

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

DEPARTMENT: Capital Improvement Department

AGENDA DATE: December 11, 2018

CONTACT PERSON/PHONE: Sam Rodriguez, P.E., City Engineer, 212-0065

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: No. 1: Create an Environment Conducive to Strong, Sustainable Economic Development

SUBJECT:

That the City Manager be authorized to sign a Contract of Sale between the City of El Paso and SEAB, L.P., a Texas Limited Partnership, for the purchase of real property municipally known and numbered as 112 Mills Ave, El Paso, El Paso County, Texas more particularly described as 2,000 square feet, more or less, being a portion of Block 5 Mills Addition (25 feet on Mills X 80 feet beginning 65 feet of NWC) in the amount of \$595,000.00 to serve as the San Jacinto Plaza Visitor Center and Restrooms, and, that the City Manager, or his designee, be authorized to sign any necessary documents to accomplish the intent of this Resolution.

BACKGROUND / DISCUSSION:

The City Council would like acquire the property at 112 Mills for use as part of the City's Visitor Center and San Jacinto Restroom Project. The cost for purchase of the property is \$595,000. The owner has accepted the City's offer of \$595,000.

SELECTION SUMMARY:

N/A

PROTEST

☒ No protest received for this requirement.

☐ Protest received.

COUNCIL REPRESENTATIVE BRIEFING:

Was a briefing provided? ☐ Yes or ☒ Not Applicable (Routine)
If yes, select the applicable districts.

- ☐ District 1
- ☐ District 2
- ☐ District 3
- ☐ District 4
- ☐ District 5
- ☐ District 6
- ☐ District 7
- ☐ District 8

☐ All Districts

PRIOR COUNCIL ACTION:

Funding for the Visitor Center/San Jacinto Restroom Project was approved by the City Council on April 30, 2018.

AMOUNT AND SOURCE OF FUNDING:

\$3,172,000 from the 2019 Capital Plan

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

 for San Rodriguez

RESOLUTION

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

That the City Manager be authorized to sign a Contract of Sale between SEAB, L.P., a Texas Limited Partnership and the City of El Paso, for the purchase of real property municipally known and numbered as 112 Mills Ave, El Paso, El Paso County, Texas more particularly described as 2,000 square feet, more or less, being a portion of Block 5 Mills Addition (25 feet on Mills X 80 feet beginning 65 feet of NWC) in the amount of \$595,000.00 to serve as the San Jacinto Plaza Visitor Center and Restrooms, and, that the City Manager, or his designee, be authorized to sign any necessary documents to accomplish the intent of this Resolution.

APPROVED this _____ day of _____, 2018.

THE CITY OF EL PASO

ATTEST:

Dee Margo
Mayor

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:

Sam Rodriguez, P.E.
City Engineer

CONTRACT OF SALE

between

SEAB, L.P.
SELLER AND

CITY OF EL PASO
BUYER FOR

2,000 square feet, more or less, being a portion of Block 5 Mills Addition (25 feet on Mills X 80 ft beg 65 ft of NWC), El Paso, El Paso County, Texas

CONTRACT OF SALE

This Contract of Sale (the **Contract**) is made and entered into as of the Effective Date by and between SEAB, L.P. (referred to herein as "**Seller**"), and CITY OF EL PASO, TEXAS, a Texas municipal corporation ("**Buyer**").

ARTICLE I DEFINED TERMS

1.1 **Definitions.** As used herein, the following terms have the meanings set forth below:

"Business Day" means any day, other than a Saturday or Sunday, on which national banks in El Paso, Texas, are open for business.

"Buyer's Objection Letter" has the meaning assigned to such term in Section 4.3 hereof.

"Closing" means consummation of the sale and purchase of the Property contemplated by this Contract by the deliveries required under Section 7.2.

"Closing Date" means the date on which the Closing will be held as specified in Section 7.1.

"Cure Period" has the meaning assigned to such term in Section 4.4 hereof.

"Deed" has the meaning assigned to such term in Section 7.2(a)(i) hereof.

"Earnest Money Deposit" means the money, plus any accrued interest thereon if any, deposited by Buyer in escrow with the Title Company at the time and in the amount specified in Section 3.2 hereof.

"Effective Date" means the date upon which the City signs this contract on behalf of Buyer.

"Improvements" means the buildings and other improvements located on the Land and all fixtures and other property owned by Seller that is affixed to the Land.

"Independent Consideration" means \$100.00.

"Inspection Period" means the period commencing on the Effective Date and ending twenty (20) Business Days after the Effective Date.

"Inspections" has the meaning assigned to such term in Section 4.6 hereof.

"Land" means that certain tract of land located in El Paso County, Texas, described as on **Exhibit A** appended hereto, together with all rights appurtenant thereto.

"Ownership Documents" has the meaning assigned to such term in Section 5.2(a) hereof.

"Permitted Exceptions" means (i) those exceptions or conditions that affect or may affect title to the Property that are approved or deemed to be approved by Buyer.

