

**EXHIBIT G**

**EL PASO WATER UTILITIES - PUBLIC SERVICE BOARD  
AND THE CITY OF EL PASO, TEXAS**

**PORTIONS OF SECTIONS 17, 18, 19, AND 20, BLOCK 80, TOWNSHIP 1  
AND SECTIONS 13, 14, 18, 19, 20 AND 23, BLOCK 81, TOWNSHIP 1,  
TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS,  
CITY OF EL PASO, EL PASO COUNTY, TEXAS**

**SALE OF REAL ESTATE PARCEL MPC  
Request for Bids Number:29-07**

**BID FORM**

**TO:** El Paso Water Utilities - Public Service Board  
1154 Hawkins Boulevard  
El Paso, Texas 79925

Att'n: Edmund G. Archuleta, P.E., General Manager, EPWU

**TO BE OPENED: 11:00:00 A.M. MDT, TUESDAY, JULY 31, 2007**

**SUBJECT: Sale of Real Estate – Master Planned Community Parcel (“PARCEL MPC”)**

**OFFER TO PURCHASE:** The undersigned **BIDDER** hereby offers to purchase the surface estate of **PARCEL MPC**, the real property described in the General Conditions and Instructions to Bidders (“Instructions”) for Request for Bids Number29-07, in accordance with the terms, conditions and requirements for development of **PARCEL MPC** stated in the Instructions and any Addenda thereto, including Exhibits A-H of the Instructions, at the Per-Acre Price stated below.

**SUMMARY DESCRIPTION OF LAND**

**PARCEL MPC (4832.99 ACRES approx), CONSISTING OF A PORTION OF SECTIONS 17, 18, 19, AND 20, BLOCK 80, TOWNSHIP 1, AND SECTIONS 13, 14, 18, 19, 20 AND 23, BLOCK 81, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS. *No part of the subsurface estate, including but not limited to the mineral estate, will be conveyed; and all groundwater rights will be reserved and none will be conveyed.***

**BIDDER’S REPRESENTATIONS**

- 1. BIDDER** has read the Instructions, and has received and read any and all Addenda issued by EPWU to the Instructions, and represents and verifies to EPWU and the City of El Paso that **BIDDER** is familiar with all procedures, terms and conditions described in the Instructions and any Addenda thereto, including all requirements concerning the development and build-out of **PARCEL MPC**.
- 2. BIDDER** agrees to and will comply fully with those procedures, terms, conditions and requirements if awarded the bid for sale, development and build-out of **PARCEL MPC** as a master planned community. **BIDDER** understands that these include, but are not limited to, the following:

Subject lands. The Survey Map in **Exhibit A** of the Instructions depicts **PARCEL MPC**, consisting of approximately 4832.99 acres. **Exhibit A** also identifies various areas, described more fully in the Instructions, that are NOT part of **PARCEL MPC** and that will not be conveyed.

Surface estate only; no subsurface estate or groundwater rights conveyed. **BIDDER** understands that only the surface estate of **PARCEL MPC** will be conveyed; and that the mineral and other subsurface estates, and all groundwater rights, will be retained by EPWU and the City. **BIDDER** understands that the use of surface water may be regulated by the State of Texas.

Closing Costs. **BIDDER** agrees that, if awarded the bid for sale and development of **PARCEL MPC**, **BIDDER** will pay all costs of closing, including but not limited to title insurance, advertising, appraisals and surveys and other associated costs and expenses, at closing of sale of each Phase Parcel.

Development and restrictive covenants. **BIDDER** agrees that, if awarded the bid for sale and development of **PARCEL MPC**, **BIDDER** will develop and build-out **PARCEL MPC** as a master planned community according to the specific mix of residential, retail, commercial and public uses specified in **Exhibit B** of the Instructions, consistent with the Northeast Master Plan approved by the City Council and incorporated as a specific study area plan in the City's Comprehensive Plan on January 9, 2007, and approved as a Land Study by the City Plan Commission on December 7, 2006; will incorporate Smart Growth principles in the development and build-out of **PARCEL MPC**; and that no industrial or manufacturing uses will be allowed. The successful bidder agrees to include these standards, and any others specified in the Instructions, as restrictive covenants in any subsequent deeds or other conveyances of all or any parts of **PARCEL MPC**.

Limited waiver of rights under Texas Local Government Code chapter 245. **BIDDER** agrees that, if awarded the bid for sale and development of **PARCEL MPC**, **BIDDER** will waive certain of those rights it otherwise may have under Chapter 245, as specified in the Instructions.

Per-Acre Price. **BIDDER** understands that it is to bid a single per-acre purchase price ("Per-Acre Price"), even though **BIDDER** must purchase the **PARCEL MPC** in three phases, each with its own closing, as described in Section 11 and **Exhibit C** of the Instructions. The Per-Acre Price will be applicable to all acreage in **PARCEL MPC** regardless of phase; as follows: The price for each acre of the Phase One Parcel shall be the Per-Acre Price for the acreage included in the Phase One Parcel; and the price for each acre of the Phase Two Parcel or the Phase Three Parcel, respectively, shall be the Per-Acre Price plus a per-acre carrying charge equal to an annual rate of seven percent (7%) of the Per-Acre Price, accrued from the date of the Initial (Phase One Parcel) Closing to the date of the respective subsequent Phase Parcel Closing. **BIDDER** understands that the **MINIMUM ACCEPTABLE PER-ACRE PRICE** for **PARCEL MPC** is **Twenty Thousand Nine Hundred Twenty-Three Dollars (\$20,923.00) per acre.**

3. Master Planned Community Development Agreement. **BIDDER** agrees that, if awarded the bid for sale and development of **PARCEL MPC**, **BIDDER** will execute a contract substantially of the form and substance of the Master Planned Community Development Agreement shown in **Exhibit H** of the Instructions.

4. Inspections of site; acceptance "as is." **BIDDER** represents that it has had the opportunity to make all inspections, studies and determinations it desires concerning **PARCEL MPC** (including but not limited to present zoning, surface and subsurface conditions, soils, drainage and storm water characteristics, and title to the property), and that, if awarded the bid for sale and development of **PARCEL MPC**, **BIDDER** will accept the property "as is," including all encumbrances and restrictions of record, and all encumbrances and surface and subsurface conditions whether apparent or not. **BIDDER** understands that neither EPWU nor the City have made or will make any representations or warranties concerning title to or the condition of **PARCEL MPC**, or its suitability for any purposes, except as stated in the Special Warranty Deed.

5. Bidding entity. **BIDDER** represents and warrants to EPWU and the City that it is the entity that was determined by EPWU to be a Qualified Bidder on the basis of **BIDDER's** response to the Request for

Qualifications, and that **BIDDER** is (or represents) the particular associated team that was determined through the RFQ process to be a Qualified Bidder, except that professional and financial team members may have been changed or added.

6. **Bid duration.** **BIDDER** agrees that this BID shall constitute an offer to purchase and develop PARCEL MPC according to the terms and conditions stated in the Instructions, for the Bid Hold-Open Period stated therein, and that if this BID is accepted by EPWU and the City within that Bid Hold-Open Period, it shall constitute a valid and binding contract requiring **BIDDER** to purchase and develop PARCEL MPC according to the terms and conditions stated in the Instructions.

**Signatory's representation of authority**

The undersigned individual represents to the City of El Paso and to EPWU that he/she is an officer of the **BIDDER** (if **BIDDER** is a legal entity rather than an individual), that he/she has the authority to execute and submit this Bid on behalf of **BIDDER** and to bind **BIDDER** hereto, and that **BIDDER** has duly authorized he/she to do so on its behalf.

**BID**

1. **BIDDER bids the following Per-Acre Price for PARCEL MPC:**

State Per-Acre Price in words: \_\_\_\_\_ **Dollars per acre**

State Per-Acre Price in numbers: \$ \_\_\_\_\_ **per acre**

(In the event of a conflict or inconsistency between the price stated in words and the price stated in numbers, the price stated in words will control.)

