

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

DISTRICT(S) AFFECTED: 4

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 sell and transfer approximately 2,313 acres of land to the City for \$18,600,000.00 payment of which will be accomplished through the City's "Impact Fund" (created by Ordinance No. 017460, as amended by Ordinance No. 018772) to allow the City to pursue certain economic development projects. Further, the City and EPWU-PSB agree to collaborate in the establishment of a customer affordability assistance program for the benefit of EPWU customers and residents of the City of El Paso who meet certain federal low-income guidelines.

BACKGROUND/DISCUSSION:

As per the 2010 Joint Resolution between the City and EPWater, EPWater is transferring approximately 2,313 acres of land in Northeast El Paso from its land inventory to the City's land inventory to allow the City to pursue certain economic development projects. The City agrees to pay to EPWater the appraised value of the land, \$18,600,000.00 over a thirty year period. The payment will be accomplished through an annual payment to the EPWater through the City's Impact Fund which is set aside for economic development and infrastructure projects as per Ordinance No. 017460, as amended by Ordinance No. 018772.

As additional consideration for the land transfer, the City agrees to collaborate with EPWater through the establishment of a customer assistance program to provide assistance to EPWU customers who meet certain federal low-income guidelines. Specifically, the City agrees to participate in an amount of up to \$1,000,000.00 over the term of this agreement. Contribution to the program will commence with a withholding of \$50,000.00 from the first monthly water revenue payment due after the effective date of this agreement and continuing to be withheld at the same rate from each annual August monthly water revenue payment until repayment associated with the land transfer begins, at which time contribution will be provided through a portion of the annual amortized interest due to EPWater in connection with the land transfer.

PRIOR COUNCIL ACTION:

On April 5, 2010, the City and EPWater 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 Related To Transfers Of Real Estate, Land Use Policies, Relocation Of EPWU-PSB Facilities, Joint Use And Water Rights," as amended September 26, 2012 and December 13, 2017 which allows for the transfer of land from one inventory to the other and provides criteria for such transfer.

AMOUNT AND SOURCE OF FUNDING:

Over a 30 year period \$18,600,000.00 will be paid to EPWater by the City through the City's Impact Fund which is set aside for economic development and infrastructure projects as per Ordinance No. 017460, as amended by Ordinance No. 018772 according to the Payment Plan and Schedule attached to the Agreement. In the event full payment is not made by the City to EPWater through the City's Impact Fund, the remaining payment due will be accomplished by a withholding of the annual August water revenue payment due to the City by EPWater.

BOARD/COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



Jessica Herrera, Director
Economic & International Development

CITY CLERK DEPT.
2018 OCT 25 AM 10:28

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 sell and transfer approximately 2,313 acres of land to the City for \$18,600,000.00 payment of which will be accomplished through the City's "Impact Fund" (created by Ordinance No. 017460, as amended by Ordinance No. 018772) to allow the City to pursue certain economic development projects. Further, the City and EPWU-PSB agree to collaborate in the establishment of a customer affordability assistance program for the benefit of EPWU customers and residents of the City of El Paso who meet certain federal low-income guidelines.

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

§

MEMORANDUM OF UNDERSTANDING

§

COUNTY OF EL PASO

§

Northeast Land Transfer

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, on April 5, 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 Related To Transfers Of Real Estate, Land Use Policies, Relocation Of EPWU-PSB Facilities, Joint Use And Water Rights," as amended September 26, 2012 and December 13, 2017 ("Joint Resolution"); and

WHEREAS, EPWater has determined that certain parcels of land in its land inventory totaling approximately 2,313 acres, located in Northeast El Paso, are inexpedient to the System, and the property can be transferred to the City under the Joint Resolution; and

WHEREAS, the City has requested that EPWater transfer approximately 2,313 acres from the EPWater's land inventory to the City's land inventory under the Joint Resolution to allow the City to pursue certain economic development projects; and

WHEREAS, the Parties wish to collaborate to establish and achieve an EPWater Customer Affordability Assistance Program ("Assistance Program") for the benefit of EPWater customers and residents of the City of El Paso who meet certain qualifying criteria and meet certain federal low-income guidelines; 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 and support of the Assistance Program.