"Property" means, collectively, the Land and Improvements.

"Purchase Price" means the total consideration to be paid by Buyer to Seller for the purchase of the Property.

“Seller’s Title Cure Period” has the meaning assigned to such term in Section 4.4 hereof.

“Title Company” means Stewart Title Company, 415 N. Mesa El Paso, Texas 79901.

“Title Commitment” has the meaning assigned to such term in Section 4.1 hereof.

“Title Review Period” has the meaning assigned to such term in Section 4.3 hereof.

“Title Policy” has the meaning assigned to such term in Section 4.5 hereof.

1.2 **Other Defined Terms.** Certain other defined terms have the respective meanings assigned to them elsewhere in this Contract.

ARTICLE II AGREEMENT OF PURCHASE AND SALE

On the terms and conditions stated in this Contract, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase and acquire from Seller, the Property.

ARTICLE III PURCHASE PRICE AND ADDITIONAL CONSIDERATION

3.1 **Purchase Price.** The total purchase price to be paid by Buyer for the Property shall be the agreed upon value of **FIVE HUNDRED NINETY FIVE THOUSAND and NO/100 DOLLARS (\$595,000.00)** for the Property (the **“Purchase Price”**). The Purchase Price, net of all prorated amounts allocated to Seller as set forth in this Contract, shall be payable to Seller through the Title Company at the Closing by wire transfer of immediately available federal funds. The consideration recited herein represents a settlement and compromise by all parties as to the value of the Property herein conveyed.

3.2 **Earnest Money Deposit.** Buyer shall deposit with the Title Company the sum of **ONE THOUSAND and NO/100 Dollars (\$1,000.00)** as Earnest Money (the **“Earnest Money Deposit”**) within ten (10) Business Days after the Effective Date.

The Earnest Money Deposit shall be held by the Title Company in escrow to be applied or disposed of as provided in this Contract, and shall be held in account that is not interest-bearing unless the Seller and Buyer (through its City Manager or designee) agree in writing that the funds be invested in an interest-bearing account at a financial institution in El Paso, Texas, reasonably acceptable to Seller and Buyer, and all interest earned thereon shall become a part thereof. If the purchase and sale hereunder are consummated in accordance with the terms of this Contract, the entire \$1,000.00 Earnest Money Deposit shall be applied to the Purchase Price at Closing.

ARTICLE IV TITLE AND SURVEY AND INSPECTION

4.1 **Title Commitment.** Within five (5) Business Days following the Effective Date, Buyer agrees to order, at Buyer’s sole cost and expense, a current commitment for Title Insurance for the Property (the **“Title Commitment”**), a copy of which shall be furnished to Seller and Buyer. The Title Commitment shall contain the express commitment of the Title Company to issue a Texas Form T-1 Owner Policy of Title Insurance for the Property, which shall otherwise be in form and

content consistent with Section 4.5 hereof. The Title Commitment shall be accompanied by copies of all instruments that create or evidence title exceptions affecting the Property.

42 **Survey.** Buyer shall obtain an update of any existing survey or obtain a new survey at Buyer's cost (any such updated survey or new survey being herein called the "**Survey**"). The parties agree to use the metes and bounds description of the Land contained in the Survey, if different from that appended hereto as **Exhibit A**, for purposes of describing the Property in the Deed conveying to Buyer title to the Property. In the event Buyer does not obtain a Survey within twenty (20) Business Days after the Effective Date, the Survey shall be deemed waived.

43 **Review of Title Commitment and Survey.** Buyer shall have a period of twenty (20) Business Days following its receipt of the Title Commitment and the Survey (if applicable) (the "**Title Review Period**") in which to review the Title Commitment and the Survey (if applicable) and give written notice to Seller specifying Buyer's objections, if any, to the Title Commitment, the Survey (if applicable) (the "**Buyer's Objection Letter**"). If Buyer fails to give the Buyer's Objection Letter to Seller prior to the expiration of the Title Review Period, then all exceptions to title shown on Schedule B but not on Schedule C of the Title Commitment are deemed to be Permitted Exceptions. Except as the Buyer may direct, all items on Schedule C can never be deemed to be Permitted Exceptions and must be removed by Seller as a precondition to closing and Buyer shall have no obligation to object to them.

44 **Seller's Obligation to Cure; Buyer's Right to Terminate.** If Buyer delivers to Seller the Buyer's Objection Letter before the end of the Title Review Period, then Seller may, but is not obligated to, within ten (10) Business Days of the date of receipt of such letter (the "**Cure Period**"), give written notice ("**Seller's Title Cure Notice**") to Buyer of Seller's intention to satisfy the Buyer's objections concerning Schedule B items. It is expressly understood that in no event shall Seller be obligated or required to bring any action or institute any proceeding, or to otherwise incur any costs or expenses in order to attempt to eliminate any matter contained in Buyer's Objection Letter. If Seller fails to timely give Buyer the Seller's Title Cure Notice or if Seller fails or refuses to satisfy any or all of Buyer's objections, including exceptions related to releases of liens shown on Schedule C of the Title Commitment, then Buyer, as its sole and exclusive right and remedy, shall notify Seller in writing within ten (10) Business Days after the expiration of the Cure Period, that either:

