

EL PASO WATER – PUBLIC SERVICE BOARD

Bid Number: RFQ27-22 – On Call Professional Real Estate
Brokerage Services

ADDENDUM No. 1

February 2, 2022

In accordance with the instructions to the Request for Qualifications (RFQ), the following revisions shall become part of the request and the brokers shall acknowledge receipt thereof in their Statement of Qualifications package.

1. In reference to Exhibit D
 - a. The following documents are available on the El Paso Water website under Professional Services, RFQ27-22 On Call Real Estate Brokerage Services.
 - I. Exhibit D
 - II. Exhibit A as part of Exhibit D
2. Due date for Statement of Qualifications is extended to February 17, 2022, at 3:00 P.M. (MST)

Robert Davidson

Robert L. Davidson
Contracts Construction Administrator
El Paso Water

*The Purchasing Agent's signature certifies only that the document shall become part of the Contract Documents for the reference project. His signature is not a representation that the content of this document is technically correct

STATE OF TEXAS	§	AGREEMENT FOR ON-CALL
	§	REAL ESTATE BROKERAGE SERVICES
COUNTY OF EL PASO	§	

THIS AGREEMENT FOR ON-CALL REAL ESTATE BROKERAGE SERVICES (this "**Agreement**") is entered into by and between _____, a [Texas/New Mexico] _____, (the "**Broker**") and the EL PASO WATER UTILITIES-PUBLIC SERVICE BOARD, a component of the City of El Paso, Texas, a home rule municipal corporation, hereinafter referred to as ("**EPWater**"). Broker and EPWater may be hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**"

RECITALS

WHEREAS, EPWater currently owns various parcels of real property located in El Paso County, Texas [in the State of New Mexico] (the "**Property**"); and

WHEREAS, the Public Service Board declared the Property inexpedient to El Paso Water Utilities' water, wastewater and drainage systems (collectively the "**System**"); and

WHEREAS, EPWater wishes to sell the Property in a manner and method ensuring the stability and financial viability of the water utility; while allowing EPWater to act as cooperative steward of the region's water, wastewater, or stormwater infrastructure by continuing to address the current and future water needs of on-going enterprises in the area; and

WHEREAS, pursuant to Texas Local Government Code §253.014, EPWater may contract with a licensed real estate broker to sell a tract of real property it owns or holds in trust and has the authority to sell; and

WHEREAS, EPWater has a substantial need to engage a Broker to provide Real Property Marketing Services to promote the sale of the Property; as more fully set forth and as described in the Scope of Work attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, EPWater issued a Request for Qualifications for On-Call Professional Real Estate Brokerage Services for Land Sales by Local Broker; and +

WHEREAS, the Broker has demonstrated competence and possesses the knowledge and qualifications to perform On-Call Real Estate Brokerage Services for EPWater; and

WHEREAS, EPWater desires to enter into an agreement for On-Call Real Estate Brokerage Services with Broker, subject to the terms and conditions contained in this Agreement; and

NOW THEREFORE, , in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **SCOPE OF SERVICES.** Broker hereby agrees to perform the services and provide the deliverables set forth on **Exhibit A**, attached hereto and incorporated fully herein (the “*Scope of Work*”).

2. **TERM.** The term of this Agreement commences on the Effective Date and shall terminate one (1) year from the Effective Date (the “*Term*”), unless otherwise Terminated pursuant to the terms contained herein. The word “Term” may be used herein to refer to both the initial one-year Term or, if exercised in accordance with the terms of this Agreement, any Renewal Term (as defined below).

- a. **RENEWAL.** Broker shall have the right to request to extend this Agreement for three (3) additional, one (1) year terms (each year being a separate “*Renewal Term*”).
 - i. Broker may exercise a renewal option by giving written notice to EPWater not less than thirty (30) before the expiration of the then-current Term (the “*Request to Renew*”). EPWater shall notify Broker if it decides to renew this Agreement within fifteen (15) days of receipt of the Request to Renew.
 - ii. The terms for any Renewal Term shall be the same as provided in this Agreement; provided, however, that EPWater reserves the right to review and update insurance policy limits and other provisions of the Agreement upon any renewal.