**BID SUBMITTED:**

\_\_\_\_\_  
BIDDER

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
MAILING ADDRESS

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
FAX NUMBER

# EXHIBIT H

## MASTER PLANNED COMMUNITY DEVELOPMENT AGREEMENT

This Master Planned Community Development Agreement (“Agreement”) is by and between the El Paso Water Utilities – Public Service Board (“EPWU”) with offices at 1154 Hawkins Boulevard, El Paso, Texas 79925; the City of El Paso, Texas (“City”), a home-rule city with charter issued by the State of Texas, with offices at City Hall located at \_\_\_\_\_, El Paso, Texas \_\_\_\_\_; and \_\_\_\_\_ (“Purchaser”) with offices at \_\_\_\_\_.

### 1. DEFINITIONS

“**Purchaser**” shall mean the Bidder who submits the Bid that is accepted by EPWU and the City, and to which the bid and this Agreement is awarded .

“**EPWU**” shall mean the El Paso Water Utility – Public Service Board.

“**City**” shall mean the City of El Paso, Texas.

“**City Council**” shall mean the city council of El Paso, Texas.

“**Request for Bids**” shall mean the request for bids/proposals for the sale and conveyance of the subject Property made by EPWU and the City, dated June 15, 2007, and identified as Request for Bids No. 29-07, “Sale of Real Estate Parcel MPC.”

“**Bid Documents**” shall mean the various documents describing the bidding process and requirements applicable thereto and the standards and requirements applicable to the development and build-out of PARCEL MPC, and the Purchaser’s Bid, and include:

- (i) The Request for Qualifications and attachments;
- (ii) General Conditions and Instructions to Bidders (“**Bid Instructions**”), including the exhibits thereto:

Exhibit A – Survey Map, Parcel MPC, June 15, 2007  
Exhibit B – Development Principles and Requirements, Parcel MPC  
Exhibit C -- Land/Tract Minimum Phased Purchase Schedule and Phasing  
Map  
Exhibit D – Infrastructure Requirements and Development Schedule  
Exhibit E – City Approval Requirements and Example Flow Chart  
Exhibit F – Local Builders and Suppliers Requirements and HUB Goals  
Exhibit G – BID FORM; and

(iii) Any Addenda or Errata issued by EPWU regarding the Request for Bids;

**“Purchaser’s Documents”** shall mean the documents and other materials, and the formal oral representations made by Purchaser, during the pre-Bid process, including:

(i) Purchaser’s Bid (Bid Form); and

(ii) Purchaser’s Response to the Request for Qualifications (including Purchaser’s submitted Qualifications and any related communications from Purchaser to EPWU or the City, including but not limited to Purchaser’s presentation at the interviews for qualification of bidders held on or about April 18-19, 2007).

**“Bid”** shall mean the bid and related documents submitted by a bidder in response to the Request for Bids, submitted on the Bid Form (Exhibit G of the Bid Documents) and meeting the bid requirements of the Bid Documents.

**“Purchaser’s Bid”** shall mean the Bid submitted by the successful bidder, to whom the bid and this Agreement have been awarded.

**“Smart Growth”** shall have the meaning ascribed to it, and consist of the principles attributed, in the Bid Documents.

**“Development Standards”** shall mean the various standards and requirements for development and build-out of PARCEL MPC stated in the Bid Documents, which are expressly incorporated and recognized in this Agreement, and any other standards or requirements stated in this Agreement.

**“Satisfactory Performance”** shall have the meaning assigned in Section 13 of the Bid Instructions.

**“PARCEL MPC”** shall mean the property being conveyed to the Purchaser, as described and delimited in the Bid Documents.

**“Tract”** shall mean individual tracts of land within a given Parcel, and may correspond to tracts developed by Purchaser itself, or tracts sold and conveyed by Purchaser to Sub-Developers or Builders, or, as context may require, to tracts sold to ultimate residents.

**“Golf Course”** shall mean the Painted Dunes Golf Course owned by EPWU/City and located at the eastern end of PARCEL MPC, but not conveyed as part of PARCEL MPC.

**“Golf Course Tract”** shall mean the land on which the Golf Course is located, which tract is not part of PARCEL MPC and will not be sold and conveyed by EPWU/City in this transaction.

**“Golf Course Improvements”** shall mean the real and personal property improvements located and present on the Golf Course Tract at the time of the award of the bid and this Agreement to the Purchaser.

**“Phases”** shall mean the three (3) sequential Phases of development and build-out defined and required by the Bid Instructions. .

**“Phase Parcel”** shall mean the particular portion of PARCEL MPC that is to be developed in the corresponding Phase of development of PARCEL MPC.

**“Phase One Parcel”** shall mean the Parcel to be sold and conveyed to Purchaser, and to be developed and built-out by Purchaser, in Phase One of the development of PARCEL MPC.

**“Phase Two Parcel”** shall mean the Parcel to be sold and conveyed to Purchaser, and to be developed and built-out by Purchaser, in Phase Two of the development of PARCEL MPC.

**“Phase Three Parcel”** shall mean the Parcel to be sold and conveyed to Purchaser, and to be developed and built-out by Purchaser, in Phase Three of the development of PARCEL MPC, the final Phase of development.

**“Phased Purchases”** shall mean the sequential, three-phases of land purchase described the Bid Documents.

**“Per-Acre Price”** shall mean the *per-acre* price bid by Purchaser in Purchaser’s Bid, and accepted by the City, for the purchase of PARCEL MPC, and applicable to all the acreage of PARCEL MPC, including acreage on which infrastructure is to be developed by the Purchaser and then be dedicated to the City. The Per-Acre Price will apply to the purchase of all Phase Parcels; that is, it shall be the *per-acre* purchase price of the Phase One Parcel at the Initial Closing; and it shall be the basis for subsequent purchases of the Phase Two Parcel and the Phase Three Parcel, with applicable *per-acre* Carrying Charge accrued as described in Sections 12 and 15 of the Bid Instructions.

**“Initial Closing”** shall mean the first sale and conveyance closing, at which the the Phase One Parcel is sold and conveyed to Purchaser.

**“Phase Two Closing”** shall mean the closing at which the Phase Two Parcel is sold and conveyed to Purchaser.

**“Phase Three Closing”** shall mean, if Purchaser has elected the Phased Purchase Option, the closing at which the Phase Three Parcel is sold and conveyed to Purchaser.

**“Assignee”** unless otherwise apparent in context shall mean any person or entity to which Purchaser has conveyed any Tract(s) within a Phase Parcel, for development and

build out by that Assignee. Unless otherwise specified or apparent in context, it shall also include any successors and assigns of an Assignee.

## **2. INCORPORATION OF BID DOCUMENTS AND PURCHASER'S DOCUMENTS**

(a) The Bid Documents and the Purchaser's Documents are expressly incorporated in this Agreement and made a part of it ("Incorporated Documents").

(b) In the event of a conflict between (i) the body of this Agreement and (ii) either the Bid Documents, any issued Addenda or Errata to the Bid Documents, or the Purchaser's Documents, this Agreement shall control; and the Bid Documents and Addenda or Errata shall control over the Purchaser's Documents in the event of any conflict between them.

(c) In the event of a conflict of provisions in (i) the numbered sections of the Bid Instructions, the Bid Document exhibits, or any issued Addenda or Errata, with (ii) the "Introduction" in the Bid Instructions, the numbered sections of the Bid Instructions, the Bid Document exhibits and/or the Addenda and Errata shall control.

(d) Purchaser shall meet and satisfy any standards, requirements, obligations and conditions stated in the Bid Documents, whether or not stated in the body of this Agreement.

(e) Where the body of this Agreement and the provisions of the Bid Documents concern the same or similar requirements, conditions, standards, terms or other matters, they are to be read in conjunction with each other and harmonized to the extent reasonably practicable. Provisions in this Agreement are cumulative of and may augment provisions in the Bid Documents, and vice-versa.

(f) "This Agreement," unless otherwise apparent from context, shall mean and refer to this Agreement including all incorporated documents. "As provided in" or "as described in" a referenced section of an Agreement document, or other references to particular sections made in the body of this Agreement or the Bid Documents, shall mean as provided or described in the referenced section but shall also include any related or additional requirements that may be stated elsewhere in this Agreement including the Bid Documents. Unless otherwise apparent in context, a reference to a particular section or sections is for convenience and is not exclusive.