- (a) Buyer waives its right to further object to any objections it has asserted which Seller has failed or refused to satisfy in which event those objections asserted by Buyer shall be deemed Permitted Exceptions and waived by Buyer and the parties shall proceed to close this transaction;
- (b) Buyer may in its sole discretion agree to extend the Cure Period to allow Seller additional time to cure objections; or
- (c) Terminate this Contract, in which event the Title Company shall return to Buyer the Earnest Money Deposit, less the Independent Consideration, as provided herein, and Seller and Buyer shall have no further obligations, one to the other, with respect to the subject matter of this Contract except as otherwise provided herein.

45 **Title Policy.** At the Closing, or as soon thereafter as the Title Company can issue the same, Buyer shall cause, at Buyer's sole cost and expense, a standard T-1 form Owner Policy of Title Insurance (the "**Title Policy**") to be furnished to Buyer by the Title Company. The Title Policy shall be issued by the Title Company and shall insure that Buyer has good and indefeasible fee simple title to the Property, subject only to the Permitted Exceptions. The Title Policy shall contain no exceptions other than Permitted Exceptions and shall provide that:

- (a) The survey exception may be amended, at Buyer's expense, to except only "shortages in area";
- (b) The exception for rights of parties in possession shall be deleted;
- (c) The tax exception shall be limited to taxes for the year of Closing and subsequent years not yet due and payable; and
- (d) Unless waived by Buyer, all exceptions, conditions, or requirements described in Schedule C of the Title Commitment shall be released and satisfied prior to or at Closing and such items and requirements shall not be exceptions to the Owner Title Policy to be provided by Seller.

46 **Inspection.**

- (a) Buyer, at Buyer's expense, shall have the right during the Inspection Period to make such physical examinations, studies, appraisals, inspections, engineering, environmental and insurance underwriting tests and investigations (the "**Inspections**") of the Property as Buyer may deem advisable. Seller shall reasonably cooperate with Buyer in making the Property reasonably available for Buyer's Inspections. Buyer may also reinspect the Property prior to Closing to verify that the Project has remained in similar physical shape, ordinary wear and tear excepted, as the Property was during the Inspection Period. All inspection fees, appraisal fees, engineering fees and other costs and expenses of any kind incurred by Buyer relating to such inspection and its other due diligence shall be at the sole cost and expense of Buyer. Buyer agrees to be responsible and liable for any claims or damages, including mechanic's and materialmen's liens, and reasonable attorneys' fees incurred by Seller caused or arising out of or in connection with Buyer's Inspections of the Land and/or Improvements. Buyer shall require its representatives, agents, consultants and contractors ("**Buyer Representatives**") entering upon the Property for any purpose to obtain and maintain during in the Inspection Period general liability insurance in an amount not less than \$500,000.00 and property damage insurance in an amount not less than \$500,000.00, with an insurance carrier which is licensed in the State of Texas and is reasonably acceptable to Seller. The provisions of this Section shall survive the Closing or the earlier termination of this Contract. If Buyer elects to terminate this Contract in accordance with the terms hereof, Buyer shall provide Seller with copies of all documents, tests and reports generated from Buyer's Inspection within five (5) Business Days following the date of Buyer's termination.
- (b) If Buyer has not terminated this Contract (i) during the Inspection Period or (ii) within ten (10) Business Days after the expiration of the Cure Period as provided in Section 4.4(b), then Buyer waives its right to terminate this Contract. If Buyer terminates this

Contract during the Inspection Period or within ten (10) Business Days after the expiration of the Cure Period, then, in either event, the Earnest Money Deposit, less the Independent Consideration, shall be returned to Buyer, and thereafter Seller and Buyer shall have no further obligations to each other with respect to the subject matter of this Contract except as otherwise expressly provided herein.

ARTICLE V
REPRESENTATIONS, WARRANTIES, COVENANTS,
AND AGREEMENTS OF SELLER

5.1 Representations and Warranties of Seller. Seller represents and warrants to Buyer as of the Effective Date and as of the Closing Date as follows:

- (a) Seller has the full right, power, and authority to sell and convey to Buyer the Property as provided in this Contract and to carry out Seller's obligations hereunder, and all requisite action necessary to authorize Seller to enter into this Contract and to carry out Seller's obligations hereunder has been, or on the Closing Date will have been, taken, and this Contract constitutes a valid and binding obligation of the Seller, enforceable in accordance with its terms;
- (b) On the Effective Date, and as of the date of Closing, there are no adverse or other parties in possession of the Property or who have any leasehold rights in the Property;
- (c) There is no litigation pending or, to Seller's current actual knowledge, threatened, affecting the Property; and Seller has no knowledge of, and has received no written notice from, any governmental authority requiring any work, repairs, construction, alterations or installations on or in connection with the Property, or asserting any violation of any federal, state or municipal laws, ordinances, codes, orders, regulations or requirements affecting any portion of the Property, including, without limitation, the Americans with Disabilities Act and any applicable environmental laws or regulations;
- (d) Seller has not received written notice of any pending condemnation action other than that related to this Contract with respect to all or any portion of the Property and to Seller's current actual knowledge and there are no existing condemnation or other legal proceedings affecting the existing use of the Property by any governmental authority having jurisdiction over or affecting all or any part of the Property;
- (e) At Closing, Seller shall have good and indefeasible title to the Property free and clear of any known claim, lien, or encumbrance, specifically including any claims for mechanics liens arising through Seller, subject only to the Permitted Exceptions;
- (f) Seller has not received written notice that the current use of the property does not comply with all currently applicable zoning ordinances and governmental requirements.
- (g) There are no contracts of any kind, including contracts for maintenance, security, disposal, or fire suppression that will survive the Closing;

- (h) Seller is not a “foreign person” within the meaning of the Foreign Investment in Real Property Tax Act or the Tax Reform Act of 1986, and Buyer is not obligated to withhold any portion of the Purchase Price for the benefit of the Internal Revenue Service;
- (i) No party (other than Buyer) has any right or option to acquire all or any part of the Property, whether subject to earnest money contract, option agreement, right of first refusal, reversionary or future interests, or right of reverter.

52 Condition of Property.

- (a) **Disclaimer.** Except as expressly provided herein and in Seller’s special warranty of title to be contained in the deed to Buyer at Closing, Seller hereby specifically disclaims any warranty, guaranty, or representation, oral or written, past, present or future, of, as to, or concerning (i) the nature and condition of the Property, including but not by way of limitation, the water, soil, geology and the suitability thereof, and of the Property, for any and all activities and uses which Buyer may elect to conduct thereon, income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to or affecting the same; (ii) the manner of construction and condition and state of repair or lack of repair of any improvements located thereon; (iii) the nature and extent of any easement, right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; and (iv) the compliance of the Property or the operation of the Property with any laws, rules, ordinances, or regulations of any government or other body. IN CONNECTION WITH THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN, EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, COMPLIANCE BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER DOES NOT MAKE ANY REPRESENTATIONS REGARDING HAZARDOUS WASTE, AS DEFINED BY THE LAWS OF THE STATE OF TEXAS AND ANY REGULATIONS ADOPTED PURSUANT THERETO OR THE U.S. ENVIRON-MENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OF ANY HAZARDOUS WASTE OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES IN OR ON THE PROPERTY. Buyer agrees to accept the Property at Closing with the Property being in its present AS IS condition WITH ALL FAULTS.
- (b) **Waiver.** BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS EXPERIENCED IN THE OWNERSHIP, DEVELOPMENT AND/OR OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT BUYER PRIOR TO THE CLOSING WILL HAVE INSPECTED THE PROPERTY TO ITS

SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. BUYER ACKNOWLEDGES THAT IT IS FULLY RELYING ON BUYER'S (OR BUYER'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND NOT UPON ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY SELLER OR ANY OF HIS REPRESENTATIVES. BUYER ACKNOWLEDGES THAT BUYER HAS (OR BUYER'S REPRESENTATIVES HAVE), OR PRIOR TO THE CLOSING WILL HAVE, THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY BUYER IN ORDER TO ENABLE BUYER TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY); AND BUYER ACKNOWLEDGES THAT BUYER IS RELYING SOLELY UPON ITS OWN (OR ITS REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY. BUYER HEREBY EXPRESSLY ASSUMES ALL RISKS, LIABILITIES, CLAIMS, DAMAGES AND COSTS (AND AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATED TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY ATTRIBUTABLE TO THE PERIOD FROM AND AFTER THE DATE OF CLOSING. BUYER ACKNOWLEDGES THAT ANY CONDITION OF THE PROPERTY THAT BUYER DISCOVERS OR DESIRES TO CORRECT OR IMPROVE PRIOR TO OR AFTER THE CLOSING SHALL BE AT BUYER'S SOLE EXPENSE. BUYER EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW THAT BUYER MIGHT OTHERWISE HAVE AGAINST SELLER RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PROPERTY EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED BY THIS AGREEMENT. BUYER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH HEREIN ARE INTEGRAL PARTS OF THIS AGREEMENT AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO BUYER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH ABOVE.

The provisions of Section 5.2(a) and (b) shall survive the Closing.

5.3 Ownership Documents. Within ten (10) Business Days following the Effective Date, Seller shall deliver to Buyer the following items (the “**Ownership Documents**”) with respect to the Property, to the extent in the possession or under the reasonable control of Seller:

- (a) A copy of all environmental reports, inspections or assessments, if any, of the Land and Improvements.

If the parties fail to consummate the transaction described herein for any reason other than the Seller's default, Buyer agrees to return to Seller all materials delivered by or on behalf of Seller pursuant to or in connection with this Contract within ten (10) Business Days of such event.