3. **PERFORMANCE.** The Scope of Work to be performed under this Agreement will be performed on an “as-needed” basis in accordance with the following terms:

- a. Broker will be contacted by a representative of EPWater and presented with a task order (the “*Task Order*”) describing with specificity the property EPWater seeks to utilize Broker to sell.
- b. A Brokerage Agreement (the “*Brokerage Agreement*”) shall be attached to each Task Order, which shall contain all the terms and conditions for performance of the Task Order, including, without limitation, a description of the property EPWater seeks to sell (the “*Task Order Property*”), the listing price, and confidentiality provisions. The Brokerage Agreement shall be executed by the Parties prior to commencing any of the work on the Task Order.

4. **COMPENSATION.** Broker shall be compensated for the services requested in each Task Order as follows:

A. **Amount.** When earned and payable, EPWater will pay Broker an amount up to six percent (6%) of the total sales price of the Task Order Property, subject to the terms and conditions contained in the Task Order or as otherwise provided in this Agreement (the “*Compensation*”).

B. Earned. Broker's Compensation is earned when any one of the following occurs during the Term:

- i. EPWater sells, all of the Task Order Property to a willing buyer at any price on any terms; or
- ii. Broker individually or in cooperation with another broker produces a buyer ready, willing, and able to buy the Task Order Property at the Listing Price (as defined in the Task Order) or at a higher price and under terms acceptable to EPWater.

C. Payable. Once it is earned, Broker's Compensation is payable during the term of the Brokerage Agreement, as the term is defined therein, at the closing and funding of any sale or exchange of all of the Task Order Property, subject to the terms of Paragraphs 4, 5 6, and 7 of this Agreement and as otherwise provided herein.

D. Not Payable. Broker's Compensation is not payable if a sale of the Task Order Property does not close or fund as a result of:

- a. a decision of the City of El Paso not to sell the Task Order Property; or
- b. EPWater's failure, without fault of EPWater, to deliver to a buyer a deed or a title policy as required by the contract to sell; or
- c. loss of ownership due to condemnation or other legal or administrative decision or proceeding; or
- d. EPWater's failure to restore the Task Order Property, as a result of a casualty loss, to its previous condition by the closing date set forth in a contract for the sale of the Task Order Property.

E. Breach by Buyer Under a Contract: If EPWater collects earnest money, the sales price, or damages by suit, compromise, settlement, or otherwise from a buyer who breaches a contract for the sale of the Property entered into during the Term, EPWater will pay Broker, after deducting attorney's fees and collection expenses, an amount equal to the lesser of: (i) one-third (1/3) of the amount collected by EPWater after deductions; (ii) or the amount of the Broker's Compensation stated in Paragraph 4(A) herein. Any amount paid under this Paragraph 4(E) is in addition to any amount that Broker may be entitled to receive for subsequently selling the Property to another unrelated buyer.

5. BROKER'S ASSOCIATE. If Broker will not be performing the obligations under this Agreement and the Brokerage Agreement and will instead use an associated licensed real estate sales agent, Broker shall identify, by name, one licensed real estate sales agent on the Brokerage Agreement who is and under the direct supervision and control of the Broker and licensed by the Texas Real Estate Commission, who Broker elects to act on Broker's behalf to perform the obligations under the Brokerage Agreement, including without limitation to show the Task Order Property to interested prospective buyers, communicate with, carry out instructions of and provide opinions and advice to EPWater during negotiations with potential buyers.

- a. The Compensation shall be paid directly to Broker when earned and payable, and Broker shall be solely responsible for compensating its associate from the Compensation. EPWater shall have no payment obligation to the any of Broker's associates.

