Office of the City Attorney

May 3, 2017

Mr. Francis S. Ainsa, Jr.
Ainsa Hutson Hester & Crews, LLP
Attorneys at Law
5809 Acacia Circle
El Paso, Texas 79912

By email to: fain@acaciapark.com

Re: Letter Dated April 17, 2017

Mr. Ainsa:

I am in receipt of a copy of the letter addressed to Mayor and City Council in which you threatened litigation and demanded the City Council reevaluate and rescind their decision to use funds generated by the sale of the 2012 Quality of Life Bonds to construct a project in the Union Plaza. I discussed the matter at length with my client and sought authority from the Council to respond appropriately. In order to dispel any and all doubts about the legality of the actions which have been taken and will be taken in the future with regard to the Multi-Purpose Performing Arts and Entertainment Facility, the City Council authorized me to engage outside counsel and to take action to file an expedited bond validation action pursuant to Chapter 1205.001 et. seq. of the Texas Government Code. Such an action entitles issuers of public securities to obtain a declaratory judgment confirming, among other things, the validity of proposed public securities, public securities authorizations, expenditures of money related to public securities, and contracts related to projects funded through the issuance of public securities. I have attached a courtesy copy of the Original Petition which was filed in Travis County for you and your clients.

Sincerely,

Sylvia Borunda Firth
City Attorney

Enclosure

Cc: Mayor and Council
Tommy Gonzalez

Sylvia Borunda Firth – City Attorney
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Velva L. Price
District Clerk
Travis County
D-1-GN-17-001888
Carrisa Escalante

NO. **D-1-GN-17-001888**

	§	IN THE DISTRICT COURT OF
EX PARTE	§	
	§	TRAVIS COUNTY, TEXAS
	§	
CITY OF EL PASO	§	**250TH** JUDICIAL DISTRICT
	§	

ORIGINAL PETITION OF THE CITY OF EL PASO FOR CHAPTER 1205 EXPEDITED DECLARATORY JUDGMENT

This is an expedited bond validation action brought pursuant to Chapter 1205.001 *et. seq*. of the Texas Government Code ("***Chapter 1205***"), which entitles issuers of public securities to obtain a declaratory judgment confirming, among other things, the validity of proposed public securities, public securities authorizations, expenditures of money related to public securities, and contracts related to projects funded through the issuance of public securities.[1] Chapter 1205 provides a statutory framework for accelerated resolution, in a single forum, of all issues that have been or could be raised that affect the validity of the public securities, ordinances, elections and/or authorizations described in this Original Petition.[2]

I.
STATEMENT OF THE CASE

Following a 2012 duly-held election by the voters of the City of El Paso (the "***City***"), the City has issued, and is planning to further issue, general obligation bonds for various public projects, including the development of a multi-purpose performing arts and entertainment facility (the "***Facility***") in downtown El Paso ("***Downtown***" or "***Downtown El Paso***"). In light of recent objections by a group of El Paso taxpayers to the City's efforts to move forward with the development and construction of the Facility, the City files this Chapter 1205 action to obtain

[1] Tex. Gov't Code Ann. § 1205.021.
[2] Tex. Gov't Code Ann §§ 1205.025, 1205.061.

judicial validation of its authority to proceed with the construction of the Facility proposed to and approved by the voters, in the Downtown location proposed to and approved by voters.

II.
DECLARATORY JUDGMENT RELIEF REQUESTED

The City, as an issuer of public securities, seeks to obtain on an expedited basis, declaratory judgment that:

(a) Ordinance No. 017849 authorizing the November 6, 2012 bond election (the "***Election Ordinance***") and the November 6, 2012 election (the "***Election***") in which El Paso voters approved the issuance of City general obligation bonds to finance the Facility (among other projects) are legal, valid, enforceable and incontestable;

(b) the City is fully authorized to issue general obligation bonds to finance the acquisition, construction, improvement and equipping of the Facility and the acquisition of land and rights-of-way therefore (the "***Bonds***");

(c) to the extent the Bonds have been previously issued,[3] such Bonds are legal, valid, enforceable and incontestable; and the additional Bonds to be issued to finance the costs of the Facility, when issued in conformity with applicable law and as approved by the Texas Attorney General, will be legal, valid, enforceable and incontestable;

(d) the City is fully authorized to expend the current and future proceeds of the Bonds for the acquisition of land, design, development, construction, improvement, and equipping of the Facility, and each such expenditure and proposed expenditure relating to the Bonds and the Facility is legal, valid, enforceable, and incontestable;

(e) the proposed Facility constitutes a valid "multi-purpose performing arts and entertainment facility" as described in the Election Ordinance and as approved by the voters in the Election, and the use of such Facility for various sports and sporting events, which are a common form of entertainment, is legal, valid, enforceable and incontestable;

(f) the Election Ordinance and the resulting contract with the voters require that the Facility be located in Downtown El Paso;

[3] Costs of the Facility are being financed from more than one series of Bonds. Portions of the following previously issued Bonds have been or will be used to fund Facility costs: the "City of El Paso, Texas General Obligation Refunding and Improvement Bonds, Series 2014," the "City of El Paso, Texas General Obligation Refunding and Improvement Bonds, Series 2015" and the "City of El Paso, Texas General Obligation Bonds, Series 2016." The City anticipates issuing additional Bonds to further fund the costs of the Facility.

(g) the City has the discretion to determine specifically where, in Downtown El Paso, the Facility will be located;

(h) the Union Plaza District site located in Downtown El Paso is one legal, valid, enforceable and incontestable location for the construction of the Facility; and

(i) the Election to authorize the issuance of the Bonds for the Facility under state law supersedes any current, future or potential attempt to use the right of initiative, pursuant to the City Charter, to hinder or delay the Facility, and any pending controversy regarding such initiative or any future attempt to invoke the initiative provision in the City Charter to hinder or delay the Facility shall have no legal effect upon the Bonds or the Facility.

Chapter 1205 requires the Court, upon receipt of this Original Petition, to "immediately issue an order" setting the matter for trial "at 10:00 a.m. on the first Monday after the 20th day after the date of the order."[4] **As the first Monday after the 20th day after the date of the order will be Monday, May 29, 2017, a legal holiday (Memorial Day), the City proposes that the matter be set for trial at 10:00 a.m. the following day, *i.e.*, Tuesday, May 30, 2017.** In the alternative, the City will make itself available at the time the Court determines appropriate under the statute, the Texas Rules of Civil Procedure and the interests of justice and equity.

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[4] Specifically, Tex. Gov't Code Ann § 1205.041 provides:

(a) The court in which an action under this chapter is brought shall, on receipt of the petition, immediately issue an order, in the form of a notice, directed to all persons who:
  (1) reside in the territory of the issuer:
  (2) own property located within the boundaries of the issuer;
  (3) are taxpayers of the issuer; or
  (4) have or claim a right, title, or interest in any property or money to be affected by a public security authorization or the issuance of the public securities.

(b) The order must, in general terms and without naming them, advise the persons described by Subsection (a) and the attorney general of their right to:
  (1) appear for a trial at 10 a.m. on the first Monday after the 20th day after the **order; and**
  (2) show cause why the petition should not be granted and the public securities or the public security authorization validated and confirmed.

The order must give a general description of the petition but it is not required to contain the entire petition or any exhibit attached to the petition. (Emphasis added).

III.
FACTUAL BACKGROUND

A. **The Facility and the Revitalization of Downtown El Paso**

1. Construction of a multi-purpose performing arts and entertainment facility in Downtown El Paso is an integral component of the City's economic development, Downtown revitalization, and quality of life investment initiatives. Since the adoption of its Downtown Plan more than a decade ago, the City has evaluated a wide range of potential projects to spur high quality economic development and bring new vibrancy to Downtown.

2. In furtherance of those economic development and revitalization goals, through lawful and appropriate action pursuant to the provisions of the Texas Government Code, and with full approval of the voters of El Paso, the City has undertaken certain of those potential projects which will create and improve public parks, museums, libraries, and cultural and performing arts and entertainment facilities.

3. The Facility – a multi-purpose performing arts and entertainment facility to be located in Downtown El Paso – is one such project currently underway.

4. The City Council and the voters of El Paso have authorized and financed (and will further finance) the Facility through the proper and legal issuance of the Bonds authorized by the Election.

5. The City has determined that a Union Plaza District location in Downtown El Paso is the most appropriate site location for the Facility, as it is a site that would provide great opportunity for citizen use, incremental sustained revitalization of Downtown, and minimized cost to the City.

B. **The Election Ordinance**

6. On August 14, 2012, the City Council, after a thorough public hearing, voted to approve Ordinance No. 017849 -- the Election Ordinance -- which set an election for approval of the City's issuance of the Bonds for November 6, 2012.[5] In relevant part, the Election Ordinance declared that the City would seek voter approval to issue $228,250,000 in general obligation bonds for

> acquiring, constructing, improving, renovating and equipping new and existing library, museum, cultural and performing arts facilities and improvements, including the acquisition of land and rights-of-way for such projects…such projects to include:
>
> Arts and Entertainment
>
> Multi-purpose performing arts and entertainment facility located in Downtown El Paso.[6]

7. The City purposefully included as an integral part of the Election Ordinance the location of the Facility (a "multi-purpose performing arts and entertainment facility located in Downtown El Paso"). That the Facility would be located in Downtown El Paso was widely published and openly debated prior to the Election.

