

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

DEPARTMENT: Economic and International Development

AGENDA DATE: Regular: January 8, 2019

CONTACT PERSON: Elizabeth Triggs, (915) 212-1619
TriggsEK@elpasotexas.gov

DISTRICT(S) AFFECTED: 4

SUBJECT:

A resolution that 1) the City Council the City Council hereby supports the introduction and passage of legislation during the current Texas legislative session creating a municipal management district ("District") encompassing the City-owned approximately 2,313 acres situated in the northeast part of the City of El Paso ("NE Parcel") and exchanged with FSW Investments, LP ("FSW") for approximately 44 acres situated in the northwest part of the City on November 13, 2018 through Ordinance No. 018871 provided that such legislation does not substantially differ from the legislation attached hereto as Exhibit A, which is incorporated hereby by reference and for all purposes; 2) the City Council hereby directs the City Manager to publish notice of intent to introduce legislation creating a municipal management district encompassing the NE Parcel as soon as possible, without waiting for closing on the land exchange transaction; and further directs the City Manager to submit legislation for the creation of said district following the required thirty (30) day waiting period following notice of intent publication; and 3) the City and FSW are currently negotiating a variety of issues regarding development of the NE Parcel and the District, which include without limitation, issues related to public improvements to be constructed, the method of financing of those improvements, and numerous other issues, which will require time to conclude. Therefore, this resolution in support of the legislation creating the District and directing the City Manager to initiate the District creation process does not constitute consent to the creation of this District as required by Section 59, Article XVI of the Texas Constitution, and the City specifically reserves the right to consent to the District.

BACKGROUND/DISCUSSION:

On Nov. 13, 2018, the City of El Paso and FSW Investments, LP entered into a land exchange agreement wherein the City conveyed real property appraised at \$18.6M and located in the northeast part of the City to FSW in exchange for real property owned by FSW, valued at \$18.6M, and located in the northwest part of the City. The land located in the northwest area of the City is proposed to be the future site of Great Wolf Lodge, while the land in the northeast offers the opportunity for a new development.

At this time, FSW Investments, LP wishes to establish a municipal management district (MMD) on the northeast parcel. Such districts may be used to support raw land development by partially funding public infrastructure costs initially paid for by the developer through proceeds of bonds issued by the district and secured by ad valorem taxes or special assessments or both. An MMD may be created by either approval by the Texas Commission on Environmental Quality or the State Legislature. As the 84th State Legislature

has convened, FSW Investments, LP and the City, as the current property owner, wish to work together to initiate the MMD creation process through the State Legislature. This resolution authorizes the City Manager to initiate that process by publishing notice of intent to submit legislation for district creation to the Legislature and to submit said legislation following the required 30 day waiting period.

It is important to note that this resolution does not constitute the City's consent to create the MMD as required by Section 59, Article XVI of the Texas Constitution. Such consent may be provided at a later date and following the execution of an agreement laying out development terms as required by the original land exchange agreement executed on November 13, 2018.

PRIOR COUNCIL ACTION:

There is one existing MMD within the City limits known as Montecillo Management District No. 1. On February 22, 2011, the City Council approved a resolution supporting legislation to create the Montecillo Management District No. 1; subsequently the Texas Legislature approved House Bill 3831 establishing the district.

AMOUNT AND SOURCE OF FUNDING:

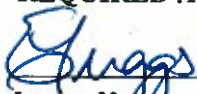
N/A

BOARD/COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:


For: Jessica Herrera, Director
Economic & International Development

RESOLUTION

CITY CLERK DEPT
2019 JAN 3 PM2:00

WHEREAS, on November 13, 2018 through Ordinance No. 018871, the City of El Paso (the "City") entered into a Land Exchange Agreement with FSW Investments, LP, ("FSW") wherein the City exchanged approximately 2,313 acres situated in the northeast part of the City of El Paso (the NE Parcel) for approximately 44 acres situated in the northwest part of the City of El Paso; and

WHEREAS, the City remains the owner of record of the NE Parcel as closing on the land exchange transaction has not yet occurred; and

