

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

CITY CLERK DEPT.
2017 JUN -6 PM 5:44

DEPARTMENT: Economic & International Development Department

AGENDA DATE: May 9, 2017

CONTACT PERSON NAME AND PHONE NUMBER: Jose Carlos Villalva (Real Estate Manager) 915-504-5880

DISTRICT(S) AFFECTED: District 8

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

SUBJECT:

That the City Manager is authorized to execute a Ground Lease between The University of Texas System and the City of El Paso for approximately 0.044 acres of land being a part of Lots 1, 2, and 3, Fractional Block 23, Alexander's Addition, El Paso, El Paso County, Texas, which parcel is located near the intersection of Cincinnati Ave. and Oregon St. The parcel is needed for construction and operation of a traction power substation which is a component of the El Paso Streetcar Project. All terms and conditions of the ground lease shall be accordance with the Term Sheet attached to this Resolution as Exhibit "A" and in form and substance approved the City Attorney. The City Manager is further authorized to sign any and all documents approved by the City Attorney necessary to consummate this transaction, make all necessary and appropriate budget transfers, and to appropriate necessary funds.

BACKGROUND / DISCUSSION

A Substation is needed to provide power to the trolley. UT System land has been found to be suitable for the location of the Substation. The City and the UT System have agreed to terms. UTEP has encroached on the City's right of way, as part of the agreed upon terms UT System will apply for a Special Privilege License. The cost of the Special Privilege License will be the same amount as the ground lease. The ground lease term will be for three years.

PRIOR COUNCIL ACTION

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

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

Information copy to appropriate Deputy City Manager

RESOLUTION

WHEREAS, the El Paso Streetcar Project will provide fixed rail transit service for downtown El Paso and the University of Texas at El Paso (UTEP) area; and

WHEREAS, the Camino Real Regional Mobility Authority (CRRMA) is constructing the El Paso Streetcar Project; and

WHEREAS, a site on the UTEP campus near the intersection of Cincinnati Ave. and Oregon St. has been identified as a location for a traction power substation which is a component of the El Paso Streetcar Project; and

WHEREAS, the CRRMA has asked the City to lease the identified site for the traction power substation.

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

That the City Manager is authorized to execute a Ground Lease between The University of Texas System and the City of El Paso for approximately 0.044 acres of land being a part of Lots 1, 2, and 3, Fractional Block 23, Alexander's Addition, El Paso, El Paso County, Texas, which parcel is located near the intersection of Cincinnati Ave. and Oregon St. The parcel is needed for construction and operation of a traction power substation which is a component of the El Paso Streetcar Project. All terms and conditions of the ground lease shall be accordance with the Term Sheet attached to this Resolution as Exhibit "A" and in form and substance approved the City Attorney. The City Manager is further authorized to sign any and all documents approved by the City Attorney necessary to consummate this transaction, make all necessary and appropriate budget transfers, and to appropriate necessary funds.

ADOPTED this ____ day of _____, 2017.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Jessica Herrera, Interim Director
Economic & International Development

APPROVED AS TO CONTENT:

Jay Banasiak, Director
Mass Transit Department

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THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Office of General Counsel - Real Estate Office
201 W. 7th Street, Suite 600
Austin, Texas 78701
512-499-4333
WWW.UTSYSTEM.EDU/OFFICES/REAL-ESTATE

Writer's Direct Number: (512) 579-5044

Derek Silva
Assistant Director of Real Estate
dsilva@utsystem.edu

May 8, 2017

OGC# 160673

Jose Villalva
Real Estate Manager
Economic Development | City of El Paso
801 Texas Ave. (3rd Floor)
El Paso, TX 79901

Via email: villalvajc@elpasotexas.gov

Re: Term Sheet regarding (i) the ground lease by the City of El Paso ("*City*") from the Board of Regents of The University of Texas System ("*BOR*") of approximately 0.044 acres of land located in El Paso, El Paso County, Texas which land is further described on Exhibit A attached hereto (the "*Premises*") and (ii) a Special Privilege License granted to BOR by City.