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 agrees to transfer a portion of the following identified parcels of real property, located in Northeast El Paso to the City’s land inventory totaling approximately 2,313 acres:

- a. **Area 1** (1,501.648 acres): A portion of Sections 9, 10, 15, 16, 17 and 18, Block 81, Township 1, Texas and Pacific Railroad Company Surveys, City of El Paso, El Paso County, Texas;
- b. **Area 2** (650.600 acres): A portion of Sections 11, 14 and 19, Block 81, Township 1, Texas and Pacific Railroad Company Surveys, City of El Paso, El Paso County, Texas;
- c. **Area 3** (2,045.343 acres): A portion of Sections 11, 12, 13, 14, 19, 20 and 21, Block 81, Township 1, Texas and Pacific Railroad Company Surveys, City of El Paso, El Paso County, Texas; and
- d. **Area 4** (1,003.107 acres): A portion of Sections 7, 17, 18, 19, 20 and 30, Block 80, Township 1, Texas and Pacific Railroad Company Surveys, City of El Paso, El Paso County, Texas.

The above property is depicted on **Exhibit “A”**, attached hereto and made a part of herein for all purposes. The specific land to be transferred in the amount of approximately 2,313 acres to the City’s land inventory shall be identified in accordance with **Section 1.09** of this Agreement.

Section 1.03 The land transfer outlined in **Section 1.02** above, from EPWater to the City, and any future transfer by the City of any ownership interest in the above-identified property, shall be subject to the following additional reservations and exceptions:

- a. A reservation of all easements and mineral interests filed and recorded at the time of transfer of the identified parcels, as noted in the Title Commitment for Title Insurance, attached hereto and made a part hereof for all purposes as **Exhibit “B”**;
- b. Exception from transfer and conveyance all existing water and reclaimed water lines and water wells and proposed future water lines and water wells and infrastructure shown and depicted on **Exhibit “C”**;
- c. Exception from transfer and conveyance all existing sewer lines and proposed future sewer lines and infrastructure as depicted on the attached **Exhibit “C”** attached hereto and made a part herein for all purposes;
- d. Exception from transfer and conveyance in the approximate amount of two-hundred and seventy-two (272) acres in total for a future EPWater Aquifer Storage Recovery (“ASR”) Project to be developed by EPWater and further depicted on **Exhibit “C”**;

- e. Exception from transfer and conveyance any land located outside of the bounds of Tax Increment Reinvestment Zone Number Thirteen, City of El Paso, Texas as created by Ordinance No. 018849.
- f. A reservation for EPWater, its successors and assigns forever, all water in and under, and that may be produced from or attributable to the above- identified property. If the water estate is subject to existing production or an existing license, this reservation includes the production, the license and all benefits from such; and
- g. Any subsequent owner of the above-identified property shall grant at no cost to EPWater easements for future water, sewer and stormwater facilities as requested to EPWater, including lines, appurtenances, pump stations, storage facilities or channels, dams, ponds, etc., in addition to the facilities specifically identified above, that are necessary to serve any and all of the identified and transferred parcels as requested by EPWater at the time of any subdivision plat submittal by a subsequent owner.

Section 1.04 The City agrees to pay to EPWater the total amount of **EIGHTEEN MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$18,600,000.00)** in connection with the transfer of the portion of the above-identified property as consideration for the transfer of said property from EPWater's land inventory to the City land inventory, and in furtherance of certain economic development objectives desired to be achieved by the City.

Section 1.05 The City and EPWater further agree as follows:

- a. The City agrees to pay to EPWater in accordance with the Payment Plan and Schedule attached as **Exhibit "D"** and incorporated herein by reference for all purposes. The Parties agree that the payments due by the City, as noted in **Exhibit "D"**, for the transfer of the portion of the above identified property, will be accomplished by an annual payment to EPWater by the City from the City's Impact Fund allocated through the El Paso Electric street rental charge by Ordinance No. 017460, as amended by Ordinance No. 018772. In the event full payment is not made by the City to EPWater through the City's Impact Fund, the remaining payment due will be accomplished by a withholding of the annual August water revenue payment due to the City by EPWater. Payment, and/or withholding shall be made in accordance with the schedule specified in **Exhibit "D"**.
- b. The Parties acknowledge and agree that a portion of the above identified property in the amount of approximately 2,313 acres to be transferred to the City is intended to be sold by the City to a third party. The City agrees to furnish to EPWater a copy of its contract of sale with the third party for the transferred property.
- c. At any point in time, the City may request that the annual payment or annual withholding be increased in order to accelerate the Payment Plan and Schedule noted in **Exhibit "D"**.

Section 1.06 Further, the Parties agree to work together collaboratively to establish and achieve an EPWater Customer Affordability Assistance Program ("Assistance Program") for the benefit of low-income qualifying EPWater customers who meet certain qualifying criteria. Such Assistance Program and its guidelines, to include income eligibility guidelines, will be developed and implemented through a third-party administrator.

