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April 17, 2017

Mayor Oscar Leeser

Via Email: mayor@elpasotexas.gov

Representative Peter Svarzbein

Via Email: district1@elpasotexas.gov

Representative Jim Tolbert

Via Email: district2@elpasotexas.gov

Representative Emma Acosta

Via Email: district3@elpasotexas.gov

Representative Carl L. Robinson

Via Email: district4@elpasotexas.gov

Representative Dr. Michael Noe

Via Email: district5@elpasotexas.gov

Representative Claudia Ordaz

Via Email: district6@elpasotexas.gov

Representative Lily Limón

Via Email: district7@elpasotexas.gov

City of El Paso

300 N. Campbell

El Paso, Texas 79901

Re: Quality of Life Bond Issue approved on November 6, 2012/ Multipurpose
Cultural and Performing Arts Facility

Dear Mayor Leeser and City Representatives:

I represent a number of individuals who are taxpaying residents of the City of El Paso. This letter is being written to provide you, the current City Council of the City of El Paso, with an opportunity to reevaluate and rescind your decision to use funds generated by the sale of the 2012 Quality of Life Bonds to construct a project in the Union Plaza neighborhood (also known

as “Duranguito”) that is materially different from the project that was presented to and approved by the voters. Specifically, the project approved by the voters for Duranguito was a “multipurpose performing arts and entertainment facility”. However, the project on which bond funds are being expended is not a “multipurpose performing arts and entertainment facility but is, in fact, a sports arena. Because my clients will be seeking a declaratory judgment and injunctive relief if you do not rescind your decision, it is not necessary to submit an Application for Remedy Prerequisite to Suit against the City under Section 1.5 of the Charter of the City of El Paso. However, I believe that every effort should be made to avoid a lawsuit by providing you with the basis for my clients’ claim and an opportunity to cease the illegal expenditure of funds generated by the sale of the bonds.

On August 14, 2012, the City Council adopted Ordinance No. 0917849 (the “Ordinance”) providing for a bond election to be held on November 6, 2012 in order to authorize the issuance of bonds to pay for the following four categories of projects: Museum, Cultural, Arts & Entertainment, and Library.

The Arts & Entertainment Project was described as a “multipurpose performing arts and entertainment facility located in Downtown El Paso.” The Ordinance also prescribed that the language on the ballot was to be substantially in the following form:

**MUSEUM, CULTURAL, PERFORMING ARTS, AND LIBRARY
FACILITIES PROPOSITION**

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

The ballot contained the language set forth above but did not contain the phrase “. . . located in Downtown El Paso;” which was expressly set out in the Ordinance.

The City conducted studies in 2012 and 2015 in order to seek input from various groups regarding the above described project as well as the other projects described in the Ordinance. In 2013, the City issued a Request for Statements of Qualification for firms interested in acting as a consultant to assemble qualified teams to determine the locations of facilities and achieve other goals. The City’s release stated that “The goal of this engagement is to assist the City in maximizing the long term benefits to Downtown El Paso through the development of three facilities – multipurpose arena, children’s museum and Hispanic cultural center.” The City’s release also contained the following language: “Section E. Multi-purpose Cultural and Performing Arts Facility Strategy - Engage . . . in a study to determine the proper location, size and scope of the new venue. Particular emphasis will be placed on developing a venue model that will provide the maximum long-term economic impact to Downtown El Paso.” The City’s release referred to the multi-purpose performing arts and entertainment facility as a

“multipurpose arena” even though that description is materially different from the description of the project in both the Ordinance and the ballot submitted to the voters. The City’s release gave no hint as to why the project was now being referred to as a “multi-purpose arena”.

The City’s designation of the Duranguito neighborhood as the site for the “multipurpose performing arts and entertainment facility” has generated intense protests from groups interested in preserving that neighborhood because of its cultural value and its historical and archeological significance. Indeed, in 1998 the City of El Paso conducted a comprehensive architectural and archaeological survey of an area that included Duranguito, which not only identifies numerous historic buildings and archaeological sites, but also specifically recommends the establishment of a historic district there as well as adding numerous properties to the National Register of Historic Places, including the Trost & Trost Fire Station No. 11. Even though the study provided the City with concrete evidence of the historical and archeological significance of Duranguito, no action has ever been taken by any city council to protect this area from destruction. It is no wonder that on November 7, 2016, the City’s own Historic Landmark Commission voted 6-0 to oppose the construction of a multi-purpose cultural and performing arts facility in Duranguito. This vote was followed by similar action by the City Planning Commission (4-1) and the El Paso County Historical Commission (13-0). However, when those actions were taken, the members of the Historic Landmark Commission, the City Plan Commission and the El Paso County Historical Commission were focusing on opposing the construction of any type of project Duranguito. Virtually no one then knew that the City had abandoned its agreement with the voters to construct a multi-purpose performing arts and entertainment facility and had decided, without voter approval, to construct a completely different project – a sports arena. This lack of knowledge is a direct result of the City’s efforts to maintain tight control over the changed purpose of the project in order to prevent it from being widely disseminated to the public. If the City had disclosed to the public that it had changed the purpose of the project without voter approval, the consequences would have been marked by protests and legal action.

