Family Housing Revenue Bonds:

\$76,125,000 for the following residential rental projects Salazar Apartments; Cien Palmas Apartments; Mesa Place Townhomes; and Franklin Place Townhomes.

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986 requires that before the bonds are issued, the issuance of such tax exempt bonds must be approved by the highest elected official of the local governmental unit having jurisdiction over the area in which such facility is located after a public hearing following reasonable notice to the public;

WHEREAS, Alamito Public Facilities Corporation, published a Notice of Public Hearing in the El Paso Times as required by Section 147(f) of the Internal Revenue Code on March 11, 2022, and held a public hearing on Tuesday, March 18, 2022;

WHEREAS, Alamito now requests that the Mayor sign a Certificate of Approval of the Highest Elected Official;

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

That the Mayor be authorized to sign the Certificate of Approval of the Highest Elected Official attached to this Resolution for the sole purpose of compliance with Section 147(f) of the Internal Revenue Code of 1986.

(SIGNATURE PAGE FOLLOWS)

APPROVED this ____ day of _____, 2022

CITY OF EL PASO, TEXAS:

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

DocuSigned by:

CC4FBB864DE8484...
Art Provenghi

Alamito Public Facilities Corporation, a
public facility corporation of the Housing
Authority of the City of El Paso, Texas

APPROVAL OF APPLICABLE ELECTED REPRESENTATIVE

I, the duly elected Mayor of the City of El Paso, Texas (the "City"), certify with respect to the obligations (the "Bonds") described in the published Notice of Public Hearing (the "Notice of Public Hearing") attached as part of Annex A to the Minutes, and an opportunity for the members of the public to appear ("List of Attendees") attached as Annex B, and Certification of Public Hearing attached hereto as Exhibit A, which Bonds are proposed to be issued by the Alamito Public Facilities Corporation, a public facility corporation of the Housing Authority of the City of El Paso, Texas, that:

Based upon the evidence presented to me, for the sole purpose of satisfying the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and for no other purpose, I hereby approve the Bonds and the facilities to be financed with a portion of the proceeds of the Bonds and located within the City, all as described in the Notice of Public Hearing.

This approval is not to be construed as (i) a representation or warranty by the City or the undersigned that the Bonds will be paid or that any obligations assumed by any of the parties will, in fact, be performed, (ii) as a pledge of the faith and credit of or by the City; further, the fact that the undersigned has approved the Bonds as required by the Code may not, in any event, be used as a sales device with respect to the Bonds, or (iii) this approval shall not be construed as a representation or warranty by the City concerning the validity of the Bonds.

In Witness Whereof, I have set my hand this _____, 2022.

(Signatures appear on following page)


CITY OF EL PASO, TEXAS

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

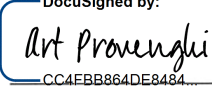
APPROVED AS TO FORM:



Karla M. Nieman
City Attorney

APPROVED AS TO CONTENT:

DocuSigned by:



Art Provenghi
Alamito Public Facilities Corporation, a public
facility corporation of the Housing Authority
of the City of El Paso, Texas

EXHIBIT A

Minutes and Certification of Public Hearing

MINUTES AND CERTIFICATION OF PUBLIC HEARING

I, Art Provenghi (the "Hearing Officer"), called to order the public hearing of the Alamito Public Facilities Corporation (the "Issuer"), a non-profit public facility corporation created by the Housing Authority of the City of El Paso, Texas (the "Authority"), on Friday, March 18, 2022, at 10:00 a.m., in the Authority's Board Room located at 304 Texas Avenue, Suite 1600, El Paso, Texas 79901 on the proposed issuance by the Issuer of obligations (the "Bonds") in an aggregate principal amount not to exceed \$76,125,000.

The Hearing Officer stated that the public hearing required under Section 147(f) of the Internal Revenue Code of 1986, as amended, was open for purposes of discussing the proposed issuance of the Bonds, all as described in the Notice of Public Hearing published in the El Paso Times on March 11, 2022, as set forth in the Affidavit of Publication attached as Annex A hereto.

A summary of the comments is shown on Annex B attached hereto.

After sufficient time was given for all present to make their comments with respect to the proposed issuance of the Bonds, the Hearing Officer declared the public hearing closed.

WITNESS MY HAND this the 18th day of March, 2022.



Art Provenghi
Hearing Officer
Alamito Public Facilities Corporation

ANNEX A

AFFIDAVIT OF PUBLICATION
(see attached)

El Paso Times

PART OF THE USA TODAY NETWORK

Affidavit of Publication

Ad # 0005166013

This is not an invoice

HOUSING AUTHORITY - LEGALS
5300 E PAISANO DR

EL PASO, TX 79905

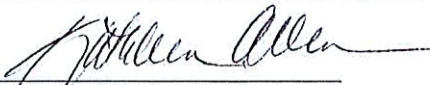
I, being duly sworn say: El Paso Times, a daily newspaper of general circulation published in the City and County El Paso, State of Texas, which is a newspaper of general circulation and which has been continuously and regularly published for the period of not less than one year in the said County of El Paso, and that he/she was upon the dates herein mentioned in the EL PASO TIMES.

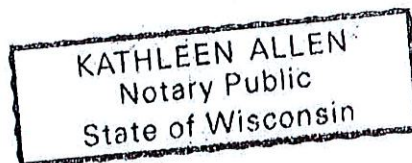
That the LEGAL copy was published in the EL PASO TIMES for the date(s) of such follows DAY(s) to wit

03/11/2022


Legal Clerk

Subscribed and sworn before me this March 11, 2022:


State of WI, County of Brown
NOTARY PUBLIC
1-7-05
My commission expires



Ad # 0005166013
PO #: PUBLIC HEARING
of Affidavits 1

This is not an invoice

NOTICE OF PUBLIC HEARING
ALAMITO PUBLIC FACILITIES
CORPORATION

Notice is hereby given of a public hearing to be held by Alamito Public Facilities Corporation (the "Issuer"), a non-profit public facility corporation created by the Housing Authority of the City of El Paso d/b/a Housing Opportunity Management Enterprises ("HOME"), on Friday, March 18, 2022, at 10:00 a.m., in HOME's Board Room located at 304 Texas Avenue, Suite 1600, El Paso, Texas 79901.