In accordance with these stated goals and objectives, the City's contribution to the Assistance Program shall be in the amount of **FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00)** annually for a total commitment of **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)**. The Parties acknowledge that this annual contribution will be accomplished by: 1) withholding from the next monthly water revenue payment due to the City following the execution of this Agreement in the amount of **FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00)** and continuing to be withheld from each annual August water revenue payment due thereafter until annual payments related to the land transfer commence as described in Section 1.05 above; and 2) upon the commencement of payments related to the land transfer as described in Section 1.05 above, the annual allocation of a portion of the amortized interests for the land transfer as identified in **Exhibit "D"** in the amount of **FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00)** until the City has participated for a total contribution of **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)**.

Section 1.07 The Parties also acknowledge that pursuant to a Memorandum executed on November 28, 2016, EPWater transferred a parcel of land consisting of 9.240 acres (**Parcel A**) from EPWater's land inventory to the City and that said parcel was intended to be transferred by the City to a third party. The Memorandum also provided that upon closing of the sale of this Parcel A to the third party, EPWater would receive the sum total of Four Million Two Hundred Seventy Five Thousand Five Hundred and no/100 Dollars (\$4,275,542.00), for the value of the parcel. To date, Parcel A has not been sold by the City and EPWater has not been compensated for this parcel. The Parties wish to reaffirm the terms, including payment requirements of this Memorandum.

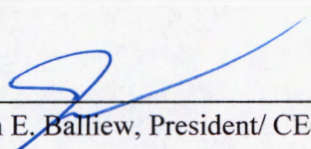
Section 1.08 The Parties acknowledge and agree that EPWater shall not be committed to any additional requirements, obligations or commitments of any kind, including any financial obligation or commitment, to any party to whom the parcels of land may be transferred to or sold to, or to any party that may develop the parcels of land in the future.

Section 1.09 The transfer of the land from EPWater to the City shall be effective on the date of receipt of a written request provided by the City Manager to EPWater's President/CEO requesting said transfer. Said written request shall identify the portion and description of the land identified above that will be transferred. In the event the City's written request and the closing on the property transferred does not occur within twelve (12) months of the Effective Date of this MOU, this MOU shall be null and void, and the identified land in Section 1.02 above shall remain in EPWater's land inventory.

APPROVED on this _____ day of _____, 2018.

Signatures on following page.

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

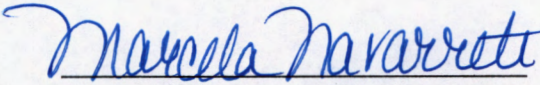


John E. Balliew, President/ CEO

CITY OF EL PASO, TEXAS

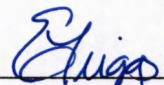
Tomàs González, City Manager

APPROVED AS TO CONTENT:



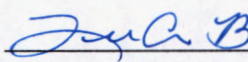
Marcela Navarrete, Vice President
Strategic, Financial and Management Services

APPROVED AS TO CONTENT:



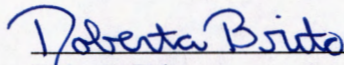
for: Jessica Herrera, Director
Economic and International
Development

APPROVED AS TO FORM:



Lee Ann B. Koehler
General Counsel

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

EXHIBIT "A"
METES AND BOUNDS OF PARCELS CONTAINING LAND TO BE TRANSFERRED

Exhibit A



EXHIBIT "B"
TITLE COMMITMENT

EXHIBIT "C"
EXISTING AND PROPOSED WATER INFRASTRUCTURE
EXISTING AND PROPOSED SEWER INFRASTRUCTURE
AQUIFER STORAGE RECOVERY PROJECT

Exhibit "C"

