

**Minutes of Special Meeting
Board of Directors
El Paso County Water Improvement District No. 1
(EPCWID1)
November 18, 2022**

DIRECTORS PRESENT	EMPLOYEES PRESENT
Johnny Stubbs, President	Al Blair, District Engineer/Interim General Manager
Art Ivey, Vice-President	Lisa Aguilar, Chief Administrative Officer/Interim General Manager (via zoom)
Larry Ceballos, Secretary	Sharon Atilano, Licensing Manager
George Brooks, Assistant Secretary	Cathy Oyston, Water Records/Dispatch Supervisor
Miguel Teran, Director	
LEGAL COUNSEL	
Maria O'Brien Attorney At Law (via zoom)	GUESTS
Renea Hicks, Attorney At Law (via zoom)	Robert Kimpel
C.B. Burns, Attorney At Law (via zoom)	

1. Call to order and establishment of a quorum.

There being a quorum of Directors present, the meeting was called to order by President Johnny Stubbs at 9:00 a.m., and the Directors then proceeded to consider the following.

2. Welcome of guests and public comments. **No action was taken on this item.**

The Board then entered into a closed session at 9:01 a.m. regarding the items to be considered in closed session as shown on the Notice of Public Meeting. The Board subsequently returned to the open session at 9:53 a.m. with no action having been taken in the closed session.

3. Interim General Managers' report concerning the following:

Letter of Agreement for Professional Engineering Services with David Oscar Ornelas, P.E., for review and assistance with real property licenses.

After a motion by George Brooks, seconded by Art Ivey, duly considered and carried by unanimous vote of the Board the following resolution was adopted:

RESOLVED: that the Board of Directors accept the Letter of Agreement for Professional Engineering Services with Oscar David Ornelas, Jr., P.E., for review and assistance with real property licenses, a copy of which is attached hereto.

4. District Engineer's reports and recommendations concerning the following:

- a. **Rio Grande Project Operating Agreement Accounting.** No action was taken on this item.
- b. **Rio Grande Project Compact Accounting.** No action was taken on this item.
- c. **Rio Grande Project Water Supply and Water Allocations.** No action was taken on this item.
- d. **Status of 3rd Party Construction in District Canals and Drains.** No action was taken on this item.

5. Sale of Surplus District Real Property under 49.226 of the Texas Water Code:

Application 1797 for purchase of approximately 5.552 acres of the upper end of the Mesa Spur Drain between Stations 0+00 and 25+00

Vice-President Art Ivey left the room and announced that he would abstain from discussion of this item and any vote taken regarding the item, and he proceeded to sign an affidavit pursuant to Texas Local Government Code, §171.004.

After a motion by Miguel Teran, seconded by George Brooks, duly considered and carried by a majority vote of the Directors present, with Art Ivey, abstaining and leaving the room, it was:

RESOLVED: that the resolution approved for application 1797 for the purchase of approximately 5.552 acres of the upper end of the Mesa Spur drain between stations 0+00 and 25+00 is rescinded.

6. Appointment and Employment of a General Manager.

After a motion by Larry Ceballos, seconded by Art Ivey, duly considered and carried by unanimous vote of the Board the following resolution was adopted:

RESOLVED: that the Board of Directors appoint Oscar David Ornelas, Jr., as the new General Manager, a copy of the agreement is attached hereto.

7. Consideration of agenda items for next regular board meeting.


8. **Adjournment.** On motion duly made, seconded and carried, the Board Meeting adjourned at 10:06 a.m.


Larry Ceballos, Secretary


AGREEMENT FOR ENGINEERING SERVICES

This Agreement for Engineering Services ("Agreement") is entered into by Oscar David (Jay) Ornelas, Jr., PE, a registered engineer in the State of Texas ("the Engineer") and El Paso County Water Improvement District No. 1 ("the Client"), (collectively "the Parties"), and is effective as of November 18, 2022 and terminating on January 9, 2023.