6. COOPERATION WITH OTHER BROKERS. Broker will use its best efforts to qualify any buyers represented by other brokers prior to scheduling a showing, and Broker shall accompany any cooperating brokers to all showings unless agreed to in advance by EPWater.

- a. A formal written agreement between Broker and the other broker shall be established prior to any showing of the Task Order Property. Broker acknowledges and agrees that under no circumstances shall EPWater required to pay a commission or compensation of any kind to any other broker.
- b. In the agreement between Broker and the other broker, Broker shall offer to pay the other broker a fee of fifty percent (50%) of Broker's earned Compensation if the other broker produces a buyer that purchases the Property, and the other broker shall acknowledge and agree that under no circumstances shall EPWater required to pay a commission or compensation of any kind to the other broker.

7. BUYERS ALSO REPRESENTED BY BROKER. If a prospective buyer who Broker represents offers to buy the Task Order Property, EPWater authorizes Broker to act as an intermediary and Broker will notify EPWater that Broker will service the parties in accordance with one of the following alternatives and subject to all of the terms and conditions otherwise contained in this Agreement:

- a. The Parties acknowledge and agree that the total compensation to be paid by EPWater for brokerage services related to the sale of the Task Order Property is capped at a up to six percent (6%) of the total sales price of the Task Order Property at closing and Broker acting as an intermediary shall not affect this amount in any way. EPWater shall not be obligated to pay a commission or compensation to any other broker and shall not be considered a party to any commission or payment agreements involving any other brokers, parties, agents or associates of Broker or otherwise.
- b. If a prospective buyer who Broker represents is serviced under this Agreement by an associate of Broker other than the associate identified in the Brokerage Agreement, Broker shall:
 - i. immediately notify EPWater of the representation; and
 - ii. instruct the associate identified in the Brokerage Agreement to carry out instructions of, and provide opinions and advice during negotiations to EPWater only, and remind them of their duties regarding Confidential Information under Paragraph 27 of this Agreement; and
 - iii. instruct the associate servicing the prospective buyer that they are appointed solely to the prospective buyer and remind them of Broker's duties regarding Confidential Information under this Agreement.
- c. If a prospective buyer who Broker represents is serviced by the same associate that is servicing EPWater, Broker shall:
 - i. immediately notify EPWater of the representation; and

- ii. appoint another licensed associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the prospective buyer and identify that associate; and
- iii. instruct the newly identified licensed associate servicing the prospective buyer that they are appointed solely to the prospective buyer and remind them of Broker's duties regarding Confidential Information under Paragraph 27 of this Agreement; and
- iv. instruct the associate identified in the Brokerage Agreement to communicate with, carry out instructions of, and provide opinions and advice during negotiations to EPWater only, and remind them of their duties regarding Confidential Information under this Agreement.

d. **Broker acknowledges and agrees that it:**

- i. **may not disclose to EPWater that the prospective buyer will pay a price greater than the price submitted in a written offer to EPWater unless otherwise instructed in a separate writing by the prospective buyer;**
- ii. **may not disclose any confidential information or any information EPWater or the prospective buyer specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the Task Order Property;**
- iii. **may not treat a party to the transaction dishonestly; and**
- iv. **may not violate the Real Estate License Act.**

8. BROKER'S AUTHORITY. Broker will use reasonable efforts and act diligently to market the Property for sale, procure a buyer, and negotiate the sale of the Task Order Property.

- a. Unless otherwise prohibited herein, Broker shall:
 - i. review the Task Order Property and understand its terms prior to commencing any of the Task Order work; the right to access the Task Order Property shall extend to Broker's associates, prospective buyers, inspectors;
 - ii. advertise the Task Order Property on the Multiple Listing Service endorsed by the National Association of Realtors and by such other means and methods as Broker determines to be the best way to market the Task Order Property, including without limitation coordinating with EPWater and creating and placing advertisements with interior and exterior photographic and audio-visual images of the Task Order Property and related information in any media and the Internet;
 - iii. disseminate approved information about the Task Order Property to other Brokers and to prospective buyers, including applicable disclosures or

notices that EPWater is required to make under law or a contract;

- iv. check the records of local, state and federal agencies and other governmental bodies as well as any other sources to secure information concerning the property which Broker is hereby authorized to list;
- v. ensure the earnest money has been deposited in trust in accordance with a contract for the sale of the Task Order Property; and
- vi. after the term of this Agreement ends, the Broker may advertise that Broker "sold" the Task Order Property.

