OFFICE OF THE MAYOR

December 23, 2020

Mr. Gregory Smith
Texas Historical Commission
Federal Programs Coordinator
History Programs Division
P.O. Box 12276
Austin, TX 78711-2276

RE: El Paso Downtown Historic District nomination to National Register of Historic Places.

Dear Mr. Gregory Smith

This letter constitutes the opinion of the Chief Elected Official as requested by the Texas Historical Commission (THC) regarding the proposed nomination of the El Paso Downtown Historic District nomination. Before providing the opinion, the City would like to inform the THC that the Mayor has not received the notification required under Title 36 of the Code of Federal Regulations. Title 36 of the Federal Regulations requires that the Chief Elected Official be notified about the State Board of Review meeting at least 30 days prior to the meeting. As of the date of this letter, the Mayor has not received the required notice of the State Board of Review meeting on this nomination. Proper notice of this nomination was crucial for the City since the City must go through a thorough review and approval process in order to respond to the THC's request for an opinion. Given the failure to receive proper notification as required by law, the City has been unable to timely procure the consultants it needed to provide the THC a complete opinion. As such, the City is forced to send this opinion without consultant reports. The City will be supplementing this opinion with consultant reports once those reports are completed, hopefully before the January 15, 2021 deadline given by the THC. Nevertheless, the City requests that the THC postpone the State Board of Review hearing to the following scheduled State Board of Review meeting to allow the City time to provide the THC and the State Board of Review with a proper response in order to ensure that that the State Board of Review has complete information regarding this nomination.

OPINION

On August 3, 2020, HHM & Associates, Inc., on behalf of the County of El Paso, filed an application with the THC to nominate the El Paso Downtown Historic District for inclusion in the National Register of Historic Places. The proposed El Paso Downtown Historic District boundary

includes an area designated in the application and survey as the "barrio Duranguito" or "Duranguito". Barrio Duranguito is identified in the survey and application as the area bounded by San Antonio Avenue on the North side, Santa Fe Street on the East, Paisano Drive on the South, and Leon Street on the West. Barrio Duranguito includes the proposed site of the City of El Paso's Multipurpose Performing Arts and Entertainment Center (MPC) project. The MPC site is bounded by Overland Avenue on the North, Santa Fe Street on the East, Paisano Drive on the South, and alley G between Leon and Chihuahua Street to the West as more particularly shown in the attached Exhibit "A" (this area will be referred to in this letter as the "MPC Site") The City **opposes** the inclusion of the MPC Site as part of the nomination to the National Register of Historic Places for Downtown El Paso. The City has no opposition regarding the remainder of the proposed El Paso Downtown Historic District boundary.

1. **MPC Site's structural condition affects the integrity of the Barrio Duranguito area and Downtown District.**

Title 36, Section 60.4 of the Code of Federal Regulations describes the criteria for evaluating nominations to the National Park Service for inclusion in the National Register of Historic Places. Section 60.4 provides that the National Park Service publishes guidance on how to apply the criteria listed in Section 60.4. Currently, the National Park Service publishes the National Register Bulletin on How to Apply the National Register Criteria for Evaluation (National Register Bulletin). The National Register Bulletin provides that a district is not eligible for inclusion in the National Register if it contains so many alterations or new intrusions that the district no longer conveys a sense of historic environment. (pg. 64). Further, the National Register Bulletin provides that a component of a historic district cannot contribute to the significance of the district if the component has been substantially altered since the period of the district's significance. (Page 64). The current condition of the MPC Site prevents Duranguito from contributing to the significance of the proposed district and further damages the integrity of the proposed El Paso Downtown Historic District.

The survey narrative submitted by the applicant assess the properties within the Duranguito area to be in sufficiently good condition to be contributing structures to the El Paso Downtown Historic District. However, several of the properties identified as contributing and independently eligible properties within the MPC Site are currently deteriorated to the point that they are no longer suitable nor secure for any type of use. Currently the buildings within the MPC Site are closed off to the public as they pose a risk to life and property. For your review, the City is submitting photographs depicting the current condition of the properties as Exhibit "B" to this letter. As a way of background, the City has been involved in protracted litigation over the development of the MPC site. The City is currently under yet another emergency stay granted by the 8th Court of Appeals, but for the current order and several others, the buildings would have been demolished approximately two years ago due to the public safety concerns those structures pose. Instead the City has had no choice but to maintain the buildings under strict closure from public access until the City obtains a final judgement. The City will be sending the THC a professional assessment of the architectural and structural integrity of buildings within the MPC Site as a supplement to this opinion.