## **3. PURPOSE; NO MERGER WITH DEED**

(a) The body of this Agreement, together with the incorporated Bid Documents (and, to the extent not conflicting with or altering the terms and requirements of the body of this Agreement or the Bid Documents, the incorporated Purchaser Documents), describes the procedures by which, conditions under which, and other terms by which EPWU and the City have agreed to sell and convey PARCEL MPC to Purchaser, and the terms and conditions to which Purchaser has agreed, including the Per-Acre Price, and the

performance that Purchaser has promised, as consideration in part for the sale and conveyance of PARCEL MPC to it. In particular, Purchaser has agreed to pay the Per-Acre Price as described in the Bid Documents, to develop PARCEL MPC in a specific manner as a master planned community in accordance with the City's approved Northeast Master Plan and Comprehensive Plan, and the City Plan Commission's Land Study and other requirements, except as otherwise provided herein.

(b) This Agreement is not merely a contract for sale, but also is intended by the parties to be, and is, a contract defining the post-sale, post-conveyance obligations of Purchaser for the development of the master planned community described herein on the property to be conveyed to and developed by Purchaser as provided herein. As such, the obligations, duties, covenants, commitments, responsibilities, assumptions of risk, representations, warranties, and promises of Purchaser stated in this Agreement (collectively, "Purchaser's Obligations"), and the rights and interests of EPWU and the City stated herein, are intended by the parties to, and will, survive the conveyance of the property described herein and the issuance of the deed(s) to such property called for herein. The legal doctrine of merger of contract-for-sale or contract-for-deed with the property deed shall not apply, nor shall that doctrine or any other have the effect of negating or modifying Purchaser's Obligations in any way, or otherwise excusing Purchaser from them, either before or after issuance of any deed concerning PARCEL MPC or any part thereof, or of negating, modifying, limiting, curtailing or otherwise altering the rights of EPWU and the City.

#### **4. EARNEST MONEY DEPOSIT**

(a) As provided in Section 10 of the Bid Instructions, EPWU shall deposit the Purchaser's Earnest Money Deposit submitted with Purchaser's Bid, into an interest-bearing escrow account in EPWU's designated depository bank.

(b) As provided in Section 8(d) of the Bid Instructions, not later than fifteen (15) days after Purchaser's notification of the acceptance of the Purchaser's Bid and the award of the Bid to the Purchaser, Purchaser shall execute an earnest money contract in a form acceptable to EPWU that will govern the escrow and release (or forfeiture) of the Purchaser's Earnest Money Deposit.

(c) Except where there has been a default by the Purchaser as described in Sections 10(d), 10(e) and 10(f) of the Bid Instructions or otherwise therein, the Earnest Money Deposit and interest accrued thereon shall be applied and/or refunded to Purchaser as provided in Section 10(g) of the Bid Instructions.

(d) Upon any default by the Purchaser of the Purchaser Obligations as described herein and in Sections 10(d), 10(e) and/or 10(f) of the Bid Instructions or otherwise therein, or termination of the Bid award and this Agreement as described therein, Purchaser's Earnest Money Deposit together with all interest accrued thereon shall be forfeited and become the property of EPWU, as liquidated damages for the failure of Purchaser to complete its purchase and/or development obligations. The parties agree that

the costs and expenses to EPWU to conduct the process required to qualify, select and arrange for a third party replacement to Purchaser to complete the project, and to oversee such completion, are indeterminate and incapable of accurate characterization, reasonable estimate or anticipation, and that forfeiture of the Earnest Money Deposit and accrued interest is an appropriate substitute therefore as liquidated damages to EPWU.

(e) The forfeiture of all or any part of the Earnest Money Deposit shall be in addition to any rights of EPWU or the City to claim or apply proceeds from any payment or performance bond posted by the Purchaser, or to seek and obtain any other remedy EPWU or the City may have under this Agreement or otherwise at law or in equity; and, further, shall not be in lieu of or to be applied in whole or any part as an offset to or credit applied against any amounts otherwise owed to EPWU or the City by Purchaser.

(f) If Purchaser fails to complete the Total Purchase Option or any of the Phase Parcel Purchases, as applicable, EPWU/City shall have the right to sell and convey the any parts of PARCEL MPC that have not been purchased by Purchaser to a third party, free of any encumbrances, liens or claims of any kind, legal or equitable, by or through Purchaser.

## 5. CLOSING PREPARATION AND SEQUENCE

(a) **Purchases in cash at closing.** All Phase Parcel purchases must be made by Purchaser in cash at the applicable Phase Parcel Closing. "Payment in cash" means payment by certified check, cashiers check, or money order payable to "El Paso Water Utilities," or a wire transfer to the account of EPWU, to be arranged.

(b) **Preparation for Initial Closing.** As provided in Section 18 of the Bid Instructions, within twenty (20) days of receipt of written notification of acceptance of the Purchaser's Bid, Purchaser shall provide EPWU with all information necessary for EPWU to prepare documents and conduct and complete the Initial Closing. Purchaser shall cooperate fully with EPWU to prepare for and complete the Initial Closing and effect the conveyance of the Phase One Parcel at such closing.

(c) **Sequential Phase Parcel purchases.** The Phase Parcels shall be purchased in sequence as described in Section 11 of the Bid Instructions and elsewhere in the Bid Documents or this Agreement.

(d) **Initial Closing.** Absent good cause for delay, closing on the total Property or on the Phase One Parcel ("Initial Closing") shall occur on or before the first business day following the expiration of forty-five (45) days from the date of adoption by the City Council of an ordinance authorizing the sale of PARCEL MPC, or as the parties may agree in writing.

(e) **Phase Two Closing.** If Purchaser has met the Minimum Residential Finished Lot Threshold for the Phase One Parcel, as stated in Section 26(d) of the Bid Instructions, and has made Satisfactory Progress (as defined in Section 13 of the Bid Instructions) in

developing the Phase One Parcel, Purchaser may purchase the Phase Two Parcel. The Phase Two Parcel may be purchased by Purchaser at any time on or before the Phase Two Parcel purchase deadline stated in Section 11 of the Bid Instructions and consistent with **Exhibit C** of the Bid Documents, but must be purchased by Purchaser no later than this deadline.

(f) **Phase Three Closing.** If Purchaser previously has purchased the Phase One and Phase Two Parcels, has met the Minimum Residential Finished Lot Threshold for the Phase One and Two Parcels, as stated in Section 26(d) of the Bid Instructions, and has made Satisfactory Progress (as defined in Section 13 of the Bid Instructions) in developing the Phase One and Phase Two Parcels Purchaser may purchase the Phase Three Parcel. The Phase Three Parcel may be purchased by Purchaser at any time on or before the Phase Three Parcel purchase deadline stated in Section 11 of the Bid Instructions and consistent with **Exhibit C** of the Bid Documents, but must be purchased by Purchaser no later than this deadline.

(g) **Closing Costs.** All costs of and related to each applicable closing shall be borne fully and solely by Purchaser.

## 6. CONVEYANCE OF LANDS – GENERAL

(a) **Conditions precedent for conveyances.** Conveyance to Purchaser of PARCEL MPC at the Per-Acre Price bid by Purchaser in Purchaser's Bid shall be contingent upon:

(i) a resolution by EPWU that PARCEL MPC is no longer needed or useful to the EPWU water and wastewater system and that, to satisfy applicable bond covenants either (A) other property of equal value will be substituted for the land sold or (B) the proceeds from the land sale will be placed in a special fund to be used to pay off the bonds;

(ii) passage by the City Council of an ordinance authorizing the City Manager to make and close the sale of PARCEL MPC;

(iii) Purchaser having timely executed the required earnest money contract; and

(iv) Purchaser having timely executed this Agreement.

