

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

**DEPARTMENT:** Economic and International Development

**AGENDA DATE:** October 30, 2018

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

**DISTRICT(S) AFFECTED:** All Districts

**SUBJECT:**

A resolution that the Mayor be authorized to sign a Memorandum of Understanding in a form substantially similar to the attached document, between the City of El Paso ("City") and the El Paso Water Utilities—Public Service Board ("EPWU-PSB") by which EPWU-PSB will advance an amount not to exceed Five Million Dollars from the Annual Remittance due to the City for the City to use as economic incentive for eligible land development projects.

**BACKGROUND/DISCUSSION:**

In accordance with the policies and procedures outlined in the 2010 Joint Resolution between the City and EPWater, EPWater is advancing to the City an amount not exceed \$5,000,000.00 from the five percent land sales remittance due to the City by EPWater from net proceeds of land sold within the EPWater System's inventory. The purpose of the advance is to be used by the City as economic incentive for eligible land development projects within the City that will be served by existing water, wastewater or stormwater/drainage infrastructure or that capitalize on existing infrastructure improvements or will require minimal additional EPWater infrastructure improvements; will use land currently within EPWater's System and inventory, which is surplus or deemed inexpedient by EPWater; or will promote water conservation efforts, or promote preservation of open space to control natural stormwater/drainage flows.

The Advance will be provided as requested by the City in connection with economic development incentive package(s) agreed to by the City in connection with eligible land development projects. The Advance will be recovered through withholding of the annual land sales remittance due to the City by EPWater over a period of ten years. If the advance is not recovered within that time period, recovery will be accomplished by withholding in equal amounts over the next ten years from the City's annual August water revenue payment due to it by EPWater.

**PRIOR COUNCIL ACTION:**

Pursuant to certain bond covenants which became effective in 1992, EPWater is obligated to remit five percent (5%) of net proceeds of land sold within the System's inventory to the City on an annual basis and in 2010, the Parties entered into a "Joint Resolution Between the El Paso City Council and the El Paso Water Utilities – Public Service Board Setting Forth The Policies, Procedures And Reimbursements Relating To Transfers Of Real Estate, Land Use Policies, Relocation Of EPWU-PSB Facilities, Joint Use And Water Rights" as amended in September 26, 2012 and December 13, 2017.

**AMOUNT AND SOURCE OF FUNDING:**

Over a 10 year period, annual remittance will be withheld from the five percent land sales remittance due to the City by EPWater. If the Advance is not recovered within that time period, the remaining balance will be withheld in equal amounts over the next 10 years from the City's annual August water revenue payment due to it by EPWater.

**BOARD/COMMISSION ACTION:**

N/A

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

**DEPARTMENT HEAD:**

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

**RESOLUTION**

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

That the Mayor be authorized to sign a Memorandum of Understanding in a form substantially similar to the attached document, between the City of El Paso ("City") and the El Paso Water Utilities-Public Service Board ("EPWU-PSB") by which EPWU-PSB will advance an amount not to exceed Five Million Dollars from the Annual Remittance due to the City for the City to use as economic incentive for eligible land development projects.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

**THE CITY OF EL PASO**

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


**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Jessica Herrera, Director  
Economic and Int'l Development

**STATE OF TEXAS**

202

## MEMORANDUM OF UNDERSTANDING

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**COUNTY OF EL PASO**

22

## Land Development Advance

This Memorandum of Understanding (“MOU”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between the **CITY OF EL PASO TEXAS** (“City”), a home rule municipal corporation, and the **EL PASO WATER UTILITIES – PUBLIC SERVICE BOARD** (“EPWater”), a component unit of the City (hereinafter collectively referred to as the “Parties”).

**WHEREAS**, pursuant to the authority granted by the City of El Paso Ordinance No. 752 approved by the City Council on May 22, 1952, EPWater has been vested with the management and control of the City's water and wastewater system ("System"); and

**WHEREAS**, pursuant to the authority granted by the City of El Paso Ordinance No. 16668 approved by the City Council on July 25, 2008, EPWater has been vested with the management and control of the City's stormwater system; and

**WHEREAS**, pursuant to certain bond covenants which became effective in 1992, EPWater is obligated to remit five percent (5%) of net proceeds of land sold within the System's inventory to the City on an annual basis ("Annual Remittance"); and