C. **The Election and Contract With the Voters**

8. On November 6, 2012, the City held the Election and the voters were asked to vote For or Against the following:

> MUSEUM, CULTURAL, PERFORMING ARTS, AND LIBRARY FACILITIES PROPOSITION – "THE ISSUANCE OF $228,250,000 GENERAL OBLIGATION BONDS FOR MUSEUM, CULTURAL, MULTI-PURPOSE PERFORMING ARTS AND ENTERTAINMENT AND LIBRARY FACILITIES IMPROVEMENTS…"

[5] A true and correct copy of the Ordinance is attached hereto as **Exhibit A**.
[6] *Id.* at 3.

9. On November 6, 2012, through the Election, the citizens of El Paso voiced overwhelming support for the Facility (and other proposed facilities) and the City's proposed means of financing its construction via the Bonds. Thus, the proposed Bond issuance passed, which constituted the approval by the voters for the issuance of the Bonds for the financing of the Facility.

10. Under Texas law and Article I, Section 16 of the Texas Constitution, a "contract with the voters" exists when an issuer of government securities seeks approval from the voters to issue bonds and the voters grant such approval on the basis of the official action of the governing body of the government issuer. The binding nature of such a contract with the voters comes from a core principle of the Texas Constitution, the prohibition of laws that impair the obligation of contracts. The Texas Supreme Court has held that the voters, as parties to the contract created, are entitled to receive "substantially all of the benefits and security of that contract." Therefore, the governing body would violate its contract if it uses the voter-approved bond proceeds in a way that the voters did not approve.

11. Once the voters, in the Election, approved the Facility and approved the Bonds as the primary financing mechanism for it, the City's representations regarding the nature and Downtown location of the Facility, as memorialized in the Election Ordinance adopted by the City Council prior to the Election, formed an essential part of the City's contract with the voters. The portion of the Election Ordinance specifying a "multi-purpose performing arts and entertainment facility located in Downtown El Paso," was therefore a term of the City's contract with the voters. Moreover, the summary language contained in the Election ballot itself did not in any way limit the terms of this contract. Thus, by its express terms, the contract with the

voters requires that the Facility be a "multi-purpose performing arts and entertainment" facility *located in Downtown El Paso*.

D. **The Issuance of the Bonds**

12. In each case, following approval by the Attorney General of Texas, the City has issued its Bonds to partially finance the Facility. The City is planning to issue one more series of additional Bonds to finance the remaining costs of the Facility in accordance with applicable law and after approval of such issuances by the Texas Attorney General.

E. **The Determination of the Facility Site**

13. As a Home Rule city, the City has discretion to determine *where* in Downtown El Paso to locate the Facility.

14. After reviewing various studies regarding the most advantageous Downtown sites on which to locate the Facility, City staff recommended, and the City Council chose, a site within the Union Plaza District in Downtown El Paso in October of 2016.[7] Following such decision, there was additional public debate and discussion about the location of the Facility and in December 2016, the City Council passed a motion to study the feasibility of locating the Facility in a different location, *e.g.*, on the site of the City's current convention center. After additional public debate about various locations, however, the City Council unanimously confirmed the original Union Plaza District site location for the Facility in February of 2017.

15. In connection with the designation of the site location for the Facility, the City has entered into numerous agreements to advance the construction and development of the Facility. These agreements anticipate that the parties will begin work promptly on the Facility. Delay related to challenges to the Facility, the Bonds, the Election and/or the Election Ordinance will jeopardize these agreements and various timetables set out therein.

[7] Attached hereto as **Exhibit B** is a true and correct copy of a current map of the proposed Facility site.

F. **Contingent in Opposition to the Location**

16. On April 17, 2017, Francis S. Ainsa, Jr. wrote to City Mayor Oscar Leeser and the City Representatives, to inform them that he represents certain City taxpayers who oppose the use of the proceeds of the Bonds for construction of the Facility on the Union Plaza site. This opposition is based on the false assertion that the Facility proposed is materially different from the project presented to and approved by the voters in the Election. Ainsa complains on two specific grounds: (1) that the Facility contemplated does not qualify as a voter-approved multi-purpose performing arts and entertainment facility, as the Facility has been subsequently described as a "multi-purpose arena"[8] where sports events will be held in addition to the other entertainment events; and (2) that, since the Election Ordinance only, and not the ballot for the Election, contained the phrase "located in Downtown El Paso," the City is not required to locate the Facility in Downtown El Paso.

G. **The City's Request for Validation and Certainty**

17. The City has acted lawfully and is entitled to continue to meet its obligations, pursuant to the Election Ordinance passed, and the vote of the citizens authorizing the Facility and its financing through the Bonds, regardless of efforts by a small number to circumvent the Facility and Bond authorization.

18. Given the urgency with which the City is trying to work for the good of its citizens and the damage lingering uncertainty on these specifics injects into the Facility project, the City brings this Chapter 1205 action on behalf of and for the benefit of the City, as it seeks to proceed with confidence and certainty in the development, construction and financing of the

[8] Mr. Ainsa incorrectly concludes the Facility will be a "sports arena," rather than a "multi-purpose performing arts and entertainment facility," based on a City website posting that suggests that *in addition to* performing arts and cultural events, the Facility may serve as a venue for athletic and recreational events.

Facility, assured by order of this Court that its actions, are legal, valid, enforceable and uncontestable under the laws of the State of Texas.

IV.
NATURE OF THIS CHAPTER 1205 ACTION

19. Chapter 1205 provides issuers of public securities such as the City with an efficient procedure for confirming the validity of public securities and their associated contracts and obligations, either before or after the public securities are authorized, issued, or delivered.[9] An action under Chapter 1205 simultaneously provides a single forum for timely addressing and adjudicating any concerns that could conceivably be raised by the Attorney General or any Interested Party (defined below). Specifically, §1205.021 provides in pertinent part that an issuer of public securities may:

> [B]ring an action under this chapter to obtain a declaratory judgment as to:
>
> (1) the authority of the issuer to issue the public securities;
>
> (2) the legality and validity of each public security authorization relating to the public securities, including if appropriate:
>
> (A) the election at which the public securities were authorized;
>
> (B) the organization or boundaries of the issuer;
>
> (C) the imposition of an assessment, a tax, or a tax lien;
>
> (D) the execution or proposed execution of a contract;
>
> (E) the imposition of a rate, fee, charge, or toll or the enforcement of a remedy relating to the imposition of that rate, fee, charge, or toll; and
>
> (F) the pledge or encumbrance of a tax, revenue, receipts, or property to secure the public securities;

[9] Section 1204.025 provides: "An issuer may bring an action under this chapter: (1) concurrently with or after the use of another procedure to obtain a declaratory judgment, approval, or validation; (2) before or after the public securities are authorized, issued, or delivered; (3) before or after the attorney general approves the public securities; and (4) regardless of whether another proceeding is pending in any court relating to a matter to be adjudicated in the suit."

(3) the legality and validity of each expenditure or proposed expenditure of money relating to the public securities; and

(4) the legality and validity of the public securities.

The Supreme Court of Texas has long recognized that the legislature intended for courts to quickly resolve any proceedings brought under Chapter 1205. *See Buckholts Indep. Sch. Dist. v. Glaser*, 632 S.W.2d 146, 150-51 (Tex. 1982); *Rio Grande Valley Sugar Growers, Inc. v. Attorney General*, 670 S.W.2d 399, 401 (Tex. App.-Austin 1984, writ ref'd n.r.e.) ("The total thrust of [article 717m-1, predecessor statute to Chapter 1205] is to dispose of public securities validation litigation with dispatch.").

V.
DISCOVERY LEVEL

20. Due to the expedited nature of this action, the City does not intend to conduct discovery under the levels outlined in Rule 190 of the Texas Rules of Civil Procedure. Rather, as provided by Chapter 1205.064, the records of the City that relate to the public securities will be made open to inspection at reasonable times[10] to any person or entity that becomes a party to this action.[11] The Court may also take judicial notice of those public records not attached to this Original Petition.[12]

VI.
PARTIES, JURISDICTION, AND VENUE

A. Parties

21. The City was incorporated in 1873 and is a home-rule municipality located entirely within El Paso County, Texas, organized and operating under the laws of the State,

[10] Tex. Gov't Code Ann § 1205.064(a) ("Each record of an issuer relating to the public securities, a public security authorization, or an expenditure of money relating to the public securities is open to inspection at reasonable times to any party to an action under this chapter.").
[11] A person may become a party to this action through the procedures outlined in § 1205.062.
[12] Public documents related to the Facility are available for inspection at the City Hall of the City. A number of such public documents are available on the City's website at http://home.elpasotexas.gov/mpc (last retrieved May 1, 2017).

including Article XI, Section 5 of the Texas Constitution. As such, the City is an "issuer" of public securities within the meaning of Section 1205.001 of Chapter 1205.