The public hearing is regarding the issuance of obligations by the Issuer, which may be issued in one or more series, in an aggregate principal amount not to exceed \$76,125,000 (the "Bonds"). The Bonds will be issued as exempt facilities bonds for the qualified residential rental projects (collectively, the "Development") described below pursuant to section 142(a)(7) of the Internal Revenue Code of 1986, as amended (the "Code").

The Development will consist of the following:

- A qualified residential rental project located at or near 311 South Eucalyptus Street, El Paso, El Paso County, Texas 79905 financed with proceeds of the Bonds in an aggregate principal amount not to exceed \$49,550,000, the initial owner and principal user of which project will be EP Salazar II, LP, a Texas limited partnership (or a related person or affiliate thereof);
- A qualified residential rental project located at or near 7845 Lilac Way, El Paso, El Paso County, Texas 79915 financed with proceeds of the Bonds in an aggregate principal amount not to exceed \$12,700,000, the initial owner and principal user of which project will be EP WH Cien Palmas, LLC, a Texas limited liability company (or a related person or affiliate thereof);
- A qualified residential rental project located at or near 5450 Suncrest, El Paso, El Paso County, Texas 79912 financed with proceeds of the Bonds in an aggregate principal amount not to exceed \$7,930,000, the initial owner and principal user of which project will be EP WH Mesa Franklin, LLC, a Texas limited liability company (the "Mesa Franklin Borrower") (or a related person or affiliate thereof); and
- A qualified residential rental project located at or near 600 Belvidere Street, El Paso, El Paso County, Texas 79912 financed with proceeds of the Bonds in an aggregate principal amount not to exceed \$5,945,000, the initial owner and principal user of which project will be the Mesa Franklin Borrower (or a related person or affiliate thereof).

All interested persons are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Mr. William T. Avila, Bracewell LLP, 300 Convent Street, Suite 2700, San Antonio, Texas 78205-3723 (210-299-3415). Any interested persons unable to attend the hearing, but who would like to express their views with respect to the Development and the Bonds, may submit their views in writing to Mr. Avila prior to the date scheduled for the hearing.

This notice is published, and the above-described hearing is to be held in satisfaction of the requirements of section 147(f) of the Code.

#5166013, El Paso Times,
March 11, 2022

ANNEX B

There were no outside participants participating in the public hearing, and thus no comments were made.

304 TEXAS AVE. 16TH FLOOR, EL PASO TX 79901

10:00 AM

LIST OF ATTENDEES

[illegible]



Legislation Text

File #: 22-505, 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.

All Districts

Capital Improvement Department, Sam Rodriguez (915) 212-1808

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 be authorized to sign a Professional Services Agreement for the project known as "Traffic Management Center Upgrades" to AECOM Technical Services, Inc. The Agreement will be for an amount not to exceed Three Million, Five Hundred Eighteen Thousand, Seven Hundred Sixty-Nine and 71/100 Dollars (\$3,518,769.71), and includes authorization for the City Engineer to approve additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and authorization for the City Engineer to approve Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if the identified services are necessary for proper execution of identified project and if the increased amounts are within the appropriate budget identified for the project for a total amount of \$3,618,769.71. 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 the Agreement.

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

AGENDA DATE: May 10, 2022

PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Sam Rodriguez, P.E., City Engineer
(915) 212-1808

DISTRICT(S) AFFECTED: All

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

SUBGOAL: 7.3 Enhance a regional comprehensive transportation system.

SUBJECT:

That the City Manager be authorized to sign a Professional Services Agreement for the project known as "Traffic Management Center Upgrades" to AECOM Technical Services, Inc. The Agreement will be for an amount not to exceed Three Million, Five Hundred Eighteen Thousand, Seven Hundred Sixty-Nine and 71/100 Dollars (\$3,518,769.71), and includes authorization for the City Engineer to approve additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and authorization for the City Engineer to approve Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if the identified services are necessary for proper execution of identified project and if the increased amounts are within the appropriate budget identified for the project for a total amount of \$3,618,769.71. 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 the Agreement.

BACKGROUND / DISCUSSION:

The agreement for professional services provides for the design of upgrades to the City of El Paso Traffic Management Center and traffic signal upgrades to include evaluating the latest technology used to control and communicate with traffic signal lights, adaptive technology, emergency preemption and mass transit priority.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

FHWA/CMAQ with City match.

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Capital Improvement Department

SECONDARY DEPARTMENT: Streets and Maintenance Department

Revised 04/09/2021

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

DEPARTMENT HEAD:

Assistant Director Capital Improvement

X *Jerry DeMuro/for*

Sam Rodriguez, P.E., City Engineer

RESOLUTION

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

That the City Manager be authorized to sign an Agreement for Professional Services by and between the CITY OF EL PASO and AECOM TECHNICAL SERVICES, INC., a California USA Foreign for-Profit Corporation, for a project known as “Architect And Engineering Services for Traffic Management Center Upgrades” for an amount not to exceed \$3,518,769.71; that the City Engineer is authorized to approve additional Basic Services and Reimbursables for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) and to approve Additional Services for an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) if such services are necessary for the proper execution of the project and that the increased amounts are within the appropriate budgets of the project for a total amount of \$3,618,769.71; and 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 the execution of the Agreement.

APPROVED THIS _____ DAY OF _____ 2022.


CITY OF EL PASO:

Oscar Leeser, Mayor

ATTEST:

Laura D. Prine
City Clerk

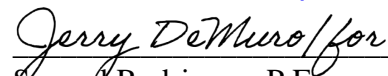
APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:

Assistant Director Capital Improvement



Samuel Rodriguez, P.E.
City Engineer

CITY OF EL PASO AE SELECTION SCORESHEET
SOLICITATION #2022-0177R

Rater		WALTER P MOORE	AECOM	LEE ENGINEERING
Rater 1		70	78	64
Rater 2		80	82	76
Rater 3		80	84	74
Rater 4		76	82	71
Rater 5		77	74	63
Evaluation of prior customer satisfaction with the work of the firm		10	8	9
TOTAL POINTS		393	408	357

AN AGREEMENT FOR PROFESSIONAL SERVICES

2.3 The Consultant shall serve as the Owner's professional representative for the construction 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 Project's the construction contract. 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 day 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 \$3,518,769.71 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, 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, 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 must have prior approval by City Council through written amendment to 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 the Project shall be pursuant to the Consultant's fee proposal for such Basic and Additional Services 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 to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C"**.

