

# **El Paso County**

## **Public Improvement District Establishment Order**

### **I. PURPOSE**

The purpose of the Public Improvement District (“PID”), Policy is to outline the issues the El Paso County Commissioners Court (“County”) will consider before supporting the establishment and/or continuation of a PID as allowed by Chapter 372 of the Texas Local Government Code (the “Act”) within the unincorporated area of the County. It addresses County administrative issues and are in addition to the requirements of state law, for any landowner or developer (“Applicant”), to submit a petition for the establishment of a PID to the County.

### **II. GENERAL**

- A. Except when the County Commissioners elect to participate in the project’s costs, PIDs must be self-sufficient and must not adversely impact the ordinary service delivery of the County.
- B. PIDs must clearly demonstration a public purpose and economic benefit through advancement of the County’s economic goals which include expanding the tax base, creating quality jobs, increasing private capital investment in the community, spurring development in targeted County locations; encouraging development of targeted businesses or clusters desirable to enhance the County’s economy; or creating additional attainable housing in El Paso County.
- C. PIDs will only be approved on a reimbursement basis to the Applicant. The County of El Paso will not issue debt to finance development expenses.
- D. PIDs must be established prudently and only when related to a public purpose to avoid a proliferation of special districts.
- E. PID petition signatures should reflect that a reasonable attempt was made to obtain full support of the PID by the majority of the property owners.

### **III. PETITION**

In agreeing to consider a petition for creation of a PID, the County will require the following from the Applicant of the PID at the time the Petition is submitted, at a minimum:

- A. A fully executed PID Development Review Fee Agreement in the form attached hereto as Exhibit “A” with an initial deposit of \$25,000 to cover all administrative or operational costs incurred by the County for legal, engineering, administrative and financial advisory services, and fees in connection with vetting the request for a PID. The payment of such fees is not a guarantee that the County will approve the creation of the PID but is an initial fee for review of the application, processing the petition and creating the PID, if applicable.

- B. Evidence that the Applicant has the expertise and financial backing to complete the new development to be supported by the PID financing sources of funding to fund the balance of the improvements in the PID not eligible to be funded by PID issued financing, as prepared by a professional financial or accounting firm on behalf of the applicant. The information shall be presented for review by the County Budget & Fiscal Policy Department and the Office of the County Auditor.
- C. Proposed development plan including conceptual layouts, land studies, and construction schedule, as applicable
- D. Identify all estimated project costs, including acquisition, construction, soft costs, and applicable long-term management costs.
- E. Demonstrated previous experience developing similar scale and type of project.
- F. The proposed development must be consistent with the entitlements on the property. If applicable Zoning for the proposed development must be in place prior to PID creation or concurrent with PID creation. The Applicant must provide evidence to the County that the utility service providers have or will have sufficient capability to provide all necessary utility services for a PID.

#### **IV. REQUIREMENT FOR DEVELOPMENT AGREEMENT**

With an application for a PID, the Applicant must acknowledge the obligation to enter into a Development Agreement if the Petition is accepted and before the PID is finally created. The Development Agreement will include, but not be limited to, the following provisions, as the same may be applicable to the type of PID proposed:

- A. All PIDs shall be self-sufficient. In no case shall any consideration or approval of a PID create a recourse position for the County, where the County is asked to pledge its full faith and credit or responsible for repayment of any debt.
- B. Outline at least six of the County's desired community benefits incorporated by the proposed development;
- C. A development plan that outlines, at a minimum, land use and thoroughfare connections and is consistent with the County's Master Thoroughfare Plan, Parks Master Plan and any other applicable and relevant County or municipal long-range planning documents and requirements, as amended;
- D. The proposed development will substantially contribute to funding the expansion of arterial streets, major collector roadways, and trunk line utility infrastructure, as applicable when necessary to exceed existing standards pursuant to the County Subdivision Order and relevant municipal ordinances applicable for properties located within the extraterritorial jurisdiction of a municipality, and to address the projected demand for services and impacts of the development;
- E. The development will be located within an existing Water and Wastewater Certificate of Convenience and Necessity (CCN) or expanded CCNs facilitated by the developer;

- F. Plans for the proposed development shall be prepared and reviewed by the County in compliance with the County's Subdivision Order, Flood Damage Prevention Order, Airport Zoning Protection Order and any other development regulations related to land use, infrastructure design, permitting, and inspections; Applicant shall seek County development approvals prior to the commencement of any construction in accordance with all existing rules and regulations.
- G. If the proposed PID is located in the ETJ of any municipality, written evidence of the approval from municipality of the creation of the PID shall be submitted to the County in the form of a legally binding resolution or ordinance.