22. The City is authorized to issue public securities within the meaning of Section 1205.001(2) of Chapter 1205.

23. Chapter 1205 provides that all persons who reside within the territory of the City; who own property located within the boundaries of the City; or who have or claim a right, title, or interest in any property or money to be affected by a public security authorization or the issuance of the public security (individually, an "***Interested Party***" and collectively, the "***Interested Parties***") are parties to this action and any judgment rendered in this action is binding upon all Interested Parties.[13] An Interested Party may become a party to this action by filing an answer to this Original Petition on or before the time set for trial, or thereafter by intervention with leave of the Court.[14]

24. Defendants thus include all Interested Parties, as well as the Honorable Ken Paxton, in his official capacity as Attorney General of the State of Texas (collectively, the "***Defendants***").

B. **Jurisdiction and Venue**

25. ***The trial and show cause order*:** Jurisdiction over the Interested Parties may be had through publication of notice as provided by Sections 1205.041 and 1205.043-.044 of Chapter 1205. Specifically, Section 1205.041 of Chapter 1205 requires that, upon receipt of this Original Petition, the clerk of the court where this Original Petition is filed issue an order, in the form of a notice, advising the Defendants of their right to appear for trial at 10:00 a.m. on the

[13] Tex. Gov't Code Ann § 1205.023.
[14] *Id.* at § 1205.062.

first Monday after the 20th day after the date of the order[15] and show cause why this Original Petition should not be granted and the undertaking of the Facility and the issuance of the Proposed Bonds, together with the associated agreements, contracts and transactions herein described, should not be adjudged to be valid, enforceable and incontestable.

26. ***Notice*:** Section 1205.043 of Chapter 1205 further directs that the clerk shall give notice by publishing a substantial copy of the Order in a newspaper of general circulation in Travis County, Texas, and in a newspaper of general circulation in the County, where each Issuer has its principal office. The notice shall be published once a week for two (2) consecutive calendar weeks, with the first publication not less than fourteen (14) days prior to the date set for trial. In such manner, all to this lawsuit, with the exception of the Attorney General, shall thereby be made parties to these proceedings and the Court shall have jurisdiction over them to the same extent as if individually named as defendants in this Original Petition and personally served with process in this cause.[16]

27. ***Attorney General*:** Defendant Attorney General Ken Paxton is named and sued herein pursuant to Section 1205.042 of Chapter 1205, and may be served at the Office of the Attorney General of Texas, 300 W. 15th Street, Austin, Texas 78711.

28. ***Venue*:** Venue is proper in Travis County pursuant to Section 1205.022 of Chapter 1205.

[15] See comment in Section II above regarding the Monday after 20 days falling on Memorial Day and the City's request that the Court set this matter for hearing at 10:00 a.m. the following day, *i.e.*, Tuesday, May 30, 2017.
[16] *Id*. at § 1205.044.

VII.
APPLICABLE LAW AND ARGUMENT

A. **As the Election and Bonds Are Valid Given Voter Approval, and Incontestable Given the Passage of Time, the City May Proceed With the Facility's Construction in Downtown El Paso.**

29. The City has taken all necessary steps to establish its authority to finance and build the Facility as described herein.

30. The City's method for financing the Facility and related expenditures is wholly consistent with Texas law.

31. With the Election Ordinance, the City called for an election to seek voter approval for issuance of bonds for the creation of various facilities, including performing arts and entertainment facilities. The ballot proposition included in the Election Ordinance and submitted to the voters on November 6, 2012 also designated the method of financing the project and sought approval to issue the Bonds as required by the Texas Local Government Code.

32. The voters approved the issuance of the Bonds and the Facility by wide margin. No further voter authorization is required by statute or the City Charter to finance and develop the Facility.

33. In addition, the Downtown location of the Facility always was an essential element of the Facility and was specifically included in the Election Ordinance. That the Facility would be Downtown was widely known and debated at the time of the Election and as such was approved by the voters as a matter of law pursuant to the long established doctrine of "contract with the voters."[17]

34. The terms of the contract with the voters are established by language of the ballot proposition, together with the ordinances, resolutions, and representations approved by the

[17] *See, e.g. San Saba County v. McCraw*, 108 S.W.2d 200, 203-04 (Tex. 1937); *Taxpayers for Sensible Priorities v. City of Dallas*, 79 S.W.3d 670, 674 (Tex. App.—Dallas 2002, pet. denied).

governing body of the entity calling the election.[18] As set forth herein, in the months preceding the Election, the City Council adopted the Election Ordinance at a public meeting that made unequivocal representations regarding its intention to locate the Facility in Downtown El Paso. The location of the Facility is a material term of the contract with the voters and the City may not repudiate its duly adopted representations through future ordinance or any other mechanism without violating its contract with the voters.[19] Accordingly, no subsequently proposed ordinance or other political maneuver will alter the authority of the City to proceed with and to consummate the construction and financing of the Facility, at a Downtown location to be determined by the City.

35. State law not only prescribes the method by which the City and the voters authorize and approve a bond project, it also prescribes the method by which the results of a duly held election may be challenged. Specifically, the Texas Election Code requires the City to canvass the returns of an election and sets forth the grounds on which such election may be challenged and the timeline for raising any challenge to the election's results. The City canvassed its Election on November 19, 2012. Pursuant to Section 232.008 of the Election Code, the results of such Election are incontestable 30 days following such canvass. That deadline expired on December 19, 2012. Any proposed initiative ordinance and any use of the City Charter provisions for initiative or referendum to delay or significantly change the terms of

[18] *Taxpayers for Sensible Priorities, supra*, note 62 at 675; *See also, Davis v. Duncanville Ind. Sch. Dist.*, 701 S.W.2d 15, 16 (Tex. Ap. – Dallas 1985) (noting that representations that were not "orders, statements, or representations concerning the bond election [that] were adopted by the Board at a called meeting" do not form part of the contract with the voters).

[19] *See Moore v. Coffman*, 109 Tex. 93, 95 (Tex. 1918) (where location for bond project is designated, it is assumed to be a material part of the contract with the voters and construction at the designated location "becomes simply a matter of keeping faith with those whose will the election expressed.").

the contract with the voters that was ratified in the Election would be an attempt to collaterally attack the results of a valid election while evading the strict requirements of the Election Code.[20]

36. Because the Facility and the Bonds were approved pursuant to law, the City was and is authorized to issue the Bonds and commence building the Facility.

B. **As No Further Approval is Required, the City May Not Be Prevented From Exercising Its Lawful Authority to Construct the Facility in Downtown.**

37. The City has sought and received both City Council and voter approval required by Texas law to finance and construct the Facility.

38. No provision of federal or Texas law requires the City to submit, to popular vote, any single component of the Facility project, aside from the Bonds' approval. Indeed, the sole vehicle for voter approval of the Bonds and the Facility is through an election describing the project and its proposed financing and containing the statutorily mandated ballot language.

39. There is not, nor can there be, any grounds for requiring a second vote on any aspect of the Facility and/or the Bonds.

40. Chapter 1205 expressly grants this Court jurisdiction over and the authority to enjoin or consolidate into this suit any other action with the potential to affect the validity of the Bonds, their authorization and related issues..[21] The City hereby moves that the court enjoin the maintenance of any other such action and consolidate any such action with this suit for prompt resolution according to the accelerated schedule set by the Chapter 1205.

C. **The Plain Meaning of the Election Ordinance and the Contract With the Voters *Requires That the Facility Be Located Downtown.***

41. As set forth above, under Texas law, a "contract with the voters" exists when an issuer of government securities seeks approval from the voters to issue bonds and the voters

[20] *See, e.g., Kelsey v. Corbett*, 396 S.W.2d 440, 442 (Tex. App. – El Paso 1965) (writ refused n.r.e.) (holding that an election contest pursuant to the statute was the exclusive remedy for challenging tax imposed by election).
[21] *See* 1205.061.

grant such approval on the basis of the official action of the governing body of the government issuer. At the very least, the terms of a contract with the voters include the expressed language and purposes stated in an election ordinance or order formally adopted by the governing body (including the full bond proposition language). The summary language contained in the ballot itself does not limit the terms of this contract.

42. In Texas, the binding nature of such a contract with the voters comes from Article I, Section 16 of the Texas Constitution, which prohibits laws that impair the obligation of contracts. That prohibition applies to both state statutes and municipal ordinances and also has been held to apply to a contract with the voters (as well as written contracts). The Texas Supreme Court has held that the proceeds from bonds that are approved by voters could not be diverted from the expressed provisions of the bond proposition that was passed by the voters.[22] The parties to the contract created are entitled to receive "substantially all of the benefits and security of that contract."[23] Therefore, the governing body would violate its contract if it uses the voter-approved bond proceeds in a way that the voters did not approve.[24]

43. Courts interpret the plain meaning of a bond ordinance proposition to determine whether a governing body has violated the contract with the voters. If no party contests the ambiguity of the proposition, then the plain meaning of the proposition prevails, unless it leads to absurd results.