After several years of public discussions about whether the Duranguito neighborhood should be the site of a multipurpose performing arts and entertainment facility and whether eminent domain should be used to acquire the private property in the project footprint, in 2016 the City finally created a section on its website entitled “Multipurpose Cultural and Performing Arts Center”. Even this description is not identical to the project description in the Ordinance or the Ballot. However, it does serve to reinforce the concept that the project is intended to be a facility for cultural and performing arts purposes. In spite of using the terms cultural and performing arts center, the City’s webpage entitled Signature Events suggests that the project’s purpose is no longer just for cultural and performing arts:

**MULTIPURPOSE CULTURAL AND PERFORMING
ARTS CENTER (MPC), A VOTER –APPROVED PROJECT**

The development of an indoor Multipurpose Cultural and Performing Arts Center (MPC) overwhelming (sic) approved by the voters as part of the 2012 Quality of Life Bonds is gaining momentum.

The City of El Paso selected a site immediately south of the Convention Center for the \$180 million Multipurpose Cultural and Performing Arts Center. The MPC – one of three signature projects of the 2012 bond program - will provide a venue for athletic, performance, cultural and recreational events in the heart of El Paso's Downtown. The ordinance calling for the election stated that the multipurpose facility would be located in "Downtown El Paso".

The City's website suggests that the multipurpose performing arts and entertainment facility may be used for two new purposes: athletic and recreational events.

Actually, the City had been planning for some time to change the project from a multi-purpose performing arts and entertainment facility to a sports arena. The culmination of this planning became evident to a very limited number of people when the City issued a Request For Qualifications ("RFQ") under Solicitation No. 2017-336R on October 4, 2016. The RFQ was not made generally available to the public. Copies were made available only to persons who intended to submit responses and could verify their status. Even though the RFQ is entitled: "Architectural and Engineering Services for the Multipurpose Cultural and Performing Arts Center" the description of the Project on page 4, reveals that the purpose of this project has materially changed:

1.3 Project Description

1.3 The City's ultimate objective is to build a first-class, sustainable arena that provides a flexible and usable sports and entertainment venue to the public. The Project is expected to include a state of the art arena with a target capacity of 15,000 seats for basketball games, that includes approximately 24 private suites, 30 loge boxes and 500 club seats, industry standard concessions and food service facilities, merchandising, branding, efficient building systems, team and event support facilities and for amenities.

This paragraph does not even pay lip service to the "multi-purpose performing arts and entertainment facility" purpose that was approved by the voters in 2012. The City and its consultants have apparently decided that the purpose approved by the voters was not the best purpose and, without disclosing its intention to materially change the original purpose of the project, have moved forward to illegally spend money generated from the sale of bonds to construct a project that was never approved by the voters in 2012.

There can be no post vote debate over whether a sports arena is a better purpose than a multipurpose performing arts and entertainment facility. The voters were asked to approve a specific facility and did so. As a result, the City cannot lawfully use funds generated from the sale of the 2012 Quality of Life bonds to construct a project that has never been approved by the

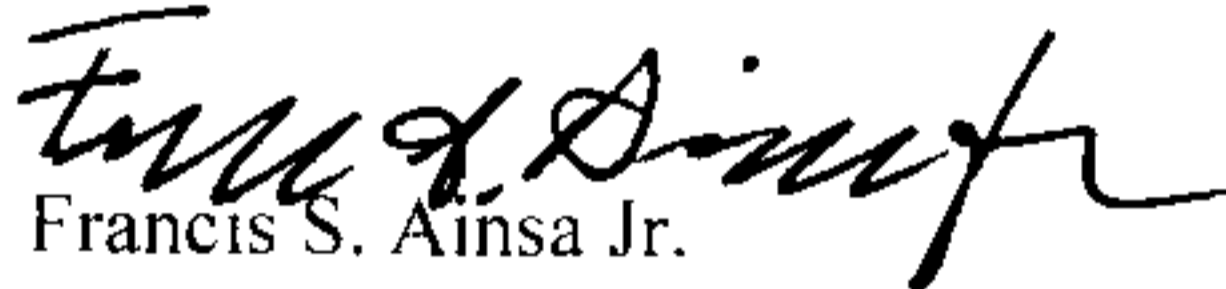
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voters. The City has made this issue all the more aggravated by continuing to pay lip service to a project that will never be constructed.

The City Attorney made a public statement that she has been advised by the City's bond counsel that the Multipurpose Performing Arts And Entertainment Facility must be built in downtown El Paso because the City entered into a contract with the voters when it adopted the Ordinance calling for a downtown location. Leaving aside the fact that the ballot does not mention that the project has to be constructed in downtown El Paso, the City also entered into a contract with the voters to construct a multipurpose performing arts and entertainment facility and not a sports arena.

I urge you to promptly rescind all resolutions authorizing the expenditure of funds generated from the sale of the 2012 Quality of Life bond funds for the purpose of constructing the project described in the Solicitation No. 2017-336R. If you fail or refuse to rescind all prior authorizations to spend bond funds on a sports arena in a prompt manner I will file a declaratory judgment action asking the court to declare that the City is illegally spending bond funds and intending to continue to illegally spend funds generated by the sale of the 2012 Quality of Life bonds for a purpose that was not approved by the voters and to issue a temporary and permanent injunction prohibiting further expenditures.

Very truly yours,



Francis S. Ainsa Jr.

FSA/cr

cc: Ms. Sylvia Borunda Firth, City - Attorney Via Email: firthsb@elpasotexas.gov
Mr. Tommy Gonzalez, City Manager - Via Email: wilsonja@elpasotexas.gov
Ms. Richarda Momsen, City Clerk - Via Hand Delivery
Clients