- 1. Request for Services:** The Engineer shall provide engineering and technical services ("Services") as requested by the Client.
- 2. Scope of Work:** Assist Client with review and design issues related to application to use the Client's facilities and real property. Engineer shall work directly with Client's License Manager and Assistant License Manager.
- 3. Hourly Compensation:** For all Services provided by the Engineer under this Agreement the Client shall pay the Engineer for work completed by the Engineer according to the hourly fees as \$130 per hour. For each billing period (typically monthly) in which the Engineer performs such Service, the Engineer shall furnish the Client with an invoice describing each separately identifiable service provided in that period. The cumulative amount invoiced by the Engineer shall not exceed \$15,000 unless authorized in writing by the Client.
- 4. Travel and Reimbursable Expense:** The Client shall reimburse the Engineer for travel expense and any other reasonable expense incurred in his performance of this Agreement. Reimbursement for travel expense shall be at rates prescribed by the State of Texas. All other expenses shall be at the cost to the Engineer, unless Client otherwise agrees in advance to reimburse. The Engineer shall furnish to the Client receipts supporting any reimbursement request.
- 5. Payment:** The District shall pay the Engineer within 30 days after the District receives an invoice from the Engineer.
- 6. Terms and Conditions.** The General Terms and Conditions of this agreement are included and made a part of this agreement. This Agreement can be terminated at will by either party upon receipt of written notice to the other party. Such notice may be given by regular U.S. Mail, hand delivered, or sent by email.


Art Ivey, Vice President
El Paso County Water Improvement District No. 1

Date: 11-28-2022


Oscar David (Jay) Ornelas, Jr., PE

Date: 11/18/2022

General Terms and Conditions

TERMINATION

Either party may terminate this Agreement upon giving written notice to the other party at least one (1) days prior to the date of termination. In the event of termination, the Engineer shall within 15 days deliver to the Client one (1) reproducible copy of all finished or unfinished documents, computer programs developed by Engineer under contract with the Client, data, studies, surveys, drawings, maps, models, reports, etc. prepared by the Engineer and paid by the Client under this Agreement. The Engineer shall be entitled to receive just and equitable compensation for any work performed in accordance with the provisions of this Agreement prior to termination. If the Engineer has completed the specified tasks and phases prior to termination, Engineer will be entitled to the fees stipulated under this Agreement for such work completed. If termination should occur prior to the completion of a task or phase, the Engineer shall be reimbursed for his work under that particular task and phase based on the hours completed for that particular task and phase.

OWNERSHIP OF DOCUMENTS

All documents including drawings and specifications prepared or furnished by the Engineer pursuant to this Agreement are instruments of service in respect of the Project and the Engineer shall retain ownership and property interest therein. In addition to design and construction documents otherwise provided under this Agreement, the Engineer will provide the Client, upon completion of the project, one reproducible copy of all pertinent work product, if so requested by the Client. As limited herein below for work completed and paid for by the Client whether or not the Project is completed, the Client may make and retain physical and digital copies for information and reference in connection with the use and occupancy of the Project by the Client and others; however, such documents are not intended or represented to be suitable for reuse by Client or others on any other project. Any such reuse will be at Client's sole risk and without liability or legal exposure to Engineer.

LIMITATION OF LIABILITY

To the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, employees, agents and independent professional associates and consultants, and any of them, to OWNER and/or Client and anyone claiming by, through and under OWNER and/or Client, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to Engineer's services, the Project or this agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract of Engineer or Engineer's officers, directors, employees, agents and independent professional associates and consultants, and any of them, shall not exceed the total compensation of received by Engineer under this agreement, or the total amount of \$100,000, whichever is less.

CONFIDENTIALITY

- (a) The Engineer may reveal confidences and private information only with a fully informed client's or employer's consent, or when required by law or court order; or when those confidences, if left undisclosed, would constitute a threat to the health, safety or welfare of the public.
- (b) The Engineer shall not use a confidence or private information regarding a client or employer to the disadvantage of such client or employer or for the advantage of a third party.