WHEREAS, upon taking ownership of the NE Parcel, FSW plans to create a municipal management district ("District") encompassing the NE Parcel, subject to the City's review and consent; and

WHEREAS, if created, a municipal management district could provide a mechanism for FSW to finance a portion of public improvements within the NE Parcel; and

WHEREAS, the City finds that it is in the public interest to support the introduction and passage of legislation by the Texas Legislature creating the District; and

WHEREAS, initially, the proposed municipal management district will include City-owned property outside the boundaries of the NE Parcel because the metes and bounds survey of the NE Parcel has not been completed nor has the deed for the NE Parcel been conveyed; and

WHEREAS, upon conveyance of the deed for the NE Parcel (with the metes and bounds description of the NE Property), FSW shall de-annex from the municipal management district any property outside the NE Parcel boundaries of the NE Parcel; and

WHEREAS, FSW's obligation to de-annex from the municipal management district any property outside the boundaries of the NE Parcel shall be memorialized in an Entitlement Agreement by and between the parties with Council's review and approval; and

WHEREAS, the City's consent to creation of the District as required by Section 59, Article XVI of the Texas Constitution, shall be withheld until said Entitlement Agreement is executed and made effective; and

WHEREAS, as the owner of record of the NE Parcel, the City does not object to FSW beginning the process of creating a municipal management district; and

WHEREAS, municipal management districts are special districts created under Section 59, Article XVI of the Texas Constitution requiring a special act of the Texas Legislature; and

WHEREAS, Section 59, Article XVI of the Texas Constitution requires that prior to the introduction of legislation creating a municipal management district, a notice of intent to introduce the legislation must be published in a newspaper in the county where the district will be located at least thirty (30) days in advance of filing such legislation; and

WHEREAS, the parties desire to publish notice of intent to introduce legislation creating a municipal management district encompassing the NE Parcel; and

WHEREAS, following publication of the notice of intent to introduce legislation creating a municipal management district encompassing the NE Parcel, the parties desire to submit such legislation as early in the Texas Legislature's 2019 Session as possible.

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

1. The City Council hereby supports the introduction and passage of legislation during the current Texas legislative session creating a municipal management district ("District") encompassing the City-owned approximately 2,313 acres situated in the northeast part of the City of El Paso ("NE Parcel") and exchanged with FSW Investments, LP ("FSW") for approximately 44 acres situated in the northwest part of the City on November 13, 2018 through Ordinance No. 018871 provided that such legislation does not substantially differ from the legislation attached hereto as Exhibit A, which is incorporated hereby by reference and for all purposes;

2. The City Council hereby directs the City Manager to publish notice of intent to introduce legislation creating a municipal management district encompassing the NE Parcel as soon as possible, without waiting for closing on the land exchange transaction; and further directs the City Manager to submit legislation for the creation of said district following the required thirty (30) day waiting period following notice of intent publication; and

3. The City and FSW are currently negotiating a variety of issues regarding development of the NE Parcel and the District, which include without limitation, issues related to public improvements to be constructed, the method of financing of those improvements, and numerous other issues, which will require time to conclude. Therefore, this resolution in support of the legislation creating the District and directing the City Manager to initiate the District creation process does not constitute consent to the creation of this District as required by Section 59, Article XVI of the Texas Constitution, and the City specifically reserves the right to consent to the District.

APPROVED this _____ day _____, 2019.

CITY OF EL PASO

Dee Margo
Mayor

(signatures continue on following page)

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Roberta Brito
Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:

J. Huggs
Jessica Herrera, Director
for: Economic and International Development

Exhibit A

By:

.B. No.

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the City of El Paso Municipal Management District No. 2; providing authority to impose a tax, levy an assessment, and issue bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 4, Special District Local Laws Code, is amended by adding Chapter 3908 to read as follows:

CHAPTER 3908. CITY OF EL PASO MUNICIPAL MANAGEMENT DISTRICT

NO. 2

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3908.001. DEFINITIONS. In this chapter:

- (1) "Board" means the district's board of directors.
- (2) "City" means the City of El Paso, Texas.
- (3) "Director" means a board member.
- (4) "District" means the City of El Paso Municipal

Management District No. 2.