5.4 **Survival Beyond Closing.** The representations, warranties, undertakings and agreements of Seller contained herein survive the Closing for one (1) year and are not merged therein.

ARTICLE VI REPRESENTATIONS, WARRANTIES OF BUYER

6.1 **Buyer's Representations.** Buyer hereby represents and warrants to Seller as of the date of this Contract and as of the Closing Date as follows:

Once this contract is signed by the City's representative, Buyer has the full right, power, and authority to purchase the Property from Seller as provided in this Contract.

6.2 **Survival Beyond Closing.** The representations, warranties, undertakings and agreements of Buyer contained herein survive the Closing and are not merged therein.

ARTICLE VII CLOSING

7.1 **Date and Place of Closing.** Provided that Buyer has not terminated this Contract as herein provided and all of the other conditions of this Contract shall have been satisfied prior to or on the Closing Date, the Closing of this transaction shall take place at a time to be appointed by the parties at the offices of the Title Company within thirty (30) Business Days after the expiration of the Inspection Period (the "**Closing Date**"), or such earlier date as may be specified by Buyer but not less than five (5) Business Days advance written notice to Seller. If the Closing Date falls on a Saturday, Sunday or legal holiday, the Closing shall take place on the next Business Day thereafter.

7.2 Items to be Delivered at Closing

- (a) **Seller.** At the Closing, Seller shall deliver or cause to be delivered to Buyer or the Title Company, the following items fully executed by Seller or Buyer, as the case may be, and acknowledged where so indicated by all necessary parties in respect to the Property:
 - (i) A Special Warranty Deed (the "**Deed**"), duly executed and acknowledged by Seller, conveying title to the Land and Improvements, in substantially the form of **Exhibit B** appended hereto, subject only to the Permitted Exceptions;
 - (ii) An affidavit, in compliance with Section 1445 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder, stating under penalty of perjury the Seller's United States identification number and that each of Seller is not a "foreign person" as that term is defined in Section 1445, duly executed and acknowledged by Seller; and
 - (iii) Any other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.
- (b) **Buyer.** At the Closing, Buyer shall deliver or cause to be delivered to Seller or the Title Company, the following items:
 - (i) The Title Policy, in the form specified in Section 4.5 hereof (unless waived by Buyer in accordance with the provisions of Section 4.5);

- (ii) The Purchase Price, less the \$1,000 of Earnest Money being held by the Title Company which is applicable to the Purchase Price, payable by wire transfer as required by Section 3.1 hereof;
- (iii) Appropriate evidence of authorization reasonably satisfactory to Seller and the Title Company for the consummation of the transaction contemplated by this Contract; and
- (iv) Any other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

73 Prorations. The following items shall be adjusted or prorated between Seller and Buyer as set forth below:

- (a) **Taxes.** General real estate taxes for the then current year relating to the Property shall be prorated as of midnight preceding the Closing Date. If the Closing occurs before the tax rate is fixed for the then current year, the apportionment of taxes shall be made upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation of the Land and Improvements. Within thirty (30) days after the actual taxes for the year in which the Closing occurs are determined, Seller and Buyer shall adjust the proration of such taxes and Seller and Buyer, as the case may be, shall pay to the other any amount required as a result of such adjustment and this covenant shall not merge with the Deed delivered hereunder but shall survive the Closing. All special taxes or assessments assessed prior to the Closing Date shall be paid by Seller.

74 Recalculation of Prorations. In the event the Closing does not occur and fund as of 12:00 noon, local time, on the Closing Date, all prorations shall extend to the midnight of the following day.

75 Possession. Possession of the Property shall be delivered to Buyer by Seller at the Closing subject to the rights of any third parties under the Permitted Exceptions.

76 Costs of Closing. Each party is responsible for paying the legal fees of its counsel in negotiating, preparing, and closing the transaction contemplated by this Contract. Buyer shall pay for the premium for Title Policy and all endorsements requested by Buyer; all real estate tax searches; UCC searches; the cost of the New Survey; its own engineering inspections as well as for the charges attributable to recording the Deed and the Title Company escrow fees. Any other expenses that are incurred by either party that are expressly identified herein as being the responsibility of a particular party shall be paid by such party. All other expenses are allocated between the parties in the customary manner for sales of real property similar to the Property in El Paso County, Texas.

7.7 Provisions of Article VII to Survive Closing. The provisions of this Article VII survive the Closing.

ARTICLE VIII DEFAULTS AND REMEDIES

8.1 Default of Buyer. If Buyer has not terminated this Contract pursuant to any of the provisions hereof authorizing such termination, and Buyer defaults hereunder and fails to perform any of the covenants and/or agreements contained herein which are to be performed by Buyer, Seller

shall be entitled to receive the Earnest Money Deposit as Seller's sole and exclusive remedy, as liquidated damages, due to the inconvenience of ascertaining and measuring actual damages, and the uncertainty thereof.