## **V. COMMUNITY BENEFITS**

Subject to the requirements of the Act, the County will prioritize approval of PID petitions for land in the County that provide for the following public benefits to a degree that is superior to the benefits typically generated by real estate development projects not involving PID financing (the "Community Benefits").

- A. Projects that will generate primary employment or other long-term economic development benefits to the County, above and beyond the economic development benefits generated by typical residential developments.
- B. Improvements or services that meet or exceed the County 's design standards, take into consideration environmentally sensitive areas or natural features within the area for development.
- C. Projects that create or enhance parks, hike and bike trails, recreational facilities, open space benefits, etc. that exceed what is required by applicable development regulations.
- D. Projects that improve environmental protection, storm water quality, and flood control benefits that meet or exceed what is required by applicable development regulations.
- E. Affordable Housing Developments that may include senior housing, workforce housing, or veteran's housing.
- F. Projects that increase or enhance multimodal transportation options.
- G. Projects that improve public educational programs and/or facilities.
- H. Projects that provide enhanced benefits to improve the public roadway network in the County.
- I. Projects that provide enhanced water and wastewater infrastructure in the County.
- J. Projects as identified by the County to address community need as authorized by Chapter 372.
- K. Projects that provide significant economic development benefit to the community as determined by the Court.

- L. Projects that the Court, in its sole discretion determines are in the best interest of the community and are aligned with other County policies and directives regarding community development, economic development, and land use objectives.

## **VI. MINIMUM REQUIREMENTS FOR A PID**

To be considered by the County, the land development project supported by the PID must meet the following minimum requirements:

- A. The PID must achieve at least four of the Community Benefits, unless the land development project or PID is the type of project listed in subparagraph V (L) above and the Commissioner's Court in its sole discretion has determined the proposed PID has qualities it deems to be of exceptional benefit to the County.
- B. Petitioner will be required to pay fees for administrative or operational costs incurred by the County during the creation of a PID as set forth in the Development Review Fee Agreement. The payment of such fees is not a guarantee that the County will approve the PID. The costs a Petitioner will pay include but are not limited to:
  - i. Reviewing the PID petition;
  - ii. Publishing required legal notices;
  - iii. Preparation and review of creation proceedings and levy of assessments;
  - iv. Cost of the appraisal and reviewing the appraisal, the Feasibility Study, and Engineering Report including the cost of services provided by County consultants, attorneys, financial advisors and PID administrator;
  - v. Preparation of the initial Service and Assessment Plan by a PID Administration Firm who is approved by the County;
  - vi. Review and approval of plans for inspection of construction of PID improvements;
  - vii. Procurement of contracts for PID administration and operation, collection of assessments, foreclosures, etc.
  - viii. The County's ongoing administrative and operational costs related to an approved PID, such as collection of PID assessments, review and approval of Service and Assessment Plan updates, and other costs shall be reimbursed from PID assessments. The County's costs will be determined on an annual basis.
- C. Administration and management of ongoing PID responsibilities, such as preparation and updating of the Service and Assessment Plan ("SAP"), issuance of notices for annual County Commissioners Court action on the SAP, operation and maintenance of PID improvements, and other related matters shall be paid by PID assessments and performed by an experienced third-party firm under contract with the County.
- D. The County will use PID proceeds only to pay or reimburse the costs of PID improvements that have been designed and constructed to the applicable standards of, and accepted for maintenance or otherwise approved by, the governmental entity responsible for them.