Sec. 3908.002. CREATION AND NATURE OF DISTRICT. The district is a special district created under Section 59, Article XVI, Texas Constitution.

Sec. 3908.003. PURPOSE; LEGISLATIVE FINDINGS. (a) The

Exhibit A

creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter. By creating the district and in authorizing the city and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

(b) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the district.

(c) The district is created to supplement and not to supplant city services provided in the district

Sec. 3908.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a)

The district is created to serve a public use and benefit.

(b) All land and other property included in the district will benefit from the improvements and services to be provided by the district under powers conferred by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other powers granted under this chapter.

(c) The creation of the district is in the public interest and is essential to further the public purposes of:

(1) developing and diversifying the economy of the

Exhibit A

state;

(2) eliminating unemployment and underemployment;

(3) developing or expanding transportation and commerce; and

(4) providing quality residential housing.

(d) The district will:

(1) promote the health, safety, and general welfare of residents, employers, potential employees, employees, visitors, and consumers in the district, and of the public;

(2) provide needed funding for the district to preserve, maintain, and enhance the economic health and vitality of the district territory as a residential community and business center; and

(3) promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty.

(e) Pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, vehicle parking, and street art objects are parts of and necessary components of a street and are considered to be an improvement project that includes a street or road improvement.

(f) The district will not act as the agent or instrumentality of any private interest even though the district will benefit many

Exhibit A

private interests as well as the public.

Sec. 3908.005. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section 2 of the Act enacting this chapter.

(b) The boundaries and field notes contained in Section 2 of the Act enacting this chapter form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not affect the district's:

(1) organization, existence, or validity;

(2) right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on the bond;

(3) right to impose or collect an assessment or tax; or

(4) legality or operation.

Sec. 3908.006. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES.

(a) All or any part of the area of the district is eligible to be included in:

(1) a tax increment reinvestment zone created under Chapter 311, Tax Code.

(2) a tax abatement reinvestment zone created under Chapter 312, Tax Code;

(3) an enterprise zone created under Chapter 2303, Government Code; or

(4) an industrial district created under Chapter 42,

Exhibit A

Local Government Code.

(b) If the city creates a tax increment reinvestment zone described by Subsection (a), the city and the board of directors of the zone, by contract with the district, may grant money deposited in the tax increment fund to the district to be used by the district for:

(1) the purposes permitted for money granted to a corporation under Section 380.002(b), Local Government Code, and

(2) any other district purpose, including the right to pledge the money as security for any bonds or other obligations issued by the district under Section 3908.201.

(c) A tax increment reinvestment zone created by the city in the district is not subject to the limitations provided by Section 311.006, Tax Code.

Sec. 3908.007. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW. Except as otherwise provided by this chapter, Chapter 375, Local Government Code, applies to the district.

Sec. 3908.008. LIBERAL CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed in conformity with the findings and purposes stated in this chapter.

[Sections 3908.009-3908.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3908.051. GOVERNING BODY; TERMS. The district is

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governed by a board of five directors who serve staggered terms of four years expiring June 1 of each even-numbered year.

Sec. 3908.052. QUALIFICATIONS OF DIRECTORS APPOINTED BY CITY. (a) To be qualified to serve as a director appointed by the governing body of the city, a person must be:

(1) a resident of the district who is also a registered voter of the district;

(2) an owner of property in the district;

(3) an owner of stock or a partnership or membership interest, whether beneficial or otherwise, of a corporate partnership, limited liability company, or other entity owner of a direct or indirect interest in property in the district;

(4) an owner of a beneficial interest in a trust, or a trustee in a trust, that directly or indirectly owns property in the district; or

(5) an agent, employee, or tenant of a person described by Subdivision (2), (3), or (4).

(b) Section 49.052, Water Code, does not apply to the district.

