

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

DEPARTMENT: Planning & Inspections Department
AGENDA DATE: Consent Agenda 4/4/17
CONTACT PERSON/PHONE: Larry F. Nichols, (915) 212-1550
Nelson Ortiz, (915) 212-1606
DISTRICT(S) AFFECTED: 3

SUBJECT:

A Resolution authorizing the City Manager to sign an Escrow Agreement between the Paisano Housing Redevelopment Corporation ("Paisano"), and the City of El Paso, Texas a municipal corporation ("City"), and WestStar Title Company ("WestStar") for the deposit of park fees in connection with the purchase of a 11.100-acre portion, more or less, out of Lot 1, Block 1, Pebble Brook Subdivision Unit One Replat "A", an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 74, Page 62, Real Property Records, El Paso County, Texas. Subject Property: West of Lee Trevino and South of Montana; Applicant: Paisano Housing Redevelopment Corporation
(District 3)

BACKGROUND / DISCUSSION:

The Housing Authority of the City of El Paso (HACEP) is acquiring property known as a portion of Lot 1, Block 1, Pebble Brook Unit One Replat A, to be used for a multi-family residential housing development. The City has determined that this property would be assessed parkland fees related to the development in accordance with Title 19. HACEP disputes the amount of parkland fees. The City and HACEP recommend that HACEP deposit the parkland fees upon closing of the sale of the property, into an escrow account held by WestStar Title Company, until a resolution of the dispute.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

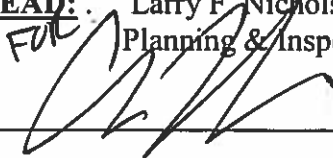
N/A

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

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD: Larry F. Nichols, Director
Planning & Inspections Department



APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

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

That the City Manager be authorized to sign an Escrow Agreement between the Paisano Housing Redevelopment Corporation ("Paisano"), and the City of El Paso, Texas a municipal corporation ("City"), and WestStar Title Company ("WestStar") for the deposit of park fees in connection with the purchase of a 11.100-acre portion, more or less, out of Lot 1, Block 1, PEBBLE BROOK SUBDIVISION UNIT ONE REPLAT "A", an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 74, Page 62, Real Property Records, El Paso County, Texas.

APPROVED this ____ day of _____ 2017.

CITY OF EL PASO

Oscar Leeser, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Karla M. Nieman
Assistant City Attorney

APPROVED AS TO CONTENT:



Tracy Novak, Director
Parks and Recreation Department

ESCROW AGREEMENT

This **ESCROW AGREEMENT** (the "**Agreement**") is entered into as of this ____ day of _____, 2017 (the "**Effective Date**"), by and between Paisano Housing Redevelopment Corporation ("**Paisano**") and The City of El Paso, Texas, a municipal corporation (the "**City**") and WestStar Title Company ("**Escrow Agent**").

RECITALS

A. Paisano will purchase certain property located in El Paso, El Paso County, Texas being more particularly described on Exhibit "A" and Exhibit "A-1" attached hereto (the "**Property**").

B. The property is subject to certain Declaration of Covenants, Conditions and Restrictions recorded under Volume 2540, Page 1520, Real Property Records of El Paso County, Texas (the "**Declaration**") which restricts the Property to non-residential uses.

C. City requires that all residential subdivisions provide for the parkland needs of the community within its corporate limits, which includes property where the zoning allows for single family, two-family or multi-family development (apartments).

D. The calculation for parkland requirements is determined by using the gross density permitted by the zoning classification on the property or by the subdivider verifying by deed restrictions or other legal instrument the density permitted within the subdivision is less than the gross density.

E. Cielo Vista Church, the current owner of the Property, Paisano and the City have negotiated that certain Amended Declaration of Covenants Conditions and Restrictions (the "**Amended Declaration**") which would allow the Property to be used for multi-family residential housing, including apartments and duplexes, and any customary appurtenances to such residential apartment buildings or duplexes as allowed under the zoning designation, provided, however, no more than 185 dwelling units shall be constructed on the Property. A copy of the Amended Declaration is attached hereto as Exhibit "B".