3.3 CONSULTANT'S INVOICES. The Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to **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 days (90) 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 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 the Project. 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 AND TIME. The Consultant acknowledges that the total project budget for the Project allocates is \$3,518,769.71, which is to include all features essential to the operation of the Project for its intended use as described in the Scope of Services and Project budget in **Attachment "A"**. The Consultant does hereby agree to design the Project such that the Consultant's final agreed cost opinions for the construction of the Project, including all features essential to its intended use, is within the above budgeted amount for the base bid. If the Consultant's cost opinions exceed the Project Budget at any time, the Consultant shall make recommendations to the Owner to adjust the Project's size or quality and the Owner shall cooperate with the Consultant to adjust the scope of the Project. If all responsible bids exceed the City approved Consultant's final cost opinions by more than ten percent (10%), the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

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 services called for by each phase shall begin upon the issuance of a Notice to Proceed from the City Engineer. The Consultant shall complete the

requested services in accordance with the timelines and schedules outlined in **Attachments “C” and “D”**.

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 FOR FAILURE TO COMPLY WITH SUBCHAPTER J, CHAPTER 552, GOVERNMENT CODE. The requirements of subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor or vendor agrees

that the Contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

4.3.4 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. The Consultant shall procure and maintain insurance coverage as required herein and attached in **Attachment “E”**. 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
 - \$1,000,000.00 Products/Completed Operations
 - \$1,000,000.00 Personal and Advertising Injury

- b) **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 Agreement.

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.

5.2 INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY HOLD HARMLESS, AND DEFEND 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 ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR CONSULTANT'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, CONSULTANTS OR EMPLOYEES. 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.

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 prudent considering the ordinary professional skill and care of a competent engineer or architect, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment "D"**. It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. 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.

7.2 OPINION OF PROBABLE COST. As a design professional practicing in El Paso the Consultant is expected to be familiar with the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The cost opinions 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 lowest responsible bidder.

The Consultant's final cost opinions for the construction of the Project, shall take into account labor costs which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Consultant in compiling a final cost opinions for the Project.

If the Consultant's most recent cost opinion for any construction contract is in excess of the Project construction budget, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Consultant without further compensation.

As noted herein, if all responsible bids exceed the final cost opinion by more than ten percent (10%), the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations

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.

7.3.1 Errors and Omissions on Design: The Consultant shall make revisions to the work authorized which are necessary to correct the Consultant errors and omissions appearing therein, when required to do so by the Owner. No additional compensation shall be paid for this work.

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 has 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, other than the construction of the Project, 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, 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 (limited to Consultant's office hours) and places upon reasonable notice.

7.6 CONTRACTING INFORMATION

The Contractor must preserve all contracting information related to this Contract as provided by the records retention schedule requirements applicable to the City for the duration of this Contract. Contractor will promptly provide the City any contracting information related to this Contract that is in the custody or possession of the Contractor on request of the City. On completion of this Contract, Contractor will either provide at no cost to the City all contracting information related to this Contract that is in the custody or possession of the Contractor or preserve the contracting information related to this Contract as provided by the records retention requirements applicable to the City.

7.7 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.

7.8 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.

7.9 GOVERNING LAW. The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

7.10 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.

7.11 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.

7.12 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:	AECOM TECHNICAL SERVICES, INC. ATTN: MARIBEL CHAVEZ, P.E. 801 Cherry St., Suite 1050 Fort Worth, TX 76102
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Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

7.13 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.

7.14 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.

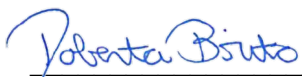
7.15 TEXAS GOVERNMENT CODE. In accordance with Chapter 2274 of the Texas Government Code, as amended from time to time, the Consultant represents and warrants to the Owner the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity 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:

CITY OF EL PASO:


Tomás González
City Manager

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
City Engineer

ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____, 2022,
by **Tomás González**, as **City Manager** of the **City of El Paso, Texas**.

Notary Public, State of Texas

My commission expires:

(Signatures begin on following page)

CONSULTANT:

By: Maribel Chavez, P.E.
Name: Maribel Chavez
Title: Principal in Charge

ACKNOWLEDGEMENT

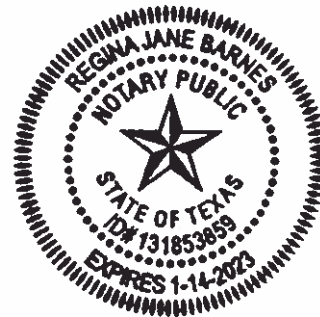
THE STATE OF Texas §
§
COUNTY OF Dallas §

This instrument was acknowledged before me on this 22 day of April, 2022,
by Maribel Chavez, PE Principal -in-Charge, on behalf of Consultant.

Regina Barnes
Notary Public, State of Texas

My commission expires:

01-14-2023



**ATTACHMENT “A”
SCOPE OF SERVICES**

EXHIBIT A

SERVICES TO BE PROVIDED BY THE CITY OF EL PASO

Subject to availability, the services to be provided or performed by the City of El Paso will include, but not be limited to, the following items:

- A. Name, address and phone number of the City's Project Manager.
- B. As-builts, plans, accident data, and any documentation which would assist in the completion of the project.
- C. Review recommendations offered by the Engineer, and approve or reject any or all work performed under this project.
- D. The City of El Paso will provide a GIS inventory identifying major ITS devices components, and communication protocol and medium. Data will include
 - City of El Paso Traffic Signal cabinets, including detection and comm. sys.
 - City of El Paso CCTV Camera sites
 - City of El Paso DMS sites
- E. Periodically review progress of work.
- F. Internal coordination with applicable City Departments when necessary.

EXHIBIT B

SERVICES TO BE PROVIDED BY THE ENGINEER

The work to be performed by the Engineer consists of providing engineering services required for performing feasibility study and plan sheet, specification and estimate for this Traffic Management Center Upgrades project.