Sec. 3908.053. APPOINTMENT OF DIRECTORS. The governing body of the city shall appoint directors from persons recommended by the board.

Sec. 3908.054. VACANCY. If a vacancy occurs on the board, the remaining directors shall appoint a director for the remainder

Exhibit A

of the unexpired term.

Sec. 3908.055. OFFICERS. The board shall elect from among the directors a chair, a vice chair, and a secretary. The offices of chair and secretary may not be held by the same person.

Sec. 3908.056. COMPENSATION; EXPENSES. (a) The district may compensate each director in an amount not to exceed \$150 for each board meeting. The total amount of compensation for each director in one year may not exceed \$7,200.

(b) A director is entitled to reimbursement for necessary and reasonable expenses incurred in carrying out the duties and responsibilities of the board.

Sec. 3908.057. LIABILITY INSURANCE. The district may obtain and pay for comprehensive general liability insurance coverage from a commercial insurance company or other source that protects and insures a director against personal liability and from all claims relating to:

(1) actions taken by the director in the director's capacity as a member of the board;

(2) actions and activities taken by the district; or

(3) the actions of others acting on behalf of the district.

Sec. 3908.058. NO EXECUTIVE COMMITTEE. The board may not create an executive committee to exercise the powers of the board.

Sec. 3908.059. BOARD MEETINGS. The board shall hold

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meetings at a place accessible to the public.

Sec. 3908.060. INITIAL DIRECTORS. (a) The initial board
consists of:

Pos. No.	Name of Director
<u>1</u>	_____
<u>2</u>	_____
<u>3</u>	_____
<u>4</u>	_____
<u>5</u>	_____

(b) The terms of the initial directors expire June 1, 2021.

(c) Of the directors who replace an initial director, the terms of directors serving in positions 1, 2, and 3 expire June 1, 2025, and the terms of directors serving in positions 4 and 5 expire June 1, 2023.

(d) Section 3908.052 does not apply to this section.

(e) This section expires September 1, 2025.

[Sections 3908.061-3908.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 3908.101. GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. 3908.102. IMPROVEMENT PROJECT AND SERVICE IN DEFINABLE AREA. The district may undertake an improvement project or service that confers a special benefit on a definable area in the district

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and levy and collect a special assessment on benefited property in the district in accordance with:

(1) Chapter 372, Local Government Code; or

(2) Chapter 375, Local Government Code.

Sec. 3908.102. IMPROVEMENT PROJECTS AND SERVICES. (a) The district may provide, design, construct, acquire, improve, relocate, operate, maintain, or finance an improvement project or service using money available to the district, or contract with a governmental or private entity to provide, design, construct, acquire, improve, relocate, operate, maintain, or finance an improvement project or service authorized under this chapter or Chapter 375, Local Government Code.

(b) An improvement project described by Subsection (a) may be located:

(1) in the district; or

(2) in an area outside the district if the project is for the purpose of extending a public infrastructure improvement beyond the district's boundaries to a logical terminus.

Sec. 3908.103. ECONOMIC DEVELOPMENT. (a) The district may engage in activities that accomplish the economic development purposes of the district.

(b) The district may establish and provide for the administration of one or more programs to promote state or local economic development and to stimulate business and commercial

Exhibit A

activity in the district, including programs to:

- (1) make loans and grants of public money; and
- (2) provide district personnel and services.

(c) The district may create economic development programs and exercise the economic development powers that:

(1) Chapter 380, Local Government Code, provides to a municipality.

Sec. 3908.104. PARKING FACILITIES. (a) The district may acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain parking facilities or a system of parking facilities, including lots, garages, parking terminals, or other structures or accommodations for parking motor vehicles off the streets and related appurtenances.

(b) The district's parking facilities serve the public purposes of the district and are owned, used, and held for a public purpose even if leased or operated by a private entity for a term of years.

(c) The district's parking facilities are necessary components of a street and are considered to be a street or road improvement.

(d) The development and operation of the district's parking facilities may be considered an economic development program.