82 **Default of Seller.** If Seller fails or refuses to consummate the sale of the Project to Buyer pursuant to this Contract at the Closing, or Seller fails to perform any of its other obligations hereunder for any reason other than Buyer's failure to perform Buyer's obligations under this Contract, then Buyer may, as Buyer's sole and exclusive right and remedy for any such default, terminate this Contract by giving written notice thereof to Seller and the Title Company and Seller shall deliver all of the Earnest Money Deposit, less the Independent Consideration, to Buyer and thereafter neither party hereto shall have any further rights or obligations hereunder.

83 **Effect of Termination.** Upon termination of this Contract under this Article 8 or pursuant to any other provision of this Contract, no party thereafter shall have any further obligations to the other hereunder except for the payment of any sums or damages upon termination as provided herein and except for any covenants and obligations which expressly survive such termination.

ARTICLE IX BROKERAGE COMMISSIONS

9.1 **Representations Concerning Brokerage Commission.** Seller hereby represents and warrants to Buyer that it has not contracted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction, and that Seller has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any other party with respect to the transaction contemplated hereby. Buyer hereby represents and warrants to Seller that Buyer has not contracted or entered into any agreement with any real estate broker, agent, finder, or other party in connection with this transaction and Buyer has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any other party with respect to the transaction contemplated hereby.

ARTICLE X CASUALTY OR CONDEMNATION

10.1 **Right of Termination.** Seller agrees to give Buyer and Title Company prompt notice of any fire or other casualty affecting the Property or of any actual or threatened taking or condemnation of all or any portion of the Property other than the subject condemnation action. If, prior to the Closing, there shall occur damage to the Property caused by fire or other casualty, then Seller or Buyer shall have the right to postpone the Closing Date or terminate this Contract by written notice delivered to the other party within thirty (30) Business days after Buyer has received notice from Seller of that event or the date of the fire or other casualty or Seller's receipt of notice of taking or condemnation, whichever shall first occur. If this Contract is terminated pursuant to this Section 10.1, the Earnest Money Deposit shall be returned to Buyer and the parties shall have no further obligations under this Contract, or to each other with respect to the subject matter of this Contract. Notwithstanding the foregoing, in the event that the cost of repairing or restoring such damage shall be covered by available insurance and such cost shall be less than \$10,000, then Buyer shall proceed to Closing and Seller shall assign at Closing to Buyer its right, title and interest in the insurance proceeds available to repair or restore the damage or destruction and to any applicable rent loss insurance and, in addition, Seller shall credit the Purchase Price with the amount of any deductible under such insurance policy(s).

102 **Postponement of Closing.** In the event that Buyer gives notice to postpone the Closing Date pending a determination of the nature and extent of such damage or destruction and the availability and adequacy of insurance proceeds, the postponement shall be in effect for an additional twenty (20) Business Days after the thirty (30) Business Day period that Buyer has to give notice of its desire to postpone (the *Damages Determination Period*).

103 **Insurance for Repair.** If the cost to repair or replace the damage is reasonably estimated by the Seller's insurance adjuster to exceed \$10,000, then at Buyer's election and in its sole discretion, Buyer may elect to proceed with the Closing and at the Closing, Seller shall assign to Buyer its right, title and interest in the insurance proceeds available to repair or restore the damage or destruction and to any applicable rent loss proceeds, and Seller shall credit the Purchase Price with the amount of any deductible under such insurance policy(s).

ARTICLE XI MISCELLANEOUS

11.1 **Notices.** All notices, demands, requests, and other communications required or permitted hereunder shall be in writing, and shall be deemed to be delivered (i) if personally delivered, upon receipt; (ii) if sent by expedited prepaid reputable overnight delivery, the next business day after delivery to such service; (iii) if sent by United States registered or certified mail, return receipt requested, postage prepaid, three (3) days after having been deposited in the United States Postal Service, properly addressed as follows (or at such other address and person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other party in the manner provided for in this Section):

Seller:	Bryan Abraham SEAB, L.P. 5401 Tierra Vista Lane El Paso, Texas 79932
Copy:	John S. Birkelbach, Esq. Mounce, Green Myers, Safi, Paxson & Galatzan, P.C. 100 N. Stanton, 10 th Floor El Paso, Texas 79901
City:	City Clerk City of El Paso P.O. Box 1890 El Paso, Texas 79950-1890
Copy:	City Attorney City of El Paso P. O. Box 1890 El Paso, Texas 79950
Copy:	City Engineer Capital Improvement Department City of El Paso P. O. Box 1890 El Paso, Texas 79950-1890

112 **Governing Law.** This Contract is being executed and delivered, and is intended to be performed, in the State of Texas, and the laws of Texas shall govern the validity, construction, enforcement, and interpretation of this Contract. This Contract is performable in, and the exclusive venue for any action brought with respect hereto shall lie in El Paso County, Texas, where the Property is located.

113 **Entirety and Amendments.** This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Project, and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

114 **Parties Bound.** This Contract is binding upon and inure to the benefit of Seller and Buyer, and their respective permitted successors and assigns.