Dear Jose:

This Term Sheet is being delivered to you to outline the general terms for the proposed transaction described below between BOR and City.

Landlord: Board of Regents of The University of Texas System ("*BOR*" or "*Landlord*")

Tenant: The City of El Paso ("*City*" or "*Tenant*")

Use of Premises: The Premises may be used by Tenant only for operating a traction power substation ("*Substation*") on the Premises for the El Paso Streetcar Project.

Contingency: The effectiveness of the Lease contemplated herein is contingent upon the simultaneous execution by the parties of a Special Privilege License (as defined hereinbelow) for BOR's use of the Parcels (as defined hereinbelow). If the parties fail to reach an agreement for the Parcels on or prior to February 28, 2018, or if City terminates BOR's use of the Parcels during the Term, then the Lease of the Premises shall terminate, respectively, on March 1, 2018 or the date of termination, as applicable.

BOR agrees to submit an Application for special privilege permits and licenses for the use of the Parcels (the "*Special Privilege License*").

- Term:** 3 years
- Option to Extend Term:** Provided that the Lease has not been terminated, the Lease shall automatically renew for a period of one year at (i) the expiration of the initial Term and, if applicable, (ii) the expiration of the first extension Term.
- Commencement Date:** The Lease shall commence on the day that City grants the Special Privilege License to BOR, but in no event later than February 28, 2018.
- Rent:** The initial Rent for the Premises shall \$1,063 which is an amount equal to the Special Privilege License fee applicable to BOR's use of two strips of land located in the City right-of-way (the "*Parcels*") upon which two UTEP parking areas currently encroach; the *Parcels* are shown on the attached Exhibit B.
- Future Purchase Option:** City agrees that during the Term (as may be extended), but in any event, no later than 180 days prior to the expiration of the 2nd extension option, City will provide written notice to BOR of City's intent to acquire the Premises ("*Purchase notice*"). As allowed by the Texas constitution and applicable laws of the State of Texas, the consideration for such acquisition will be City's conveyance of its interest in the *Parcels* to BOR, accompanied by a credit or debit (as applicable) in an amount equal to the difference in the fair market values of the Premises and of the *Parcels*. The fair market value of each of the Premises and the *Parcels* shall be determined in the manner set forth in the following paragraph. The remaining terms of a purchase/exchange contract(s) for the Premises and *Parcels* shall be negotiated by the parties in a separate document(s).
- Within 10 days following BOR's receipt of the Purchase Notice, City and BOR shall select and approve a qualified, experienced appraiser (the "*Appraiser*") that the parties shall engage to perform an appraisal of both the Premises and the *Parcel* to establish the current, fair market values of the parties' respective interests in the land constituting the Premises and the *Parcels* based on each property's highest and best use. (the "*Fair Market Value(s)*"). BOR shall bear the cost of the *Parcels* appraisal and City shall bear the cost of the Premises appraisal. If the parties are unable within such 10-day period to agree upon the Appraiser, then within 10 days following the expiration of the initial 10-day period, each party shall select a qualified, experienced appraiser and notify the other party of its selection. Within 20 days following the expiration of the initial 10-day period, the two appraisers selected by the parties shall select a third qualified, experienced appraiser who shall be the Appraiser for the purposes hereunder.
- Security Deposit:** None
- Operating Expenses:** The Lease will be an absolute triple-net lease. Tenant will be responsible for the payment of all operating expenses, including but not limited to the following:

- payment of real and personal property taxes, if any, on the premises and all improvements;
- Paying for insurance covering casualty, liability, and the replacement cost of improvements located on the Premises; and
- obtaining and paying for all utilities, management, all landscaping, and maintenance of all improvements in first class condition, repairs and replacements.

Tenant will be responsible for all costs related to its leasehold interest, including legal and administrative costs.

Landlord will have no obligation to maintain or make repairs or replacements to improvements located on the Premises.

