

STATE OF TEXAS   §  
                                 §  
EL PASO COUNTY   §

**INTERLOCAL AGREEMENT FOR CONSTRUCTION OF FIRST-TIME WATER SERVICE  
TO PORTIONS OF DESERT ACCEPTANCE COLONIA BETWEEN EL PASO COUNTY AND  
THE CITY OF EL PASO PUBLIC SERVICE BOARD**

**THIS AGREEMENT** is entered into this \_\_\_\_ day of November 2020, between The City of El Paso, (“City”) acting by and through its El Paso Water Utilities Public Service Board, hereinafter called “PSB”, and El Paso County, Texas, hereinafter called “County”.

**WHEREAS**, Texas Government Code, Chapter 791, authorizes local governments of the State to enter into contracts for governmental functions and services to increase their efficiency and effectiveness; and

**WHEREAS**, the County and the City are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this agreement, and have each entered into this agreement by the action of its governing body in the appropriate manner prescribed by law; and

**WHEREAS**, the PSB and the County have been cooperating to bring first time and improved potable water and sewer service to several communities outside the immediate limits of the City, including within the County’s East Montana Water System service area; and

**WHEREAS**, the PSB and County have agreed to continue a partnership to provide first-time drinking water to portions of the Desert Acceptance *colonia* that have historically lacked access to potable water to help mitigate the threat to the health, safety and welfare of residents in the community; and

**WHEREAS**, the County will utilize funding from the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) to cover all costs incurred by PSB for the construction of the first-time water system expansion to ensure residents in the colonia have access to potable drinking water in the middle of the COVID-19 global health pandemic; and

**WHEREAS**, the PSB agrees to construct the water line extensions under the design described in Exhibit A utilizing PSB personnel, equipment and materials as described in Exhibit B, providing the County agrees to cover all costs incurred by the PSB to complete the agreed upon scope of work;

**WHEREAS**, it is necessary and in the best interests of the PSB, its customers, and the County to perform this scope of work;

**NOW THEREFORE**, in consideration of the premises, and of the terms, provisions, and mutual promises herein contained which fairly compensate the performing parties, it is mutually agreed as follows:

### **TERM OF AGREEMENT**

This Agreement shall be effective on the latter date shown below upon which this Agreement was executed by a party to the Agreement, and shall be and continue in full force and effect until completion and acceptance by the County of the work to be performed by PSB.

### **MANAGEMENT**

The County is the owner of all work completed pursuant to this Agreement and all work shall be subject to final review and acceptance by the County. It is further understood and agreed to by the parties that the PSB shall furnish the management services necessary to fulfill the requirements of this Agreement and shall be ultimately responsible for the scope of work described in Exhibit B.

## **1. PSB DUTIES, RESPONSIBILITIES AND AUTHORITY**

**1.1** The PSB shall furnish all services necessary to complete the scope of work described in Exhibit B utilizing PSB staff, equipment and materials. Specifically, the PSB shall install all piping and backfill bedding material for the water line extensions only up to one (1) foot above the pipe crown.

**1.2** The PSB shall complete the scope of work and submit all invoices to the County for payment by December 11, 2020 to provide the County sufficient time to process payment. If PSBs work exceeds the December 11, 2020 deadline, PSB will immediately cease work until it has conferred with the County. PSB will make an immediate effort to confer with the County to determine how to proceed.

- 1.3** The PSB shall provide all of the supervision, engineering oversight and management of the project in accordance with County requirements, regulations and procedures to complete the project and deliver an acceptable work product to the County.

## **2. COUNTY DUTIES**

- 2.1** The County will allocate necessary funds from its CARES Act appropriation for the total cost for the preparation and construction of the scope of work described in Exhibit B. In the event that the CARES Act funds are not available to the County for payment of the work performed by the PSB, the County will be responsible for paying PSB the total costs of the PSB's work from its own County funds. In no event will the County expect or hold PSB responsible with assuming the cost of the work requested by the County under this Agreement.
- 2.2** The County shall provide the PSB with a signed and sealed set of engineering plans for the construction of the project as described in Exhibit A. The County shall incur any and all costs, as necessary, associated with requests for information from the PSB to the design engineer of record.
- 2.3** Upon installation of the piping and backfill bedding materials by the PSB, the County shall install backfill material and compact said backfill material, disposing of excess or unsuitable materials as necessary.
- 2.4** The County shall provide for the installation of backfill materials immediately after the PSB completes installation of pipe and bedding material, provided the PSB has furnished the County a detailed work schedule a minimum of three (3) business days in advance to ensure the County may mobilize the necessary, staff, equipment and materials on the job site.
- 2.5** The County shall waive all applicable fees outlined in the County Right-of-Way Disturbance Policy as this is a County-sponsored project aiming to provide first-time drinking water to residents of a historically underserved *colonia*.

## **3. FINANCES**

- 3.1** The anticipated total project cost ("Project Cost") for construction of the agreed upon scope of work is estimated to be \$404,472.57 further detailed in Exhibit B.
- 3.2** Upon completion of construction, the PSB shall submit a written notice to the County certifying that all work has been completed in accordance with the PSB's contract requirements. The PSB shall simultaneously provide written certification of the manpower and other in-kind expenses

incurred during the preparation of these respective documents and submit all invoices to the County by December 11, 2020.