(c) The Engineer shall exercise reasonable care to prevent unauthorized disclosure or use of private information or confidences concerning a client or employer by the engineer's employees and associates.

SUCCESSORS AND ASSIGNS

Client and Engineer each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

a. Neither Client or Engineer shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except as stated above and except prior to the extent that the effect of the limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in the paragraph shall prevent the Engineer from employing such independent consultants, associates and subcontractors, as he may deem appropriate to assist him in the performance of services hereunder.

b. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Client and Engineer.

PROVISIONS CONCERNING PAYMENTS

If Client fails to make any payment due under this agreement for Engineering services and expenses within thirty days after receipt of Engineer's statement, Engineer may, after giving seven days' written notice to Client, suspend services under this Agreement until Engineer has been paid in full all amounts due for services and expenses.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is entered into as of, and shall commence on, January 9, 2023, by and between EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1 ("District") and DAVID OSCAR (JAY) ORNELAS, an individual ("Employee").

RECITALS

WHEREAS, the District is a political subdivision of the State of Texas established under Article XVI, Section 59 of the Texas State Constitution;

WHEREAS, the District delivers surface water from the Rio Grande River in El Paso County, Texas to water right lands in El Paso County and assesses and collects taxes for the water right lands within its boundaries;

WHEREAS, Employee has prior experience and expertise with the District and its operations and agrees to accept employment with the District under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the premises, representations, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Term:** This Agreement shall commence and become effective on January 9, 2023 ("Effective Date") and, unless terminated sooner pursuant to Section 5, shall continue in effect until the first anniversary of the Effective Date ("Initial Term"). Unless this Agreement is extended pursuant to Section 5(A), it will expire at the conclusion of the Initial Term.

2. **Position, Employee Disclosure and Duties:** Employee will be employed full-time as General Manager. Employee will report directly to the Board of Directors of the District and will perform the below-referenced duties subject to the approval or rejection of the District. Employee will work exclusively and full-time for District.
 - A. Employee's primary job duties shall include, but not limited to:
 - i. Supervise and manage the operations and all aspects of the District's business.
 - ii. Any other duty as may be assigned by the Board of Directors from time to time, or change in any of the above-referenced duties.

 - B. These duties may be changed, added to, or eliminated, at any time in the sole discretion of the District.

- C. Employee will immediately disclose to the District any consulting agreements or relationships, board memberships, or other professional commitments he has with or to any third party. The District has the right to require Employee to terminate or cease any such relationship during the term of this Agreement.
3. **Salary:** Employee shall be paid an annual salary of \$175,000.00, to be paid pursuant to the District's normal payroll procedures, and subject to any deductions required by any applicable benefit plan, or local, state, or federal law.
4. **Benefits:** Employee shall receive the following benefits:
- A. **Vehicle:** Employee will be provided a vehicle by the District to use for business purposes. Employee will use the vehicle only for proper purposes and must operate the vehicle at all times in safe and prudent manner. The cost of providing this one vehicle to Employee shall be allocated as an expense of the District. The District will maintain insurance on the vehicle. Employee must at all times be insurable and provide proof of insurance to the District. Employee also must notify the District of any motor vehicle citation he receives, or any motor vehicle accident in which he is involved, while driving the District vehicle. Employee is responsible for any fines or penalties related to any such citation.
- B. **Cell Phone:** Employee will be provided with a mobile phone to use for business purposes. Employee will use the mobile phone for legitimate business purposes and will not operate it while driving a vehicle on District business.
- C. **Healthcare and Other Benefits:** Employee shall be eligible to participate in any District-sponsored healthcare plan, retirement plan, and other employee benefit plan or District-provided benefits in accordance with the terms of such plans. Employee will be eligible for vacation, sick leave and other benefits to which District employees are eligible in accordance with any policies providing such benefits.
5. **Extension, Termination and Resignation:**
- A. **Extension:** The Initial Term may be extended beyond the period set forth in Section 1, as mutually agreed upon by District and Employee in a written document signed by Employee and the District's authorized representative. If the Initial Term is extended, this Agreement shall control any such extension period, except as amended pursuant to the requirements of this Agreement.