- b. Broker is expressly prohibited from executing any document in the name of or on behalf of EPWater concerning the Task Order Property or making any unapproved representations on behalf of EPWater.

9. FRINGE BENEFITS. No benefits will be provided to the Broker by EPWater.

10. LOCATION OF PERFORMANCE. Broker shall perform the services in El Paso, Texas; El Paso County or in the State of New Mexico; or at such place(s) as may be necessary or appropriate to fulfill the terms of this Agreement and the Task Order.

11. INDEPENDENT BROKER RELATIONSHIP. Nothing herein shall be construed as creating a relationship of employer and employee between the parties hereto. EPWater shall not be subject to any obligations or liabilities of the Broker incurred in the performance of this Agreement unless otherwise herein authorized.

12. INSURANCE. Broker shall maintain in effect, at all times during performance of the services described in this Agreement, the minimum coverage and limits of insurance with insurers satisfactory to EPWater set forth in this Paragraph 12. Certificates of such insurance and evidence of policy endorsement for additional insured(s) and waiver of subrogation requirements, executed by the insurer in form satisfactory to EPWater, shall be furnished to EPWater immediately upon execution of this Agreement and prior to Broker commencing work. Electronic copies of the policy documents associated with the insurance policies covered in this section shall be forwarded to EPWater no less than (5) days prior to the commencement of work. Broker shall submit the following forms and certificates for each of the above insurances to the EPWater before commencing work:

- a. Certificates of insurance shall, without any qualification thereto, contain the following statement relative to cancellation:

"Should any of the described policies be canceled or changed before the expiration date thereof, the issuing company will mail thirty (30) days written notice to the named Certificate Holder and EPWater."

- b. If required by Texas or New Mexico state law, Worker's Compensation and Employer's Liability shall be provided in accordance with the statutory limits required by law and include the following endorsement:

"The policy is endorsed to provide that insurer waives any right of subrogation it

may acquire against EPWater, its partners, agents and employees by reason of any payment made on account of injury, including death resulting therefrom, sustained by any employee of the insured."

- c. The following liability policies, except the Professional Liability policy, shall be endorsed to provide that EPWater be named as additional primary insured(s) thereunder, and such policies shall contain each of the following types of insurance indicated:
 - i. Commercial Liability Insurance required as set forth below:
 - (i) Bodily injury and property damage coverage in limits not less than \$1,000,000 Combined Single Limit for one occurrence; and
 - (ii) Coverage shall be at least as broad as the standard ISO occurrence, CG 00-01 and specifically include independent contractor and products/completed operations coverages.
 - ii. Automobile Liability required as set forth below:
 - (i) Bodily Injury and Property Damage coverages in limits not less than \$1,000,000 Combined Single Limits per accident; and
 - (ii) Policy shall be in a comprehensive form including coverage for all owned, hired, leased or non-owned vehicles.
 - iii. If Broker is to use watercraft or aircraft in the performance of his Agreement, the craft must be insured for liability limits not less than \$1,000,000 Combined Bodily Injury and Property Damage per occurrence.
 - iv. Professional Liability insurance shall be required with limits at \$1,000,000 on a "claims made" basis.
- d. The above insurance policies shall be endorsed to include a requirement that the insurer will provide EPWater with thirty (30) days written notice prior to the effective date of any cancellation or change in the insurance and, with the exception of the Professional Liability and Workers Compensation policies, shall be endorsed to name EPWater as an additional insured. Policies written on a claims-made form (along with required endorsements) shall be kept in force during and for three (3) years following work done under this Agreement.