F. Paisano and the City are disputing the amount of parkland fees ("**Parkland Fees**") related to the development of the Property that are required to be paid by Paisano, if any, pursuant to the requirements in Section 19.20 Parks and Open Space of the El Paso Municipal Code (the "**Dispute**").

G. Paisano and the City have each agreed to execute and deposit the Amended Declaration and Paisano has agreed to deposit the purported amount of Parkland Fees owed by Paisano, both with Escrow Agent, in accordance with the terms of this Agreement until the Dispute is resolved between Paisano and the City.

AGREEMENT

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Paisano, City and Escrow Agent agree as follows:

1. Receipt of Parkland Fees. In connection with the execution of this Agreement, Paisano has deposited with Escrow Agent by cash or wire transfer, the sum of One Hundred Twenty Five Thousand Eight Hundred and No/100ths Dollars (\$125,800.00) (consisting of the Parkland Fees which are calculated based on One Hundred Eighty Five (185) units multiplied by Six Hundred Eighty and No 100ths Dollars (\$680.00) per unit) (the "*Escrow Funds*"). The City represents and warrants to Paisano and Escrow Agent that the Escrow Funds is the amount of Parkland Fees that the City purports must be paid by Paisano pursuant to Section 19.20 Parks and Open Space of the El Paso Municipal Code.

2. Investment of Escrow Funds. Upon receipt of the Escrow Funds, Escrow Agent shall immediately invest the Escrow Funds into an interest bearing account, with a federally insured financial institution selected by Escrow Agent and approved by Paisano and the City, such approval not to be unreasonably withheld. All interest earned on the Escrow Funds shall be the property of Paisano. Any Escrow Funds remaining on deposit with Escrow Agent after the Resolution (hereinafter defined) of the Dispute shall be returned to Paisano.

3. Receipt of Amended Declaration. In connection with the execution of this Agreement, Paisano and the City have deposited with Escrow Agent their original signature pages to the Amended Declaration (the "*Escrow Document*").

4. Dispute Resolution and Disbursement of Escrow Funds and Escrow Document.
a. Dispute Resolution. The following shall be deemed an automatic resolution of the Dispute (the "*Resolution*") without further notice or documentation by the parties:

1. Paisano sends notice to Escrow Agent to pay the full amount of the Escrow Funds (less any interest earned thereon) to the City; or
2. Paisano and the City send written notice to Escrow Agent that the City will accept an amount less than Escrow Funds for satisfaction of the Parkland Fees or that no Parkland Fees shall be owed by Paisano to the City for the development of the Property.

b. Disbursement of Escrow Funds.

1. Upon Resolution of the Dispute, Escrow Agent shall deliver the Escrow Funds to the party(ies) required under the Resolution of the Dispute and Escrow Agent shall record the Escrow Document in

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the Real Property Records of El Paso County, Texas and provide a recorded copy to both parties.

5. Liabilities of Escrow Agent. The acceptance by Escrow Agent of its duties as such under this Agreement is subject to the following terms and conditions, which all parties to this Agreement hereby agree shall govern and control with respect to the rights, duties, liabilities and immunities of Escrow Agent:

a. Escrow Agent shall not be bound by any agreement to which it is not a party;

b. Escrow Agent acts hereunder as depository only, and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness, or validity of any funds deposited with it;

c. Escrow Agent shall be entitled to rely upon and shall be protected in acting upon any written notice, request, waiver, consent, receipt or other paper document which Escrow Agent in good faith believes to be genuine and to be signed by the proper person;

d. Escrow Agent shall not be liable for any error of judgment, or for any act done or step taken or omitted in good faith, or for any mistake of fact or law, or for anything done or refrained from in connection herewith, except for its own default or negligence;

e. Escrow Agent may consult with, and obtain advice from, legal counsel, and it shall incur no liability and shall be fully protected in acting or refraining from acting in good faith in accordance with the advice of such counsel;

f. The liability of Paisano and the City to Escrow Agent hereunder shall be limited to the amount of Escrow Funds in the possession of Escrow Agent as of the time any claim is made by such Escrow Agent hereunder and the exclusive source for satisfying any such claims shall be such Escrow Funds.