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[22] *Troy Dodson Construction Co. v. McClelland*, 993 F.2d 1211, 1216 (5th Cir. 1993); *Barrington v. Cokinos*, 338 S.W.2d 133, 142 (Tex. 1960); *Lewis v. City of Fort Worth*, 89 S.W.2d 975, 978 (Tex. 1936); *Black v. Strength*, 246 S.W. 79, 80 (Tex. 1922); *San Saba Cty. v. McCraw*, 108 S.W.2d 200, 201 (Tex. 1937); *Fletcher v. Howard*, 39 S.W.2d 32 (Tex. 1931); *see also* Op. Tex. Att'y Gen. No. JC-0127 (1999); Op. Tex. Att'y Gen. No. 98-060 (1998).

[23] *See e.g. McCraw*, 108 S.W.2d at 200; *Howard*, 39 S.W.2d at 32; *Black*, 246 S.W. 79.

[24] *Putnam v. City of Irving*, 331 S.W.3d 869, 878 (Tex. App.—Dallas 2011, pet. denied) (finding the City's pledge to fund a construction project via new taxes was consistent with voter approval even though the proposition did not specify that the new taxes would fund the project).

44. In *City of San Antonio v. Headwaters Coalition, Inc.*,[25] a Texas appellate court interpreted a bond ordinance and other corresponding provisions of the ordinance to determine how a city can change the location of a project after voters had approved the measure. In that case, voters passed a proposition for drainage facilities and improvements, but the proposition did not specify how the City of San Antonio would accomplish those improvements. The text of the proposition did not specify an exact location for a facility, but instead referred to flood improvements in the "Broadway Corridor" and listed street names to specify the perimeter of the section. Unlike certain other projects in the election ordinance language that specified locations for permanent structures, the Broadway Corridor project did not include such language. The City of San Antonio contended that in its "post-election 'honest judgment,'" another location outside the Broadway Corridor was more appropriate for the drainage project which accomplished the goal of benefiting the Broadway Corridor. The court held the City of San Antonio's decision to build a facility in another stretch of the Broadway Corridor was an appropriate "use of tax proceeds in a manner approved by the voters."

45. Here, the Election Ordinance included a specific location for the Facility – Downtown El Paso. Namely, on November 6, 2012, the voters in the City passed, in relevant part, the following Ordinance proposition:

> MUSEUM, CULTURAL, PERFORMING ARTS, AND LIBRARY FACILITIES PROPOSITION
>
> "SHALL the City Council of the City of El Paso, Texas, be authorized to issue general obligation bonds of the City in the principal amount of $228,250,000 for permanent public improvements and public purposes, to wit: acquiring, constructing improving, renovating and equipping new and existing library, museum, cultural and performing arts facilities and improvements, including the acquisition of land and right-of-way for such projects, and acquiring and installing public art related to and being a part of some or all of the foregoing; such projects to include the following:

[25] *City of San Antonio v. Headwaters Coalition, Inc.*, 381 S.W.3d 543, 550–54 (Tex. App.—San Antonio 2012, pet. denied).

Arts & Entertainment

Multi-purpose performing art and entertainment facility located in Downtown El Paso"

46. Clearly, the Election Ordinance specified that the Facility would be located in Downtown El Paso and, as a result, the location became part of the express terms of the contract with the voters. Indeed, were the City to move the construction *away* from the Downtown area, it would violate the unambiguous language of the Election Ordinance and voter approved proposition. The Texas Supreme Court has found that, where the voters have passed bonds in reliance on the specific bond proposition, then the governing body cannot "arbitrarily ignore or repudiate" the terms of the contract created by the proposition "without involving the perpetration of fraud or its equivalent on the voters."[26]

47. At the time of the Election, there was significant public debate with respect to efforts to revitalize Downtown El Paso. Part of that discussion included the importance of various bond financed projects (such as the Facility) as a catalyst for Downtown redevelopment. These discussions themselves demonstrate that the Facility's Downtown location was a part of the benefits that the voters reasonably expected when they approved the proposition.

48. The fact that the wording of the ballot for the Election made no specific mention of the Facility to be built "in Downtown El Paso" has no effect on the validity of the election or the authority of the City to build the Facility Downtown. The terms of a contract with the voters include the expressed language and purposes stated in an election ordinance or order formally adopted by the governing body – including the full bond proposition language.[27]

[26] *Hudson v. San Antonio Independent School District*, 95 S.W.2d 673, 675 (Tex. 1936).
[27] *See* Op. Tex Att'y Gen.No. JC-0488 (2002).

D. **The City Has the Discretion To Determine *Where* in Downtown the Facility Will Be Located.**

49. Pursuant to Texas Law, El Paso is a Home Rule City, and therefore, if an action is not prohibited by the City Charter, that action is appropriate for the City.

50. The City Charter does not in any way prohibit the City from building in the Union Plaza District neighborhood in Downtown El Paso.

51. Moreover, the site within the Union Plaza District of Downtown El Paso is not a historical district and enjoys no specific or general protection against development, as it is not recognized by either the Texas Historical Commission or its federal equivalent as a historical district.

52. Thus, there is no special protection afforded the Union Plaza Downtown neighborhood that would prohibit the City's exercise of discretion to locate the Facility therein, and the City may locate the Facility in the Union Plaza Downtown El Paso area.

E. **The Multi-purpose Performing Arts and Entertainment Facility As Planned, To Include Sporting Events, Complies With the Facility Mandated in the Election Ordinance and the Contract with the Voters.**

53. The multi-purpose performing arts and entertainment facility – the Facility – will certainly allow sports and sporting events, as well as other forms of entertainment. These events fall well within the anticipated nature and debated and decided functionality of the Facility, as planned by the City.

54. The multi-purpose nature of the Facility is a benefit to the City and its citizens since it assures that a costly public work will be more fully utilized. This allows greater entertainment venues for its citizens and increases the positive economic impact of the Facility to Downtown and the City in general. All of this reasoning was part of the public debate and

justification for the Facility prior to the Election. Such public debate included a discussion of sporting events as part of the entertainment functionality of the multi-purpose Facility.

55. Specifically, inclusion of sporting events as one of several possible uses of the Facility is entirely consistent with both the Election Ordinance and the wording of the ballot pursuant to which El Paso voters overwhelmingly approved the issuance of the Bonds to build it. The Election Ordinance declared that the election would seek voter approval to issue $228,250,000 in general obligation bonds for "acquiring, constructing, improving, renovating and equipping new and existing library, museum, cultural and performing arts facilities and improvements, including the acquisition of land and rights-of-way for such projects…such projects to include the following… Multi-purpose performing arts and entertainment facility located in Downtown El Paso."[28] The ballot language, in turn, similarly asked the voters to vote For or Against the following:

> "MUSEUM, CULTURAL, PERFORMING ARTS, AND LIBRARY FACILITIES PROPOSITION" – "THE ISSUANCE OF $228,250,000 GENERAL OBLIGATION BONDS FOR MUSEUM, CULTURAL, MULTI-PURPOSE PERFORMING ARTS AND ENTERTAINMENT AND LIBRARY FACILITIES IMPROVEMENTS…"

56. The fact that the proposed Facility is intended to house sporting events *in addition to* other types of entertainment and performing arts events by no means suggests that the purpose of the Facility has materially changed or that it will house sporting events only, to the exclusion of all other purposes for which the Facility might be utilized. A central function of the Facility will be to contribute to the revitalization of Downtown El Paso, so to the extent the Facility can be used frequently and for a wide variety of purposes that collectively will attract a large portion

[28] *Id*. at 3.

of the local population, the Facility will serving its intended purpose and the purpose for which the voters overwhelmingly approved it.

VIII.
PRAYER FOR ORDERS REQUIRED BY CHAPTER 1205

57. The City respectfully prays that the Court follow the procedures set forth in Chapter 1205 and further prays:

(a) that the Court, upon presentation of this Original Petition, immediately enter and issue an Order Giving Notice of Suit (the "Order")[29] in the form of a notice in accordance with Section 1205.041 of the Texas Government Code, directed to all Interested Parties; and that the Order require the Interested Parties, in general terms and without naming them, and the Attorney General of Texas, to appear for hearing and trial at 10:00 o'clock a.m., on Tuesday May, 30, 2017, the first business day following the Monday after the expiration of 20 days from the date of issuance of the Order, and to show cause why the prayers of this Original Petition should not be granted, *i.e.*, that an order confirming (a) the validity and enforceability of the Ordinance, Resolutions and Agreements, and all other contracts that relate to the issuance of the Bonds and the expenditure of Bond proceeds for the administration, development, construction, and financing of the Facility; and (b) the City's authority to proceed with the design, development and construction of the Facility as approved by the City Council and the voters;

(b) that prior to the date set for hearing and trial, the Clerk of this Court provide the required notice of this proceeding pursuant to §1205.43 of the Texas Government Code by publishing a substantial copy of the order in a newspaper of general circulation in El Paso County, Texas, and in Travis County, Texas, with such notice being published once in each of two consecutive calendar weeks, with the date of the first publication to be not less than 14 days prior to the date set for hearing and trial;

(c) that the Court enter an order enjoining the maintenance of any action related to the subject matter of this suit in any other forum;

(d) that the Court require any party opposing this action, or any intervenor, other than the State Attorney General, to post a bond for payment of all damages and costs that may accrue by reason of the delay that will be occasioned by the continued participation of the opposing party or intervenor in the event that the Issuers finally prevail and obtain substantially the judgment prayed for in this Original Petition; and

[29] A copy of the proposed form of Order Setting Hearing and Order Giving Notice of Suit is attached as **Exhibit C**.