This includes evaluating ITS technology used to control and communicate with traffic signal lights, adaptive technology, emergency preemption and mass transit priority. Field investigations will be necessary to evaluate any new construction needs to accommodate the new equipment footprint.

More detailed evaluation of the latest technology will include:

- Ethernet/IP-based communications to all traffic elements (Fiber Optic / Wireless / Ethernet-over-Copper)

- Evaluate and select the infrastructure to support next generation transportation technologies.

1. Connected Vehicles
2. Connected vehicle infrastructure
3. Autonomous vehicle
4. Internet of things

- Latest Advanced Traffic Management Systems

1. Traffic management system/controller software
2. Servers (hardware/software)
3. Traffic Signal simulating/testing equipment
4. TMC/Server room heating/cooling equipment
5. Computers at control console
6. Field communications interface equipment

- Latest Advanced Traffic Management Systems

- Latest Advanced Transportation Controllers

- Adaptive Traffic Control Systems (ATCS)

- Multi-Modal Transportation Solutions to include the following

1. Transit signal priority for mass transit vehicles
2. Pre-emption for Emergency Vehicles
3. Bicyclist
4. Pedestrian

- Hybrid or high resolution vehicle detection technologies (Radar, Video, microwave)

- Changeable Message Signs (CMS)

-Traffic Signals Division's Mini TMC at Building 8 upgrade:

1. Laptops with all software needed for the technicians to program and troubleshoot cabinets on the field (video detection, audible pedestrian buttons, bike detection)
2. Remote laptops or remote access for monitoring of system after hours of work (weekends, holidays)
3. Electronic testing equipment for the new system equipment repairs (controller modem cards, communication equipment, surface mount de-soldering – solder workstations)
4. Equipment to troubleshoot communications between TMC and field Cabinets (fiber OTDR, fiber optics splicer, copper system, wireless system and all necessary tools needed) to maintain a reliable operation of the entire system.

DESIGN CRITERIA. The Engineer shall prepare all work in accordance with the latest version of applicable City procedures, specifications, manuals, guidelines, standard drawings, standard specifications or previously approved special provisions and special specifications to include the *Roadway Design Manual*, *Hydraulic Design Manual*, the *Texas Manual on Uniform Traffic Control Devices (TMUTCD)*, *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*, *Plans Specifications and Estimates (PS&E) Preparation Manual*, *Traffic Signals Manual*, *Highway Illumination Manual*, *Procedures for Establishing Speed Zones*, *Transportation Research Board (TRB) Highway Capacity Manual*, *Institute of Transportation Engineers (ITE) Trip Generation Manual*, *American with Disabilities Act Accessibility Guidelines (ADAAG)*, the *Texas Accessibility Standards (TAS)*, the *American Association of City Highway and Transportation Officials (AASHTO) Guide for the Development of Bicycle Facilities*, *National Electrical Code (NEC)*, and other City approved manuals. When design criteria are not identified in City manuals, the Engineer shall notify the City and refer to the AASHTO, *A Policy on Geometric Design of Highways and Street* (latest edition).

RIGHT-OF-ENTRY AND COORDINATION. The Engineer shall notify the City and secure permission to enter private property to perform any surveying, engineering, or other activities needed for the City's right-of-way (ROW). In accordance with the City's policy, the Engineer shall not commit acts which would result in damages to private property, and the Engineer shall make every effort to comply with the wishes and address the concerns of affected private property owners. The Engineer shall contact each property owner prior to any entry onto the owners' property, and shall request concurrence from the City prior to each entry.

1. PROJECT MANAGEMENT

Project Management and Administration

The Engineer, in association with the City's Project Manager shall be responsible for directing and coordinating all activities associated with the project to comply with City policies and procedures, and to deliver that work on time.

Project Management and Coordination. The Engineer shall coordinate all subconsultant activity to include quality and consistency of plans and administration of the invoices and monthly progress reports. The Engineer shall coordinate with necessary local entities.

The Engineer shall:

1. Kick-off Meeting with the City of El Paso
2. Prepare monthly written progress reports for each project.
3. Develop and maintain a detailed project schedule to track project conformance to Exhibit C, Work Schedule, for each work authorization. The schedule submittals shall be in a hard copy and electronic format.
4. Meet on a biweekly basis with the City to review project progress.
5. Prepare, distribute, and file both written and electronic correspondence.
6. Prepare and distribute meeting minutes.
7. Document phone calls and conference calls as required during the project to coordinate the work for various team members.

2. TMC UPGRADES PHASE 1 - FEASIBILITY STUDY

The Engineer is responsible for meeting with stakeholders to obtain all necessary data, standards and specifications such as the City of El Paso, Federal, and State standards, among others.

1. CITY OF EL PASO ITS INVENTORY

System Inventory. The Engineer shall conduct a City of El Paso ITS inventory identifying major ITS devices components, and communication protocol and medium. Survey will be performed at the following locations.

- City of El Paso communication Hub cabinets
- City of El Paso TMC
- City of El Paso mini TMC at building 8.

Communication medium investigation. The Engineer shall investigate communication medium used on different ITS systems i.e. Copper, fiber optics, wireless. The Engineer shall also investigate communication protocol i.e. RS-232, Ethernet or SONET will be determined based on ITS

inventory and as-built document review.

Backbone data communication investigation. The Engineer will analyze existing communication system and will investigate TxDOT future communication plans for ease of integration.

City of El Paso ITS GIS map. Information collected in the during the inventory and investigation will be used to populate a GIS map depicting existing ITS device type and communication system associated with it.

2. ITS MARKETPLACE ASSESSMENT.

The Engineer shall review the recent Regional ITS Architecture completed in 2020, identify ITS technology and conduct an ITS marketplace assessment.

The Engineer shall identify technology for:

- Traffic Signal Systems and servers with Connected/Automated features
- Vehicle detection systems, i.e. video, microwave, radar, other
- Emergency and transit pre-emption/priority systems
- School zone flashers
- CCTV Cameras or systems with video analytics
- Disaster/Recovery server technology
- Three other ITS emerging technologies to be determined at a later date

The Engineer shall:

1. Identify existing technologies and relevant applications from a vendor standpoint. Up to five vendors per technology. Conduct research to determine which vendors and manufacturers supply equipment or material, that currently serves the industry, which are relevant to the standard sheet or specification being developed. Contact all applicable vendors, and meet in person with vendors, if necessary, as determined by the City. Minimize travel; where possible by meeting with vendors via webinar. The Engineer shall submit relevant vendor documentation to the City, including any vendor product data sheets. The City's reserves the right to attend any meetings with vendors.