115 **Saturday, Sunday or Legal Holiday.** If any date set forth in this Contract for the performance of any obligation by Buyer or Seller or for the delivery of any instrument or notice should be on other than a Business Day, the compliance with such obligations or delivery is deemed accepted on the next following Business Day.

116 **Time is of the Essence.** It is expressly agreed by Seller and Buyer that time is of the essence with respect to this Contract.

11.7 **Exhibits.** The Exhibits which are referenced in, and attached to, this Contract are incorporated in and made a part of this Contract for all purposes. If one or more Exhibits to be attached to this Contract are not so attached or are incomplete upon the Effective Date, then Seller agrees to prepare or complete any such Exhibits and furnish Buyer with a copy of same. Buyer have the right to approve the form and contents of each such Exhibit supplied by Seller within five (5) Business days of receipt thereof in its sole and absolute discretion. Buyer reserves the right to terminate this Contract should Buyer not approve the form and content of such Exhibits, provided, however, such Exhibits shall be deemed accepted by Buyer if Buyer fails to provide Seller of any written objections to such Exhibits submitted by Seller within ten (10) Business days following receipt of the same.

118 **Attorney's Fees.** If either party hereto shall be required to employ an attorney to bring suit to enforce or defend the rights of such party hereunder, the prevailing party in such suit shall be entitled to recover its reasonable attorney's fees and costs, in addition to any other relief to which it or they may be entitled.

119 **Municipal Purpose.** The parties agree that Buyer, a political subdivision of the State of Texas, enters into this contract to serve a municipal purpose and government function under the authority of and for the benefit of the sovereign state.

11.10 **Severability.** If for any reason any provision of this Contract is held to violate any applicable law, and so much of this Contract is held to be unenforceable, then the invalidity of such specific provision shall not be held to invalidate any other provision of this Contract which shall remain in full force and effect.

11.11 **Multiple Counterparts.** This Contract may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and either of the parties hereto may execute this Contract by signing any such counterpart.

11.12 **Electronic Signature.** Delivery of an executed counterpart signature pages of the Contract by facsimile or electronic mail is effective as delivery of an original of an executed counterpart signature page.

11.13 **No Third Party Beneficiary.** Except as otherwise expressly provided herein, this Contract is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary or otherwise.

11.14 **Effect of Headings.** The subject headings of sections and subsections of this Contract included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

11.15 **Recording.** Neither this Contract, nor any memorandum or evidence hereof shall be recorded in any public records without the prior written consent of both parties.

EXECUTED by Seller the 29th day of Nov, 2018.

SELLER:

SEAB, L.P., a Texas limited partnership

By: SEAB Managers, LLC, a Texas limited liability company, its general partner

By: Bryan Abraham
Bryan Abraham, Manager

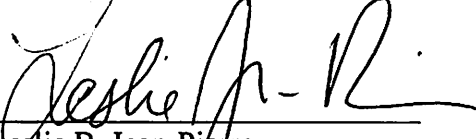
[Signatures Continue on Next Page]

EXECUTED by the City of El Paso the _____ day of _____, 2018.

CITY OF EL PASO, TEXAS

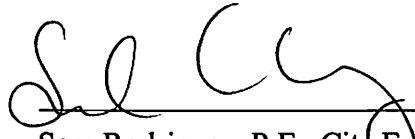
Tomás González
City Manager

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:



Sam Rodriguez, P.E., City Engineer
Capital Improvement Department

Receipt of a fully executed copy of the Contract and a check, subject to collection for the Earnest Money Deposit received this _____ day of _____, 2018.

STEWART TITLE COMPANY

By: _____
Printed Name: _____
Title: _____

EXHIBITS

- Exhibit A** - Description of Land
- Exhibit B** - Form of Special Warranty Deed