- E. In the event of default under the terms of the PID Financing Agreement, the County shall, after providing notice and an opportunity to cure, have the right to capture reimbursements to complete development of public infrastructure.
- F. Prior to the finalization of the assessment structure, County and Developer must enter into a Reimbursement Agreement outlining the terms and conditions of the PID, the financing of PID improvements, the collection and distribution of assessment revenues, and other related matters.
- G. Property in the PID owned by the County shall not be subject to PID assessments. Property in the PID owned by another governmental entity may be assessed only pursuant to an inter-local agreement between the entity and the County. Additionally, the PID may not finance improvements or services that would not be accessible to the general public.
- H. If minimum requirements cannot be met, an explanation of why the minimum requirements cannot be met and alternatives provided to meet or exceed the requirement.

## **VII. PETITION REQUIREMENTS**

Where a proposed PID is identified, Applicant shall notify, in writing, the County Chief Administrator, or his/her designee, at least 30 days in advance of Applicant's intent to file a Petition. If requested, an Applicant must attend one or more pre-filing teleconferences scheduled by the County during the 30-day period. Petitions requesting establishment of a public improvement PID must satisfy all statutory requirements under §372.004 of the Texas Local Government Code. In addition, all petitions submitted for establishment of a public improvement PID shall include the following:

- A. The basic terms and conditions for creation of the PID, including the provision of Community Benefits.
- B. The petitioner's qualifications and previous experience with real estate development, financing of the development, prior PIDs, etc.
- C. A legal description of the boundaries of the PID, a black and white map of the PID boundaries suitable for publication for the legal notices and a "commonly known" description of the area to be included in the PID.
- D. A current tax roll of the owners in the PID.
- E. Any plan for phasing of both the real estate development supported by the PID and construction of public improvements in the PID.
- F. The estimated costs of the proposed improvements (in dollars, \$)
- G. The not to exceed maximum Assessment (in dollars, \$).
- H. The not to exceed maximum tax equivalent Rate (in cents, \$).
- I. A sunset clause, and a pre-executed petition to dissolve the PID by the landowner in case the SAP is not approved, and assessments levied for either reimbursement within three (3) years of the date of the Development Agreement.

- J. A plan for ensuring dissolution of the PID will not impose unintended costs on the County or other governmental entities, and that addresses the maintenance or disposition of PID improvements if a PID is dissolved.
- K. Evidence that the petition's signatures are genuine, or the petition will be accompanied by a reasonable fee to cover the County costs of signature verification.
- L. If the proposed PID is an expansion of an existing PID, a petition for the new segment of the proposed PID must identify each subdivision, or portion thereof, within the proposed boundaries of the new PID, and each subdivision or portion thereof, that is not currently in an existing PID shall individually satisfy the requirements for a petition under §372.005 of the Texas Local Government Code. Subdivision has the meaning assigned by §232.021 of the Texas Local Government Code.
- M. A section, which clearly identifies the Community Benefits of the PID to the affected property owners (for use in public hearing(s)) and to the County as a whole (i.e., promotes the interests of the County).
- N. Prior to the public hearing to consider the approval of the PID the landowner will provide description of all County-owned land within the PID as well as its proposed share of project costs, if any.
- O. Specified assurances to the County that the construction of improvements in the public right-of-way (not including roads or utilities maintained by the County) will be maintained by the PID and in no way obligates the County to future maintenance or operational costs, unless otherwise stated in a subsequent agreement.
- P. Statement that the petitioners understand that the annual budget for the PID is subject to review by County staff with final approval by the County Commissioners Court.
- Q. A certified check or a wire transfer for the application fee will be paid by the applicant to reimburse the County for the cost of evaluating the petition. This application fee must be paid in full when the petition is submitted to the County for evaluation and review. Petitioners must pay all direct costs of processing the PID petition, such as newspaper advertisements, postage, and contractors pursuant to the County's current Fee Schedule. If a Development Review Fee Agreement has been executed and the fees paid to the County, the application fee and review costs to evaluate the petition will be taken from the fees paid to the County.
- R. All estimated costs must be identified before a decision is reached on a request to establish a PID. Costs to be identified include costs related to establishing the PID; costs for maintenance, operations, and administration; and costs for later revision, repair, or replacement of any improvements.
- S. An independently prepared market analysis or feasibility study – to be prepared and submitted prior to the public hearing. The market analysis or feasibility study will assess the reasonableness of the public improvements and overall development plan in light of market conditions. The costs of the third-party market analysis will be paid by the PID Petitioner and the County will order the study.