13. INDEMNIFICATION OF EPWATER. BY ACCEPTANCE OF THIS CONTRACT, THE BROKER AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND EPWATER, THEIR BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES, FROM ANY AND ALL CLAIMS WHETHER FOR INJURIES OR DAMAGES TO PERSONS OR PROPERTY (INCLUDING DEATH), OR ANY OTHER TYPE OF CLAIM ALLEGED TO HAVE BEEN RECEIVED OR SUFFERED AS A RESULT OF OR ARISING OUT OF THE OPERATIONS OF THE BROKER OR ITS AGENTS, SUB-BROKERS, BROKERS AND EMPLOYEES, IN THE PERFORMANCE OF THIS CONTRACT. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

14. DEFAULT.

- a. If Broker materially breaches or fails to perform any of the terms of this Agreement

and does not cure such breach or failure within thirty (30) days after written notice from EPWater to Broker describing such breach or failure, EPWater may terminate this Agreement on five (5) business days' written notice to Broker. Upon termination of this Agreement pursuant to this Section, EPWater shall be released from all contractual obligations to Broker hereunder except for any obligation for the payment of a commission under this Agreement if the conditions set forth in Section 4E of this Agreement for the payment of such commission are satisfied.

- b. If EPWater materially breaches or fails to perform any of the terms of this Agreement and does not cure such breach or failure within thirty (30) days after written notice from Broker to EPWater describing such breach or failure, Broker may exercise any and all remedies available to Broker in any order, as determined solely by Broker.

15. LAW GOVERNING AGREEMENT/VENUE. For purposes of determining the place of the Agreement and the law governing the same, it is agreed that the Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the courts of El Paso County, Texas.

16. TERMINATION.

- a. **Termination for Cause.** Either party may terminate this Agreement without cause after ten (10) days written notice to the other party of the intention to terminate this Agreement, or at any time by mutual agreement of the parties. Should EPWater have cause to terminate this Agreement or if the Broker is in breach of this Agreement, the Agreement may be terminated immediately upon written notification to the Broker of the cause for termination.
- b. **Termination for Convenience.** EPWater may terminate this Agreement for convenience, in whole or in part, at any time by written notice to the Broker. The Broker will be paid for work performed up to the time of termination. The Broker will promptly submit its termination claim to EPWater.
- c. **Termination for Failure to Comply with Subchapter J, Chapter 552, Government Code.** The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and the Broker agrees that this contract can be terminated if the Broker knowingly or intentionally fails to comply with a requirement of that subchapter.
- d. **Responsibility upon Termination.** Any equipment or hard copies of information provided by EPWater to the Broker in connection with or furtherance of Broker's services under this Agreement, including without limitation, laptops, maps, Confidential Information, and personal management tools, shall, immediately upon the termination of this Agreement, be returned to EPWater.
- e. **Survival.** The provisions of Sections 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21 23,

24, 25 and 29 of this Agreement shall survive the termination of this Agreement and remain in full force and effect thereafter.

- f. **Protection Period:** Within ten (10) calendar days of the expiration of the Term or earlier termination of this Agreement (the “***Protection Period***”), Broker may send EPWater written notice specifying the names of persons whose attention was called to the Property during the Term. If EPWater agrees to sell the Property during the Protection Period to a person named in the notice, EPWater will pay Broker, upon the closing of the sale, the amount Broker would have been entitled to receive if the Term were still in effect. This Paragraph 16(f) survives termination of the Term.

1. This Paragraph 16(f) will not apply if:

- (i) EPWater agrees to sell the Property during the Protection Period;
- (ii) the Property is exclusively listed with another Texas licensed real estate broker at the time the sale is negotiated; and
- (iii) EPWater is obligated to pay such other broker a fee for the sale.