(b) **Special warranty deeds with restrictions and covenants.** Conveyance(s) of the Phase Parcels shall be made by special warranty deeds, and shall be subject to the Development Standards stated in this Agreement. The deeds each shall contain covenants and restrictions running with the land that embody the Development Standards stated in this Agreement. The conveyance and the deeds shall be subject to any existing easements, deed or other restrictions, reservations, rights-of-way, dedications and any other encumbrances, whether of record or apparent in fact on PARCEL MPC. There will be a restrictive covenant running with the land that no radioactive materials or other hazardous wastes that would or might contaminate or otherwise damage the ground water

supply or other water sources of the City of El Paso will be discarded, stored or otherwise placed or brought on PARCEL MPC or any parts of it.

(c) **Written representations by Purchaser at closings.** At each Phase Parcel Closing, the Purchaser shall provide the written representations required in Section 21(e) of the Bid Instructions.

(d) **Easements to be granted by Purchaser at closings.** At each Phase Parcel Closing, the Purchaser shall grant the easements required by Section 21(e) and, as known at the time, by Sections 21(f) and 32(f) of the Bid Instructions.

(e) **Title search and title insurance.** EPWU will arrange for and obtain a title commitment. It shall, however, be the sole responsibility of Purchaser to satisfy itself that title is acceptable. Purchaser shall bear the cost of such title search, title commitment, payable to EPWU at closing. Purchaser shall obtain and bear the costs of title insurance..

(f) **Survey Map – PARCEL MPC.** Parcel MPC and the three Phase Parcels are depicted in **Exhibit A** to the Bid Documents; also depicted are the non-developable portions of PARCEL MPC, such as areas required to be developed as parks and open spaces and areas where drainage and storm water or other infrastructure needed for and benefiting all Phases of the development of PARCEL MPC must be built and implemented by Purchaser.

(g) **Survey Map – embedded property not conveyed as part of PARCEL MPC.** The Survey Map of Exhibit A to the Bid Documents depicts certain lands adjacent to or circumscribed by PARCEL MPC (identified in Section 21(d) of the Bid Instructions) which are not part of PARCEL MPC and that will not be sold and conveyed by EPWU/City.

(h) **Sale and conveyance “as is.”**

(i) As provided in Section 21 of the Bid Instructions, PARCEL MPC will be sold and conveyed by the City to the Purchaser strictly “as is” and subject to all easements, restrictions, reservations, rights-of-way, dedications and other encumbrances, whether of record or visible or apparent on PARCEL MPC itself.

(ii) It shall be the sole responsibility of the Purchaser to inspect PARCEL MPC and its title and determine its condition prior to Initial Closing. This includes, but is not limited to, sole responsibility of the Purchaser for: on-site or other inspections; surveys; surface and sub-surface inspections; watershed, drainage and storm water inspections and studies; archeological inspections; engineering studies and design; soils testing and inspection; and other appropriate determinations.

(iii) Purchaser is fully and solely responsible to make any applications or reports, conduct any inspections, make any determinations, obtain any permits, permissions or consents that may be required, and design, conduct, obtain approval for, effect and complete any preparation or remediation of any kind that may be required prior to or to permit lawful conveyance of PARCEL MPC or applicable parts of it and to permit development and build-out of PARCEL MPC or applicable parts of it. This includes but is not limited to making or obtaining any and all inspections, applications, permits or consents, or remediation or other steps required under the federal Endangered Species Act (ESA), the federal Clean Water Act (CWA), the National Environmental Protection Act (NEPA), and any other applicable federal, state or local law or regulation.

(iv) Purchaser will verify in writing at the Initial Closing that it has had the opportunity to inspect PARCEL MPC prior to that closing, and that it has conducted any and all inspections, studies and other tests or surveys to its satisfaction prior to closing; and that Purchaser accepts the Phase One Parcel “as is,” and agrees to accept the Phase Two and Three Parcels “as is” at the respective Phase Parcel Closings for them.

(i) **RESERVATION OF GROUNDWATER RIGHTS.** As provided in Section 23 of the Bid Instructions, ***NO GROUNDWATER RIGHTS OF ANY KIND WILL BE CONVEYED WITH PARCEL MPC. EPWU and the City expressly reserve all groundwater rights associated with PARCEL MPC.*** The special warranty deed issued to Purchaser shall expressly reflect this reservation; and all contracts for sale and deeds or other conveyance documents of any kind made and given by Purchaser concerning any portions of PARCEL MPC shall also expressly include this reservation and make clear no underground water rights of any kind are being conveyed.

(j) **CONVEYANCE OF SURFACE ESTATE ONLY.** As provided in Section 22 of the Bid Instructions, only the surface estate of PARCEL MPC is being conveyed. The subsurface estate(s) are expressly reserved. The special warranty deed issued to Purchaser shall expressly reflect this reservation; and all contracts for sale and deeds or other conveyance documents of any kind made and given by Purchaser concerning any portions of PARCEL MPC shall also expressly include this reservation and make clear no subsurface interests of any kind are being conveyed.

(k) **EPWU/City reports and studies.** EPWU/City will provide copies of any studies they have conducted or reports in their possession regarding PARCEL MPC, but do not guarantee the accuracy, currentness, or completeness of any such studies or reports; Purchaser is fully responsible for any and all studies, data or other information on which it bases its decision to bid and the substance of its bid, and for bidding for and accepting conveyance of PARCEL MPC, and relies on any such studies or reports at its own risk.

(l) **NO REPRESENTATIONS OR WARRANTIES BY EPWU/CITY.** **NEITHER EPWU NOR THE CITY MAKE ANY REPRESENTATIONS OF ANY KIND, OR ANY WARRANTIES OF ANY KIND, TO PURCHASER**

**CONCERNING: PARCEL MPC OR ANY PARTS OF IT, TITLE TO PARCEL MPC OR ANY PARTS OF IT, ATTRIBUTES OF PARCEL MPC OR ANY PARTS OF IT, OR THE FITNESS FOR USE FOR ANY PURPOSE OF PARCEL MPC OR ANY PARTS OF IT, OTHER THAN ARE EXPRESSLY MADE IN THIS AGREEMENT OR IN ANY SPECIAL WARRANTY DEED ISSUED TO CONVEY PARCEL MPC OR APPLICABLE PARTS OF IT TO PURCHASER.**

**7. ELEMENTS OF MASTER PLANNED COMMUNITY DEVELOPMENT**

(a) **Phasing.** The Property shall be developed by Purchaser over a ten (10)-year period, in three (3) distinct, sequential Phases, as described in the Bid Documents.

(b) **Deadlines for certain development; purchase deadlines.** As identified in Section 11 of the Bid Instructions and Exhibit C of the Bid Documents, deadlines shall apply for development each Phase Parcel, and the purchase of the next Phase Parcel.

(c) **Master Plan.** The conceptual master plan for PARCEL MPC, described in **Exhibit B** of the Bid Documents, calls for the development of PARCEL MPC in three distinct, sequential Phases (*see* Exhibit C of the Bid Documents) to produce a master planned community utilizing Smart Growth principles, that has specific community elements and infrastructure (*see* Exhibit D of the Bid Documents), including but not limited to parks, open space, and a trail system connecting the various Phases; a coordinated traffic plan; drainage and storm water management infrastructures; a specific mix of residential and commercial buildings of various types, styles and price ranges, with unifying and harmonious architectural design, landscaping and color schemes, and construction elements; sites for schools and related facilities; and other amenities. Development and build-out of each Phase of PARCEL MPC development shall conform substantially to the conceptual master plan and other requirements stated in this Agreement, including the Bid Documents.

(d) **Mixed uses and building types.** Requirements for proportional mix of uses, building and residence types, lot sizes and types, and other physical qualities applicable to PARCEL MPC development are described in the Bid Documents, especially Section 25 of the Bid Instructions and Exhibit B of the Bid Documents.

(e) **Phase One includes primary infrastructure development.**

(i) In addition to residential and commercial developable portions of the Phase One Parcel as depicted in Exhibit C of the Bid Documents, the Phase One Parcel includes land not intended for residential or commercial development, and which will not be so developed, but which is and will be developed by the Purchaser as and be used solely for parks, open space and certain other infrastructure intended to serve all Phase Parcels of PARCEL MPC. As described in the Bid Documents, these infrastructure elements include but are not limited to: parks, open space, trails and other recreational facilities, school and municipal facilities sites, arterial roadways, and drainage and storm water facilities.