EXHIBIT A PROPERTY DESCRIPTION

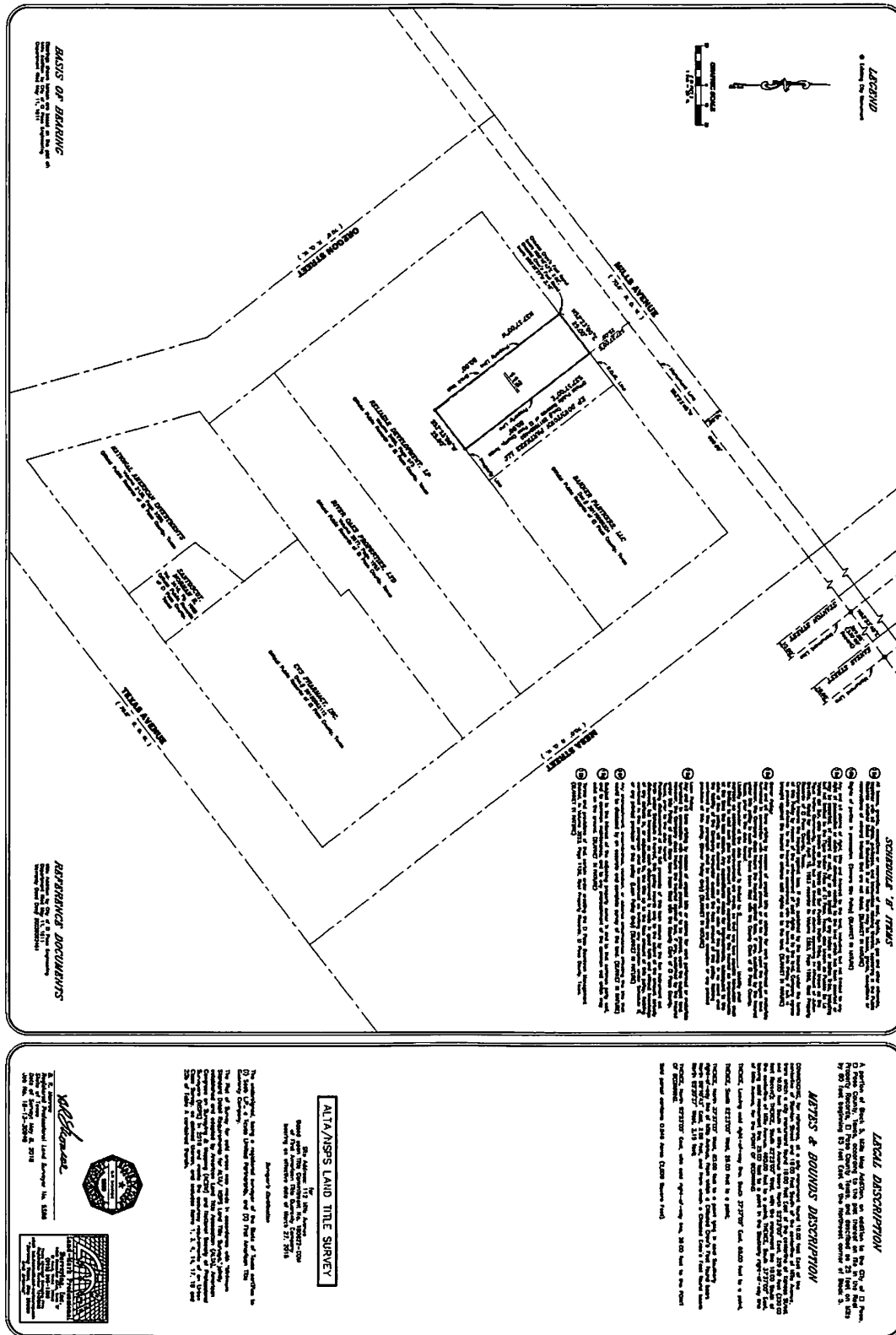


EXHIBIT B

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Effective Date: _____, 2018

Grantor: **SEAB, L.P.**

Grantor's Mailing Address: 5401 Tierra Vista Lane
El Paso, Texas 79932

Grantee: **THE CITY OF EL PASO, A MUNICIPAL CORPORATION**

Grantee's Mailing Address: City of El Paso
P.O. Box 1890
El Paso County
El Paso, Texas 79950-1890

Consideration: TEN AND NO/100 DOLLARS (\$10.00), and other valuable consideration, receipt of which is hereby acknowledged.

Property (including any improvements):

2,000 square feet, more or less, being a portion of Block 5, Mills Addition (25 feet on Mills X 80 feet beginning 65 feet of NWC), with a street address of 112 Mills Avenue, El Paso, E Paso County, Texas, and being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof for all purposes intended.

EXCEPTIONS TO CONVEYANCE AND WARRANTY:

This conveyance is made by Grantors and accepted by the City of El Paso subject to the following:

1. Visible and apparent easements not appearing of record.
2. Any discrepancies, conflicts, or shortages in area or boundary lines or any encroachments or any overlapping of improvements which a current survey would show.
3. Easements, restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and encumbrances for taxes and assessments (other than liens and conveyances) presently of record in the Official Public Records of El Paso County, Texas that affect the property, but only to the extent that said items are still valid and in force and effect at this time. See the Exhibit "B" attached hereto and made a part hereof for all purposes.

GRANT AND CONVEYANCE:

Grantor, for the consideration and subject to the Exceptions to Conveyance and Warranty, GRANTS, SELLS, and CONVEYS to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors and assigns to warrant and forever defend all and singular the property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

When the context of this instrument requires, singular nouns and pronouns will include the plural

EXECUTED the _____ day of _____, 2018.

GRANTOR:

SEAB, L.P., a Texas limited partnership

By: SEAB Managers, LLC, a Texas limited liability company, its general partner

By: _____
Bryan Abraham, Manager

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me this _____ day of _____, 2018, by Bryan Abraham, Manager of SEAB Managers, LLC, a Texas limited liability company, in its capacity as general partner of SEAB, L.P., a Texas limited partnership, on behalf of said partnership.

Notary Public in and for the State of Texas

My Commission expires: _____