17. **NOTICE.** Any notices required under this Agreement shall be sufficient if sent by Certified Mail postage prepaid, to EPWater or the Broker at the following addresses:

EPWATER: El Paso Water Utilities - Public Service Board
Attn: Marcela Navarrete, Vice President
P.O.Box511
El Paso, TX 79961-001

COPY TO: El Paso Water Utilities - Public Service Board
Attn: Alma De Anda
P.O.Box511
El Paso, TX 79961-001
ADeAnda@epwater.org

BROKER: _____

18. **MEDIATION.** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this Agreement that may arise between the parties. If the dispute cannot be resolved by negotiation, the dispute will be submitted to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the cost of mediation equally.

19. **ATTORNEYS' FEES.** If EPWater or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Agreement or any transaction contemplated thereby, such party will be entitled to recover from the non-prevailing party all costs of such proceeding

and reasonable attorney's fees.

20. ISRAEL. Broker affirms it does not boycott Israel and will not do so during the term of this Agreement.

21. ENERGY COMPANIES. In accordance with Chapter 2274 of the Texas Government Code, Broker affirms it does not boycott energy companies and will not boycott energy companies during the term of this contract.

22. Firearm Entity or Trade Association. In accordance with Section 2274.002 of the Texas Government Code, Broker does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association.

23. RELIANCE ON PERSONAL JUDGMENT, LEGAL COUNSEL, ACCOUNTING ADVICE. Each party acknowledges and agrees that it: (a) has carefully read this Agreement; (b) has had adequate opportunity to seek independent legal and tax advice relating to the matters pertaining to this Agreement; (c) adequately understands the contents of this Agreement and is making an informed decision to enter this Agreement; (d) is not relying upon any fact, promise or representation made by any party other than the expressed agreements, representations and warranties contained in this Agreement; and (e) is relying solely upon its own judgment in entering into this Agreement.

24. NO CONFLICT. Broker warrants that neither Broker nor anyone employed by the same employer as Broker, whether located in El Paso or New Mexico or elsewhere, have not assumed any obligations inconsistent or in conflict with those undertaken by Broker under this Agreement.

25. NON-SOLICITATION. Broker agrees that during the term of this Agreement, Broker will not, directly or indirectly, through an existing corporation, unincorporated business, affiliated party, successor employer, or otherwise, solicit, hire for employment or work with, on a part-time, consulting, advising, or any other basis, other than on behalf of EPWater, any employee or independent contractor employed by EPWater while Broker is performing services for EPWater.

26. RIGHTS AND DATA. All presentations, drawings, models, designs, formulas, methods, documents, and tangible items prepared for and submitted to EPWater by Broker in connection with the services rendered under this Agreement shall belong exclusively to EPWater and shall be deemed to be works made for hire (the "**Deliverable Items**"). To the extent that any of the Deliverable Items may not, by operation of law, be works made for hire, Broker hereby assigns to EPWater a no-cost, perpetual right of ownership in the Deliverable Items, and EPWater shall have the right to obtain and hold in its own name any registration, and any other registrations and similar protection which may be available in the Deliverable Items. Broker agrees to give EPWater or its designees all assistance reasonably required to perfect such rights.

27. CONFIDENTIAL INFORMATION.

a. **Obligation of Confidentiality**. In performing consulting services under this Agreement, Broker may be exposed to and will be required to use certain "**Confidential Information**" (as hereinafter defined) of EPWater. Broker agrees that Broker will not use, directly

or indirectly, such Confidential Information for the benefit of any person, entity, or organization other than EPWater, or disclose such Confidential Information without the written authorization of the President of EPWater, either during or after the term of this Agreement, for as long as such information retains the characteristics of Confidential Information.

b. **Definition. "Confidential Information"** means information known by EPWater but not disclosed or known to the public as allowed by law, including, without limitation, information concerning any patents, confidential designs, processes, formulae, source codes, plans, devices or material, research and development, proprietary software, analysis, techniques, materials, or designs (whether or not patented or patentable), directly or indirectly useful in any aspect of the business of EPWater, any vendor names, customer and supplier lists, databases, management systems and sales and marketing plans of the EPWater, any confidential secret development or research work of EPWater, or any other confidential information known by EPWater. All information which Broker acquires or becomes acquainted with during the period of this Agreement, whether developed by Broker or by others, which Broker has a reasonable basis to believe to be Confidential Information, or which is treated by EPWater as being Confidential Information, shall be presumed to be Confidential Information.