- T. Include a provision that at the time of contract closing, a notification that anyone selling land in a public improvement PID must include a "title encumbrance" which notifies any prospective property owner of the existence or proposal of special assessments on the property. All closing statements must specify who is responsible for payment of the PID assessment on a pro rata share thereof.
- U. A plan for ensuring dissolution of the PID will not impose any costs on the County or other governmental entities and that addresses the maintenance or disposition of PID improvements if a PID is dissolved.

### **VIII. PREFERENTIAL FACTORS**

PIDs, in which the costs of public improvements are financed without County financial participation, other than revenue generated from PID are preferred. Except for public improvements specifically approved in a County, the County will not expend or pledge general fund revenue, general obligation bonds or certificate of obligation proceeds, other public funds, etc. to support the costs of PID improvements unless it is explicitly approved by County Commissioners Court as advancing a County purpose. In addition:

- A. PID petitions signed by 100% of the owners in the PID boundaries are preferred;
- B. PIDs that have a tax rate equivalent comparable to surrounding developments.
- C. Petitioners that can demonstrate indication of demand (letters of intent, builder contracts with earnest money) are preferred;
- D. PIDs that provide four or more community benefits are preferred;
- E. PIDs that have Engineer's Reports for improvements authorized by the PID and subdivision development are preferred.
- F. A PID's budget shall include sufficient funds to pay for all costs above and beyond the County's ordinary costs, including additional administrative and/or operational costs, including costs and fees associated with a third-party PID administrator engaged by the County.

### **IX. NOTICE, PUBLIC HEARING, APPROVAL OF THE PETITION AND PID PROCESS**

- A. County staff and consultants will assess the adequacy of the petition and the PID agreement and their compliance with this Order and the Act and recommend to the County Commissioners Court whether to proceed with a public hearing on the Petition.
- B. If the County Commissioners Court approves setting a public hearing on the PID petition, County staff will publish the newspaper notice and mail the notice to property owners required by the Act.
- C. The hearing may be continued from time to time. After the final adjournment of the public hearing, the County Commissioners Court has six months to adopt a resolution making the findings required by the Act to approve the Petition.

D. The PID Financing and Reimbursement agreement must be executed on or before the date the PID assessments are levied.

**X. PID ADMINISTRATION AND MANAGEMENT**

The County will contract with an outside consultant to administer the PID and to bill, collect, and track PID assessments. This cost will be considered a reimbursable project cost and shall be included in the PID Service and Assessment Plan.

**XI. CAPITALIZED TERMS**

Capitalized terms used in but defined in this Order shall have the meaning ascribed by the Act.



**Exhibit "A"**  
**DEVELOPMENT REVIEW FEE AGREEMENT**  
**INCURRED BY THE COUNTY FOR**  
**(Name of Project)**

**THIS AGREEMENT** ("the Agreement") is entered into this \_\_\_\_\_ day of 2021, by and between the County of El Paso, Texas, ("the County"), and ("Applicant") (collectively herein referred to as "the Parties").

