

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

**DEPARTMENT:** Economic and International Development

**AGENDA DATE:** First Reading: April 16, 2019  
Public Hearing: April 30, 2019

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

**DISTRICT(S) AFFECTED:** 1 and 4

**SUBJECT:**

An ordinance authorizing the City Manager to sign the First Amendment to Ordinance No. 018871, the Land Exchange Agreement between the City of El Paso and FSW Investments, LP to extend the deadline by which the parties must enter into a development agreement; amend certain definitions and the manner in which closing is to occur; and to provide for the City's cooperation in the creation of a Municipal Management District over the City-owned property located in the northeast section of the City being transferred to FSW Investments, LP.

**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, a destination water park and resort, while the land in the northeast offers the opportunity for a new mixed-use development. Under this first amendment to the Land Exchange Agreement, the parties agree to: 1) extend the deadline by which the parties must enter into a development agreement by requiring that the development agreement is a condition precedent to closing; 2) amend certain definitions and the manner in which closing is to occur; and 3) formalize the City's cooperation in the creation of the a Municipal Management District over the northeast property which is critical to the development of the land and intended to supplement, not supplant City services provided in the district.

**PRIOR COUNCIL ACTION:**

On November 13, 2018 by Ordinance No. 018871, the City and FSW Investments, LP entered into a land exchange agreement for the exchange of land of equal value between the two entities.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD/COMMISSION ACTION:**

N/A

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

**DEPARTMENT HEAD:**

\_\_\_\_\_  
Jessica Herrera, Director, Economic & International Development

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN THE FIRST AMENDMENT TO ORDINANCE NO. 018871, THE LAND EXCHANGE AGREEMENT BETWEEN THE CITY OF EL PASO AND FSW INVESTMENTS, LP, TO EXTEND THE DEADLINE BY WHICH THE PARTIES MUST ENTER INTO A DEVELOPMENT AGREEMENT; AMEND CERTAIN DEFINITIONS AND THE MANNER IN WHICH CLOSING IS TO OCCUR; AND TO PROVIDE FOR THE CITY'S COOPERATION IN THE CREATION OF A MUNICIPAL MANAGEMENT DISTRICT OVER THE CITY-OWNED PROPERTY LOCATED IN THE NORTHEAST SECTION OF THE CITY BEING TRANSFERRED TO FSW INVESTMENTS, LP.**

**WHEREAS**, on November 13, 2018, City Council adopted Ordinance No. 018871 authorizing the City Manager to sign a Land Exchange Agreement between the City of El Paso (the "City") and FSW Investments, LP ("FSW") wherein the City exchanged City-owned property situated in the northeast section of the City of El Paso for property owned by FSW situated in the northwest section of the City; and

**WHEREAS**, as part of the Agreement, the parties must enter into a development agreement within 30 days of the Effective Date of the Agreement; and

**WHEREAS**, as part of the Agreement, certain terms are defined and the manner of closing on the transaction is stipulated; and

**WHEREAS**, the parties wish to extend the deadline for entering into the development agreement and to amend certain definitions and the manner in which closing is to occur; and

**WHEREAS**, the City agrees to cooperate in the creation of a municipal management district to encompass that portion of the property in the northeast section of the City that FSW shall own upon consummation of the Land Exchange Agreement.

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

That the City Manager is authorized to sign the First Amendment to Ordinance No. 018871, the Land Exchange Agreement between the City and FSW Investments, LP, to extend the deadline by which the parties must enter into a development agreement; to amend certain definitions and the manner in which closing to occur; and to provide for the City's cooperation in the creation of a Municipal Management District over the City-owned property located in the northeast section of the City being transferred to FSW Investments, LP.

**APPROVED** this \_\_\_\_\_ day \_\_\_\_\_, 2019.

*(signatures on following page)*


**CITY OF EL PASO**

\_\_\_\_\_  
Dee Margo  
Mayor

**ATTEST:**

\_\_\_\_\_  
Laura D. Prine

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Roberta Brito  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
For: Jessica Herrera, Director  
Economic and International Development

STATE OF TEXAS           §       **FIRST AMENDMENT TO LAND**  
                                     §       **EXCHANGE AGREEMENT**  
COUNTY OF EL PASO   §

This First Amendment to the Land Exchange Agreement ("First Amendment") is entered into and is effective this \_\_\_\_ day of \_\_\_\_\_, 2019 (the "First Amendment Effective Date") by the City of El Paso (the "City"), a Texas home rule municipal corporation, and FSW Investments, LP. ("FSW") (collectively, the "Parties").

**WHEREAS**, on November 13, 2018, the City of El Paso City Council passed and approved Ordinance No. 018871 authorizing the City to enter into a Land Exchange Agreement whereby the City would convey to FSW approximately 2,313 acres situated in the northeast section of the City in exchange for 44 acres owned by FSW located in the northwest section of the City; and

**WHEREAS**, the Parties entered into the Land Exchange Agreement (the "Agreement") effective December 7, 2018; and

**WHEREAS**, Section 13.3 (f) of the Agreement requires the Parties to enter into a "development agreement" within 30 days of the Effective Date of the Agreement, as a Condition Precedent to FSW's Performance; and

**WHEREAS**, as part of the Agreement, certain terms are defined and the manner of Closing on the transaction contemplated by the Agreement (the "Transaction") is stipulated; and

**WHEREAS**, the Parties wish to extend the 30-day deadline for entering into the development agreement; amend certain definitions; and amend the manner in which Closing on the Transaction is to occur.