It is also important to note that the current structural condition of some of the buildings within the MPC Site may require demolition regardless of whether the MPC project continues. The cost of restoring these buildings to a safe condition is likely to be substantial (if the buildings can be saved) and currently there are no funds available that may be used for the restoration of the MPC Site. As such, should the City be unable to demolish the buildings to continue with the MPC project, the buildings will remain in their current condition as an area of blight within the Duranguito area and the El Paso Downtown Historic District for an indefinite period of time.

Given that the current condition of the MPC Site properties prevent the Duranguito properties from having integrity as required in the Bulletin and jeopardize the integrity of the proposed district as a whole, the THC and State Board of Review need to exclude the MPC Site from the proposed nomination.

2. Context of the Multipurpose Performing Art and Entertainment Center (MPC) Project

On November 2012, El Paso voters approved a $245 million bond program that provided for the construction of three signature projects within the City of El Paso (Children's Museum, Mexican American Cultural Center, and the Multipurpose Performing Art and Entertainment Center (the MPC)). The bond language specified that the MPC be located in the downtown of El Paso. Following the approval of the bond package by the voters, the City hired an urban design consultant to evaluate multiple locations within the El Paso downtown for the location of the MPC project. In the summer of 2015, City Council approved the MPC Site as the location for the project. Part of the decision in selecting the MPC Site as the location for the MPC project was the fact that this area was one of the few areas in downtown El Paso that does not have any historic designation (federal, state, or local) as well as being the location that would be least disruptive to the urban fabric of downtown El Paso.

Following approval of the MPC Site by City Council, the City proceeded to acquire the properties. Currently the City owns 18 out of 20 parcels within the footprint of the MPC Site. The City coordinated with the THC throughout the property acquisition phase to ensure that the City obtained any required archeological permits from the THC as required under the Texas Antiquities Code. On October 16, 2018**,** the THC issued to the City Permit Number 8525 allowing the City to perform intensive survey work on MPC Site. The ground penetrating methods approved by the THC require the demolition of certain buildings. However, due to ongoing litigation, the City has been delayed in continuing with archeological work on the site as required by the THC and the Texas Antiquities Code.

3. Litigation against THC and City.

In July 2017, Mr. Grossman filed a lawsuit against the City of El Paso in the 384th District Court, seeking a temporary restraining order and temporary injunction against the City for threatened violations of the Antiquities Code. At the time of the lawsuit, the City owned less than the required 5 acres which would have triggered THC review under the Antiquities Code. Although the City was under no legal obligation at that time, the City agreed to work with the THC to make sure all requirements of the Antiquities Code were met. On October 16, 2018**,**

THC issued Permit Number 8525 allowing the City to perform intensive survey work on MPC Site. On October 23, 2018, Mr. Grossman filed a lawsuit against Mark Wolfe, Executive Director of the THC, claiming the issuance of the archeological permit was an illegal act which eventually lead to the THC suspending the permit issued to the City pursuant to an order of the Third Court of Appeals in Travis County Texas. In the lawsuit, the State Architect testified that the buildings on the MPC Site had no architectural significance. In the opinion issued by the Third Court of Appeals, the court also found those buildings had no architectural significance. Following the appeal and a denial of review from Texas Supreme Court, the THC ultimately prevailed in the lawsuit and on October 7, 2019 the THC reinstated the City's permit to perform an archeological survey. The permit included permission to demolish the buildings on the site in order to complete the required archeological survey. On October 24, 2019, the 384th District Court in El Paso County also denied Mr. Grossman's request for a temporary injunction against the City. In that suit Grossman again sought to enjoin the demolition of buildings within the MPC Site claiming, again, that it would be an illegal act for the City to perform the archeological survey permitted by the THC. On that same day, Mr. Grossman filed an appeal with the 8th Court of Appeals in El Paso County. Following the filing of the appeal, the 8th Court of Appeals granted Mr. Grossman an emergency stay to prevent the City from performing the archeological survey permitted by the THC including demolition of the buildings within the MPC Site while the court makes a decision on the appeal. Currently, any and all work is suspended pending a decision from the 8th Court of Appeals.