g. In the event of any unresolved dispute between Paisano and the City as to whether the Escrow Funds, or any portion thereof, should be released to Paisano or the City, the validity or meaning of this Agreement, or any of the facts or matters relating to the transaction contemplated by this Agreement, Escrow Agent shall be under no obligation to act, except under process or order of court, or until it has been adequately indemnified to its full satisfaction, and shall sustain no liability for its failure to act pending such process or court order or indemnification. In the event of any such unresolved dispute, Escrow Agent may, in its reasonable discretion, deposit and interplead the Escrow Funds (or such portion of the Escrow Funds as is in the possession of Escrow Agent) with the clerk of a court of competent jurisdiction and, upon depositing the Escrow Funds and filing a complaint of interpleader, Escrow Agent shall be relieved of any and all liability as to the funds so deposited.

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6. Notices. Except as otherwise provided herein, all notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall, unless otherwise provided herein, be given or served (i) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (ii) by overnight delivery using a nationally recognized overnight courier, or (iii) by personal delivery. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) business day after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified between the hours of 8:00 a.m. and 5:00 p.m. of any business day with delivery made after such hours to be deemed received the following business day. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

If to Paisano:

Housing Authority of the City
of El Paso
Attention: Gerald Cichon
5300 E. Paisano Dr.
El Paso, Texas 79905

If to City:

City of El Paso, Texas
Attention: City Manager
300 N. Campbell
El Paso, Texas 79901

With copy to:

P.C. Gordon Davis Johnson & Shane
Attention: Joshua F. Rhoads
4695 N. Mesa
El Paso, Texas 79912

With copy to:

City Attorney of El Paso, Texas
Attention: Sylvia Firth
300 N. Campbell
El Paso, Texas 79901

If to Escrow Agent:

WestStar Title
Attention: Travis Smith
641 N. Stanton
El Paso, Texas 79901

7. Termination. This Agreement shall automatically terminate upon complete distribution of the Escrow Funds and Escrow Document in accordance with the terms of this Agreement.

8. Performance. This Agreement is entered into and shall be performable in El Paso County, Texas, and in the event of litigation hereunder, it is specifically stipulated that this Agreement shall be interpreted and construed according to the laws of the State of Texas.

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9. Attorneys Fees. In the event of litigation to enforce this Agreement, the prevailing party shall be entitled to recover its attorneys' fees from the non-prevailing party.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument and shall be effective when at least one counterpart of this Agreement has been executed and delivered by each of the parties hereto.

[SIGNATURE PAGE FOLLOWS]

EXECUTED as of the Effective Date.

PAISANO:

PAISANO HOUSING REDEVELOPMENT
CORPORATION

By: _____

Name: Gerald Cichon

Title: Chief Executive Officer

DocuSigned by:


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CITY:

CITY OF EL PASO, TEXAS
a Texas municipal corporation

By: _____

Name: Tommy Gonzalez

Title: City Manager

ESCROW AGENT:

WESTSTAR TITLE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:



Karla M. Nickman
Assistant City Attorney

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EXECUTED as of the Effective Date.

PAISANO:

PAISANO HOUSING REDEVELOPMENT
CORPORATION

By: _____
Name: Gerald Cichon
Title: Chief Executive Officer


CITY:

CITY OF EL PASO, TEXAS
a Texas municipal corporation

By: _____
Name: Tommy Gonzalez
Title: City Manager

ESCROW AGENT:

WESTSTAR TITLE

By:  _____
Name: TRAVIS JOEL SMITH
Title: COMMERCIAL ESCROW OFFICER

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Exhibit "A"
Property

A 11.100 acre portion, more or less, out of Lot 1, Block 1, PEBBLE BROOK SUBDIVISION UNIT ONE REPLAT "A", an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 74, Page 62, Real Property Records, El Paso County, Texas, said portion being more particularly described by metes and bounds in Exhibit "A-1" attached hereto.