c. **Property of EPWater.** Broker agrees that all plans, manuals, and specific materials developed by the Broker on behalf of EPWater in connection with services rendered under this Agreement, are and shall remain the exclusive property of EPWater. Promptly upon the expiration or termination of this Agreement, or upon the request of EPWater, Broker shall return to EPWater all documents and tangible items, including samples, provided to Broker or created by Broker for use in connection with services to be rendered hereunder, including, without limitation, all Confidential Information, together with all copies and abstracts thereof.

27. CONTRACTING INFORMATION. The Broker must preserve all contracting information related to this contract as provided by the records retention schedule requirements applicable to EPWater for the duration of this Agreement. The Broker will promptly provide EPWater any contracting information related to this Agreement that is in the custody or possession of the Broker on request of EPWater. On completion of this Task Order, the Broker will either provide at no cost to EPWater all contracting information related to this Agreement that is in the custody or possession of the Broker or preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to EPWater.

28. CERTIFICATION. Pursuant to Section 2155.004, Texas Local Government Code, Broker hereby acknowledges and certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated, and payment withheld, if this certification is inaccurate.

29. DELINQUENCY IN PAYING CHILD SUPPORT. Broker acknowledges that, pursuant to Section 231.006, Texas Family Code, a child support obligor who is more than 30 days delinquent in paying child support, and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an owner interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials or services; or receive a state - funded grant or loan until all arrears have been paid; or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.

30. NO CONFLICTS OF INTEREST. Broker represents and warrants that it currently has no actual or potential conflicts of interest in providing the services under this Agreement to EPWater and any resulting contract, if any, and that Broker's provision of the services under this Agreement and any resulting contract, if any, would not reasonably create an appearance of impropriety. The Broker agrees to immediately disclose to EPWater any potential conflicts of interest arising during the Term of this Agreement.

31. GOVERNMENTAL PURPOSE. The Parties agree that this Agreement is entered into for a governmental purpose.

32. REPRESENTATIONS OF EPWATER. Except as provided elsewhere herein, EPWater agrees to:

- i. Cooperate with Broker to facilitate the showing, marketing, and sale of the Task Order Property;
- ii. Not rent or lease the Property during the term of any Task Order or Brokerage Agreement without prior written notice to the Broker;
- iii. Not negotiate with any prospective buyer who may contact EPWater directly, but refer all prospective buyers to Broker during the Term;
- iv. Not enter into a listing agreement with another Broker for the sale, exchange, lease, or management of the Property to become effective during the Term without Broker's prior written approval;
- v. Provide Broker with copies of any leases or rental agreements pertaining to the Property and advise Broker of tenants moving in or out of the Property;
- vi. Complete any disclosures or notices required by law or a contract to sell the Property; and
- vii. Amend any applicable notices and disclosures if any material change occurs during the Term.

33. ADDITIONAL NOTICES.

a. Broker's Compensation or the sharing of compensation between brokers is not fixed, controlled, recommended, suggested, or maintained by the Association of REALTORS®, MLS, or any listing service.

b. Fair housing laws require all Task Order Properties to be shown and made available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status.

c. Prior to submission, Broker shall permit EPWater to review and approve the information Broker submits to an MLS or other listing service.

d. If any Task Order Property was built before 1978, Broker shall, in coordination with EPWater: (1) provide the buyer with the federally approved pamphlet on lead poisoning prevention;

(2) disclose the presence of any known lead-based paint or lead-based paint hazards in the Property; (3) deliver all records and reports to the buyer related to such paint or hazards; and (4) provide the buyer a period up to 10 days to have the Task Order Property inspected for such paint or hazards.

e. Broker shall not provide any legal advice to potential buyers.