(e) that the Court grant all proceedings, hearings, and trial on this Original Petition, priority over all other cases, causes or matters pending in the Court.

IX.
PRAYER FOR DECLARATORY JUDGMENT

The City requests that the Court proceed expeditiously in accordance with Chapter 1205 and further prays that the Court, trial and final hearing, enter a declaratory judgment to the effect that :

(a) Ordinance No. 017849 authorizing the November 6, 2012 bond election (the "***Election Ordinance***") and the November 6, 2012 election (the "***Election***")in which El Paso voters approved the issuance of City general obligation bonds to finance the Facility (among other projects) are legal, valid, enforceable and incontestable;

(b) the City is fully authorized to issue general obligation bonds to finance the acquisition, construction, improvement and equipping of the Facility and the acquisition of land and rights-of-way therefore (the "***Bonds***");

(c) to the extent the Bonds have been previously issued,[30] such Bonds are legal, valid, enforceable and incontestable; and the additional Bonds to be issued to finance the costs of the Facility, when issued in conformity with applicable law and as approved by the Texas Attorney General, will be legal, valid, enforceable and incontestable;

(d) the City is fully authorized to expend the current and future proceeds of the Bonds for the acquisition of land, design, development, construction, improvement, and equipping of the Facility, and each such expenditure and proposed expenditure relating to the Bonds and the Facility is legal, valid, enforceable, and incontestable;

(e) the proposed Facility constitutes a valid "multi-purpose performing arts and entertainment facility" as described in the Election Ordinance and as approved by the voters in the Election, and the use of such Facility for various sports and sporting events, which are a common form of entertainment, is legal, valid, enforceable and incontestable;

[30] Costs of the Facility are being financed from more than one series of Bonds. Portions of the following previously issued Bonds have been or will be used to fund Facility costs: the "City of El Paso, Texas General Obligation Refunding and Improvement Bonds, Series 2014," the "City of El Paso, Texas General Obligation Refunding and Improvement Bonds, Series 2015" and the "City of El Paso, Texas General Obligation Bonds, Series 2016." The City anticipates issuing additional Bonds to further fund the costs of the Facility.

(f) the Election Ordinance and the resulting contract with the voters require that the Facility be located in Downtown El Paso;

(g) the City has the discretion to determine specifically where, in Downtown El Paso, the Facility will be located;

(h) the Union Plaza District site located in Downtown El Paso is one legal, valid, enforceable and incontestable location for the construction of the Facility; and

(i) the Election to authorize the issuance of the Bonds for the Facility under state law supersedes any current, future or potential attempt to use the right of initiative, pursuant to the City Charter, to hinder or delay the Facility, and any pending controversy regarding such initiative or any future attempt to invoke the initiative provision in the City Charter to hinder or delay the Facility shall have no legal effect upon the Bonds or the Facility.

The City and further prays that the Court enter a decree that the declaratory judgment herein prayed shall, as to all matters adjudicated, be forever binding and conclusive against the Petitioners, the Attorney General of Texas, and all Interested Parties, irrespective of whether such parties filed an answer or otherwise appeared herein.

The City further prays for such other and further relief and orders to which the Petitioners may show itself justly entitled at law or in equity.

Respectfully Submitted,

/s/ Norlynn B. Price

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THE CITY OF EL PASO, TEXAS
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El Paso, Texas 79901-1402
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ATTORNEYS FOR THE CITY OF EL PASO

EXHIBIT A

ORDINANCE NO. 017849

AN ORDINANCE ORDERING A BOND ELECTION TO BE HELD IN THE CITY OF EL PASO, TEXAS, ON NOVEMBER 6, 2012, MAKING PROVISIONS FOR THE CONDUCT OF THE ELECTION AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO SUCH ELECTION.

WHEREAS, the City Council of the City of El Paso, Texas (the "City") hereby finds that an election should be held to determine whether said governing body shall be authorized to issue bonds of the City in the amounts and for the purposes hereinafter identified

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1: An election shall be held on the 6th day of November, 2012, in the City, which date is not less than seventy-eight (78) nor more than ninety (90) days from the date of the adoption hereof and is a uniform election date pursuant to V.T.C.A, Election Code, Section 41.001, for the purpose of submitting the following measures:

PARK, RECREATION, OPEN SPACE AND ZOO IMPROVEMENTS PROPOSITION

"SHALL the City Council of the City of El Paso, Texas, be authorized to issue general obligation bonds of the City in the principal amount of $245,000,000 for permanent public improvements and public purposes, to wit: acquiring, constructing, improving, renovating and equipping new and existing park, recreation, open space and zoo facilities and improvements, including the acquisition of land and rights-of-way for such projects, and acquiring and installing public art related to and being a part of some or all of the foregoing; such projects to include the following:

Parks & Park Improvements

New parks and/or park improvements at: Adrian Garcia, Barron, Bartlett, Blackie Chesher, Cheryl Ladd, Dick Shinault, Eastside Regional (Hueco), Fiesta/Coronado/Balboa, Johnson Basin, Magoffin, Modesto Gomez, Coronado area, NE Basin, Northeast Regional, Paseo del Sol, Las Palmas/Pendale area, Radford, Salvador Rivas, San Jacinto, Shawver, Wainwright, Westside Community, and Yucca;

Metal shade canopies over playgrounds, multiple locations throughout City;

Modular play structures and swings, multiple locations throughout City;

Outdoor sports field lights, multiple locations throughout City;

Date 5/1/17

A true and correct copy, I do hereby certify

City Clerk

CITY CLERK

(Please number on 1 side only)

Date

Signage, landscaping, lighting and other neighborhood park amenities and improvements, multiple locations through City;

Soccer/flat fields, multiple locations throughout City, with at least one championship field;

Outdoor soccer fields in Central El Paso (approximate aggregate cost: $5,000,000);

Centers and Pools

Two (2) indoor competition pool facilities;

New and renovated pools at: Chelsea, Eastside (Hueco), Lionel Forti, Pavo Real, Training &Instruction/Viscount Multipurpose, Westside;

Recreation, Senior and Community Centers, multiple locations.

Trails/Open Space

Trails & trail head improvements, including Pallisades/Billy Rogers Arroyo trailhead;

Trail head parking areas ;

Open space land acquisition/conservation;

Zoo

New Animal Exhibits and Improvements to Exhibits of the Americas;

New Animal Exhibits and Improvements to Exhibits of Asia;

New Animal Exhibits and Improvements to Exhibits of Africa;

Additions to Zoo Entry Area, including event space, shade structures, animal holding building;

Support Elements Zoo-wide, including benches, walkways, support buildings;

Site Elements Zoo-wide, including endangered species breeding center;

and in providing for the above public improvements, the City Council shall have the option to utilize other funds available for such purposes and, after making due provision for the improvements listed above, the City Council may, in its discretion, use any excess funds for acquiring, constructing, equipping, and renovating other park, recreation, zoo and open space improvements, making other park, recreation, zoo and open space additions, acquiring lands and rights-of-way necessary thereto, and acquiring and installing public art relating to and being a part of some or all of the foregoing projects; such bonds to mature serially or otherwise over a period not to exceed FORTY (40) years from their date, to be issued and sold in one or more series at any price or prices and to bear interest at any rate or rates (fixed, floating, variable or otherwise) as shall be determined within the discretion of the City Council at the time of issuance or sale of the bonds; and whether ad valorem taxes shall be levied upon all taxable property in the City sufficient to pay the annual interest and provide a sinking fund to pay the bonds at maturity?"

