

CAUSE NO. C-3074-21-G

NORBERTO SALINAS
Plaintiff

vs.

**CITY OF MISSION AND
ARMANDO O’CANA, IN HIS OFFICIAL
CAPACITY**
Defendants

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IN THE DISTRICT COURT

_____ **JUDICIAL DISTRICT**

HIDALGO COUNTY, TEXAS

ORIGINAL PETITION AND APPLICATION FOR INJUNCTIVE RELIEF

COMES NOW, Plaintiff, NORBERTO SALINAS (“Salinas”), a resident taxpayer of the City of Mission, and files this petition, complaining of Defendants, CITY OF MISSION (“Mission”) and ARMANDO O’CANA (“O’Cana”), in his official capacity as Mayor, and for cause of action respectfully shows:

I. DISCOVERY CONTROL PLAN

1.1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, plaintiff intends to conduct discovery in this case under Level 2.

II. PARTIES AND SERVICE

2.1. Plaintiff, NORBERTO SALINAS is a resident of Mission, Hidalgo County, Texas. The last three numbers of plaintiff’s driver’s license number are 905 and the last three numbers of plaintiff’s Social Security number are 409.

2.2. Defendant CITY OF MISSION now is, and at all times mentioned was, a Texas municipal corporation established by city charter and is situated in Hidalgo County, Texas. It may be served with process by serving the Mayor at 1201 E. 8th St., Mission, Texas 78572.

2.3 Defendant ARMANDO O’CANA is a resident of Mission, Hidalgo County, Texas. He may be served with process by serving him in his official capacity as Mayor at 1201 E. 8th St., Mission, Texas 78572.

III. VENUE AND JURISDICTION

3.1. The subject matter in controversy is within the jurisdictional limits of this court.

IV. STANDING

4.1 Plaintiff Salinas has standing to bring this action as a taxpayer of the City of Mission, Texas.

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Salinas owns real estate, including commercial real estate within the city limits. Salinas currently pays taxes to the City of Mission on the real estate he owns.

4.2 This action is brought to enjoin the illegal expenditure of public funds, as further detailed herein.

V. FACTS

5.1 On or about March 2021, the City of Mission entered into a contract with Performance Services of Texas, Inc. (“PSI”) for the installation of “Utility Cost Reduction Measures (UCRMs)”. This contract is alleged to have been entered into as an Energy Savings Performance Contract, pursuant to Texas Local Government Code.¹

5.2 The contract price is for **SEVENTEEN MILLION TWO HUNDRED FORTY SEVEN THOUSAND SEVENTY-EIGHT DOLLARS AND 49/100 (\$17,247,078.49)**. The City of Mission subsequently entered into a lease-purchase agreement with PSI for the purpose of financing the contract price.

5.3 Prior to the execution of the contract, the City of Mission had adopted the 2020-2021 budget and posted the adopted budget on its website.² This expenditure was not included in the originally adopted budget.

5.4 The lease-purchase agreement with PSI provides that no payments be made for the first thirty-six (36) to forty (40) months of the agreement. However, PSI will commence installing the UCRMs immediately in phases throughout the city, thus obligating the City of Mission to pay this debt over the course of 15 years.

VI. Failure to Comply with Statute (TLGC Chapter 302)

6.1 Defendant, City of Mission, violated Chapter 302 of the Texas Local Government Code, in that it did not strictly comply with Sections 302.005 and 302.006. Based on information and belief, the energy savings performance contract was not let in accordance with the procedures established for procuring professional services.³ Furthermore, notice of the request for qualifications were not published

¹ Tex. Loc. Govt. Code chapter 302

² <https://missiontexas.us/wp-content/uploads/2020/09/Final-Budget.pdf>

³ See TLGC 302.005(a) (“An energy savings performance contract under this chapter may be let in accordance with the procedures established for procuring certain professional services by Section 2254.004, Government Code.”)

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in the manner provided for competitive bidding.⁴

6.2 Based on information and belief, Defendant, City of Mission further failed to require that the projected energy savings be reviewed by a licensed professional engineer that was not an officer or employee of Performance Services, and/or was not otherwise associated with the contract. Lastly, the guarantee provided by Performance Services does not comply with the mandates of section 302.006⁵.

6.3 The contract between the defendants is void and plaintiff, as a property tax paying resident of defendant city may enjoin its performance, including the payment of any money under the contract.

VII. Debt Violates Texas Constitution

7.1 The Texas Constitution prohibits a city from creating a debt, “unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two percent.”⁶

7.2 The term of the lease-purchase agreement exceeds one year. Although the first payment under the contract is not due for 24 months after the agreement is signed, the installation of the UCRMs will occur immediately. The installation of these alleged cost reduction measures will obligate the City of Mission to comply with the payments under the agreement for the term.

7.3 The City of Mission has created a debt and has not made any provision for the payment of such debt, or interest thereon, in contravention to the Texas Constitution. The contract creating such debt is therefore void.

VIII. Injunctive Relief

8.1 Plaintiff brings this action for himself and for all others similarly situated, their number being large and it being impracticable to bring all of them before the court. The question involved in this action is of common interest to all such other persons.

8.2 The expenditure made pursuant to the lease-purchase agreement is illegal, void, and without any authority of law whatsoever, and all proceedings in connection with that action should be canceled and set aside, and all further proceedings should be enjoined.

8.3 Unless enjoined by this court defendants will proceed to spend public funds and assess the

⁴ Id.

⁵ See TLGC 302.006(d).

⁶ Texas Constitution Art XI., Sec. 5

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cost against the property of plaintiff and all others similarly situated. Those acts will constitute a taking of property without due process of law and in violation of the statutes and constitutions of Texas and the United States and will cause irreparable injury to plaintiff and his property and to all others similarly situated and their properties.

IX. Prayer for Relief

Wherefore, plaintiff requests that:

- a. Defendant be temporarily restrained from making the illegal expenditure of public funds referred to herein;
- b. During the pendency of this action, defendant be enjoined from making the illegal expenditure of public funds referred to herein;
- c. On the final hearing of this action, defendant be enjoined perpetually from making the illegal expenditure of public funds referred to herein;
- d. Plaintiff receive plaintiff's costs incurred in this action; and
- e. Plaintiff receive such other and further relief as may be just.

Respectfully Submitted

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By: 

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Verification

State of Texas


County of Hidalgo

Before me, the undersigned notary public, on this day personally appeared Norberto Salinas, proved to me through personal acquaintance who after being duly sworn, upon his oath stated that he is the Plaintiff in the above-captioned cause; that he has read the foregoing document; and that every statement contained therein is true and correct within his personal knowledge.



Norberto Salinas

SWORN AND SUBSCRIBED before me the undersigned notary public this 3rd day of August, 2021 by Norberto Salinas.



Notary Public

My Commission Expires: 12/22 / 2024