Condition of Premises:

As is, where is, and with all faults

Improvements:

Tenant acknowledges that Landlord and Paso Del Norte Trackworks ("*Contractor*") have entered into a Permission to Enter Property Agreement (the "*Entry Agreement*") to permit Contractor to access the Premises for the purpose of constructing the Substation. If Tenant and Landlord execute the Lease documents prior to the date that Contractor substantially completes construction of the Substation, then, upon the effective date of the Lease: (i) the Entry Agreement shall terminate, (ii) Contractor shall comply with the applicable provisions under the Lease relating to contractor access to, and construction of, improvements to the Premises and (iii) the Landlord will require Contractor to name the Tenant and Landlord as additional insureds for the contractor's insurance coverage as required by the Lease (which coverage shall be the same coverage as required of Contractor under the Entry Agreement). Tenant acknowledges that the Substation will be built in accordance with the plans and specifications identified in Exhibit C, which plans have been reviewed and approved by UTEP; provided that such approval is conditioned upon the modification of the fence specifications therein to include the substitution of the specified chain-link fence with a UTEP-approved fence.

Upon completion of construction of the Substation, Tenant will be responsible for the operation and maintenance of the Substation until the expiration or earlier termination of the Lease. Tenant will operate the Substation and maintain the Premises so as to reasonably minimize disruption to the UTEP campus and campus operations; any City coordination with UTEP shall be with Greg McNicol Associate Vice President of Business Affairs at UTEP. Tenant is responsible for obtaining all necessary permits and approvals for its use and the improvements. Landlord will reasonably cooperate with Tenant in obtaining required approvals, though Landlord will not incur any financial expense in doing so and Tenant will pay all costs and expenses attributable thereto.

**Final Status of Tenant's
Improvements:**

(A) If Tenant does not provide a purchase Notice or (B) upon the expiration or earlier termination of the Lease (subject to the Future Purchase Option), Tenant will remove all improvements, including the Substation, both below and above grade, and leave the Premises level at grade and debris free, unless Landlord notifies Tenant in writing not to demolish all or certain parts of Tenant's improvements. If Tenant is obligated to demolish all or a part of Tenant's improvements, Tenant will promptly proceed to do so. If Landlord elects not to require demolition of the improvements, the ownership of Tenant's improvements will vest in Landlord at the expiration or earlier termination of the Lease, free and clear of all liens and claims.

Assignment & Sublet:

Upon completion of construction of the Substation, Tenant may assign the Lease or may sublease the Premises subject to Landlord's prior consent, which shall not be unreasonably withheld, conditioned or delayed.

No later than 30 days prior to the effective date of a proposed assignment, Tenant shall provide to Landlord a written request for consent to an assignment, which request must be accompanied by (i) a copy of the executed assignment and assumption agreement and (ii) sufficient documentation and evidence necessary for Landlord to (x) ascertain the capability of the transferee to operate the Substation and (y) to verify the legal authority of Landlord to enter into a contractual relationship with such transferee, and Landlord agrees to notify Tenant of its consent to or disapproval of such assignment within 10 business days following Landlord's receipt of such documentation. In the case of any sublease or assignment, Tenant shall provide copies of the applicable sublease or assignment instruments.

**Transfer &
Recording Fees:**

Tenant shall be responsible for the payment of all transfer and/or recording fees (or taxes or fees of a similar nature) that may be imposed by reason of the Lease or recordation of any assignment or a memorandum of lease.

Commissions:

Neither Landlord nor Tenant is represented by a real estate broker. Any real estate commissions payable with respect to the Lease shall be the responsibility of party upon whom such claims are made.

No Subordination:

Landlord will not subordinate its fee interest in the Premises.

Insurance:

Tenant will maintain insurance covering its liability and the improvements throughout the Lease term. Commercially reasonable insurance requirements and limits will be specified in the Lease. The coverage limits may be modified over time. Improvements located on the Premises will be covered for no less than 100% of replacement cost. The Landlord will be named as an additional insured on Tenant's liability policies.

