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SPOLIATION NOTICE (TO RESPONDENTS)

THIS NOTICE SERVES AS A FORMAL DEMAND THAT YOU PRESERVE ALL EVIDENCE RELATED TO YOUR COMMUNICATIONS WITH EACH OTHER REGARDING THE INFORMAL MEETING THAT TOOK PLACE AS DESCRIBED IN THE PLEADINGS, AS WELL AS ANY COMMUNICATIONS RELATED TO THE MATTERS DESCRIBED IN EXHIBIT 1 OF THE PETITION. THIS INCLUDES, BUT IS NOT LIMITED TO, ALL EMAILS, TEXT MESSAGES, VOICEMAILS, SOCIAL MEDIA MESSAGES, AND ANY OTHER FORMS OF WRITTEN OR ELECTRONIC COMMUNICATION. FAILURE TO PRESERVE THIS EVIDENCE MAY RESULT IN LEGAL CONSEQUENCES, INCLUDING SANCTIONS FOR SPOILIATION OF EVIDENCE. PLEASE TAKE IMMEDIATE STEPS TO ENSURE THAT ALL RELEVANT COMMUNICATIONS AND DOCUMENTS ARE PRESERVED IN THEIR ENTIRETY.

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1. DISCOVERY

Petitioners intend to conduct discovery under Level 2 of Texas Rules of Civil Procedure 190.3.

2. DAMAGES

The Petitioners seek temporary, injunctive, and/or mandamus relief as prescribed in TX GOVT § 551.142 and TX R RCP Rules 680 and 681. Petitioner SALINAS seeks actual damages from the Respondents for an amount that is within the jurisdictional limits of the Court. Said amount is equivalent to the value of the remainder of Petitioner SALINAS's contracts with the City and the Donna Economic Development Corporation (EDC 4A).

3. PARTIES

3.1. The City of Donna, Texas (the "City") is a home-rule municipality situated in Hidalgo County, Texas.

3.2. Petitioner MORENO is the Mayor of the City and a resident of Hidalgo County, Texas. He functions as a Relator in this cause of action, acting on behalf of the City to seek legal action. He also joins in this action in his official capacity as Mayor of the City.

3.3. Petitioner SALINAS is a resident of Hidalgo County, Texas.

3.4. Respondent ERNESTO LUGO, Jr. is a resident of Donna, Hidalgo County, Texas. He may be served at the City's City Hall, located at 307 South 12th Street, Donna, Hidalgo County, Texas 78537.

3.5. Respondent OSCAR GONZALES is a resident of Donna, Hidalgo County, Texas. He may be served at the City's City Hall, located at 307 South 12th Street, Donna, Hidalgo County, Texas 78537.

4. JURISDICTION & VENUE

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4.1. The Court has jurisdiction over this matter pursuant to Tex. Gov't Code § 551.142, as this suit seeks injunctive and mandatory relief to prevent TOMA violations. TX GOVT § 25.0004(a) vests in statutory county courts, the powers of injunction and mandamus. Additionally, Respondent SALINAS claims monetary damages for an amount that falls within the jurisdiction of this court pursuant to TX GOVT § 25.1102.

4.2. The City is located in Hidalgo County, Texas. Venue is proper in Hidalgo County, Texas, as this suit concerns City actions performed by members of the City's Council in said county.

5. FACTS

5.1. Attached and incorporated into this pleading are the following exhibits:

5.1.1. "Petitioners' Exhibit 1 – a two (2) -page instrument demonstrating the call of a special meeting of the City Council, scheduled for Monday, August 26, 2024, at 12:15 PM at City Hall;

5.1.2. "Petitioners' Exhibit 2" – a five (5) -page instrument containing pertinent excerpts of the "Home Rule Charter" of the City of Donna. The pertinent excerpts demonstrate the following:

5.1.2.1. The Charter states, "The City shall have all the powers granted to cities by the Constitution and laws of the State of Texas, together with all the implied powers necessary to carry into execution such granted powers."¹ The City also has the power to, "sue and be sued" and to, "...cooperate with the government of the State of Texas [such as the local judiciary] to accomplish any lawful purpose for the advancement of the interest, welfare, health, morals, comfort, safety, and convenience of the City and its inhabitants[.]"²

¹ *City Charter*, art. I, § 4. (Exhibit 2)

² *Id.*

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5.1.2.2. All powers of the City are vested in and exercised by the Council, which includes enacting legislation and determining policies.³ No Council action is valid, however, unless it is adopted by a favorable vote of at least three Council members.⁴

5.1.2.3. The Mayor presides at all meetings of the City Council and is recognized as the head of the City government.⁵ Also the Mayor, "...shall be entitled to vote upon all matters considered by Council".⁶

5.1.2.4. The Charter mandates that any Council member or elected official found guilty of malfeasance must immediately vacate office, requires the Council to investigate formal written charges of malfeasance filed with the City Manager, and specifies that a majority vote of the Council determines guilt, with the accused member abstaining from voting.⁷ The Charter also empowers the Council to administer oaths, issue subpoenas, compel evidence production, and impose penalties for contempt for noncompliance.⁸

5.1.3. "Petitioners' Exhibit 3" – a three (3) -page instrument containing pertinent excerpts of the "Bylaws of the Donna Economic Development Corporation."

5.1.4. "Petitioners' Exhibit 4" – the Affidavit of Petitioner MORENO, tendered in support of the Petitioners' application for temporary relief.

5.1.5. "Petitioners' Exhibit 5" – the Affidavit of Petitioner SALINAS, also tendered in support of the Petitioners' application for temporary relief.

5.1.6. "Petitioners' Exhibit 6" – Formal charges filed with the City Manager.

³ *Id.* at art. II, § 8.

⁴ *Id.* at art. II, § 13.

⁵ *Id.* at art. II, § 11.

⁶ *Id.*

⁷ *Id.* at art. II, § 15.

⁸ *Id.* at art. II, § 9.

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5.2. Council member JACKSON told Petitioner MORENO that Council Member JACKSON held a meeting with the Respondents to deliberate on and discuss the termination of Petitioner SALINAS, as well as the City Manager. Council member JACKSON is expected to be a cooperating witness, though his statements to Petitioner MORENO do not constitute hearsay at the time of filing of this pleading.^{9,10}

5.3. The meeting was not publicly noticed and was not conducted in accordance with the requirements of TOMA, specifically violating Tex. Gov't Code §§ 551.041, 551.043, 551.143 and 551.144.

5.4. The Respondents called a special meeting of the Council, which is now scheduled to be held at noon on Monday, August 26, 2024, at 12:15pm.¹¹ Petitioners' Exhibit 1 demonstrates the Respondents are now scheduled to discuss and take possible action on the same matters they discussed and decided on in their unlawful informal meeting.

⁹ JACKSON's statements to Petitioner MORENO do not constitute hearsay under Rule 801(d)(2). The quorum of Respondents collectively constitutes a "party," and the statements are offered against the party. As a member of the quorum and an opposing party, JACKSON made the statements in his individual or representative capacity, satisfying Rule 801(d)(2)(A). Furthermore, because JACKSON and his co-Respondents were engaged in a conspiracy to violate the Texas Open Meetings Act (TOMA), the statements were made during and in furtherance of that conspiracy, excluding them from hearsay under Rule 801(d)(2)(E). Additionally, to the extent that the Respondent made the statements as an agent or representative of the quorum of Respondents, they are also excluded from hearsay under Rule 801(d)(2)(D), which covers statements made by a party's agent or employee on matters within the scope of that relationship. These combined factors solidify the argument that JACKSON's statements are admissible and do not constitute hearsay.