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Exhibit "A-1"
Metes and Bounds Description

**PROPERTY DESCRIPTION
METES AND BOUNDS**

PROPERTY DESCRIPTION: A PORTION OF LOT 1, BLOCK 1, PEBBLE BROOK UNIT ONE, REPLAT "A", ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 74, PAGE 62, PLAT RECORDS OF EL PASO, EL PASO COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBE BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A TX D.O.T. TYPE II CONCRETE RIGHT-OF-WAY MARKER LOCATED ON THE NORTHERLY RIGHT-OF-WAY LINE OF MONTANA AVENUE (U.S. HIGHWAY No. 62-180), A 200' WIDE PUBLIC RIGHT-OF-WAY; THENCE, SOUTH 84° 18' 12" WEST, WITH SAID RIGHT-OF-WAY LINE, A DISTANCE OF 609.48 FEET TO A POINT; THENCE, SOUTH 05° 41' 48" EAST, AWAY FROM SAID R.O.W. LINE, A DISTANCE OF 200.00 FEET TO A BOUNDARY CORNER LYING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID MONTANA AVENUE, ALSO BEING THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE, NORTH 84° 18' 12" EAST, WITH SAID R.O.W. LINE, A DISTANCE OF 637.52 FEET TO A BOUNDARY CORNER;

THENCE, SOUTH 05° 44' 10" EAST, AWAY FROM SAID R.O.W. LINE, A DISTANCE OF 845.30 FEET TO A BOUNDARY CORNER;

THENCE, NORTH 80° 23' 19" WEST, WITH THE COMMON BOUNDARY LINE OF SAID LOT 1, BLOCK 1, PEBBLE BROOK SUBDIVISION AND THE NORTHERLY BOUNDARY LINE OF PEBBLE HILLS UNIT 2 SUBDIVISION, A DISTANCE OF 558.15 FEET TO A BOUNDARY CORNER;

THENCE, NORTH 80° 58' 38" WEST, A DISTANCE OF 26.51 FEET TO A PROPERTY CORNER;

THENCE, NORTH 83° 39' 30" WEST, WITH SAID BOUNDARY LINE, A DISTANCE OF 75.31 FEET TO A BOUNDARY CORNER;

THENCE, NORTH 05° 44' 10" WEST, WITH THE COMMON BOUNDARY LINE OF SAID LOT 1, BLOCK 1 BEING DESCRIBED HEREIN, AND TRACT 2-G-3 [2-G-3-B RECORDS], A DISTANCE OF 675.50 FEET BACK TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

SAID PARCEL OF LAND CONTAINING 11.100 ACRES (483,516 SQ.FT.) OF LAND, MORE OR LESS.

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Exhibit "B"
Amended Declaration

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AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

COMMERCIAL

PEBBLE BROOK SUBDIVISION UNIT ONE REPLAT "A"

CITY OF EL PASO, TEXAS

Cielo Vista Church, being the owner of the following described property in the City of El Paso, El Paso County, Texas:

Lot 1, Block 1, PEBBLE BROOK SUBDIVISION UNIT ONE REPLAT "A", an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 74, Page 62, Real Property Records, El Paso County, Texas ("*Property*"),

does hereby amend the Declaration of Covenants, Conditions and Restrictions recorded in Volume 2540, Page 1520 of the Real Property Records of El Paso County, Texas (the "*Original Declaration*") and does hereby agree to pay any park fees required as a condition of amending the Original Declaration. Article III. Use Restrictions applicable to the Property is hereby deleted in its entirety and replaced with the following:

III. USE RESTRICTIONS

The 11.1 acre portion of Lot 1, Block 1, Pebble Brook Subdivision Unit One Replat "A" (the "*Multi-Family Parcel*"), as designated on Exhibit "A" and Exhibit "A-1" attached hereto shall be entitled to have multi-family residential housing, including apartments and duplexes, and any customary appurtenances to such residential apartment buildings or duplexes, as allowed under the zoning designations of the Multi-Family Parcel provided, however, no more than 185 dwelling units shall be constructed on the Multi-Family Parcel. The proposed use of the remaining Property is limited to non-residential uses. Except with respect to the Multi-Family Parcel, the construction of single-family, two-family or multi-family units on the Property is expressly prohibited. Except with respect to the Multi-Family Parcel, no structure either of a temporary or permanent character, trailer or mobile home shall be located on the Property and used as a residence provided, however, that one caretaker's residence may be constructed and utilized in connection within each commercial or industrial use within the Subdivision".

Except as modified by this Amended Declaration of Covenants, Conditions and Restrictions, the Original Declaration shall remain in full force and effect.

[SIGNATURE AND ACKNOWLEDGEMENT PAGE FOLLOWS]

IN WITNESS WHEREOF, Owner and the City of El Paso have jointly executed this First Amendment to Declaration as of the 25 day of March, 2017.

OWNER:

CIELO VISTA CHURCH,
a nonprofit corporation

By: Robert L. Carvalho
Name: ROBERT L. CARVALHO
Title: CFO

THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 25 day of March, 2017, by Robert L. Carvalho, CFO of Cielo Vista Church, a nonprofit corporation on behalf of such nonprofit corporation, and authorized to make the amendments described herein.



Cynthia Lynn Smith
Notary Public, State of Texas

[SIGNATURE AND ACKNOWLEDGEMENT PAGE FOLLOWS]

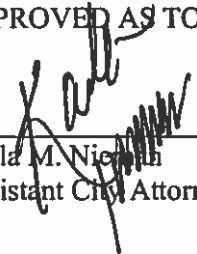
CITY OF EL PASO:

By: _____
Name: Tommy Gonzalez
Title: City Manager

THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2016, by _____, _____ of City of El Paso, on behalf of such _____, and authorized to make the amendments described herein.

APPROVED AS TO FORM:



Karla M. Nielsen
Assistant City Attorney

Exhibit "A"
Multi-Family Parcel

A 11.100 acre portion, more or less, out of Lot 1, Block 1, PEBBLE BROOK SUBDIVISION UNIT ONE REPLAT "A", an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 74, Page 62, Real Property Records, El Paso County, Texas, said portion being more particularly described by metes and bounds in Exhibit "A-1" attached hereto.

Exhibit "A-1"
Multifamily Parcel
Metes and Bounds Description

**PROPERTY DESCRIPTION
METES AND BOUNDS**

PROPERTY DESCRIPTION: A PORTION OF LOT 1, BLOCK 1, PEBBLE BROOK UNIT ONE, REPLAT "A", ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 74, PAGE 62, PLAT RECORDS OF EL PASO, EL PASO COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBE BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A TX D.O.T. TYPE II CONCRETE RIGHT-OF-WAY MARKER LOCATED ON THE NORTHERLY RIGHT-OF-WAY LINE OF MONTANA AVENUE (U.S. HIGHWAY No. 62-180), A 200' WIDE PUBLIC RIGHT-OF-WAY; THENCE, SOUTH 84° 18' 12" WEST, WITH SAID RIGHT-OF-WAY LINE, A DISTANCE OF 609.48 FEET TO A POINT; THENCE, SOUTH 05° 41' 48" EAST, AWAY FROM SAID R.O.W. LINE, A DISTANCE OF 200.00 FEET TO A BOUNDARY CORNER LYING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID MONTANA AVENUE, ALSO BEING THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE, NORTH 84° 18' 12" EAST, WITH SAID R.O.W. LINE, A DISTANCE OF 637.52 FEET TO A BOUNDARY CORNER.