(ii) The Purchaser must purchase the entire Phase One Parcel, including both developable residential and commercial lands as well as the land designated in the Bid Documents for such infrastructure; and, as part of the Phase One development and build-out, subject to any modifications in an approved Amended Land Study for the Phase One Parcel of the requirements stated in the Bid Documents regarding infrastructure development and build-out during Phase One, Purchaser must fully develop and improve such parks, open space, drainage and storm water, roads, and other required infrastructure elements.

(iii) Purchaser will comply with and timely satisfy all requirements for required infrastructure development and construction for Phase One stated in the Bid Documents (*see* Sections 28-35 of the Bid Instructions, and Exhibits B, C, D and F of the Bid Documents).

(iv) As provided in Section 32(e) of the Bid Instructions, EPWU requires landscape and irrigation restrictions in the sale of undeveloped land to promote water conservation, ensure water-use efficiency, and minimize water runoff into streets. Development of PARCEL MPC by Purchaser shall be governed by El Paso Municipal Code Title 15 (Public Services), Chapter 12 (Water and Sewer System) and Chapter 19 (Water Conservation), as these may subsequently be amended and in effect at the time of relevant applications.

(v) Purchaser shall create a planned, integrated, coordinated drainage and storm water drainage and handling system in accordance with **Exhibit B** of the Bid Documents.

(vi) The infrastructure lands and improvements, including all storm water facilities, open spaces, trails, parks and other required infrastructure improvements required by the bid instructions and Exhibits B and D of the Bid Documents will be developed by Purchaser at its own cost, and then dedicated to the City.

(vii) Purchaser will provide warranty(ies) as to drainage and storm water infrastructure, parks, and roadways, and other infrastructure as required by the City's Subdivision Ordinance or other City Code or ordinance provisions in effect at the time of dedication of the infrastructure to the City.

(f) **Infrastructure Requirements.** Purchaser is responsible for providing the infrastructure elements and meeting the infrastructure requirements stated in this Agreement, including the Bid Documents, for all Phases of development of PARCEL MPC. Purchaser will be required to post payment and performance bonds in each Phase of development of PARCEL MPC, as provided in the Bid Instructions (*see, e.g.,* Sections 28(e) and 30(d)(i)), in amounts equal to one hundred percent (100%) of the cost estimated for infrastructure required to be provided during the applicable Phase, based on the approved Amended Land Study for that Phase.

(g) **Permits and consents.**

(i) Purchaser shall be solely responsible for obtaining permits and other consents for the development and build-out of PARCEL MPC, from the City, the State of Texas, the United States and any other governmental entities having jurisdiction over the required activities of Purchaser and its agents or subcontractors, and any agencies or subdivisions of such governmental entities. In particular, but without limitation hereby, Purchaser will be solely responsible for meeting and complying with all approval, land use, subdivisions, drainage, traffic, roadway, landscaping, zoning and other City Code or ordinance-based standards, requirements, and procedures in effecting the development and build-out of PARCEL MPC, and with any and all requirements of state or federal law.

(ii) As provided in Section 6(h)(iii) above and Section 24(c) of the Bid Instructions, Purchaser shall be solely responsible, and at its sole cost, for any mitigation or remediation that may be required by applicable law, regulation or agencies with jurisdiction regarding any condition of PARCEL MPC.

(iii) As described in Section 26(b) of the Bid Instructions, an Amended Land Study is required to be filed by the Purchaser for each Phase Parcel, within six (6) months of that Phase Parcel Closing; and must be approved by the City. *As provided in Sections 26(b)(iii) and 26(f) of the Bid Instructions, Amended Land Studies will not constitute an original application for the first permit in a series for the project for the purposes of Texas Local Government Code Chapter 245.*

(h) **Master Traffic Impact Study.**

(i) Purchaser is required to conduct Master Traffic Impact Studies for PARCEL MPC, as described in Section 26(b) of the Bid Instructions, which shall be part of the applicable Amended Land Study for each Phase.

(ii) Based on the data gathered, the Studies will also contain routing, sizing and other specifications for and conclusions concerning the completion of, and a detailed plan for, a coordinated roads and traffic plan (“Traffic Plan”) for PARCEL MPC that is consistent with the conceptual master plan and Smart Growth principles.

(iii) A Study applicable to the particular Phase shall be submitted for review and approval to the City as part of the required Amended Land Study for the applicable Phase Parcel; the City shall review it for compliance with the conceptual master plan and recognition and inclusion of applicable and practicable Smart Growth principles. The City will approve the Study or require additional data collection, analysis or modification based on these factors.

(iii) If additional study and data, new or additional or revised analyses, modified conclusions, or modifications to the Traffic Plan are required by the

City, Purchaser shall have a reasonable time to complete an amended Master Traffic Impact Study and state appropriate amended conclusions and an amended Traffic Plan. The amended Study, including an amended Traffic Plan, shall be submitted to EPWU/City for review and approval, consistent with the provisions of Section (g)(iii) above.

(iv) Purchaser, and any Assignees, must comply with the approved Study and the approved Traffic Plan in the development and build-out of PARCEL MPC, including in each Phase; and at the completion of development and build-out of all Phases, PARCEL MPC shall meet or exceed a minimum level of service "C" that is based on the Master Traffic Impact Study.

(i) **Smart Growth principles.** Purchaser and Assignees will incorporate and use Smart Growth principles where and to the extent practicable, including but not limited to the principles described in the Bid Documents.

(j) **Water and wastewater services.**

(i) Water and wastewater services will be provided by EPWU in accord with the most current EPWU rules and regulations in place at the time of application for such services made to the Developer Service Section of EPWU.

(ii) Water and wastewater infrastructure facilities, including trunk and other lines, shall be provided by EPWU and Purchaser as described in Section 32 of the Bid Instructions.

(iii) Water and wastewater infrastructure improvements shall be phased by EPWU and Purchaser to meet or exceed the schedules stated in Exhibit C of the Bid Documents and as described in Section 32 of the Bid Instructions.

(iv) Purchaser shall grant easements to EPWU at no fee or cost for water and wastewater facilities as may be reasonably needed for EPWU to serve the various Phase Parcels and other, non-PARCEL MPC areas shown on Exhibit A of the Bid Documents, or as reasonably requested by EPWU at the time subdivision plats are submitted by Purchaser (or, as applicable, by Assignees to which Purchaser has sold tracts). See Sections 21(e), 21(f) and 32(f) of the Bid Instructions.

(k) **Electric and other utilities.**

(i) As required by Section 33 of the Bid Instructions, Purchaser shall work with the electric utility company to upgrade electrical lines existing on PARCEL at the time of the Initial Closing to applicable City code requirements in place at the time of Initial Closing.

(ii) Purchaser shall satisfy the other requirements stated in Section 33 of the Bid Instructions regarding utilities.

(iii) Purchaser shall maintain continuous and uninterrupted electricity service to EPWU facilities existing on or adjacent to PARCEL MPC at the time of the Initial Closing, and shall coordinate development and build-out of PARCEL MPC to ensure such continuity of service.

(l) **Parkland and facilities development and dedication.**

(i) Purchaser shall timely satisfy the requirements stated in Section 29 and elsewhere of the Bid Documents regarding the reservation, improvement, development and dedication of park and other public recreational lands and facilities.

(ii) Consistent with the requirements stated in Section 29(c) of the Bid Instructions, Purchaser will at its own cost improve and dedicate additional neighborhood parkland as required by the City's Subdivision Ordinance with each subdivision plat submitted and approved by the City for PARCEL MPC.

(iii) Purchaser shall collaborate with the City of El Paso to provide all park, open space, and trail improvements required to create a master planned trail system as described and required in Section 29 of the Bid Instructions and elsewhere in the Bid Documents.