2. Develop a matrix in Microsoft Excel for each standard sheet or specification which describes all operating requirements in rows, and estimated cost breakdowns of each vendor and option in columns. If cost breakdowns of individual options are not available, provide cost estimates of the base model for each major component as applicable. Such parameters could include maintenance considerations, technology and

integration considerations, constructability, compatibility, considerations for future upgrades, operational considerations for the traveling public, etc. The matrix shall describe in full detail which options are relevant to which situations, and the costs/benefits of each option. Submit the matrix spreadsheet to the City for review and comment.

3. Conduct a literature review of applicable subject matter. This literature review may consist of, but is not limited to, other City departments of transportation, universities, and institutes in the Excel spreadsheet created above.

4. The Engineer in coordination with the City shall select two cities of similar size to be used as a benchmarked with this similar technology and develop a comparison matrix on system size and features.

The Engineer shall deliver a technical report comparing different features and approximate deployment cost per unit.

3. MINI TMC AND NETWORK UPDATES

The Engineer shall review existing network as-builts and proposed network improvements from TxDOT that affect the City ITS system. The Engineer shall make recommendations on network improvement to make the mini TMC on building 8 completely independent from the City of El Paso TMC.

Mini TMC improvements shall include:

- Remote access to Mini TMC software
- New servers
- New laptops
- New cabinet and consoles

Recommendation shall be discussed and coordinated with the City of El Paso and shall be documented in a technical report with associated order of magnitude cost.

The Engineer shall coordinate virtual visits with five other TMCs of similar size as a scanning tour. The goal will be to share stories and lessons learned between peers. These five virtual visits could be changed to three in person visits at the discretion of the City PM.

The Engineer shall deliver a technical report on key elements of each virtual visit.

4. TMC OPERATION ROOM UPGRADES

The Engineer shall review existing HVAC system and recommend improvements to better regulate temperature inside the server room and at TMC operator room.

TMC upgrades shall include:

- Remote access to TMC software
- New servers
- New or reconfigured backbone ITS field communication equipment
- ITS business network expansion to provide Control of CCTV Cameras from the Emergency Operation Center (EOC) and 911 Fusion Center for incident management
- Coordination of technology with POE border crossing cameras, wait time collection devices, and dynamic message signs at main arterials leading to the Ports of Entry through the COEP International Bridges Department.
 - This shall include integration of ITS listed above from the POE to the City TMC.
 - Integration of CCTV cameras managed or controlled by the City TMC to be shared with the City POE for traffic monitoring purposes.
 - This may include third party systems such as TxDOT, CBP and Fusion Center.

The Engineer will provide system integration recommendation and to the extent possible as per third party permits.

The Engineer will assist the City of El Paso on developing exhibits required for Mutual Use Agreements between the City and third party.

- Coordination with City of El Paso IT Department and follow IT standards for hardware and software
- Improvement to HVAC system

Recommendation shall be discussed and coordinated with the City of El Paso and shall be documented in a technical report with associated order of magnitude cost.

5. ITS PLANNING FOR TMC UPGRADES PHASES 2 THRU 5

The Engineer shall use the information collected on steps 1 thru 4 above and coordinate with the city on prioritizing the improvements for TMC Upgrades phases 2 thru 5.

The Engineer shall use the City of El Paso ITS GIS map to plan ITS deployments based on priority and budget. The Engineer shall have a workshop with the City of El Paso to discuss proposed deployments.

The Engineer shall develop a simple matrix identifying ITS technology to be deployed at each of TMC Upgrade Phases

Deliverables:

- City of El Paso ITS Inventory in GIS
- Technical reports on ITS Marketplace assessment
 - Traffic Signal Systems
 - Vehicle Detection
 - Pre-emption/Priority Systems
 - School Zone Flasher Systems
 - Video Analytics Systems
 - Disaster/Recovery technology for network servers
 - Three other ITS emerging technologies to be determined
- Technical report on Mini TMC proposed upgrades and approximate construction cost
- Technical report on TMC Operation Room Upgrades
- City of El Paso ITS proposed improvements in GIS
- Matrix identifying ITS technology to be deployed in phased 2 thru 5
- Propose scope and project limits for construction phases 2-5 including improvements to TMC and mini-TMC.

3. TMC UPGRADES PHASE 2 - 5 PLAN SHEET SPECIFICATION AND ESTIMATE

Environmental Clearance

The Engineer shall prepare technical reports and documentation for environmental services in the form of a report, checklist, form, or analysis detailing resource-specific studies in compliance with TxDOT Environmental Compliance Toolkit requirements. Through coordination with the City and TxDOT, it will be determined what technical reports and documentation will be necessary for the project. Technical reports and documentation prepared for the State shall be sufficiently detailed to provide satisfactory basis for thorough review by the State, The Federal Highway Administration (FHWA), and (where applicable) agencies with regulatory oversight. All deliverables shall meet regulatory requirements for legal sufficiency and shall adhere to the requirements for reports enumerated in the State's National Environmental Policy Act of 1969 (NEPA) Memorandum of Understanding (MOU). Environmental technical reports and documentation shall include appropriate NEPA or federal regulatory language in addition to the purpose and methodology used in delivering the service and shall include sufficient information to determine the significance of impacts. Minimum deliverables for all technical reports will include Draft and Final documents as well as Comment Matrices.

It is assumed that:

- No parklands, recreational areas, or trails would be within the project area.

- No Air Quality Analysis, Traffic Noise Analysis, or Hazardous Materials ISA would be required.
- No USACE Pre-Construction Notification would be required.
- No Public Involvement is included.

Design:

Design shall meet all City, State, and Federal requirements and local regulations and ordinances.

The Engineer shall submit a turnkey design product. The Engineer shall follow State 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 and the State of Texas.

The Engineer shall comply with the City of El Paso Capital Improvement Department Drawing Guidelines.