4. **City of El Paso makes a request to El Paso County to remove the MPC site from the survey presented for nomination to the National Register of Historic Places.**

On September 15, 2020, the City Council of the City of El Paso voted to notify the County of El Paso that although the City supports the nomination of Downtown El Paso to the National Register of Historic Places, the City could not support the inclusion of the MPC Site within the nomination due to the ongoing multimillion dollar project approved by the voters of El Paso as well as ongoing litigation. A formal letter was sent to the County of El Paso informing the County of the vote by the El Paso City Council as well as requesting the County to exclude the MPC Site from the Downtown survey boundary. The letter is attached to this letter as Exhibit "C". The City to this date has not received a response from the County despite the fact that the County has collaborated with other entities to exclude properties from within the boundaries of the survey that will be presented to the State Board of Review. Specifically, the County excluded property owned by the El Paso Housing Authority, so as not to interfere with its plans for the development of that property.

5. **Supporting Materials:**

Attached to this letter, the THC and the State Board of Review will find the supporting documentation listed below. As provided above, the City will be sending additional supporting documentation to be included as part of the record considered by the State Board of Review.

- Exhibit "A" - MPC Site Boundary Map

- Exhibit “B” - Photographs depicting condition of buildings within MPC Site
- Exhibit “C” - Letter to County asking to exclude MPC

Request

The City respectfully requests the THC and the State Board of Review to exclude the MPC Site from the nomination to the National Register of Historic Places. Further, the City respectfully requests that the THC and the State Board of Review postpone the January 16, 2020 meeting to the next available THC meeting in order to afford the City enough time to provide the THC and State Board of Review with additional information.

Sincerely,

Dee Margo
Mayor of El Paso

Exhibit "A"