(m) **Middle and elementary school tracts.**

(i) As required in Section 34 of the Bid Instructions or elsewhere in the Bid Documents, Purchaser is required to negotiate with the El Paso Independent School District ("EPISD") for the location of any future needed middle school sites (20 acres each) and elementary school sites (15 acres each).

(ii) Purchaser will be required to make infrastructure improvements including street paving, sidewalks, drainage facilities, curb, gutter and sidewalks to all streets abutting the proposed school sites at its own cost, with no reimbursement by EPWU, EPISD, or the City.

(iii) As provided in Section 34 of the Bid Instructions, the school sites will be offered by Purchaser to EPISD for purchase at a per-acre purchase price equal to the Per-Acre Price plus interest at a seven percent (7%) annual rate accrued from the date of the Initial Closing (not compounded).

(n) **Other public infrastructure and facilities.** Consistent with the provisions in Section 35 of the Bid Instructions, Purchaser will negotiate in good faith with other public agencies providing police, fire, library, public assembly and other public and institutional facilities for appropriate facility sites in PARCEL MPC. The police and fire station sites and transit sites shall be dedicated to the City at no cost, and the Purchaser may offer the other sites to applicable agencies or entities for purchase at a per-acre price

equal to the Per-Acre Price plus interest at a seven percent (7%) annual rate accrued from the date of the Initial Closing (not compounded).

## 8. PURCHASER COVENANTS AND OBLIGATIONS

(a) **“Development Standards.”** The requirements of complying with the phasing schedule for purchases of Phase Parcels; constructing the required infrastructure and satisfying the infrastructure requirements; development and build-out of the Phase Parcels in a manner conforming to the conceptual master plan, the City’s 2025 Comprehensive Plan, the City’s Northeast Master Plan, the City Plan Commission’s 2006 Land Study (see Section 25(a) of the Bid Instructions), and the standards and applicable phasing schedules stated in this Agreement including the Bid Document; performing, obtaining approval of, and adhering to the Master Traffic Impact Study as provided in approved Amended Land Studies; applying Smart Growth principles where and to the extent practicable; the substantive requirements of the various approved studies, plans and timelines identified in the this Agreement including the Bid Documents; applicable governmental requirements, such as but not limited to those identified in Sections 5(f)(iii) and 8(f) hereof; the prohibitions against radioactive materials and hazardous wastes of Section 36(d) of the Bid Instructions; the requirement that covenants be included in contracts, deeds and other conveyance documents, and the covenants themselves, legal and regulatory requirements and standards; and any and all other development, planning, study, application, permit, and other requirements, standards and principles stated in this Agreement including the Bid Documents, all collectively shall be referred to as the **“Development Standards.”**

(b) **Compliance by Purchaser.** Purchaser shall adhere to and comply strictly with the Development Standards. Purchaser will incorporate the Development Standards into the approved Amended Land Study, the Development Layout, Phasing Plan and Schedule, and the Development Plans required in Section 9 of this Agreement.

(c) **Compliance by Assignees and Builders.** Purchaser shall be responsible to ensure that all Assignees and all builders, and their successors and assigns, adhere to and comply with the Development Standards.

(d) **Contracts for sale with Assignees, and deeds.** Purchaser shall include in any contracts for sale or other conveyances of any Tracts in a Phase Parcel to any Assignees provisions that require strict compliance by the Assignee with the Development Standards, and provisions that preclude merger of the sale or other conveyance contract with any deed provided by Purchaser; and shall require that Assignees include such provisions in any contracts for sale or other conveyances by Assignees to their successors and assigns (other than end purchasers of final housing or commercial building products), or in contracts with Assignees’ builders.

(e) **Deeds to end user purchasers.** All deeds or other conveyance documents issued by Purchaser or any Assignee (or Assignee’s successors and assigns) to any end user

purchaser shall contain as deed restrictions, covenants and limitations the standards and requirements of the Development Standards, in a form appropriately adapted to end users.

(f) **Run with land.** All restrictions, covenants and limitations in deeds or other conveyance documents, and in contracts, shall run with the land, and not be merely personal to the purchaser. All deeds and other conveyance documents shall be recorded promptly after execution and, if applicable, closing.

(g) **Governmental requirements.** Purchaser shall comply with all applicable federal, state and local laws and regulations. Knowing failure to comply with the requirements, or timely to cure deficiencies, will constitute un-Satisfactory Performance.

(h) **Local builders and suppliers utilization requirements.** Purchaser shall comply with the HUB program requirements and with the requirements regarding Purchaser's use of local builders and suppliers for the development of PARCEL MPC that are stated in Sections 37 and 38 of the Bid Instructions, respectively, and in Exhibit F of the Bid Documents. Purchaser shall ensure that all Assignees and builders satisfy these requirements. Purchaser shall provide the annual reports required by Section 39 of the Bid Instructions. Compliance with the HUB requirements and the local builders and local suppliers requirements will not relieve Purchaser from its obligations to develop and PARCEL MPC according to the required Phase Parcel purchase deadlines and other requirements stated herein.

(i) Failure or delay of an Assignee timely to perform its functions or obligations, or to comply with the Development Standards, will not excuse Purchaser from its obligations under this Agreement. Purchaser is responsible for the timely performance of its Assignees.

(j) *Failure of Purchaser (or its Assignees, or their successors or assigns, as applicable) to satisfy the Development Standards shall constitute a default by Purchaser, subject to the remedies specified in this Agreement, including termination of this Agreement as to the right to make additional Phase Parcel purchases and, as applicable, associated forfeiture of Earnest Money, and other remedies available to EPWU or the City at law or in equity.*

## 9. DEVELOPMENT PREPARATION, PROGRESS AND APPROVALS: MAJOR MILESTONES

(a) **Development timeline.** Development of each Phase shall proceed as described in the Bid Documents.

(b) Major milestones of development include, among others, the following:

(i) Phase One. Within six (6) months of the Initial Closing, Purchaser shall submit the following:

(A) An Amended Land Study for Phase One that is consistent with the conceptual master plan and the Development Standards. The study shall be submitted to the City for review and approval, and any deficiencies identified by the City shall be corrected promptly by Purchaser.

(B) A Master Traffic Impact Study, to be submitted to the City for review and approval as part of the Amended Land Study for the Phase One Parcel, as provided in Section 26(b) of the Bid Instructions and in Section 7(h) above.

(C) As part of the Amended Land Study, provide a detailed Development Layout and Construction Schedule, including a proposed schedule for any remaining Phase Parcel purchases;

(D) As part of the Amended Land study, address all requirements for infrastructure and other improvements required by this Agreement, including the Bid Documents, and previously approved Amended Land Studies, including preliminary plans for improvements that need to be coordinated with and integrated to serve adjacent parcels of all Phases of development in PARCEL MPC, particularly including drainage and storm water facilities that may need to be completed for the protection and service of the adjacent Phase Parcels as well as to allow development of the Phase One Parcel, and those facilities and infrastructure specified in Exhibit D (Infrastructure Requirements and Development Schedule) of the Bid Documents;

(E) a Development Plan that includes details on the community theme of development, the proposed architectural style, entry statements, major amenities, and construction materials, consistent with the Smart Growth principles described in Exhibit B of the Bid Documents;

(F) The approved Amended Land Study shall become part of Purchaser's contractual obligations under this Agreement, and its substantive elements shall be included as deed and contractual covenants for development of the Phase One Parcel. Purchaser, Assignees and builders must adhere to the approved Amended Land Study.

(ii) Phase Two Parcel purchase. When Purchaser has achieved the required Minimum Residential Finished Lot Threshold specified in Section 26(d) of the Bid Instructions for the Phase One Parcel and has made Satisfactory Progress in the development of that Phase Parcel, Purchaser shall be eligible to purchase the Phase Two Parcel. That purchase must be made on or before the deadline stated in the Bid Documents.

(iii) Phase Three Parcel purchase. When Purchaser has achieved the required Minimum Residential Finished Lot Threshold specified in Section 26(d) of the Bid Instructions for the Phase Two Parcel, and has made Satisfactory Progress in

the development of both the Phase One and Phase Two Parcels, Purchaser shall be eligible to purchase the Phase Two Parcel. That purchase must be made on or before the deadline stated in the Bid Documents.