¹⁰ In the alternative, the statements fall within exceptions outlined in Tex. R. Evid. 803. Specifically, under Rule 803(8) - Public Records, JACKSON's statements can be considered part of a public record because they pertain to the official activities of a public office, particularly deliberations or decisions made by city officials, which are matters observed under a legal duty to report. Given that the statements involve discussions regarding the termination of the City Manager and the City Attorney, they reflect the official activities of the city, thus meeting the criteria of Rule 803(8)(A)(i). Furthermore, because these discussions arose from or are tied to a legally authorized investigation or official proceedings, they also satisfy Rule 803(8)(A)(iii). Additionally, under Rule 803(24) - Statement Against Interest, Respondent's statements are admissible because they were made against his own interest as they expose him to potential civil or criminal liability for violating the Texas Open Meetings Act (TOMA). A reasonable person in JACKSON's position would not have made such statements unless they believed them to be true, as admitting to secret deliberations involving a quorum of city officials could subject him to legal consequences. Moreover, the circumstances surrounding the statements, including their alignment with other evidence of TOMA violations, support their trustworthiness under Rule 803(24)(B).

¹¹ Petitioner's Exhibit 1, generally.

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5.5. Petitioner SALINAS’s contract with the Donna Economic Development Corporation (EDC 4A) cannot be terminated by the City Council for the City of Donna, as the EDC 4A is a separate entity with its own board of directors, and termination by the City Council constitutes a violation of the EDC 4A’s sovereign.¹²

5.6. Per Petitioners’ Exhibit 1, the City Council has called closed session to discuss and act upon the employment (and termination) of the City Manager and the City Attorney. The exhibit also demonstrates notice to the public of upcoming discussion (and termination) of the EDC 4A Board Attorney, which is Petitioner SALINAS.

5.7. The City is home-rule, and its municipality is governed by a five-member City Council and in accordance with a “Home Rule Charter.” *City Charter*, generally. Three or more Councilmen for decision-making purposes constitute a quorum. *City Charter*, art. II, § 14.

5.8. Pursuant to *City Charter*, art. II, §§ 9 and 15(c), “formal written charges” accusing the Respondents of malfeasance due to TOMA violations, have been delivered to the City Manager prior to or on even date with the filing of this pleading.

6. STANDING

6.1. The City of Donna constitutes an “interested person”¹³ that is eligible for relief under § 551.142 of TOMA, because:

6.1.1. *Duty to Investigate Malfeasance.* The Charter imposes a duty to investigate malfeasance by its officials. When formal charges of misconduct are filed, as they have been in this case due to TOMA violations, the City is required to investigate through its non-conflicted

¹² Tex. Gov’t Code § 551.142; See TX LOCAL GOVT § 501.054 (outlining the general powers of an EDC, stating that the corporation may exercise any power necessary or incidental to carry out its purposes, including entering into contracts and agreements); see also, TX LOCAL GOVT § 501.401 (subsection “(b)” of the statute precluding “authorizing units,” in this case, the City, from impairing the rights of parties in contract with an EDC).

¹³ TX GOVT § 551.142; TX GOVT § 311.005. See, *State ex rel. Durden v. Shahan*, 658 S.W.3d 300, 303 (Tex. 2022) (citing § 551.142 and § 311.005).

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Council members. This investigation is essential to uphold the integrity of the City’s governance and ensure compliance with the law. The City’s vested interest in fulfilling this Charter-mandated duty makes it an “interested person” under § 551.142, as the City must act to prevent further unlawful conduct and preserve the proper functioning of its government.

6.1.2. *Interference with City Action.* The upcoming City Council meeting on August 26, 2024, at 12:15 PM was deliberately scheduled to block the City from calling a special meeting to authorize the hiring of special counsel and the filing of this suit. The City Charter requires that any Council action must be approved by at least three Council members. With three of the five members conflicted due to TOMA violations, the City is effectively paralyzed and unable to take action. Immediate judicial relief is necessary to protect the City’s governance and ensure compliance with its Charter.