Sec. 3908.105. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

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SUBCHAPTER D. DIVISION OF DISTRICT INTO MULTIPLE DISTRICTS

Sec. 3908.151. DIVISION OF DISTRICT; PREREQUISITES. The district, including territory added to the district under Section 3908.____, may be divided into two or more new districts only if the district has no outstanding bonded debt. Territory previously added to the district under Section 3908.____ may be included in a new district.

Sec. 3908.152. LAW APPLICABLE TO NEW DISTRICT. This chapter applies to any new district created by division of the district, and a new district has all the powers and duties of the district.

Sec. 3908.153. DIVISION PROCEDURES. (a) The board, on its own motion or on receipt of a petition signed by an owner of real property in the district, may adopt an order proposing to divide the district.

(b) If the board decides to divide the district, the board shall:

(1) set the terms of the division, including names for the new districts and a plan for the payment or performance of any outstanding district obligations;

(2) prepare a metes and bounds description for each proposed district; and

(3) appoint four initial directors for each new district.

(c) The governing body of the city shall appoint one director

Exhibit A

for each new district.

Sec. 3908.154. CONTRACT AUTHORITY OF NEW DISTRICTS. The new districts may contract with each other for any matter the boards of the new districts consider appropriate, including the joint construction or financing of a utility improvement.

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SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS; ASSESSMENTS

Sec. 3908.201. DISBURSEMENTS AND TRANSFERS OF MONEY. The board by resolution shall establish the number of signatures and the procedure required for a disbursement or transfer of the district's money.

Sec. 3908.202. MONEY USED FOR IMPROVEMENTS OR SERVICES. The district may acquire, construct, finance, operate, or maintain an improvement project or service authorized under this chapter or Chapter 375, Local Government Code, using any money available to the district.

Sec. 3908.203 TAX AND ASSESSMENT ABATEMENTS. The district may designate reinvestment zones and may grant abatements of a tax or assessment on property in the zones.

SUBCHAPTER F. TAXES AND BONDS

Sec. 3908.251. BONDS AND OTHER OBLIGATIONS. (a) The district may issue, bonds, notes, or other obligations payable wholly or partly from ad valorem taxes or assessments in the manner provided by Subchapter A, Chapter 372, or Subchapter J, Chapter 375, Local Government Code.

(b) In exercising the district's borrowing power, the district may issue a bond or other obligation in the form of a bond, note, certificate of participation or other instrument evidencing a proportionate interest in payments to be made by the district, or other type of obligation.

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(c) In addition to the sources of money described by Subchapter A, Chapter 372, and Subchapter J, Chapter 375, Local Government Code, district bonds may be secured and made payable wholly or partly by a pledge of any part of the money the district receives from improvement revenue or from any other source.

Sec. 3908.252. OPERATION AND MAINTENANCE TAX. (a) If authorized by a majority of the district voters voting at an election held in accordance with Section 3960.201, the district may impose an operation and maintenance tax on taxable property in the district in accordance with Section 49.107, Water Code, for any district purpose, including to:

- (1) maintain and operate the district;
- (2) construct or acquire improvement; or
- (3) provide a service.

Sec. 3908.253. TAXES FOR BONDS AND OTHER OBLIGATIONS. At the time bonds or other obligations payable wholly or partly from ad valorem taxes are issued:

(1) the board shall impose a continuing direct annual ad valorem tax for each year that all or part of the bonds are outstanding; and

(2) the district annually shall impose an ad valorem tax on all taxable property in the district in an amount sufficient to:

- (A) pay the interest on the bonds or other

Exhibit A

obligations as the interest becomes due; and

(B) create a sinking fund for the payment of the principal of the bonds or other obligations when due or the redemption price at any earlier required redemption date.

SECTION 2. The City of El Paso Municipal Management District No. 2 initially includes all the territory contained in the following area:

SECTION 3. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) The general law relating to consent by political subdivisions to the creation of districts with conservation,

Exhibit A

reclamation, and road powers and the inclusion of land in those districts has been complied with.

(e) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.