(iv) Phases Two and Three. Within six (6) months of the applicable Phase Parcel Closing for Phase Parcels Two and Three, respectively, Purchaser shall submit an Amended Land Study for the applicable Phase Parcel, having the same elements specified above for the Amended Land Study for the Phase One Parcel.

(c) Failure timely and satisfactorily to comply with any of these requirements shall be a default, for which the EPWU and the City may terminate this Agreement as to the Purchaser's right to purchase the remaining Phase Parcels, and seek any other relief or remedies to which they may be entitled under this Agreement or otherwise at law or in equity.

## 10. PAYMENTS

(a) **"Per-Acre Price".** The per-acre Price bid by Purchaser in Purchaser's Bid accepted by EPWU and the City shall be the **"Per-Acre Price"** applicable to the purchase and sale of the entirety of PARCEL MPC, including all Phase Parcels, as described in Sections 12 and 15 of the Bid Instructions and Section 1 of this Agreement.

(b) **Phased Purchase Prices.**

(i) The total purchase price for the Phase One Parcel shall be equal to the product of (A) the number of acres comprising the Phase One aParcel (including infrastructure acreage), multiplied by (B) the Per-Acre Price, and shall be due and payable in full by Purchaser, in cash, at the Initial Closing. A portion of the Earnest Money Deposit will be applied to Purchaser's credit at that time, as provided in Section 10 of the Bid Instructions and Section 4(c) of this Agreement.

(ii) The total purchase price for the Phase Two Parcel shall be equal to the product of (A) the number of acres comprising the Phase Two Parcel (including infrastructure acreage), multiplied by (B) the Per-Acre Phase Two Purchase Price. The total purchase price shall be due and payable in full by Purchaser, in cash, at the Phase Two Closing. The Per-Acre Phase Two Purchase Price shall be an amount equal to the sum of the Per-Acre Price plus a per-acre carrying charge accrued at an annual rate of seven (7%) (not compounded), calculated from the date of the Initial Closing to the date of the Phase Two Parcel Closing. Any remaining Earnest Money Deposit will be applied to Purchaser's credit at that time, as specified in Section 10 of the Bid Instructions and Section 4(c) of this Agreement.

(iii) The total purchase price for the Phase Three Parcel shall be equal to the product of (A) the number of acres comprising the Phase Three Parcel, multiplied by (B) the Per-Acre Phase Three Purchase Price, and shall be due and payable in full by Purchaser, in cash, at the Phase Three Closing. The Per-Acre Phase Three

Purchase Price shall be an amount equal to the sum of the Per-Acre Price plus a per-acre carrying charge accrued at an annual rate of seven (7%) (not compounded), calculated from the date of the Initial Closing to the date of the Phase Three Parcel Closing.

## **11. DEFAULT**

(a) **General rights of EPWU/City upon Purchaser default.** Upon default of any material obligation hereunder by Purchaser, EPWU/City shall have the right to terminate this Agreement as to any rights of the Purchaser to purchase and develop any remaining unpurchased Phase Parcels. This right of termination shall be in addition to any other rights and remedies available to EPWU or the City under this Agreement or otherwise at law or in equity.

(b) **Nature of events of default.** Without limitation hereby, events of default by Purchaser shall include: Failure to purchase any Phase Parcel when the deadline for such purchase occurs; failure to develop and build-out any of the required parks, open space, drainage and storm water infrastructure, or any other specific infrastructure elements of the Master Plan or otherwise required in this Agreement consistent with the Development Standards and according to the requirements of this Agreement; failure to timely develop and build-out any Phase Parcel consistent with the Development Standards and according to any other requirements of this Agreement; failure timely to initiate required development and build-out of any Phase of the project; or failure to comply with or satisfy any other material requirement or duty of Purchaser stated in this Agreement, including the Bid Documents.

(c) **Notice and opportunity to cure.** Upon the occurrence of an event of default by Purchaser, other than a failure to purchase a Phase Parcel by the deadline stated in the Bid Documents for the purchase of that Phase Parcel, EPWU and the City shall give Purchaser written notice of such default with sufficient detail to identify the specific nature and extent of the asserted default. Purchaser shall thereupon have ninety (90) days, or such other longer time period as the notice shall state, from the date of such notice to cure the default(s) to the satisfaction of EPWU and the City. Failure of Purchaser satisfactorily to cure such default within the permitted time shall be a default and shall entitle EPWU and the City to terminate this Agreement as to any rights of Purchaser to purchase and develop any remaining unpurchased Phase Parcels, and to seek any remedies to which they are entitled under this Agreement or to which they may otherwise be entitled at law or in equity.

## **12. LIMITATION OF LIABILITY OF EPWU AND CITY**

NEITHER EPWU NOR THE CITY SHALL HAVE ANY LIABILITY TO PURCHASER, ITS SUCCESSORS OR ASSIGNS (INCLUDING "ASSIGNEES"), FOR ANY CLAIMS OF ANY KIND ARISING FROM OR RELATED TO THIS AGREEMENT, THE CONVEYANCE OF PARCEL MPC OR ANY PART THEREOF TO PURCHASER, ANY CONVEYANCE BY PURCHASER OF PARCEL MPC OR

ANY PARTS THEREOF; THE DEVELOPMENT OF PARCEL MPC OR ANY PARTS THEREOF BY PURCHASER OR PURCHASER'S SUCCESSORS, ASSIGNS (INCLUDING "ASSIGNEES"), AGENTS, REPRESENTATIVES OR CONTRACTORS, OR FOR ANY CLAIMS BY THIRD PARTIES CONCERNING THE CONVEYANCE, DEVELOPMENT, BUILD-OUT OR SUBSEQUENT SALES OF PARCEL MPC OR ANY PARTS THEREOF.

### **13. INDEMNIFICATION BY PURCHASER**

PURCHASER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS EPWU AND THE CITY FROM AND AGAINST ANY AND ALL CLAIMS OF ANY KIND REGARDING, ARISING FROM, OR RELATED TO (a) PURCHASER'S OR ANY ASSIGNEE'S DEVELOPMENT OF PARCEL MPC OR ANY PARTS THEREOF OR OTHER ACTIVITIES OF ANY KIND ON PARCEL MPC OR ANY PARTS THEREOF; (b) PURCHASER'S OR ANY ASSIGNEE'S OR BUILDER'S SUBSEQUENT SALE OR OTHER CONVEYANCE OF PARCEL MPC OR ANY PARTS THEREOF; (c) PURCHASER'S OR ANY ASSIGNEE'S CONTRACTS WITH THIRD PARTIES FOR THE SALE, CONVEYANCE, DEVELOPMENT OR BUILD-OUT OF PARCEL MPC OR ANY PARTS THEREOF; (d) PROPERTY DAMAGE, PERSONAL INJURY OR WRONGFUL DEATH OCCURRING ON ANY PHASE PARCEL AFTER THE CLOSING FOR THAT PHASE PARCEL; (e) PROPERTY DAMAGE, PERSONAL INJURY OR WRONGFUL DEATH OCCURRING ON ANY PART OF PARCEL MPC NOT YET PURCHASED BY PURCHASER, WHERE THE CLAIM IS BASED ON WHOLE OR PART ON THE ACTIVITIES OF PURCHASER OR ANY ASSIGNEE OR BUILDER; (f) ANY NEGLIGENCE, GROSS NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF PURCHASER, ANY ASSIGNEE OR ANY BUILDER; OR (g) BY PERSONS OR ENTITIES OTHER THAN PURCHASER (*i.e.*, OTHER THAN THE ENTITY ITSELF) ARISING UNDER OR RELATED TO THIS AGREEMENT OR THE SALE AND CONVEYANCE OF PARCEL MPC OR ANY PARTS THEREOF.

For the purposes of this provision, "EPWU" and the "City" include, without limitation, the entity, members of their governing bodies, their officers, elected officials, employees, agents and representatives; and "Purchaser," "Assignee" and "Builder" include, without limitation, the entity, its officers, directors, trustees, owners, shareholders, partners or other principals, employees, agents, representatives, contractors, subsidiaries, affiliates, parents, and other entities or person in privity with it or claiming through or under it.