6.1.3. *The City’s Authority to Protect Governance and Public Trust.* Under its Charter, the City has the power to “sue and be sued” and to cooperate with the State of Texas to advance the interest, welfare, safety, and morals of its inhabitants. All powers of the City are vested in the Council, which is responsible for enacting legislation and determining policies. TOMA ensures that government meetings are open to the public, and violations undermine the City’s governance, exposing it to legal and ethical risks.¹⁴ Criminal TOMA violations¹⁵ erode transparency, bypass critical public input, and compromise public trust. Therefore, the City has a vested interest in seeking judicial relief to stop and prevent further violations, ensuring its processes remain transparent, lawful, and aligned with the best interests of its residents.

¹⁴ See, e.g., TX GOVT § 551.002; TOMA, which is Chapter 551 (“Open Meetings”) is codified under Subtitle A (“Open Government”) of the Government Code.

¹⁵ TX GOVT § 551.143.

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6.1.4. *Voidable Actions and Liability.* Under Tex. Gov't Code § 551.141, actions taken in violation of TOMA are voidable. Respondents have unlawfully deliberated and decided on the termination of the City Manager and Petitioner SALINAS, who serves as the attorney for both the City and the EDC 4A. These TOMA violations expose the City to significant liability, as decisions made during unlawful meetings can be legally challenged and invalidated. This creates instability in the City's administration and opens the City to breach of contract claims by both the City Manager and Petitioner SALINAS, who are under contract with the City. Further, the City Council has no authority to terminate Salinas as the EDC 4A attorney, as that decision is solely within the authority of the EDC 4A's board of directors. These unauthorized actions could lead to litigation, damages, and additional legal costs, putting the City at considerable risk.

6.2. *Mayor as Relator, and as an "Interested Person".* Petitioner Moreno, in his official capacity as Mayor, has standing as an "interested person" to seek relief for TOMA violations. The City's Charter designates the Mayor as the head of the City government and the presiding officer at all City Council meetings, with the right to vote on all matters considered by the Council. TOMA violations, such as unlawful deliberations by Council members, directly compromise the Mayor's ability to maintain order, transparency, lawful governance, and his ability to deliberate and vote. These violations undermine the integrity of the City's decision-making processes. As the official responsible for ensuring that Council actions comply with the law, the Mayor has a vested interest in seeking relief to stop and prevent further TOMA violations.

6.3. *Standing of Petitioner Salinas.* Petitioner Salinas has standing as an "interested person" to seek relief due to the Respondents' TOMA violations in discussing the termination of his contracts with both the City and the EDC 4A. His contract with the EDC 4A, a separate entity from the City, cannot legally be terminated by the City Council. Salinas faces imminent and

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irreparable harm from these unlawful actions, justifying his pursuit of injunctive relief to prevent further violations and protect his contractual rights.

7. CAUSES OF ACTION

7.1. *TOMA Violations.* The informal meeting held by the Respondents violated TOMA, as it constituted a series of communications among a quorum of the City Council that were not conducted in a properly noticed public meeting, as required by TOMA. Their actions constituted violations of Tex. Gov't Code §§ 551.041, 551.043, 551.143 and 551.144.

7.2. *Conspiracy.* Petitioners allege that Respondents engaged in a civil conspiracy to violate TOMA by holding secret deliberations outside of a duly noticed public meeting, during which they conspired to discuss and decide on the termination of Petitioner SALINAS and the City Manager. This agreement among Respondents constitutes a meeting of the minds to engage in unlawful conduct.

7.3. *Breach of Contract.* Petitioner SALINAS brings a breach of contract claim against the Respondents in their personal capacities, alleging that their ultra vires actions during an unauthorized informal meeting resulted in a breach of his contracts with the City and EDC 4A. The contracts were valid and enforceable, and Petitioner Salinas fulfilled his obligations by providing legal services to both entities. The Respondents breached these contracts by unlawfully deciding on his termination, outside of a properly noticed public meeting as required by the Texas Open Meetings Act (TOMA). These actions exceeded the Respondents' legal authority and directly caused Petitioner Salinas to suffer damages, including loss of contractual rights and potential income. Because the Respondents acted outside their legal authority, they are not entitled to immunity under Texas law, and Petitioner Salinas is entitled to seek compensatory damages for the harm caused by their actions. The scheduling of the special meeting does not cure the original

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TOMA violations, nor does it negate the harm caused to Petitioner Salinas, who has suffered procedural deprivation and remains at risk of wrongful termination. Therefore, he has standing to pursue legal action to protect his rights and ensure that all actions are taken lawfully and transparently.