The Engineer shall provide design services, contract documents, estimates and specifications and prepare construction contracts and an Engineer's Report, if requested.

The Engineer shall prepare both design and performance specifications. The Engineer shall provide a guide schedule of testing and sampling meeting current TxDOT specifications. Buy America must be enforced during the design process.

The Engineer 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 such 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.

Utility Coordination:

The firm shall be responsible to 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. All existing utility structures shall be shown on the preliminary design plan submittal as provided in 811 call and utility coordination meetings. 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 and 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 of El Paso Project Manager and the utility company or interested parties to resolve the dispute. The firm on behalf of the City of El Paso shall request from all utility companies or interested parties that they relocate all lines that conflict with new

improvements. However, EPWU can request that the City of El Paso 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 funding is provided. The firm shall coordinate this effort with the utility companies and interested parties and advise them of the City of El Paso policy to minimize pavement cuts on new roadways. All correspondence and meeting minutes shall be submitted to the City of El Paso 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 construction phasing and coordinate relocation date.

30% Design:

The Engineer shall submit the following preliminary design submittal, as applicable.

- Coversheet (90% complete)
- Quantity Summary Sheet (100% complete)
- Electrical Plan and Details (50% complete)
- Mechanical Plan and Details (50% complete)
- Plumbing Plan and Details (50% complete)
- Demolition Plan, if needed (90% complete)
- Construction Notes (50% complete)
- Storm Water Pollution Prevention Plan (75% complete)
- Typical Construction Details (75% complete)
- List of Governing Specs (100% complete)
- TxDOT Form 1002
- TxDOT Form 2443
- Performance End Date Schedule
- General Notes
- Engineer's Estimate and TxDOT form Estimate
- Utility Status and coordination report

60% Design:

The Engineer 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)
- Demolition Plan, if needed (100% complete)
- Construction Notes (90% complete)

- Storm Water Pollution Prevention Plan (100% complete)
- Typical Construction Details (100% complete)
- Special Construction Details (75% complete)
- Traffic Control Line Diagram and applicable standards (75% Complete)
- Outline of Specs (100% complete)
- List of Governing Specs (100% complete)
- TxDOT Form 1002
- TxDOT Form 2443
- TxDOT Form 2229
- General Notes
- Engineer's Estimate and TxDOT form Estimate
- 30% complete action items report and complete review comment forms
- Engineer's Seal
- Contract time determination
- Certifications (ROW, Utilities, etc.)
- Temporary Road Closure Request
- Redlines showing quality control
- Response Comment Matrix
- Performance End Date Schedule
- Utility Status and coordination report
- Environmental Doc
- TDLR Registration if Applicable

95% Design:

The Engineer 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)
- Traffic Control Line Diagram and applicable standards (100% Complete)
- Outline of Specifications (100% complete)
- List of Governing Specs (100% complete)
- TxDOT Form 1002

- TxDOT Form 2443
- TxDOT Form 2229
- General Notes
- Engineer's Estimate and TxDOT form Estimate
- Environmental Scope Development Tool
- 60% complete action items report and complete review comment forms
- Engineer's Seal
- Contract time determination
- Certifications (ROW, Utilities, etc.)
- Temporary Road Closure Request
- Performance end date
- Redlines showing quality control
- Response Comment Matrix
- Utility status and coordination report
- Environmental Doc
- TDLR Registration if Applicable

100% Design:

The Engineer shall re-submit the 95% documentation with City and TxDOT's comments addressed.

The Engineer shall provide an electronic copy of all approved and applicable environmental documents.

Deliverables: (Payment for Design Deliverables is Lump Sum):

- PS&E for TMC Upgrades Phase 2
 - 30% Submittal
 - 60% Submittal
 - 95% Submittal
 - 100% Submittal
- PS&E for TMC Upgrades Phase 3
 - 30% Submittal
 - 60% Submittal
 - 95% Submittal
 - 100% Submittal
- PS&E for TMC Upgrades Phase 4
 - 30% Submittal
 - 60% Submittal
 - 95% Submittal
 - 100% Submittal
- PS&E for TMC Upgrades Phase 5
 - 30% Submittal
 - 60% Submittal
 - 95% Submittal
 - 100% Submittal

Bidding and Construction: (Bidding and Construction Services are paid based on Time and Materials):

The Engineer 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 Engineer 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 (latest TxDOT specifications) 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 Engineer shall respond to all questions from prospective bidders, attend a pre-bid conference, and if required prepare addendums. The bids shall be advertised as a unit price contract.

After bid opening, the Engineer 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 Engineer 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

Deliverables:

- Bid-Package for TMC Upgrades Phase 2
- Bid-Package for TMC Upgrades Phase 3
- Bid-Package for TMC Upgrades Phase 4
- Bid-Package for TMC Upgrades Phase 5

Construction Observation:

The Engineer 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 Engineer. The Engineer 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 material sourcing and any material updates meeting current TxDOT
- specifications.
- 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 for each phase.
- 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 for each phase to certify that the project was constructed according to project requirements, plans, and specifications. During construction, project closeout for each phase the Engineer shall produce and provide a set of "as-built" (11"X17") in electronic format, AutoCAD file, and USB flash drive displaying the Engineer name and project.

**ATTACHMENT “B”
CONSULTANT’S FEE PROPOSAL AND HOURLY RATES**

Summary

Firm	Labor Cost	Expenses	Total
AECOM Technical Services, Inc.	\$ 3,462,511.71	\$ 6,406.00	\$ 3,468,917.71
Parkhill	\$ 48,700.00	\$ 1,152.00	\$ 49,852.00
Total	\$ 3,511,211.71	\$ 7,558.00	\$ 3,518,769.71