**WHEREAS**, the Applicant owns certain real property situated in El Paso County, Texas described in Exhibit A, attached hereto, and incorporated herein by reference ("the Property");

**WHEREAS**, the Applicant desires to develop the Property and has made application to the County for the development of the Property pursuant to:

- Chapter 372 of the Texas Local Government Code to create a Public Improvement District ("PID");

**WHEREAS**, the Parties desire to memorialize their intent regarding Applicant's agreement to reimburse professional fees, administrative fees, and expenses, ("Development Review Fees") for review of the PID Application and Development Agreement for the \_\_\_\_\_ ("the Project") by the County and for the Development Review Fees for the development of the Project;

**WHEREAS**, the Parties hereto recognize that the County will continue to incur professional, administrative, and other expenses through the entire Application process including but not limited to the following: legal publications, notices, reproduction of materials, public hearing expenses, recording of documents, attorney fees, special consultant fees, and fees for administrative time of County staff;

**NOW, THEREFORE**, for and in consideration of the foregoing premises and of the mutual promises and conditions hereinafter contained, it is hereby agreed as follows:

1. For purposes of this Agreement, "Application" shall mean and include all documentation, data, and information submitted to the County to seek or obtain the creation of the Development Agreement and PID and approval by the County of additional documents required for the PID.

2. Applicant shall provide the sum of \$25,000 to the County to be held in escrow by the County for the Development Review Fees (described in paragraph 4 below) of County for the Application, exclusively for the above-mentioned Applicant's project (\_\_\_\_). When the balance in the escrow account reaches \$10,000 and should County need additional funds for the Development Review Fees, the County shall notify the Applicant in writing and the Applicant will make one or more additional payment(s) of \$10,000.00 each within thirty (30) days of such written request and such additional payment will be deposited by the County and utilized in the same manner described above. The payment(s) made by the Applicant under this Agreement are not contingent upon any outcome of the negotiations between the County and the Applicant. Failure by the Applicant to deposit additional funds within 30 days of receipt of written notice from the County that additional funds are needed may result in rejection of the Application and legal action to recover any amounts expended by the County in accordance with this Agreement. The County shall be entitled to collect all reasonable and necessary costs of court and legal fees incurred in connection with collecting amounts due and owing to the County pursuant to this Agreement.
3. The Applicant may terminate the Application at any time by giving written notice to the County. The County shall take all reasonable steps necessary to terminate the accrual of Development Review Fees to the Applicant and file such notices as are required by the County's regulations. The County shall notify the Applicant for any additional Development Review Fees that County may incur.
4. A budget of the projected County costs and expenses is set forth in Schedule 1 attached and made a part hereof (the "County Expense Budget"). The County Expense Budget contains a 10% contingency line item. The County agrees to seek applicant's approval prior to incurring any costs or expenses in excess of the County Expense Budget, but such approval shall not be unreasonably conditioned, withheld or delayed by Applicant. The County will account for all funds expended and incurred by the County in connection with review of the Application. The County will make statements of the Development Review Fees incurred available to the Applicant. Development Review Fees to be charged to the Applicant's account shall include, but shall not be limited to legal publications, notices, and reproduction of materials, public hearing expenses, recording of documents, attorney fees, special consultant fees, engineering fees and fees for reasonable administrative time of County staff in connection with the Application. The County shall notify the Applicant for any additional Expenses that County may incur in connection with the Application or development of the Project. Applicant's obligation to reimburse the County for Development Review Fees under this Agreement shall expire upon the first to occur of: (i) County denial of the Application, or (ii) Applicant's

withdrawal of the Application, at which time the County will provide the Applicant with a final statement of account and will refund to the Applicant any funds deposited by the Applicant that were not expended by the County, except where the Parties expressly agree to the contrary.

- 5 Applicant's obligation to provide the Development Review Fees provided for in this Agreement shall exist and continue independent of whether the Application, or any part thereof, is approved, approved with conditions, denied, withdrawn, or terminated by the County or the Applicant prior to a final decision in the process. The Applicant agrees to pay all Development Review Fees regardless of whether the County approves or denies the Application. The County shall not be stopped or otherwise limited or precluded from denial or conditional approval of the Application by the terms, conditions, or obligations of this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first written above.

**APPLICANT**

By:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

This document was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_ 2021, by  
\_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_ on behalf of said \_\_\_\_\_.  
[SEAL]

Notary Public in and for the State of Texas

**COUNTY OF EL PASO, TEXAS:**

By: \_\_\_\_\_  
\_\_\_\_\_, County \_\_\_\_\_

**ATTEST:**

By:

## **EXHIBIT A**

### Legal Description of Property