7.4. *Civil Conspiracy.* Petitioner SALINAS brings a cause of action for civil conspiracy against the Respondents based on their actions during an unlawful informal meeting that resulted in the breach of his contractual rights. Respondents, as members of the Council, combined to accomplish the object of terminating Petitioner Salinas's contracts with the City and EDC 4A. They reached a meeting of the minds during an informal, unauthorized meeting, where they unlawfully deliberated on and decided to terminate Salinas's contracts in violation of the TOMA. The scheduling of a formal meeting to finalize these decisions constitutes overt, unlawful acts taken in furtherance of this conspiracy. As a direct and proximate result of the Respondents' conspiracy, Petitioner Salinas has suffered damages, including the loss of his contractual rights and potential income. Therefore, Petitioner Salinas seeks relief for civil conspiracy to hold the Respondents accountable for their coordinated unlawful actions.

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**8. PETITIONERS MORENO AND SALINAS' APPLICATION FOR RELIEF
(EX PARTE TEMPORARY RESTRAINING ORDER & INJUNCTIVE RELIEF)**

8.1. The exhibits, facts, and circumstances relating to standing noted throughout this pleading above are hereby incorporated into this application by written reference. Petitioners MORENO and SALINAS are entitled to injunctive relief pursuant to Tex. Gov't Code § 551.142, which authorizes any interested person to bring an action by mandamus or injunction to stop or prevent violations of TOMA.

8.2. Petitioners seek a temporary restraining order, issued ex parte, and a temporary injunction to enjoin the Respondents from taking any action to formalize the decisions made during their unlawful informal meeting, including, but not limited to, the firing of the current City Manager and the termination of Petitioner SALINAS's contracts with the City and the EDC 4A. If the Respondents are served with the temporary restraining order before the scheduled meeting, Petitioners request that the Court enjoin Respondents from deliberating or voting on the matters presented in the agenda, as outlined in Petitioners' Exhibit 1. However, if Respondents are served after the meeting has been conducted and after they have voted on the matters, Petitioners request that the Court immediately void those votes pending a hearing on the temporary injunction, thereby maintaining the status quo until a full hearing can be held to address the unlawful actions and ensure compliance with TOMA.

8.3. Petitioners MORENO and SALINAS will suffer imminent and irreparable harm if the City Council for the City of Donna is allowed to formalize the decisions made during the unlawful informal meeting, as the actions of the Council directly violate TOMA and threaten the legal rights of Petitioner SALINAS, Petitioner MORENO, and the City itself.

8.3.1. Petitioner MORENO will suffer irreparable harm because the actions of the City Council circumvent the requirement for open meetings, denying him the opportunity to

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provide input and participate in the democratic process. Moreno's ability to engage in civic duties and ensure that the Council's decisions align with the community's interests is compromised, leaving him without a legal remedy to protect his rights as a resident and advocate for the City's well-being. Therefore, Petitioners seek judicial relief to prevent further violations, protect their rights, and ensure that the City's governmental processes remain transparent, lawful, and aligned with the best interests, safety, welfare, and moral expectations of its residents.

8.3.2. Petitioner SALINAS faces irreparable harm as the TOMA violations jeopardize his procedural rights and employment security, putting him at risk of termination through an unlawful and non-transparent process. If the decisions made during the unlawful meeting are formalized, Salinas will be deprived of his right to fair and open deliberations, and no adequate remedy at law can compensate for this procedural deprivation.

**9. THE CITY OF DONNA'S APPLICATION FOR RELIEF
(EX PARTE TEMPORARY RESTRAINING ORDER & INJUNCTIVE RELIEF)**

9.1. The exhibits, facts, and circumstances regarding standing are herein incorporated into this application by reference. Formal charges of malfeasance due to TOMA violations have been filed with the City Manager. The City Charter mandates that non-conflicted Council members, including Petitioner Moreno, investigate these allegations. If found guilty, Respondents must vacate office.