### **14 NO WARRANTIES**

EPWU AND THE CITY EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND AND ANY NATURE NOT EXPRESSLY MADE IN THIS AGREEMENT OR IN ANY DEED CONVEYING A PHASE PARCEL FROM THE CITY TO PURCHASER. NEITHER EPWU NOR THE CITY MAKE ANY REPRESENTATIONS OR WARRANTIES CONCERNING THE TITLE TO PARCEL MPC OR ANY ENCUMBRANCES OR BURDENS ON THE LAND

EXCEPT AS PROVIDED IN SUCH DEEDS, OR CONCERNING THE CONDITION, VISIBLE OR OTHERWISE, OF PARCEL MPC OR ITS FITNESS FOR USE BY PURCHASER, EVEN FOR THE PURPOSES STATED OR CONTEMPLATED IN THIS AGREEMENT. PURCHASER ACCEPTS ALL PHASE PARCELS OF PARCEL MPC "AS IS" UPON THE CLOSING OF SALE OF EACH PHASE PARCEL, FINALLY AND WITHOUT RECOURSE OF ANY KIND AS AGAINST EPWU OR THE CITY.

#### **15. DISPUTE RESOLUTION**

(a) Neither party may be compelled to arbitrate any dispute arising under this Agreement or related to it or the development or sale and conveyance of PARCEL MPC or any part of it without the express written consent of that party.

(b) The parties agree that it shall be a prerequisite to seeking legal or other relief regarding any dispute arising under or related to this Agreement or to the development or sale and conveyance of PARCEL MPC or any part of it that the parties participate in good faith in non-binding mediation. In any such mediation, the parties agree to use the Dispute Resolution Center of Austin, Texas, as the provider of mediators for mediation as described in TEX. CIV. PRAC. & REM. CODE ANN. § 154.073. Unless the parties are satisfied with the results of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential as described in TEX. CIV. PRAC. & REM. CODE ANN. § 154.073, unless the parties agree in writing to waive such confidentiality.

#### **16. MISCELLANEOUS**

(a) **Applicable law.** This Agreement shall be construed and applied according to the laws of the State of Texas, without giving effect to its choice of laws provisions.

(b) **Venue.** Venue of any claims or disputes arising under or related to this Agreement or the performance of Purchaser or any Builder shall be and lie exclusively in the courts of competent jurisdiction in El Paso County, Texas.

(c) **Attorneys fees.** The party prevailing in any adjudication, as that term is defined in Texas Local Government Code section 271.159, or successor statutes, of a claim by or against EPWU or the City arising under or related to this Agreement or the performance of it, or regarding or related to the sale and conveyance hereunder of PARCEL MPC any part of it, shall be entitled to recovery of reasonable and necessary attorneys fees and costs as permitted by section 271.159 or its successor statute.

(d) **Entire Agreement** This Agreement, together with its attachments and the Bid Documents, constitutes the entire agreement between the parties, and supersedes any and all prior written or oral representations, agreements, promises, understandings or undertakings concerning the sale and conveyance of PARCEL MPC to Purchaser, or the development and build-out of PARCEL MPC by Purchaser. No representations or

statements by EPWU or City personnel or officers shall be effective to modify, amend, or otherwise alter this Agreement, unless first formally adopted in writing by the EPWU Board and the City Council.

(e) **Amendment.** This Agreement may be amended only by a writing duly approved by the El Paso Water Utilities – Public Service Board and the City Council.

(f) **Severance; survival.** If any provision of this Agreement should be held by a court or other legal tribunal to be illegal or otherwise unenforceable, the remainder of this Agreement shall survive to the extent lawful and practicable without changing the underlying purpose and intent of the Agreement, and shall continue and be enforceable on that basis.

(g) **Construction.** Descriptive headings or captions in this Agreement are for convenience only and shall not affect the construction or application of this Agreement. Words having established technical or trade meanings in the industry shall be so construed. Listings of items shall not be exclusive unless expressly so stated, but shall include other items, whether similar or dissimilar to those explicitly listed, as the context reasonably requires. No rule of construction requiring interpretation against the drafting party shall be applied or given effect. Words of any gender used herein shall be deemed to include words of any other gender; and use of the singular or the plural herein shall include the other, unless context requires otherwise.

(h) **Non-Assignable.** Purchaser has been selected following a comprehensive and time-consuming qualification and bidding process, and has been selected by EPWU and the City on the basis of experience, qualities, reputation and attributes specific to Purchaser. This Agreement is not assignable by Purchaser without the express written consent of EPWU and the City, which shall be given or withheld in the sole discretion of EPWU and the City.

(i) **Notice.** Any notice required to be given hereunder shall be in writing, and shall be deemed delivered (i) three (3) business days after deposit in the U.S. Mail, postage prepaid, sent by registered mail, (ii) one (1) business day after being sent for overnight delivery by a reputable national commercial courier capable of tracking shipment and delivery, or (iii) upon hand delivery, to the address(es) designated in this License Agreement and to the attention of the person(s) named herein as designated for receipt of notice by the receiving party, or to such other address or person as the receiving party may designate in writing to the sending party from time to time.

**TO EPWU:** El Paso Water Utilities – Public Service Board  
Att'n: \_\_\_\_\_  
\_\_\_\_\_  
El Paso, Texas \_\_\_\_\_

**TO City of El Paso:** City of El Paso  
Att'n: \_\_\_\_\_  
\_\_\_\_\_ Department  
\_\_\_\_\_  
El Paso, Texas \_\_\_\_\_

**TO Purchaser:** \_\_\_\_\_  
Att'n: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(j) **No waiver of rights.** No term or provision of this Agreement shall be deemed to be waived and no consent to any breach or default shall be deemed unless such waiver or consent be in writing signed by the party against which such waiver or consent is asserted; the terms of this Agreement shall not be deemed to be amended by any such waiver or consent unless in a writing expressly stating such amendment; and any waiver by either party, whether express or implied, shall not imply a consent or waiver of any term or provision on any other occasion, or any consent to any different breach or default.

(k) **Force Majeure.** No party hereto shall be responsible for performance hereunder, and its obligation to perform its obligations hereunder shall be suspended, for the duration of any events of force majeure, including but not limited to: Acts of God, including fire, explosion, earthquake, flood, landslide, and catastrophic storm and other weather events; sustained power outages or fuel shortages preventing operation of necessary equipment or receipt of necessary materials, supplies or equipment; national or international failures of supply of necessary equipment, materials, components or supplies; acts of terrorism, vandalism, sabotage, theft of necessary components, equipment, materials or supplies; any action, law, order, regulation, directive, or requirement of the United States government or of any state or local government, or of any agency, commission, court, regulatory body or other instrumentality of such government, or of any civil or military authority, having requisite authority and jurisdiction, that precludes or substantially adversely affects the party's ability to perform; war, national emergency or civil insurrection, riot or other civil disorder; strike, work stoppage or lockout; or any other event outside the control of the party or its reasonable ability to have avoided or prevented such event; and such excuse by reason of force majeure shall last until that party by the exercise of reasonable diligence might remove, avoid or otherwise cure such impediment.

(l) **Authority to execute.** Each person signing this Agreement represents and warrants to the other parties that he/she has the requisite authority to sign this Agreement on behalf of the party for which he/she signs, and has been duly authorized by that party to execute this Agreement on the party's behalf and to bind the party thereby.

**APPROVALS AND EXECUTION:**

**CITY OF EL PASO**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Print name: \_\_\_\_\_ Title: \_\_\_\_\_

*[Notarization, jurat]*

**EL PASO WATER UTILITIES – PUBLIC SERVICE BOARD**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Print name: \_\_\_\_\_ Title: \_\_\_\_\_

*[Notarization, jurat]*

**PURCHASER**

Entity name: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Print name: \_\_\_\_\_ Title: \_\_\_\_\_

*[Notarization, jurat]*