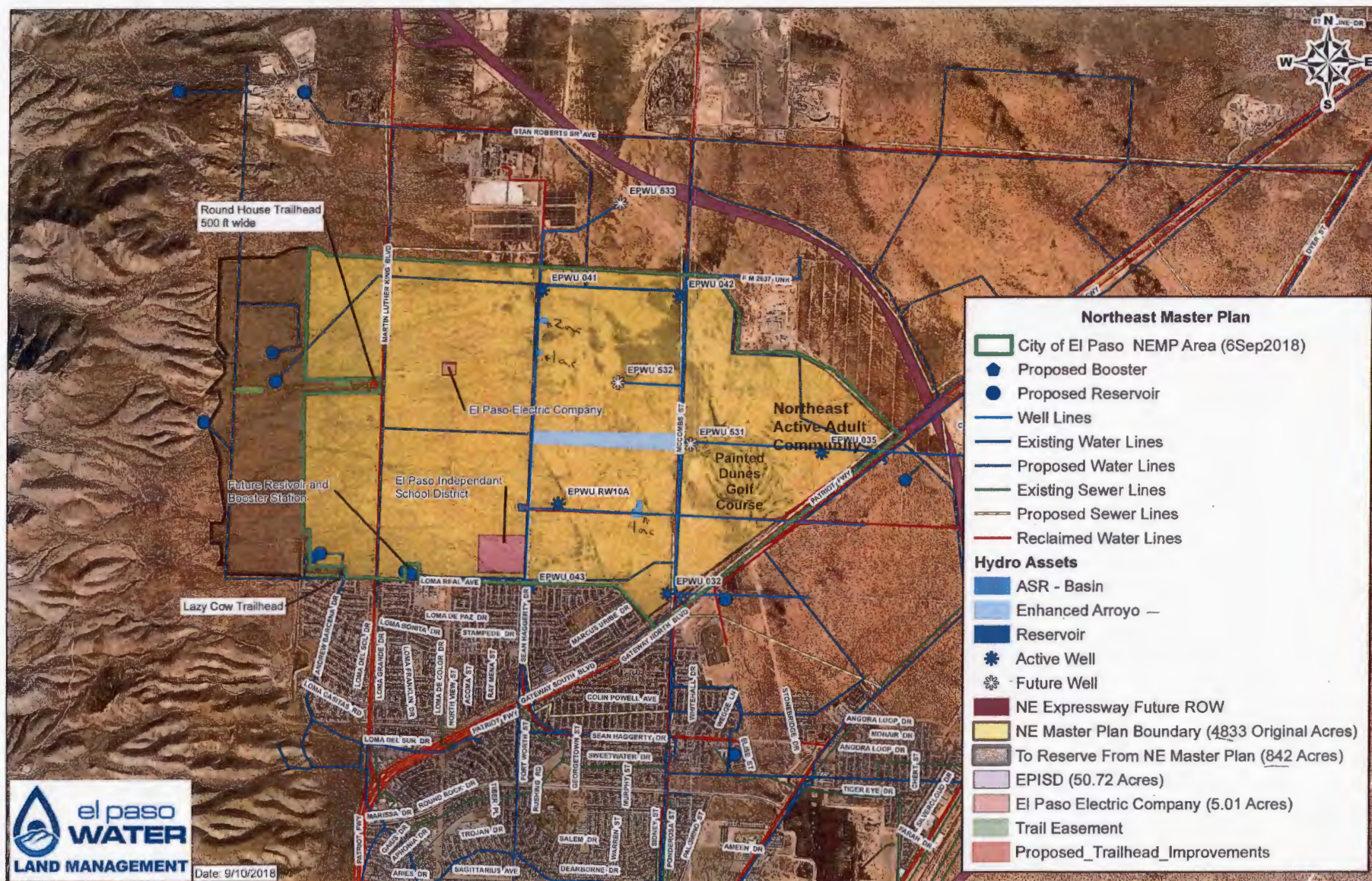


EXHIBIT "D"
PAYMENT PLAN AND SCHEDULE

Payment Date	Scheduled Payment
08/31/2022	\$803,109.75
08/31/2023	\$803,109.75
08/31/2024	\$803,109.75
08/31/2025	\$803,109.75
08/31/2026	\$803,109.75
08/31/2027	\$803,109.75
08/31/2028	\$803,109.75
08/31/2029	\$803,109.75
08/31/2030	\$803,109.75
08/31/2031	\$803,109.75
08/31/2032	\$803,109.75
08/31/2033	\$803,109.75
08/31/2034	\$803,109.75
08/31/2035	\$803,109.75
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08/31/2037	\$803,109.75
08/31/2038	\$803,109.75
08/31/2039	\$803,109.75
08/31/2040	\$803,109.75
08/31/2041	\$803,109.75
08/31/2042	\$803,109.75
08/31/2043	\$803,109.75
08/31/2044	\$803,109.75
08/31/2045	\$803,109.75
08/31/2046	\$803,109.75
08/31/2047	\$803,109.75
08/31/2048	\$803,109.75
08/31/2049	\$803,109.75
08/31/2050	\$803,109.75
08/31/2051	\$789,235.00