



**PUBLIC SERVICE BOARD MEETING
AGENDA ITEM
REGULAR MEETING**

Wednesday, February 09, 2022

SUBJECT

Economic Development Plan Agreement with Borderplex Alliance

BACKGROUND

EPWater has been designated by the State of Texas as the regional water planning agency for the El Paso region. The Borderplex Alliance is a nonprofit organization dedicated to economic development in the El Paso-Las Cruces-Ciudad Juarez region. The organization has proposed an economic development plan specific to EPWater as part of their planning services. EPWater and Borderplex Alliance have an existing Economic Development Plan Agreement in effect through February 2022. Under this new two-year agreement, to begin March 1, 2022, the primary emphasis will be for the Borderplex Alliance to provide planning services and assist EPWater in identifying potential buyers and/or lessees for EPWater owned property.

STRATEGIC OBJECTIVES SUPPORTED

Improve Land & Water Management

EVALUATION PROCESS

EPWater desires to make significant strides forward in promoting a healthy, vigorous local economy that maximizes business opportunities and the use of land owned and/or controlled by EPWater. Implementing a plan specific to EPWater is expected to return significant benefits to the Utility, its ratepayers and the citizens of the El Paso region. Furthermore, EPWater has had a role in determining which industries are recruited to the region based on water and wastewater issues.

FINANCIAL IMPLICATIONS

Sufficient funds are available in Account Number 100-7720, and the funding source is the Water and Sewer Fund.

PROPOSED ACTION REQUESTED

Consider and approve a Service Agreement between El Paso Water and the Borderplex Alliance for planning services, in accordance with Section 252.022(a)(4) of the Texas Local Government Code, which includes the implementation of an economic development plan specific to EPWater in the annual amount of \$250,000, for a two-year term.

SUPPORTING DOCUMENTATION PROVIDED

- Agreement

STATE OF TEXAS

COUNTY OF EL PASO

SERVICES AGREEMENT

RECITALS

This Agreement is made by and between the El Paso Water Utilities Public Service Board, hereinafter referred to as “EPWater”, and the Borderplex Alliance, a bi-national economic initiative, hereinafter referred to as “the Alliance”.

WHEREAS, EPWater has been designated by the Texas Legislature as the regional water planning authority and has developed and implemented a comprehensive plan to assure adequate long-term drinking water supplies for the region; and

WHEREAS, as the largest single landowner in the region, EPWater has a significant impact on the residential, commercial and industrial development in the area to include the development of commercial and industrial locations where water can be made available for industrial use; and

WHEREAS, the Alliance’s mission is to improve and maintain a healthy local economy by recruiting business and industry to the region consisting of El Paso, Texas, portions of southern New Mexico and the State of Chihuahua, Mexico; and

WHEREAS, the Alliance and EPWater desire to enter into a mutually beneficial agreement to maximize the economic impact of the Alliance and EPWater and to develop an economic development plan specific to EPWater; and

WHEREAS, the services performed by Alliance for EPWater pursuant to this Agreement constitute planning services primarily intended to guide EPWater policy to ensure the orderly development of EPWater and city land areas; and

WHEREAS, pursuant to Section 252.022(a)(4) of the Texas Local Government Code, planning services are exempt from the bidding requirements under the Texas Local Government Code.

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE PAYMENT BY EPWATER TO THE ALLIANCE IN THE ANNUAL AMOUNT OF TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) FOR THE NEXT TWO YEARS, EPWATER AND THE ALLIANCE AGREE AS FOLLOWS:

AGREEMENT

The Alliance shall engage and employ its best efforts in cooperation with the EPWater to provide the following key planning services during the term of the Agreement to include the following:

1. Concentrated and significant efforts of marketing and promotion of EPWater owned land holdings in the region to potential investors, buyers and /or lessees.
2. Promote the EPWater community development initiatives, rate increases and infrastructure investments.
3. Accomplish a close collaboration on economic development planning (especially to align with the EPWater's 50-year water plan as may be amended from time to time.
4. Join in close collaboration on Borderplex Alliance business development projects.
5. Participation through membership on the Borderplex Alliance Executive Committee and its Board of Directors.
6. Assistance with state and federal governmental entities and other treaty-created agencies.
7. Assistance with developing legislative and regulatory strategy.
8. Assistance with securing federal and state funding sources.
9. Advise EPWater on securing federal and state funding sources for infrastructure development programs.
10. Advise EPWater regarding the finding of new revenue sources.
11. Provide EPWater with participation opportunities in Economic Development related trade delegations, familiarization tours and advocacy-related visits.