MPC Site Boundary Map

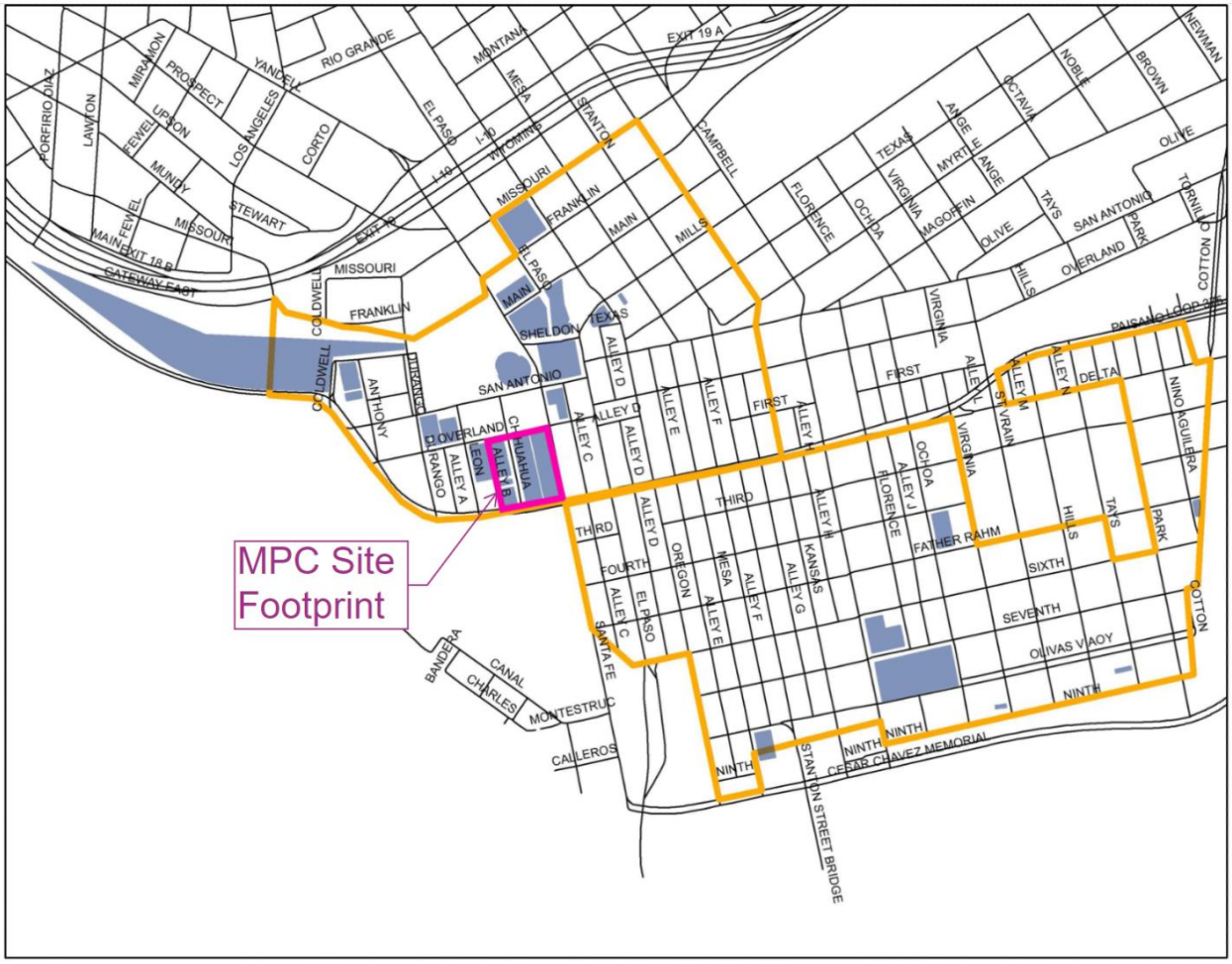

Exhibit "B"

Photographs depicting condition of buildings within MPC Site

Exhibit "C"

Letter to County asking to exclude MPC

Capital Improvement Department

MAYOR
Dee Margo

CITY COUNCIL

District 1
Peter Svarzbein

District 2
Alexsandra Annello

District 3
Cassandra Hernandez

District 4
Dr. Sam Morgan

District 5
Isabel Salcido

District 6
Claudia L. Rodriguez

District 7
Henry Rivera

District 8
Cissy Lizarraga

CITY MANAGER
Tommy Gonzalez

To: Betsy Keller
Chief Administrator
El Paso County

Andrea Adkins-Hutchins
Economic Development Director
El Paso County

CC: Gregory Smith
Federal Programs Coordinator
Texas Historical Commission

Date: September 21, 2020

Re: Nomination of Downtown and Segundo Barrio Districts to the National Register of Historic Places

To The County Commissioners' Court:

At the September 15 Regular City Council meeting, the City Council was updated on the County's proposed nominations of the Downtown and Segundo Barrio districts to the National Register of Historic Places. This was item 20.2 on the agenda.

After City staff made the presentation, the City Council of El Paso approved the following motion:

RECOMMEND approval the County's nomination of the Downtown and Segundo Barrio areas to the National Register of Historic Places and **REMOVE** the MPC (Multi-Purpose Center) boundaries from downtown project.

With this motion, the City Council approved the motion to approve and support the designation of the Segundo Barrio District, and approve and support the Downtown District with the MPC footprint being taken out. Please see attached exhibit. We would like to continue to work with County staff to effectuate this request by the City Council via the public filings and comments to your consultant and the state as part of the process.

Sam Rodriguez, P.E. – City Engineer / Managing Director
Capital Improvement Dept., 218 N. Campbell, El Paso, TX 79901

EPTX CITY OF EL PASO DELIVERING **EXCEPTIONAL** SERVICES

Capital Improvement Department

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Cissy Lizarraga

CITY MANAGER
Tommy Gonzalez

Please let us know what additional documentation or information that may be required in support of this request.

Sincerely,

Sam Rodriguez, PE
City Engineer

Sam Rodriguez, P.E. – City Engineer / Managing Director
Capital Improvement Dept., 218 N. Campbell, El Paso, TX 79901

EPTX CITY OF EL PASO
DELIVERING **EXCEPTIONAL** SERVICES