9.2. The City's Charter grants the City the authority to protect its governance, including the power to sue and cooperate with the State to advance its interests. TOMA violations by Council members compromise the City's governance, exposing it to legal and ethical risks by eroding transparency and bypassing public input. Judicial relief is necessary to preserve the City's investigative authority.

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9.3. The City is entitled to a temporary restraining order and injunctive relief because the Charter requires an investigation upon the filing of malfeasance charges. Allowing Respondents to deliberate and vote at the upcoming meeting undermines this investigation and risks further violations.

9.4. Additionally, under Tex. Gov't Code § 551.141, actions taken in violation of TOMA are avoidable, creating instability and exposing the City to breach of contract claims. The City Council lacks authority to terminate Petitioner Salinas from his EDC 4A position, a decision reserved for the EDC 4A board. These unauthorized actions could lead to litigation and significant legal costs.

9.5. Petitioners seek a temporary restraining order and injunction. If served before the meeting, Petitioners request that the Court enjoin Respondents from deliberating or voting on the agenda items. If served after the meeting, Petitioners request that the Court void the votes to preserve governance and prevent irreparable harm.

9.6. The City has no other relief available at law because almost the entire Council is conflicted due to TOMA violations. Injunctive relief is the only remedy to prevent Respondents from formalizing unlawful decisions and to allow the City to fulfill its Charter-mandated obligation to investigate. Without relief, the conflicted Respondents will obstruct this process, leaving the City without viable legal recourse.

10. ATTORNEY'S FEES

Petitioners request that the Court award reasonable attorney's fees and costs pursuant to Tex. Gov't Code § 551.142(b). This provision permits the Court to assess costs of litigation and reasonable attorney's fees to a Petitioner who substantially prevails in an action brought under § 551.142(a).

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11. PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioners respectfully pray that this Honorable Court grant the following relief:

11.1. Issue a Temporary Restraining Order without notice to Respondents, enjoining Respondents from voting on any matters at the City Council meeting scheduled for August 26, 2024, including, but not limited to, the firing of the City Manager, the appointment of an interim City Manager, the termination of Petitioner SALINAS's contracts with the City and the EDC 4A, and the appointment of a new City Attorney and EDC 4A Attorney;

11.2. In the alternative, if Respondents are not served with this pleading or the accompanying Temporary Restraining Order in time to prevent the August 26, 2024, meeting, issue a Temporary Restraining Order voiding any actions taken at the August 26, 2024, meeting that were the subject of Respondents' unlawful informal deliberations, including, but not limited to, the firing of the City Manager, the appointment of an interim City Manager, the termination of Petitioner SALINAS's contracts with the City and the EDC 4A, and the appointment of a new City Attorney and EDC 4A Attorney;

11.3. Set a hearing on Petitioners' request for a temporary injunction at the earliest possible date, at which time Petitioners request that this Honorable Court issue a temporary injunction enjoining Respondents from taking any action to formalize decisions made during the unlawful informal meeting and preventing any further violations of the Texas Open Meetings Act;

11.4. In the alternative, if temporary relief is granted pursuant to City Charter, art. II, §§ 9 and 15(c), temporarily restrain Respondents from voting on the matters discussed at the August

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26, 2024, meeting until the non-conflicted City Council members have completed the required investigation into the charges of malfeasance, as mandated by the City Charter;

11.5. Grant mandamus relief pursuant to Tex. Gov't Code § 551.142, compelling Respondents to comply with the Texas Open Meetings Act, including enjoining them from further violations and compelling them to rescind any actions taken in violation of the Act;

11.6. Award Petitioners their reasonable attorney's fees and costs incurred in bringing this suit, pursuant to Tex. Gov't Code § 551.142(b); and

11.7. Grant such other and further relief, general or special, at law or in equity, to which Petitioners may be justly entitled.

Respectfully Submitted,

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