**3.3** The PSB shall notify the County in advance in the event that costs for the construction covered by this agreement are anticipated to exceed the original Project Cost.

**3.4** The County shall make payment to the PSB by December 31, 2020.

#### **4. MISCELLANEOUS PROVISIONS**

**4.1** Conflict with Applicable Law. Nothing in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any (applicable law) present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail. The Agreement shall be modified only to the extent as necessary to conform the agreement to the applicable law and bring them within the legal requirements, and only during the time such conflicts exists.

**4.2** No Waiver. No waiver by any party hereto of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

**4.3** Entire Agreement. This Agreement contains the entire contract among the parties hereto, and each party acknowledges that no other party has made (either directly or through any agent or representative) any representation or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by the PSB and COUNTY, and not otherwise.

**4.4** Texas Law to Apply. This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas.

**4.5** Notice. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been specified by written notice delivered in accordance with this Agreement:

**If to PSB:** El Paso Water Utilities/Public Service Board

Attention: John E. Balliew, President/CEO

Copy to Felipe Lopez, Jr., P.E., Chief Operations Officer-Distribution and Collection

1154 Hawkins Boulevard

El Paso, Texas 79925

**If to County:** El Paso County

Attention: Office of the County Judge

500 E. San Antonio Avenue, Suite 301

El Paso, Texas 79901

With copy to: County Attorney

500 E. San Antonio Avenue, Suite 503

El Paso, Texas 79901

County Planning & Development Department

Attention: Director of Planning & Development

800 E. Overland, Suite 200

El Paso, Texas 79901

Each notice demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

**4.6 Additional Documents.** The parties covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

**4.7 Assignment.** This Agreement shall not be assignable.

**4.8 Authority to Execute.** The execution and performance of this Agreement by each of the parties have been duly authorized by all necessary law, resolutions, ordinances or government body action, and this Agreement constitutes the valid and enforceable obligations of the parties hereto in accordance with its terms.

**4.9 Commitment of Current Revenues Only.** Both the PSB and the County hereby specify that each party paying for the performance of governmental functions or service shall make those payments from current revenues available to the paying party. In the event that, during the term of this agreement the County does not appropriate sufficient funds to meet the obligations of the County

under this Agreement, then the PSB may terminate this Agreement upon three (3) days written notice to the County.

**4.10 Severability.** Should any phrase, clause, sentence or section of this Agreement be Judicially declared to be invalid, unenforceable or void, such decision will not have the effect of invalidating or voiding the remainder of this Agreement, and such part of this Agreement will be deemed to have been stricken from this Agreement and the remainder of this Agreement will have the same force and effect as if such part or parts had never been included.

**4.11 Force Majeure.** A Force Majeure Event is a reasonably unpredictable event that makes a Party's further performance under this agreement impossible. A Force Majeure Event includes (without limitation) an Act of God; an epidemic, pandemic, or other natural disaster declared by a governmental authority with appropriate jurisdiction over the matter; governmental rules, regulations, or orders issued in response to an epidemic or pandemic or natural disaster; civil disorder or disturbances; riots; utility-related closings; or any similar event beyond the reasonable control of such Party. Further, PSB acknowledges the El Paso County Judge's authority to issue such a disaster declaration under Texas law and waives any conflict of interest.

The non-performing Party must give reasonably prompt written notice, to the other Party, of its failure to perform, and such notice shall state the event and reason for such non-performance. Notwithstanding any provision to the contrary in this Contract, and unless otherwise agreed to in writing and approved by the governing body of each party, when a failure to perform has been declared under this paragraph, the Contract automatically terminates, each Party shall immediately cease performance, and each Party is responsible for its own demobilization and storage costs. The County is only liable for payment for PSB's satisfactory performance completed up to the date of written notice.

THE PSB ACKNOWLEDGES AND AGREES THAT IT HAS READ THIS ENTIRE CONTRACT, INCLUDING (WITHOUT LIMITATION) THIS PROVISION, AND HAS TAKEN APPROPRIATE MEASURES, AT ITS OWN EXPENSE, TO MITIGATE ITS OWN FINANCIAL RISKS UNDER THIS CONTRACT. SUCH MITIGATION MAY INCLUDE (BY WAY OF EXAMPLE AND WITHOUT LIMITATION) THE PROCUREMENT, AS APPROPRIATE, OF A POLICY OF INSURANCE THAT MITIGATES CONTRACTOR'S RISK OF A FORCE MAJEURE EVENT AS DEFINED ABOVE.

**IN WITNESSES WHEREOF**, the Parties have executed this Agreement on the day and year as noted below.

**EL PASO WATER UTILITIES PUBLIC SERVICE BOARD**

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

\_\_\_\_\_  
Date

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

\_\_\_\_\_  
Alan Shubert, Vice President  
Operations & Technical

\_\_\_\_\_  
Daniel Ortiz  
General Counsel

**EL PASO COUNTY**

\_\_\_\_\_  
Hon. Ricardo A. Samaniego  
County Judge

\_\_\_\_\_  
Date

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

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Jose M. Landeros, Director  
Planning & Development Dept.

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Kevin McCary  
Assistant County Attorney