Title and Survey:

Tenant, at Tenant's sole cost and expense, may obtain a current commitment for title insurance on the Premises, with copies of all liens and

encumbrances reflected thereon, and a land title survey of the Premises. Tenant may obtain a leasehold title policy.

As set forth above, this provisions of this Term Sheet shall not be binding on the parties until the requisite agreements have been entered into and executed by the parties.

If the foregoing is acceptable to Tenant, please so indicate by executing in the signature block below.

Sincerely,



Derek Silva

AGREED AND ACCEPTED BY TENANT:

City of El Paso

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Theresa Cullen
Deputy City Attorney

Jessica Herrera, Interim Director
Economic & International Development

APPROVED AS TO CONTENT:

Jay Banasiak, Director
Mass Transit Department

cc: Mr. Victor Pacheco (with enclosure)
Mr. Greg McNicol (with enclosure)

CITY CLERK DEPT.
2017 JUN - 6 PM 5:45

EXHIBIT B
Parcels
(labeled "*UTEP Acquisition Parcels*" below)

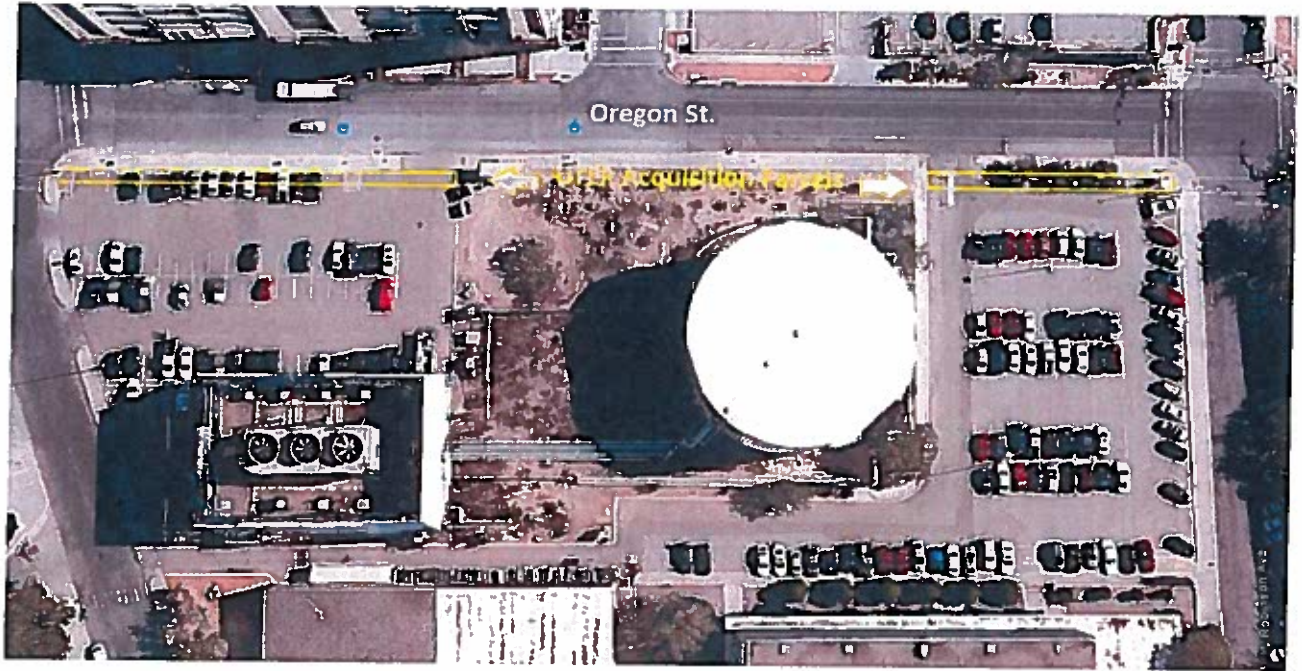


EXHIBIT C
Plans and Specifications

The conformed set of plans and specifications created by URS dated August 7, 2015 are incorporated herein by reference.