MUSEUM, CULTURAL, PERFORMING ARTS, AND LIBRARY FACILITIES PROPOSITION

"SHALL the City Council of the City of El Paso, Texas, be authorized to issue general obligation bonds of the City in the principal amount of $228,250,000 for permanent public improvements and public purposes, to wit: acquiring, constructing, improving, renovating and equipping new and existing library, museum, cultural and performing arts facilities and improvements, including the acquisition of land and rights-of-way for such projects, and acquiring and installing public art related to and being a part of some or all of the foregoing; such projects to include the following:

Museum

Children's Museum;

Digital wall at History Museum;

Improvements to existing City museum facilities;

Cultural

Hispanic Cultural Center;

Arts & Entertainment

Multipurpose performing arts and entertainment facility located in Downtown El Paso;

Library

Improvements at: Armijo Branch, Clardy Fox Branch, Dorris Van Doren Regional Branch, Esperanza Moreno Regional Branch, Irving Schwartz Branch, Judge Marquez Branch, Main Library, Memorial Park Branch, Jose Cisneros Branch, Richard Burges Branch, Westside Branch, Ysleta Branch;

New Bookmobile;

Technology Mobile;

Library Materials;

and in providing for the above public improvements, the City Council shall have the option to utilize other funds available for such purposes and, after making due provision for the improvements listed above, the City Council may, in its discretion, use any excess funds for acquiring, constructing, improving, equipping and renovating other library, museum, cultural and performing arts facilities, and/or to benefit or promote the cultural and performing arts, libraries, and/or museums, and the acquisition of land and rights-of-way for such projects; such bonds to mature serially or otherwise over a period not to exceed FORTY (40) years from their date, to be issued and sold in one or more series at any price or prices and to bear interest at any rate or rates (fixed, floating, variable or otherwise) as shall be determined within the discretion of the City Council at the time of issuance or sale of the bonds; and whether ad valorem taxes shall be levied upon all taxable property in the City sufficient to pay the annual interest and provide a sinking fund to pay the bonds at maturity?"

SECTION 2: In accordance with the provisions of a Joint Election Agreement and Contract for Election Services (the "Contract") to be executed with the El Paso County Elections Administrator, the election shall be conducted by the El Paso County Elections Administrator in accordance with the provisions of the Contract. The City shall be divided into One Hundred Fifty Seven (157) election precincts for this election and the polling places designated for each election precinct are shown in **Exhibit A,** which is attached hereto and incorporated herein by reference as a part of this ordinance for all purposes. The election officers and maximum number of clerks for said polling places shall be determined and appointed in accordance with the provisions of the Contract.

On election day, the polls shall be open from 7:00 a.m. to 7:00 p.m.

SECTION 3: The main location, dates and times for early voting for this election shall be as shown in **Exhibit B**, which is attached hereto and incorporated herein by reference as a part hereof for all purposes. **Exhibit B** may be modified to include any changes to early voting designated by the El Paso County Elections Administrator and to conform to the Contract. Additional early voting locations may be designated by the El Paso County Elections

Administrator. Javier Chacón, El Paso County Elections Administrator, is hereby appointed early voting clerk and shall appoint and designate deputy clerks for early voting in accordance with the Contract. For purposes of processing ballots cast in early voting, the election officers for the early voting ballot board for this election shall be appointed and designated in accordance with the provisions of the Contract.

The Central Counting Station for the tabulation and counting of ballots for this election shall be located at the El Paso County Elections Department, 500 E. San Antonio, Lower Level, Suite L115, El Paso, Texas 79901, and the Manager, Tabulation Supervisor, Presiding Judge and Alternate Presiding Judge at the Central Counting Station shall be appointed and designated in accordance with the provisions of the Contract.

The Manager and Presiding Judge of the Central Counting Station may appoint clerks to serve at such Station, as provided by Section 127.006 of the Election Code.

SECTION 4: A voting system or systems meeting the standards and requirements of the Texas Election Code, as amended, is hereby adopted and approved for early voting by personal appearance and by mail and for election day voting.

Ballots shall be prepared in accordance with V.T.C.A., Election Code, and permit electors to vote "FOR" or "AGAINST" the aforesaid measures which shall appear on the ballot substantially as follows:

PARK, RECREATION, OPEN SPACE AND ZOO IMPROVEMENTS PROPOSITION

"THE ISSUANCE OF $245,000,000 GENERAL OBLIGATION BONDS FOR PARK, RECREATION, OPEN SPACE AND ZOO IMPROVEMENTS, INCLUDING SOCCER/SPORTS FIELDS, AQUATIC CENTERS, AND NEW AND IMPROVED RECREATION, SENIOR AND COMMUNITY CENTERS."

MUSEUM, CULTURAL, PERFORMING ARTS, AND LIBRARY FACILITIES PROPOSITION

"THE ISSUANCE OF $228,250,000 GENERAL OBLIGATION BONDS FOR MUSEUM, CULTURAL, MULTI-PURPOSE PERFORMING ARTS AND ENTERTAINMENT AND LIBRARY FACILITIES IMPROVEMENTS, INCLUDING NEW CHILDREN'S MUSEUM, CULTURAL HERITAGE CENTER AND INTERACTIVE DIGITAL WALL."

SECTION 5: All resident qualified electors of the City shall be permitted to vote at said election, and on the day of the election, such electors shall vote at the polling place designated for the election precinct in which they reside. This election shall be held and conducted in accordance with the provisions of V.T.C.A., Election Code and V.T.C.A., Government Code, Chapter 1251, and to the extent required by law, all election materials and proceedings shall be printed in both English and Spanish.

SECTION 6: A substantial copy of this ordinance, including a Spanish translation thereof, shall be posted at three (3) public places within the City and at the City Hall not less than twenty-one (21) full days prior to the date on which said election is to be held. Notice of the election as required by the Texas Election Code and Chapter 1251 of the Texas Government Code shall also be published on the same day in each of two successive weeks in a newspaper of general circulation in said City, the first of said publications to appear in said newspaper not more than thirty (30) days and not less than fourteen (14) full days prior to the day of the election

SECTION 7: This ordinance hereby incorporates the provisions of the Contract, and to the extent of any conflict between this ordinance and the Contract, the provisions of the Contract shall control. The Mayor, City Clerk or other appropriate official, is hereby authorized to correct, modify or change the information in this ordinance and the attached Exhibits based upon the final locations, dates and times agreed upon by the El Paso County Elections Administrator and the City as well as incorporate additional early voting locations as designated by the El Paso County Elections Administrator.

[Remainder of page left blank intentionally]

PASSED AND APPROVED, this the 14th day of August, 2012.

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Sylvia Borunda Firth
City Attorney

APPROVED AS TO CONTENT:

William F. Studer, Jr.
Deputy City Manager for Development and Tourism

(City Seal)

Exhibit A

City of El Paso
November 6, 2012
7:00 a.m. - 7:00 p.m.

New Pct #.	Polling Place	Address
2	Village of Vinton City Hall	436 E. Vinton Rd.
5	Fire Station # 2	111 E. Borderland Rd.
6	Tennis West	One Tennis West Ln.
7	Lincoln Middle School	500 Mulberry Ave.
8	Fire Station # 15	115 Shorty Ln.
9 & 28	Zack White Elementary School	4256 Roxbury Dr.
10	Roberts Elementary School	341 Thorn Ave.
11 & 12	Olga Kohlberg Elementary School	1445 Nardo Goodman Dr.
13	Franklin 9th Grade Center	825 E. Redd Rd.
14	Tippin Elementary School	6541 Bear Ridge Dr.
15	Fire Station # 27	6767 Ojo De Agua Dr.
16	Rosa Guerrero Elementary School	7530 Lakehurst Rd.
17	Franklin High School	900 N. Resler Dr.
18	Monte Vista Retirement Center	1575 Belvidere St.
19	Good Samaritan Society - White Acres	7304 Good Samaritan Ct.
20 & 176	Polk Elementary School	940 Belvidere St.
21 & 177	Peace Lutheran Church	5890 Via Cuesta Dr.
22	Fire Station # 22	6500 N. Mesa St.
23	Carlos Rivera Elementary School	6445 Escondido Dr.
24	Western Hills U.M.C.- Steward Family Life Center #A	524 Thunderbird Dr.
25	Dr. Green Elementary School	5430 Buckley Dr.
26 & 27	Putnam Elementary School	6508 Fiesta Dr.
29	L. B. Johnson Elementary School	499 Cabaret Dr.
30 & 31	Polly Harris Senior Citizen Center	650 Wallenberg Dr.
32 & 33 & 34	Mesita Elementary School	3307 N. Stanton St.
35	El Paso Tennis Club	2510 N. St. Vrain St.
36	Vilas Elementary School	220 Lawton Dr.