- B. **Termination or Resignation:** Notwithstanding anything in Section 5.A. either the District or Employee may terminate this Agreement and Employee's employment at any time with or without cause, whether in the Initial Term or in any extended term.
6. **Severability:** If any term or provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement. The offending term or provision shall be deemed deleted as though it had never been included herein, but the remainder of this Agreement shall remain in full force and effect.
7. **Assignment:**
- A. **Employee:** This Agreement shall not be assignable or transferred by Employee, without the written consent of the District, signed by the District's authorized representative.
- B. **District:** The District may assign its rights and obligations under this Agreement without consent of Employee in the event that the District shall effect a reorganization, consolidation or other business change.
8. **No Waiver:** The failure of the District to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of the District's rights or deprive the District of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.
9. **Successors and Binding Agreement:** This Agreement shall inure to the benefit of and be binding upon District, its successors, and assigns. This Agreement shall also inure to the benefit of and be binding upon Employee, Employee's executors, representatives, and heirs.
10. **Governing Law and Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
11. **No Third Party Beneficiaries:** Nothing contained in this Agreement, whether express or implied, is intended, or shall be deemed, to create or confer any right, interest or remedy for the benefit of any person other than as otherwise provided in this Agreement.
12. **Entire Agreement:** This Agreement supersedes all prior employment agreements, negotiations, promises, or understandings of any kind solely with respect to Employee's employment with the District as set forth herein. Any representation, promise or condition concerning Employee's employment with the District,

whether written or oral, not specifically incorporated herein, shall have no binding force or effect upon the parties.

13. **Employee Recognition of No Representation by District Counsel:** Employee acknowledges that he is not represented by District's counsel, that no attorney-client or representative relationship of any kind was or has been established or intended by and between District's counsel and Employee, and that to the extent required, Employee expressly waives any conflicts of interest.
14. **Employee Review of Agreement:** Employee acknowledges and agrees that he has been given a sufficient and fair opportunity to review this Agreement himself and with the legal counsel of his choice prior to signing this Agreement.
15. **Amendments:** No amendment, alteration, extension, modification, change, termination, or waiver of any provision of this Agreement shall be valid or enforceable (even if Parties act in conformance with any invalid amendment) unless it is in writing and signed by Employee and the District's authorized representative.
16. **Counterparts:** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY. THE SIGNATURE PAGE IS ON THE FOLLOWING PAGE]

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

EMPLOYEE:

EL PASO COUNTY WATER IMPROVEMENT
DISTRICT NO. 1:



11/18, 2023



_____, in capacity as _____
of the District

11/18, 2023

**Affidavit of Abstention by Member of the Board of Directors of
El Paso County Water Improvement District No. 1**

I, **Arthur Ivey**, am a member of the Board of Directors of El Paso County Water Improvement District No. 1. At a meeting of such Board of Directors on the 18th day of November, 2022 the following matter came before the Board for consideration:

5. Sale of Surplus District Real Property under 49.226 of the Texas Water Code:

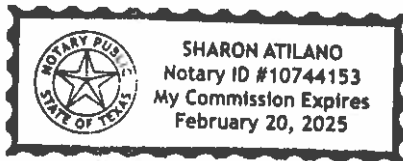
Application 1797 for purchase of approximately 5.552 acres of the upper end of the MesaSpur Drain between Stations 0+00 and 25+00

Since the matter involved a business entity or real property in which I have a substantial interest, as defined in Chapter 171 of the Texas Local Government Code, I abstained from participation in the matter. The nature and extent of the interest is the following:

Applicant is a family relative.

Signature: *Arthur Ivey*

Subscribed and sworn to this 18th day of November, 2022, by Arthur Ivey.



 Sharon Atilano
Notary Public, State of Texas
My commission expires: 2/20/2025