Property description: A 0.044-acre portion of Lots 1, 2 and 3, Block F23, Alexander Addition, El Paso, El Paso County, Texas

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a 0.044-acre portion of Lots 1, 2 and 3, Block F23, Alexander Addition, El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

COMMENCING at a city monument at the intersection of the monument lines of Kansas Street (70-foot right-of-way, Alexander Addition) and Cincinnati Avenue (70-foot right-of-way, Alexander Addition), said monument lines lying 10.00 feet east and 10.00 feet north of the respective centerlines of Kansas Street and Cincinnati Avenue, from which a city monument at the intersection of the monument lines of Kansas Street and University Avenue (70-foot right-of-way, Alexander Addition) bears South 37°37'00" East, a distance of 1649.72 feet, said monument lines lying 10.00 feet east and 10.00 feet north of the respective centerlines of Kansas Street and University Avenue; Thence, South 52°23'00" West, along the monument line of Cincinnati Avenue, a distance of 1035.00 feet to the westerly right-of-way of Oregon Street (70-foot right-of-way, Alexander Addition), said right-of-way also being the easterly vacated right-of-way of Cincinnati Avenue (Ordinance 3612, September 8, 1966, El Paso County, Texas), from which a chiseled "crow's foot" set at the intersection of the westerly right-of-way of Oregon Street and the northerly right-of-way of Robinson Avenue (70-foot right-of-way, Alexander Addition) bears South 37°37'00" East, a distance of 305.00 feet; Thence, North 37°37'00" West, along said right-of-way, at 25.00 feet passing a 5/8" rebar with cap marked "TX 2198" found on the northerly vacated right-of-way of Cincinnati Avenue, a total distance of 33.30 feet to the southerly boundary of an unrecorded metes and bounds description for a 0.044-acre parcel, dated June 23, 2015, by David N. Bowden, from which a 5/8" rebar with cap marked "TX 2198" bears South 52°48'20" West, a distance of 0.4 feet for the **POINT OF BEGINNING** of this description;

THENCE, South 52°48'20" West, along said boundary, a distance of 43.00 feet to a set concrete nail with flagging, from which a 5/8" rebar with cap marked "TX 2198" bears North 84°48'49" West, a distance of 0.4 feet;

THENCE, North 37°37'00" West, continuing along said boundary, a distance of 45.00 feet to a set bridge nail;

THENCE, North 52°48'20" East, continuing along said boundary, a distance of 43.00 feet to a bridge nail set on the westerly right-of-way of Oregon Street, from which a found chiseled "X" bears North 38°25'49" East, a distance of 0.9 feet and a P-K Nail with shiner found on the southerly right-of-way of Glory Road (70-foot right-of-way, Alexander Addition) bears North 37°37'00" West, a distance of 206.70 feet;

THENCE, South 37°37'00" East, along said right-of-way, a distance of 45.00 feet to the **POINT OF BEGINNING** of this description.

Said parcel of land contains 0.044 acres (1,935 square feet) of land more or less.

NOTE: A PLAT OF EVEN DATE HEREWITH ACCOMPANIES THIS DESCRIPTION.

ROBERT SEIPEL ASSOCIATES, INC.
Professional Land Surveyors
Texas Reg. Surveying Firm 10060500



Mark U. Balansay, R.P.L.S.
Texas License No. 6489

Job Number 17-0006D
March 17, 2017



UTEP SUBSTATION

Strategic Goal 7

Enhance and Sustain El Paso's Infrastructure Network

Economic Development

"Delivering Outstanding Services"



Introduction

- City will lease +/- 0.44 acres at the Intersection of Cincinnati Ave. and Oregon St.
- This site is needed for a substation to power the trolley
- The lease is for 3 years with two 1 year options
- UTEP has encroached on the City's right of way
- City will grant UTEP a special privilege license
- The cost of the lease and the special privilege license will be the same amount.
- After 3 years The City will buy the property and vacate the encroached areas.



Location



"Delivering Outstanding Services"



Location



"Delivering Outstanding Services"



Location



"Delivering Outstanding Services"



Questions?