**NOW THEREFORE** the Parties, for good and valuable consideration, the receipt of which is acknowledged, agree to amend the Agreement as follows:

1. Definition of "Entitlement Agreement" is added as follows:

**"Entitlement Agreement"** shall mean an agreement between the Parties setting forth certain obligations of the City and FSW related to the NE Property and specifying the standards and conditions that will govern development of the property.

2. Definition of "Escrow Agent" is hereby deleted and replaced with the following:

**"Escrow Agent"** means Lone Star Title Company, 6701 N. Mesa, El Paso Texas 79912; Phone: 915-545-2222; Fax: 915-545-1104; Email: [DHughes@lonestartitle.com](mailto:DHughes@lonestartitle.com)

3. Definition of "Title Company" is hereby deleted and replaced with the following:

"Title Company" means Lone Star Title Company, 6701 N. Mesa, El Paso Texas 79912; Phone: 915-545-2222; Fax: 915-545-1104; Email: [DHughes@lonestartitle.com](mailto:DHughes@lonestartitle.com)

4. Article III, Section 3.1, and Article VIII, Section 8.1 are revised respectively to provide that the Title Commitment referenced therein shall be provided by the City under Section 3.1 and FSW under Section 8.1, within five 5 days after the First Amendment Effective Date.
5. Article III, Section 3.3, is revised to provide that the "Title Review Period" under Section 3.3 will be thirty (30) days after the City receives the Desert West Title Commitment and to provide City's Objection Letter to FSW.
6. Article VIII, Section 8.3, is revised to provide that the "Title Review Period" under Section 8.3 will be thirty (30) days after the later of the date FSW receives: (i) the NE Title Commitment; or (ii) the NE Survey, and to provide FSW's Objection Letter to the City.
7. Article XI, Section 11.2 (a) (i) is deleted and replaced with the following:
  - (i) Two Special Warranty Deeds duly executed and acknowledged by City (collectively the "**Deed**") to the named entities designated by FSW, conveying title to the NE Property, in substantially the form of **Exhibit C** appended hereto, subject only to the Permitted Exceptions. FSW shall provide the City with legal descriptions for any division of the NE Property thirty (30) days prior to Closing.
8. Article XIII, Section 13.2 (b) is amended to replace the reference to "Desert West Property" with a reference to "NE Property".
9. Article XIII, Section 13.2 (f) is deleted and replaced with the following:
  - (f) Entitlement Agreement. On or before the Required Closing Date, the Parties have entered into an Entitlement Agreement on mutually agreeable terms, setting forth certain obligations of the City and FSW and specifying the standards and conditions that will govern development of the property.
10. Article XIII, Section 13.4 is amended to replace the reference to "Development Agreement" in the last sentence of 13.4 with "Entitlement Agreement".
11. Article XVII, "Municipal Management District," is added as follows:
  - 17.1 By Resolution of the City dated January 8, 2019 ("Resolution"), the City supported the submission of special legislation to create City of El Paso Municipal Management District No.1 ("MMD") and approved a petition for the creation of the MMD. The City agrees to take all reasonable actions necessary to complete the creation of the MMD and to cooperate with FSW in its efforts to create the MMD.

17.2 It is the intent of the Parties that the MMD be created to encompass the land described in the Resolution. However, upon creation of the MMD, the City shall request that property within the MMD be de-annexed from the MMD to reflect the boundaries of the NE Property as reflected in the Special Warranty Deed (or Deeds) conveying the NE Property to FSW and/or FSW's designees. This obligation shall survive termination or expiration of this Agreement.

12. Capitalized terms used in this First Amendment, not otherwise defined, shall have the same meaning as in the Agreement.
13. Except as amended in this First Amendment, the terms and provisions of the Agreement shall remain in effect.
14. This First Amendment may be executed in multiple counterparts, and with facsimile signatures, which collectively, will be construed as an original.

*(Signatures on following pages)*

**CITY OF EL PASO, TEXAS**

By: \_\_\_\_\_  
Tomàs Gonzàlez  
City Manager

**ATTEST:**

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

**APPROVED AS TO FORM:**

Roberta Brito  
Roberta Brito  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

Jessica Hertera  
For: Jessica Hertera, Director  
Economic and International Development

STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Tomàs Gonzàlez, City Manager, on behalf of the City of El Paso.

(SEAL)

\_\_\_\_\_  
Notary Public in and for State of Texas

\_\_\_\_\_  
Print name of notary

My Commission Expires \_\_\_\_\_

**FSW INVESTMENTS, L.P.,**  
a Texas limited partnership

By: FSW Investments Management, LLC  
Its: General Partner

By: \_\_\_\_\_  
William Kell, Vice President

STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by William Kell, Vice President of FSW Investments Management, LLC, a Texas limited liability company, the General Partner of FSW Investments, L.P., a Texas limited partnership, on behalf of said limited partnership.

(SEAL)

\_\_\_\_\_  
Notary Public in and for State of Texas

\_\_\_\_\_  
Print name of notary

My Commission Expires \_\_\_\_\_