The Alliance warrants and certifies that its personnel and Chief Executive Officer has the necessary expertise and professional acumen to accomplish the provision of the services and actions as set out hereinabove. The Alliance and EPWater will work together in a mutual and cooperative timely manner to accomplish the success of its mutual objectives. Alliance will comply with all Federal, State and local laws and ordinances applicable to the work performed under this Agreement.

Alliance understands that in the performance of the work under this Agreement, Alliance may have access to confidential information owned or controlled by EPWater, and that such information may contain proprietary details, disclosures, or sensitive information which disclosure to or use by an unauthorized third party will be damaging and/or illegal. Alliance agrees that all information disclosed by EPWater to Alliance which is in written form shall be held in confidence and used only in performance of services under this Agreement.

The Alliance and EPWater agree that to the extent permitted and authorized by law, that they will indemnify one another, and hold one another harmless from and against any and all claims, demands, damages, costs, and expenses, including investigative expenses and reasonable attorney's fees for the defense of any claim of whatsoever nature or kind arising out of the actions of the parties in fulfilling the terms, conditions and expressed intentions of the Agreement.

Nothing in this Agreement shall be construed as creating the relationship of employer and employee between the parties. All personnel furnished by the Alliance shall be deemed to be at all times employees of the Alliance which itself is an independent contractor. No joint venture or partnership shall ever be assumed or created by this Agreement.

The term of this Agreement shall be for two years with an effective date beginning on March 1, 2022 and ending on February 28, 2024. Upon execution by the parties, the EPWater shall issue an

annual payment to the Borderplex Alliance in the amount of \$250,000 upon the above services being rendered by the Alliance. Either party may terminate this Agreement at any time for convenience by providing notice to the other party.

Alliance affirms the following:

- (a) Alliance affirms it does not boycott Israel and will not boycott Israel during the term of this Agreement.
- (b) In accordance with Chapter 2274 of the Texas Government Code, Alliance affirms it does not boycott energy companies and will not boycott energy companies during the term of this Agreement.
- (c) In accordance with Section 2274.002 of the Texas Government Code, Alliance 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 Agreement against a firearm entity or firearm trade association.

All notices shall be made in writing and may be given by personal delivery or by mail. Notices sent by mail shall be addressed to the designated responsible person or office:

TO EPWater:

El Paso Water - Public Service Board
Attn: President/CEO
1154 Hawkins Boulevard
El Paso, TX 79925

TO Alliance:

Borderplex Alliance
Attn: CEO
123 W. Mills Ave., Suite 320
El Paso, TX 79901

When so addressed, notices shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the responsible person or office to whom notices are to be sent, provided reasonable notice is given.

The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and, if any phrase, clause, sentence, paragraph, or section of this contract should be declared invalid by a final decision of a court of competent jurisdiction, such invalidity will not affect any of the remaining provisions of the Agreement.

For the purpose of determining place of agreement and the law governing same, this 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 and jurisdiction of any suit or right or cause of action arising under or in connection with this contract shall be exclusively in a court of competent jurisdiction sitting in El Paso County.

The El Paso Water Utilities Public Service Board of Trustees has authorized its President and CEO to enter into this Agreement with Borderplex Alliance on its behalf.

The Borderplex Alliance, acting by its Board of Directors has authorized its Chief Executive Officer to enter into this Agreement with the El Paso Water Utilities Public Service Board on its behalf.

This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their contract. No course of prior dealings between the parties and no usage of the trade will be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement will not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.

SIGNATURES ON THE FOLLOWING PAGE

WITNESS WHICH the following signatures this ___ day of _____, 2022.

El Paso Water Utilities
Public Service Board

John E. Balliew, P. E.
President/CEO

APPROVED AS TO FORM:

Daniel Ortiz
General Counsel

The Borderplex Alliance

Jon Barela, CEO