Total cost reflects agreed upon escalation rates

Labor & Expenses Summary Task

Task	AECOM Technical Services, Inc.		Parkhill		Total	
	Hours	Labor Cost	Hours	Labor Cost	Hours	Loaded Labor
Project Management and Administration	1,742	\$ 255,781.88	26	\$ 5,028.00	1,768	\$ 260,809.88
TMC Upgrades Phase 1 - Feasibility Study	6,618	\$ 1,091,339.18	29	\$ 6,516.00	6,647	\$ 1,097,855.18
PS&E for TMC Upgraded Phase 2	2,502	\$ 364,000.42	154	\$ 24,076.00	2,656	\$ 388,076.42
Bidding and Construction Phase Services for TMC Upgraded Phase 2	304	\$ 49,443.36	72	\$ 13,080.00	376	\$ 62,523.36
PS&E for TMC Upgraded Phase 3	3,110	\$ 451,107.48	0	\$ -	3,110	\$ 451,107.48
Bidding and Construction Phase Services for TMC Upgraded Phase 3	348	\$ 56,638.52	0	\$ -	348	\$ 56,638.52
PS&E for TMC Upgraded Phase 4	3,270	\$ 487,035.42	0	\$ -	3,270	\$ 487,035.42
Bidding and Construction Phase Services for TMC Upgraded Phase 4	362	\$ 60,903.26	0	\$ -	362	\$ 60,903.26
PS&E for TMC Upgraded Phase 5	3,866	\$ 578,612.61	0	\$ -	3,866	\$ 578,612.61
Bidding and Construction Phase Services for TMC Upgraded Phase 5	400	\$ 67,649.58	0	\$ -	400	\$ 67,649.58
Expenses		\$ 6,406.00		\$ 1,152.00		\$ 7,558.00
Total	7,498	\$ 3,468,917.71	0	\$ 49,852.00	7,498	\$ 3,518,769.71

ATTACHMENT B - FEE SCHEDULE**SPECIFIED RATE AND LUMP SUM (LS) PAYMENT BASIS**

LS payments are based upon the Table of Deliverables (TOD) as identified in the Work Authorization (WA)

PRIME PROVIDER NAME:		AECOM Technical Services, Inc.	
DIRECT LABOR			
LABOR/STAFF CLASSIFICATION	YEARS OF EXPERIENCE	HOURLY BASE RATE	HOURLY CONTRACT RATE
Principal	20+	\$98.52	\$254.55
Project Manager	20+	\$89.28	\$230.69
QC Reviewer / QA Manager	20+	\$80.68	\$208.47
Engineer - Senior	15+	\$78.61	\$203.12
Engineer (Design)	5 to 10	\$57.93	\$149.68
Engineer (Project)	10 to 15	\$62.07	\$160.37
Engineer-In-Training	1 to 5	\$42.77	\$110.50
Engineer Technician	5 to 15	\$42.20	\$109.05
CADD Operator	5 to 15	\$37.24	\$96.22
CADD Operator - Senior	15+	\$50.25	\$129.83
Administrative/Clerical		\$28.96	\$74.84
Traffic Modeler - Senior	15+	\$80.68	\$208.47
Traffic Modeler	5 to 15	\$49.18	\$127.07
Project Controller		\$37.42	\$96.68
Project Controller - Senior		\$47.04	\$121.54
Transportation Planner - Senior	15+	\$82.75	\$213.81
Transportation Planner		\$68.27	\$176.40
Transportation Planner - Junior	1 to 5	\$40.63	\$104.98
GIS Operator	5 to 15	\$40.55	\$104.77
Senior Engineering Tech	15+	\$47.90	\$123.77
Junior Engineering Tech	0 to 5	\$37.01	\$95.63
Senior Traffic Tech	15+	\$49.71	\$128.43
Traffic Tech	5 to 15	\$44.59	\$115.22
Junior Traffic Tech	0 to 5	\$39.14	\$101.14
Technical Advisor - Senior	20+	\$125.00	\$322.98
INDIRECT COST RATE:	130.70%		
PROFIT RATE:	12.00%		

Contract rates include labor, overhead, and profit.

Lump Sum Payment Basis - Invoice by deliverable, according to the TOD. A copy of the TOD shall be included with each Invoice Package and is payable by each deliverable and line item as identified in the TOD. Partial payments of line item are not allowed. Documentation of hours worked is not required.

Direct Expenses will be invoiced with an 10% markup

ATTACHMENT “C”
CONSULTANT’S BASIC AND ADDITIONAL SERVICES

For the “Traffic Management Center Upgrades” hereinafter referred to as the Project, the Consultant will 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 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 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 oversight and management of the 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/CONCEPT 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.

- 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

The Consultant shall do the following:

- 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 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.

PHASE II - PRE-FINAL DESIGN PHASE

The Consultant shall do the following separately:

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.
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

The Consultant shall do the following:

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 company 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.

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 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 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, 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 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.

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 SCHEDULE

For the project known as “Traffic Management Center Upgrades”, hereinafter referred to as the Project, the Owner will compensate the Consultant an amount not to exceed \$3,581,769.71 for all Basic Services and reimbursables noted within the Agreement and its attachments.

PAYMENT SCHEDULE

Basic services for design shall include the phases listed below at the lump sum 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.

Lump Sum Payment to Consultant

The compensation for each task described in Attachment “A”. Payment shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant’s detailed Invoice and accompanying Summary and Progress Report and the Owner’s written approval.

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 construction phase exceed the estimated amount, written authorization will be required prior to rendering service. Written authorization shall be only by contract amendment in accordance with the contract provisions and applicable law.

The Owner shall make payments upon presentation of the Consultant’s detailed Invoice and accompanying 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/company 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 1st of each year and ends on August 31st of each year. The Consultant’s invoices must be separated into items that end August 31st and those that begin on Septembers 1st of any given year, to coincide with the Owner’s fiscal year.

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 Owner. 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

CONCEPT PHASE

The services called for in the Report Phase of this Agreement shall be completed concurrently with the preliminary design phase and five (5) copies of the Preliminary Study and Report shall be submitted within 30 consecutive calendar days following the written authorization from the Owner for the Consultant to proceed. 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 **ten (10) copies** of any required documents and opinion of probable construction costs shall be submitted within **120 consecutive calendar days** following written authorization from the Owner for the Consultant to proceed. 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 (5) 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 **ten (10) copies** the required documents and services shall be submitted within **90 consecutive calendar days** following written authorization from the Owner for the Consultant to proceed. 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 **ten (10) copies** of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within **60 consecutive calendar days** following written authorization from the Owner for the Consultant to proceed. After review, the Consultant shall submit to Owner **Three (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 **ten (10) copies** of the final design documents and specifications for bidding to the Owner within **60 consecutive calendar days** following written authorization from the Owner for the Consultant to

proceed. The time frame set forth in the written authorization from the Owner for the Consultant to proceed.