34. COMPLETE AGREEMENT. This Agreement and its attachments constitute and express the entire agreement between the parties hereto in reference to the professional services. In the event that a provision of this Agreement and Exhibits A and B conflict with one another, the provision contained in this Agreement prevails.

IN WITNESS HEREOF, duly authorized representatives of the Parties sign in confirmation of this AGREEMENT, with the effective date being the date that EPWater executes this AGREEMENT, as evidenced by the date below EPWater's signature (the "*Effective Date*")

BROKER:

a _____

By: _____

Name: _____

Its: _____

Texas License No. _____

EPWATER:

**EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD**

By: _____

Name: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

Michaela Grambling
Assistant General Counsel

APPROVED AS TO CONTENT:

Alma DeAnda
Utility Land and Water Rights Manager

EXHIBIT A
SCOPE OF WORK

Broker agrees to provide and perform the following real estate marketing consulting services with respect to the Property:

1. Consulting, if desired by EPWater, on the inclusions and exclusions of the offering of the Property prior to valuation of the property to establish fair market value of the Property, which shall be the minimum price acceptable to EPWater pursuant to Texas law.
2. Consultation on the requirements and proof of financial qualification of potential purchasers.
3. Preparation of a "*Due Diligence Package*" and/or "*Offer Package*" to be made available to prospective purchasers of the Property and designed to inform prospective purchasers of any conditions placed on the Property as well as package the Property in a manner that increases marketability and maximizes value.
4. Assessment of the development potential of the Property with due consideration to marketing, zoning and constraints. Assessments might include physical development concepts and feasibility analyses. Will also include presenting potential opportunities to EPWater for their review.
5. Analyzation of the commercial real estate markets from regional, municipal and neighborhood perspectives.
6. Draft preparation and/or consultation on the form of Purchase and Sale Agreement to be executed between EPWater and the successful offeror. Broker shall provide advice and input on the form of Purchase and Sale Agreement, but the final form of Purchase and Sale Agreement shall be approved by EPWater and its counsel.
7. Preparation of all property marketing materials promoting and marketing the availability of the Property for purchase, including but not limited to print ads, digital ads, internet placements, social media, procurement and management of earned media, design of e-mail communications to Broker's proprietary database and such other marketing and announcement materials as may be identified by Broker based on Broker's knowledge and expertise in the marketing properties of similar size and permitted use, subject to the approval of EPWater.
8. Showing of the Property to prospective qualified purchasers.
9. Advise and consult on the selection of a purchaser if competing offers are not identical in all respects other than the offered Purchase Price.
10. If desired by EPWater, advise and consult on compensation of qualified buyers broker.
11. Typical real estate and transactional services associated with closing and funding of a real estate transaction.

12. Marketing Deliverables by Broker Within Marketing Period shall include, at a minimum, the following services and items:

- a. Placement of the Property on Broker's website (If Available)
- b. Placement of the Property on the MLS
- c. Professional quality Property photography
- d. Property brochure
- e. Print and interactive maps of the Property
- f. Placement on third-party websites Including Lands of Texas, Land Watch, Farm and Ranch, Land Broker MLS
- g. "Tear sheets" for print advertising placements newspaper
- h. "Tear sheets" for print advertising placements magazine
- i. Digital advertising placements and targeting criteria
- 1. Inclusion of the Property in Broker's scheduled marketing emails sent to Broker's proprietary list of recipients.
- J. Targeted email(s) to specific audience based on demographics and prior interests
- k. Links to earned media coverage if any
- l. Placement on our social media channels
- m. Marketing dashboard to monitor the performance of the Property Agreement including views and engagements
- n. Three (3) periodic owner update reports including information about advertisement placements
- o. Report on individual buyer inquiries
- p. Report on buyer broker inquiries
- q. Property due diligence package (approved by EPWater)