37	Father Pinto Complex	1001 S. Ochoa St.
38	Fire Station # 3	721 E. Rio Grande Ave.
39	Sun Plaza Housing	1221 E. San Antonio Ave.
40	Lamar Elementary School	1440 E. Cliff Dr.
41	Career & Technology Center	1170 N. Walnut St.
42	Beall Elementary School	320 S. Piedras St.
43 & 44	Dr. Nixon Elementary School	11141 Loma Roja Dr.
45 & 46	Bradley Elementary School	5330 Sweetwater Dr.
47	H.E. Charles Middle School	4909 Trojan Dr.
48	Fannin Elementary School	5425 Salem Dr.
49 & 50	Desertaire Elementary School	6301 Tiger Eye Dr.
51	El Paso Korean U.M.C.	4925 Fairbanks Dr.
52	Collins Elementary School	4860 Tropicana Ave.
53	Newman Elementary School	10275 Alcan St.
54	Parkland High School	5932 Quail Ave.
55 & 184	Whitaker Elementary School	4700 Rutherford Dr.
56	Dowell Elementary School	5249 Bastille Ave.
57	Fire Station # 23	5315 Threadgill Ave.
58 & 178	Dolphin Terrace Elementary School	9790 Pickerel Dr.
59	Crosby Elementary School	5411 Wren Ln.
60 & 186 & 188	Fire Station # 16	3828 Hercules Ave.
61 & 185	Park Elementary School	3601 Edgar Park Rd.
62	Nolan Richardson Recreation Center	4435 Maxwell Ave.
63	Magoffin Middle School	4931 Hercules Ave.
64	Stanton Elementary School	5414 Hondo Pass Dr.
65	Logan Elementary School	3200 Ellerthorpe Ave.
66	Burnet Elementary School	3700 Thomason Ave.
67	Travis Elementary School	5000 N. Stevens St.
68 & 187	Kathy White Housing Complex	2500 Mobile Ave.
69	Grand View Park Senior Citizen Center	3134 Jefferson Ave.
70	Paul C. Moreno Elementary School	2300 San Diego Ave.
71	Memorial Park Senior Citizen Center	1800 Byron St.
72	Austin High School	3500 Memphis Ave.
73	Coldwell Elementary School	4101 Altura Ave.

74	Fire Station # 7	3200 Pershing Dr.
75	Cross of Grace Church	4700 Leeds Ave.
76 & 77	Fire Station # 13	5415 Trowbridge Dr.
78	Chelsea Plaza Housing	600 Chelsea St.
79	Fire Station # 5	4240 Alameda Ave.
80	Burleson Elementary School	4400 Blanco Ave.
81	San Juan Recreation Center	701 N. Glenwood St.
82	Hawkins Elementary School	5816 Stephenson Ave.
83	Henderson Middle School	5505 Robert Alva Ave.
84	Clardy Elementary School	5508 Delta Dr.
85	Fire Station #14	6300 Delta Dr.
87 & 89 & 174 & 189	Bonham Elementary School	7024 Cielo Vista Dr.
88	Ross Middle School	6101 Hughey Cir.
90	Fire Station #20	8301 Edgemere Blvd.
91	Mac Arthur Elementary School	8101 Whitus Dr.
92	Cielo Vista Park Elementary School	9000 Basil Ct.
93 & 175	Scotsdale Elementary School	2901 Mc Rae Blvd.
94	Edgemere Elementary School	10300 Edgemere Blvd.
95	Gary Del Palacio Recreation Center	3001 Parkwood St.
96	Eastpoint Elementary School	2400 Zanzibar Rd.
97	Fire Station #19	2405 Mc Rae Blvd.
98	Eastwood Heights Elementary School	10530 Janway Dr.
99 & 100	Pebble Hills Elementary School	11145 Edgemere Blvd.
101	Eastside Senior Center	3200 Fierro Dr.
102	YWCA - East	10712 Sam Snead Dr.
103	Vista Hills Elementary School	10801 La Subida Dr.
104	Fire Station #24	1498 Lomaland Dr.
105	Indian Ridge Middle School	11201 Pebble Hills Blvd.
106	Glen Cove Elementary School	10955 Sam Snead Dr.
107	Hanks High School	2001 Lee Trevino Dr.
108	Tierra Del Sol Elementary School	1832 Tommy Aaron Dr.
109	Desert View Middle School	1641 Billie Marie Dr.
110	Region 19 Head Start Multipurpose Center	11670 Chito Samaniego Dr.
111 & 112	Jane Hambric Elementary School	3535 Nolan Richardson

		Dr.
113 & 114	Bill Sybert Pre K-8 School	11530 Edgemere Blvd.
115 & 182	Hurshel Antwine Elementary School	3830 Rich Beem Blvd.
116	Spec. Rafael Hernando III Middle School	3451 Rich Beem Blvd.
117 & 118	Benito Martinez Elementary School	2640 Robert Wynn St.
119	Helen Ball Elementary School	1950 Firehouse Dr.
120	O'Shea Keleher Elementary School	1800 Leroy Bonse Dr.
121	Montwood High School	12000 Montwood Dr.
122	Vista Del Sol Elementary School	11851 Vista Del Sol Dr
123	Myrtle Cooper Elementary School	1515 Rebecca Ann Dr.
124 & 125 & 131	Sierra Vista Elementary School	1501 Bob Hope Dr.
126	Fire Station # 35	12230 Pine Springs Dr.
127	Red Sands Elementary School	4250 O'Shea Rd.
128 & 181	El Dorado 9th Grade Academy	14400 Pebble Hills Blvd.
129 & 130	Lujan-Chavez Elementary School	2200 Sun Country Dr.
132 & 134	Ramona Elementary School	351 Nichols Rd.
133	Del Norte Heights Elementary School	1800 Winslow Rd.
135	Ascarate Elementary School	7090 Alameda Ave.
136	Cedar Grove Elementary School	218 Barker Rd.
137	Ranchland Hills Middle School	7615 Yuma Dr.
138	Hacienda Heights Elementary School	7530 Acapulco Ave.
139	Mesa Vista Elementary School	8032 Alamo Ave.
140	Good Samaritan Towers	7750 Lilac Way
141	Fire Station #18	7901 San Jose Rd.
142	Riverside High School	301 Midway Dr.
143	Thomas Manor Elementary School	7900 Jersey St.
144 & 145	Loma Terrace Elementary School	8200 Ryland Dr.
146	Marian Manor Elementary School	8300 Forest Haven Ct.
147	Cadwallader Elementary School	7988 Alameda Ave.
148	Alicia R. Chacon School	221 Prado Rd.
149	Valley View Middle School	8660 Northloop Dr.
150	Robert F. Kennedy Pre-K Center	9009 Alameda Ave.
151 & 179	Capistrano Elementary School	240 Mecca Dr.
152 & 154	Lebarron Park Elementary School	920 Burgundy Dr.
153 & 155	Lancaster Elementary School	9230 Elgin Dr.

156 & 183	Pavo Real Recreation Center	9301 Alameda Ave.
157	South Loop Elementary School	520 Southside Rd.

Exhibit B

Early voting for this election shall begin on Monday, October 22, 2012 and end on Friday, November 2, 2012, and the hours designated for early voting by personal appearance and the main early voting polling place shall be as set forth below:

Early Voting Period
Oct. 22, 2012 – Nov. 2, 2012

1.	BASSETT PLACE - # 100	6101 GATEWAY WEST	9:00 - 6:00
2.	CANUTILLO ELEMENTARY	651 CANUTILLO AVE.	8:30 - 4:30
3.	CAROLINA RECREATION CENTER	563 N. CAROLINA DR.	9:00 - 6:00
4.	CLINT ISD EARLY COLLEGE ACADEMY	13100 ALAMEDA AVE.	8:30 - 5:00
5.	COURTHOUSE – LOWER LEVEL	500 E. SAN ANTONIO AVE.	8:00 - 5:00
6.	FIESTA SHOPPING CENTER - # 104	5200 N. MESA ST.	9:00 - 6:00
7.	MARTY ROBBINS REC. CENTER	11600 VISTA DEL SOL DR.	9:00 - 6:00
8.	OZ GLAZE SENIOR CENTER	13969 VENY WEBB	8:00 - 5:00
9.	PAVO REAL RECREATION CENTER	9301 ALAMEDA AVE.	9:00 - 6:00
10.	PEBBLE VILLAGE CENTER #F	10780 PEBBLE HILLS BLVD.	9:00 - 6:00
11.	REGENCY OF EL PASO	221 BARTLETT DR.	9:00 - 6:00
12.	ROGELIO SANCHEZ	1331 N. FABENS	9:00 - 6:00
13.	SUNRISE SHOPPING CENTER - # 56	8500 DYER ST.	9:00 - 6:00
14.	SUN VALLEY CENTER - # 105	4525 SUN VALLEY DR.	9:00 - 6:00
15.	TORNILLO ADMINISTRATION BLDG.	19200 COBB ST.	8:30 - 4:30
16.	VILLAGE OF VINTON	436 E. VINTON RD.	3:00 - 6:00
17.	ZARAPLEX CENTER - #118	1700 ZARAGOZA RD.	9:00 - 6:00
18.	MOBILE #1		
19.	MOBILE #2		
20.	MOBILE #3		

Oct. 22, 2012 – Oct. 26, 2012 (Mon. – Fri.) **FOLLOW ABOVE SCHEDULE**
Oct. 27, 2012 (Sat.) 7:00 am. – 7:00 pm. **ALL STATIONS**
Oct. 28, 2012 (Sun.) 12:00 pm. – 5:00 pm. **ALL STATIONS**