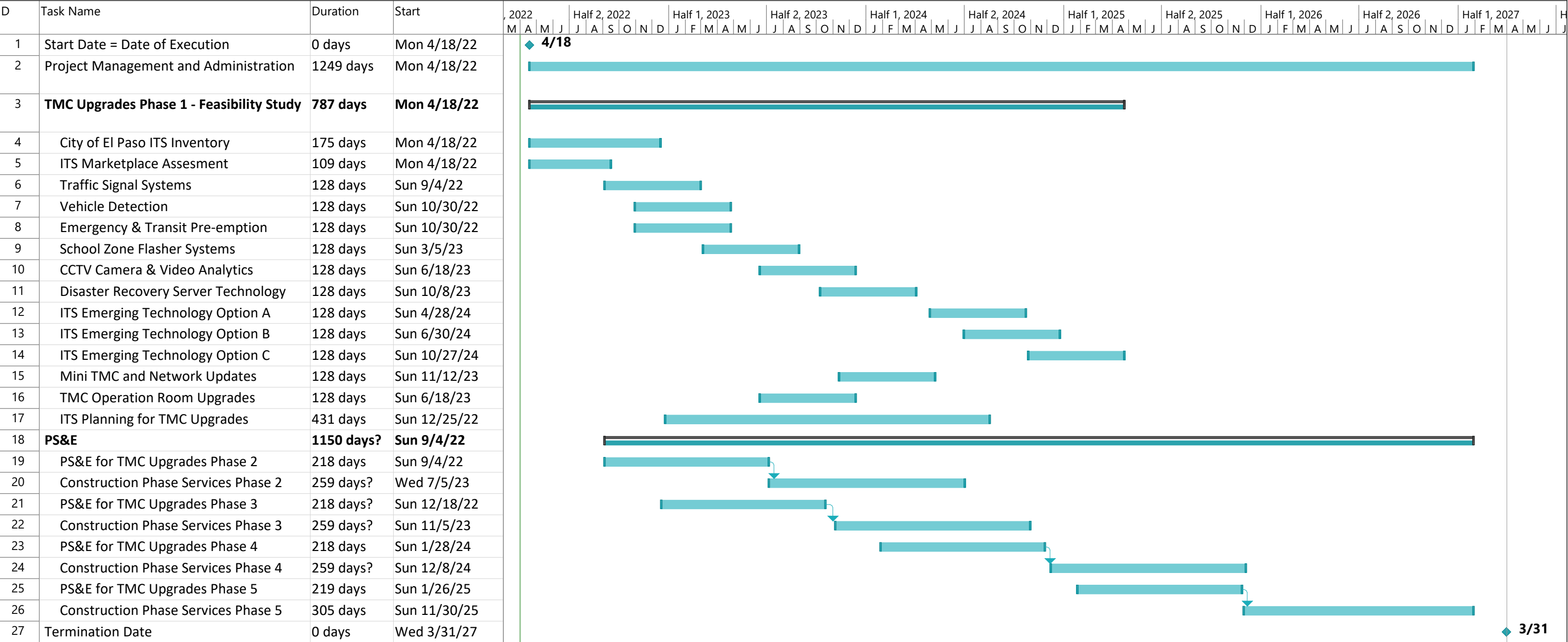
PHASE IV—BIDDING PHASE

Provide services as authorized by Owner during the bid phase as described in Attachment “C” and submit **one (1) copy** of all addenda to the Owner for appropriate action within **four (4) months**.

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 **eighteen (18) months** from the date of substantial completion.

Prime Provider: AECOM TECHNICAL SERVICES, INC.



Project: TMC Upgrades Schedu
Date: Fri 4/1/22

Task

Split

Milestone

Summary

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Project Summary

Inactive Task

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Manual Task

Duration-only

Manual Summary Rollup

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Start-only

Finish-only

External Tasks

External Milestone

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Deadline

Progress

Manual Progress

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ATTACHMENT "E" INSURANCE CERTIFICATE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/24/2022

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 Marsh Risk & Insurance Services CA License #0437153 633 W. Fifth Street, Suite 1200 Los Angeles, CA 90071 Attn: LosAngeles.CertRequest@Marsh.Com CN101348564-STND-GAUE-22-23		CONTACT NAME: Marsh Risk & Insurance Services PHONE (A/C, No, Ext): 213-345-5000 E-MAIL ADDRESS: LosAngeles.CertRequest@marsh.com FAX (A/C, No):	
INSURED AECOM AECOM Technical Services, Inc. 212 N. Kansas St. Suite 700 El Paso, TX 79901		INSURER(S) AFFORDING COVERAGE INSURER A: ACE American Insurance Company INSURER B: N/A INSURER C: Illinois Union Insurance Co INSURER D: SEE ACORD 101 INSURER E: INSURER F:	
12		2022	
		NAIC #	
		22657	
		N/A	
		27960	

COVERAGES	CERTIFICATE NUMBER: LOS-002574082-05	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 checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			HDO G72489974	04/01/2022	04/01/2023	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 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED <input type="checkbox"/> AUTOS ONLY <input type="checkbox"/> HIRE <input type="checkbox"/> AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			ISA H25564959	04/01/2022	04/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE EACH OCCURRENCE \$ AGGREGATE \$ \$
D	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/A	SEE ACORD 101	04/01/2022	04/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000
C	ARCHITECTS & ENG. PROFESSIONAL LIAB.			EON G21654693 005 "CLAIMS MADE"	04/01/2022	04/01/2023	Per Claim/Agg \$ 1,000,000 Defense Included

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: AECOM Project No: 04191910. Client Reference No: #2022-0177R. Traffic Management Center Upgrades.

City of El Paso is named as additional insured for GL & AL coverages, but only as respects work performed by or on behalf of the named insured and where required by written contract.

CERTIFICATE HOLDER	CANCELLATION
City of El Paso - Capital Improvement Department Attn: Gerald DelMuro 218 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 <i>Marsh Risk & Insurance Services</i>

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ACORD 25 (2016/03)

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