**WHEREAS**, in 2010, the Parties entered into a “Joint Resolution Between the El Paso City Council and the El Paso Water Utilities – Public Service Board Setting Forth The Policies, Procedures And Reimbursements Relating To Transfers Of Real Estate, Land Use Policies, Relocation Of EPWU-PSB Facilities, Joint Use And Water Rights” as amended in September 26, 2012 and December 13, 2017 (“Joint Resolution”); and

**WHEREAS**, in accordance with the policies and procedures outlined in the Joint Resolution, the Parties desire to promote certain land development projects within the City of El Paso which will be served by existing water, wastewater or stormwater/drainage infrastructure or that capitalize on existing infrastructure improvements or will require minimal additional EPWater infrastructure improvements; will use land currently within EPWater's System and inventory, which is surplus or deemed inexpedient by EPWater; or will promote water conservation efforts, or promote preservation of open space to control natural stormwater/drainage flows; and

**WHEREAS**, the Parties acknowledge and agree that this MOU serves the municipal purpose of endeavoring to minimize future tax rate increases to the taxpayers of El Paso and to minimize future rate increases to EPWater customers and ratepayers through the encouragement of land development.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, OBLIGATIONS AND BENEFITS CONTAINED HEREIN, EPWATER AND THE CITY AGREE AS FOLLOWS:**

**Section 1.01** This MOU shall be effective upon the date of its execution by both parties ("Effective Date").

**Section 1.02** EPWater will pay to the City an amount not to exceed the sum of **FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00)** for the City to use as economic incentive for eligible land development projects ("Eligible Projects"), as defined hereinafter. The total sum will be dispersed by EPWater in payments that mirror the disbursements as stated in the economic development incentive package(s) agreed to by the City in connection with the Eligible Projects. Each payment will be made within ten (10) days of receipt of a written request made by the City Manager to EPWater's President/CEO. If no written request is received within a period of two (2) years of the Effective Date of this MOU, this MOU shall be null and void.

For purposes of this MOU, the words "Eligible Projects" shall mean land development projects within the City of El Paso that are: (1) developments which will be served by existing EPWater water, wastewater and stormwater infrastructure or that will capitalize on existing EPWater water, wastewater and stormwater infrastructure improvements and require minimal additional EPWater infrastructure improvements; (2) developments that will use land currently within the System's inventory which is either surplus land or land deemed inexpedient by EPWater; or (3) developments which will promote water conservation efforts or promote preservation of open space in order to control natural stormwater/drainage flows.

**Section 1.03** The funds to be paid by EPWater under Section 1.02 are to be considered an advance on the Annual Remittance due to be paid by EPWater to the City in connection with sales of land in the System's inventory ("Advance"). The Advance shall be recovered through the withholding of the Annual Remittance for a period not to exceed ten (10) years. Annual withholding shall commence with the first Annual Remittance following the date of the Advance. In the event the Advance is not recovered in full through the withholding of the Annual Remittance at the end of the ten (10) year period, the excess Advance amount shall be withheld in equal amounts from the annual water revenue payment due to be paid by EPWater to the City for the next ten (10) years.

**Section 1.04** After the Advance has been recovered in full or at the end of the ten (10) year period during which the Annual Remittance is withheld, whichever comes first, the Parties shall continue under the existing bond covenants concerning the Annual Remittance. The City and EPWater agree that at no point will the City require any additional payment to the City in relation to land

sales within the System's inventory by EPWater until the total Advance amount is completely recovered by EPWater, or until the ten (10) year period during which the Annual remittance is withheld has ended, whichever comes first.

**Section 1.05** The Parties recognize that the sales marketability and developability of certain land within the System's inventory may be hindered by the surrounding available roadway facilities, and that the extension and or/expansion of such roadways may be necessary to increase the sales marketability and developability of such land. In this regard, the City agrees to pursue federal highway administration funding as opportunities arise in order to increase the marketability and potential sale of this System land.

APPROVED on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**EL PASO WATER UTILITIES -  
PUBLIC SERVICE BOARD**


**CITY OF EL PASO, TEXAS**

  
\_\_\_\_\_  
John E. Balliew, President/ CEO

\_\_\_\_\_  
Tomàs González, City Manager

**APPROVED AS TO CONTENT:**


**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Marcela Navarrete, Vice President  
Strategic, Financial and Management Services

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

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Lee Ann B. Koehler  
General Counsel

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