THENCE, SOUTH 05° 44' 10" EAST, AWAY FROM SAID R.O.W. LINE, A DISTANCE OF 845.30 FEET TO A BOUNDARY CORNER;

THENCE, NORTH 80° 23' 19" WEST, WITH THE COMMON BOUNDARY LINE OF SAID LOT 1, BLOCK 1, PEBBLE BROOK SUBDIVISION AND THE NORTHERLY BOUNDARY LINE OF PEBBLE HILLS UNIT 2 SUBDIVISION, A DISTANCE OF 558.15 FEET TO A BOUNDARY CORNER;

THENCE, NORTH 80° 58' 38" WEST, A DISTANCE OF 26.51 FEET TO A PROPERTY CORNER;

THENCE, NORTH 83° 39' 30" WEST, WITH SAID BOUNDARY LINE, A DISTANCE OF 75.31 FEET TO A BOUNDARY CORNER;

THENCE, NORTH 05° 44' 10" WEST, WITH THE COMMON BOUNDARY LINE OF SAID LOT 1, BLOCK 1 BEING DESCRIBED HEREIN, AND TRACT 2-G-3 [2-G-3-B RECORDS], A DISTANCE OF 675.50 FEET BACK TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

SAID PARCEL OF LAND CONTAINING 11.100 ACRES (483,516 SQ.FT.) OF LAND, MORE OR LESS.

MEMORANDUM

DATE: March 28, 2017

TO: The Honorable Mayor and City Council
Tommy Gonzalez, City Manager

FROM: Nelson Ortiz, Lead Planner

SUBJECT: Escrow Agreement for a portion of Lot 1, Block 1, Pebble Brook Subdivision #1 Replat A.

The Housing Authority of the City of El Paso (HACEP) is acquiring property known as a portion of Lot 1, Block 1, Pebble Brook Unit One Replat A, to be used for a multi-family residential housing development. The City has determined that this property would be assessed parkland fees related to the development in accordance with Title 19. HACEP disputes the amount of parkland fees. The City and HACEP recommend that HACEP deposit the parkland fees upon closing of the sale of the property, into an escrow account held by WestStar Title Company, until a resolution of the dispute.

Staff recommends **approval**.

Applicant: Paisano Housing Redevelopment Corporation

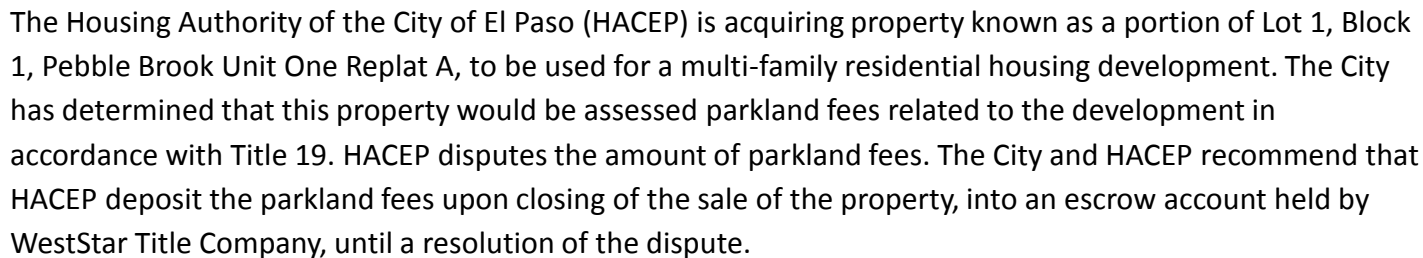


Recommendation/Public Input

- **Planning & Inspections Recommendation:** Approval

Strategic Goal #3-Promote the Visual Image of El Paso

- 3.1 Provide business-friendly permitting and inspection processes
- 3.2 Improve the visual impression of the community.



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