EXHIBIT B

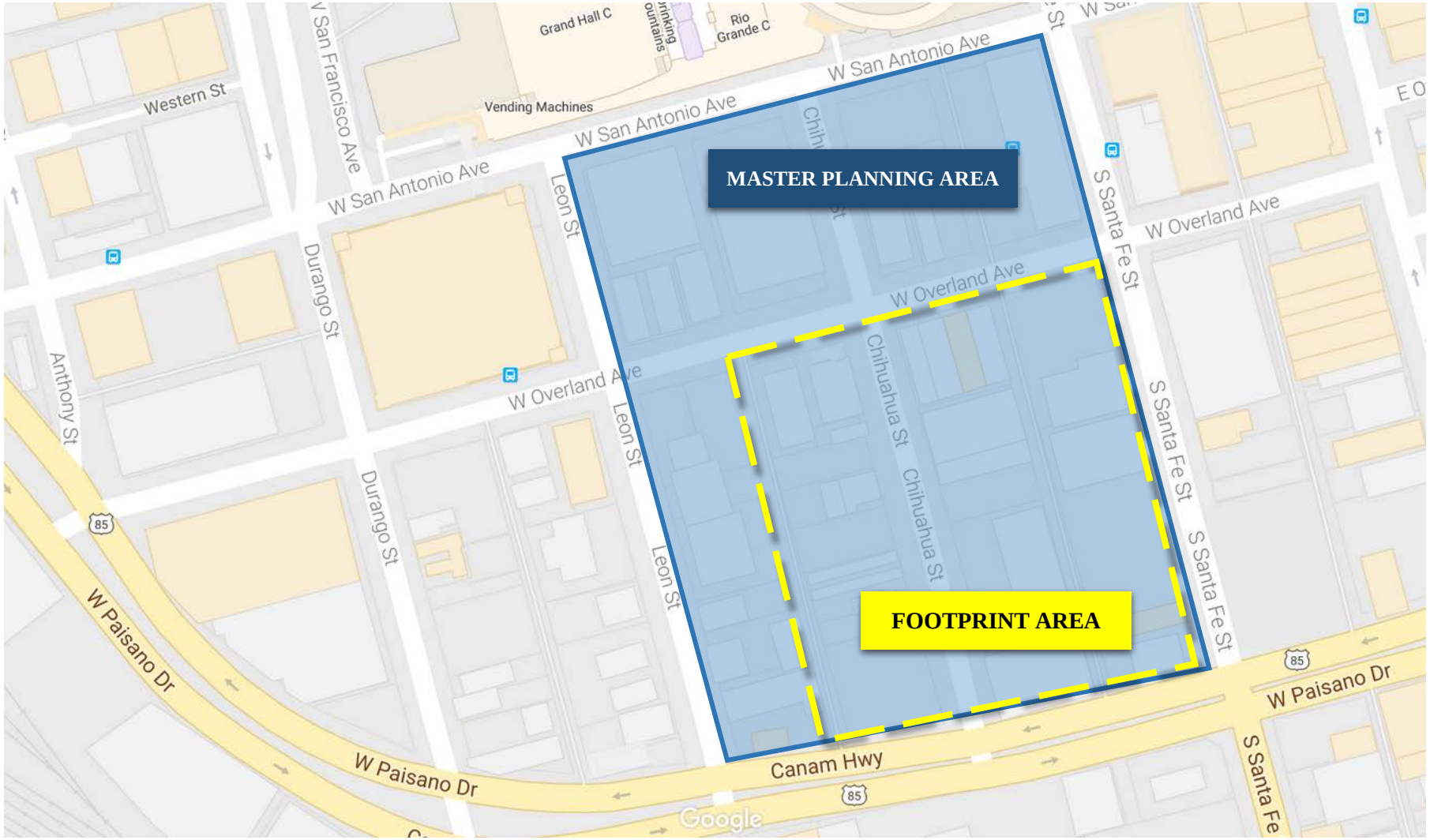
MASTER PLANNING AREA
FOOTPRINT AREA
Grand Hall C
Rio Grande C
Vending Machines
Western St
W San Antonio Ave
W Overland Ave
Leon St
Durango St
Anthony St
Chihuahua St
S Santa Fe St
W Paisano Dr
Canam Hwy
85
Google

EXHIBIT C

NO. _____

	§	**IN THE DISTRICT COURT OF**
EX PARTE	§	
	§	**TRAVIS COUNTY, TEXAS**
CITY OF EL PASO	§	
	§	**____ JUDICIAL DISTRICT**

NOTICE OF HEARING

ATTENTION: THIS NOTICE IS DIRECTED TO ALL PERSONS WHO RESIDE WITHIN THE TERRITORY OF THE CITY OF EL PASO, TEXAS; WHO OWN PROPERTY LOCATED WITHIN THE BOUNDARIES OF THE CITY OF EL PASO, TEXAS; WHO ARE TAXPAYERS OF THE CITY OF EL PASO, TEXAS; OR WHO HAVE OR CLAIM A RIGHT, TITLE, OR INTEREST IN ANY PROPERTY OR MONEY TO BE AFFECTED BY A PUBLIC SECURITIES AUTHORIZATION, THE ISSUANCE OF PUBLIC SECURITIES BY THE CITY OF EL PASO, OR THE CITY OF EL PASO'S USE OF PROCEEDS FROM SUCH PUBLIC SECURITIES FOR THE DEVELOPMENT OF A MULTIPURPOSE PERFORMING ARTS AND ENTERTAINMENT FACILITY IN DOWNTOWN EL PASO; ADVISING THEM OF THEIR RIGHT TO APPEAR FOR TRIAL AND SHOW CAUSE WHY THE PETITIONERS' ORIGINAL PETITION FOR EXPEDITED DECLARATORY JUDGMENT SHOULD NOT BE GRANTED.

Please take notice that on the 2nd day of May, 2017, The City of El Paso (the "***City***"), filed a petition (the "***Original Petition***") for expedited declaratory judgment as styled above pursuant to Chapter 1205 of the Texas Government Code. This *in rem* and class action proceeding is brought by the City in connection with the financing and construction of a multipurpose performing arts and entertainment facility (the "***Facility***") in downtown El Paso. The City seeks to obtain declaratory judgment to conclusively establish that: (a) Ordinance No. 017849 authorizing the November 6, 2012 bond election (the "***Election Ordinance***") and the November 6, 2012 election (the "***Election***") in which El Paso voters approved the issuance of City general obligation bonds to finance the Facility (among other projects) are legal, valid, enforceable and incontestable; (b) the City is fully authorized to issue general obligation bonds to finance the acquisition, construction, improvement and equipping of the Facility and the acquisition of land and rights-of-way therefore (the "***Bonds***"); (c) to the extent the Bonds have been previously issued, such Bonds are legal, valid, enforceable and incontestable; and the additional Bonds to be issued to finance the costs of the Facility, when issued in conformity with applicable law and as approved by the Texas Attorney General, will be legal, valid, enforceable and incontestable; (d) the City is fully authorized to expend the current and future proceeds of the Bonds for the acquisition of land, design, development, construction, improvement, and equipping of the Facility, and each such expenditure and proposed expenditure relating to the Bonds and the Facility is legal, valid, enforceable, and incontestable; (e) the proposed Facility constitutes a valid "multi-purpose performing arts and entertainment facility" as described in the Election Ordinance and as approved by the voters in the Election, and the use of such Facility for various sports and sporting events, which are a common form of entertainment, is legal, valid,

enforceable and incontestable; (f) the Election Ordinance and the resulting contract with the voters require that the Facility be located in Downtown El Paso; (g) the City has the discretion to determine specifically where, in Downtown El Paso, the Facility will be located; (h) the Union Plaza District site located in Downtown El Paso is one legal, valid, enforceable and incontestable location for the construction of the Facility; and (i) the Election to authorize the issuance of the Bonds for the Facility under state law supersedes any current, future or potential attempt to use the right of initiative, pursuant to the City Charter, to hinder or delay the Facility, and any pending controversy regarding such initiative or any future attempt to invoke the initiative provision in the City Charter to hinder or delay the Facility shall have no legal effect upon the Bonds or the Facility.

The Original Petition, which more fully describes the Facility, the Proposed Bonds, and the related agreements, is on file with the court and is available for review by all persons who (1) reside in the territory of the City, (2) own property located within the boundaries of the City, (3) are taxpayers of the City; (4) or have or claim a right, title, or interest in any property or money to be affected by a public security authorization or the issuance of the public securities by the City for the development of the Facility (such persons constitute "***Interested Parties***").

All Interested Parties and the Honorable Ken Paxton, in his official capacity as Attorney General of the State of Texas, are hereby notified of their right to appear at **10:00 a.m. on _____, May ___, 2017** in the courtroom of the ___ District Court, Travis County Texas for hearing and trial of the claims made in the Original Petition and to show cause why prayers of the City should not be granted and that the proceedings and the public securities or the public security authorizations validated and confirmed.

SIGNED on this _____day of May, 2017.

_____
JUDGE PRESIDING