



TEXAS ECONOMIC DEVELOPMENT FUND: ANNUAL REPORT FOR THE YEAR ENDING DECEMBER 31, 2024

January 31, 2025

CITY OF EL PASO | 300 N. Campbell | El Paso, Texas | 79901



Section 1. Background

On July 29, 2020, the City of El Paso's ("City") sole electric utility service provider, the El Paso Electric Company ("EPE"), was acquired by Sun Jupiter Holdings, LLC ("Sun Jupiter"), a wholly owned, indirect subsidiary of the Infrastructure Investments Fund ("IIF"). IIF is a private investment vehicle and long-term investor in infrastructure companies. In recognition of the utility company's importance to our community's well-being, the City, in its capacity as a primary local utility regulator and voice for its residents and businesses, worked during the months leading up to the successful closing of the acquisition to secure commitments from EPE and IIF that preserve and enhance the utility's presence and investment in the El Paso community.

During those discussions, the City focused its efforts on securing commitments that: (1) provide short and long-term benefits to our community; (2) safeguard the quality jobs provided by the utility; (3) promote continued innovation toward renewable and solar energy; and (4) ensure the City continues to receive fair compensation for the use of its streets and sidewalks in EPE's delivery of utility service to its customers. One of those commitments is the establishment of the Texas Economic Development Fund (the "TED Fund").

The TED Fund is an \$80 million fund to be funded by Sun Jupiter over a period of 15 years and administered by the City solely for the purpose of promoting economic development within EPE's Texas Service Area. The first installment was due by December 15, 2020, with each successive annual installment due by December 15 or the following business day of the applicable year. Contributions to the fund are not recoverable in EPE's rates and are in addition to the annual street rental charge charged to EPE by the City for EPE's use of City-owned rights-of-way in electric utility service delivery as originally established by Ordinance No. 016090 and periodically amended.

In accordance with the obligations contained in, on January 19, 2021, the City established, and IIF approved, the Texas Economic Development Program Policy and Guidelines (the "TED Program") to govern the City's administration and use of the TED Fund (see **Exhibit A**). Section III(J) of the TED Program requires that the City's Economic and International Department (the "EDD") keep detailed records of the TED Program and make annual reports to Sun Jupiter, with copy to EPE's General Counsel, by February 1st of every year, regarding the activities and uses of the TED Fund during the prior calendar year.

Such report shall include at least the following information: the amount of each commitment approved and accepted since the previous report, the amounts and dates of payment of each grant and/or loan since the previous report, the name of each entity receiving the benefit of such commitment, and a description of the project; whether each funded project is in compliance with the terms of its funding; a short summary of the projects that were declined for funding; the total outstanding commitments; the total unobligated appropriation; and other such information required to comply with the Final Order in Public Utility Commission of Texas Docket No. 49849.

This document fulfills the reporting requirements of the TED Program for the year ending December 31, 2024.

Section 2. Commitments Approved and Accepted

1. Ysleta Port of Entry Expansion Project

On April 23, 2024, City Council approved the submission of a Fiscal Year 2025 Community Project Funding (CPF) Ysleta Port Design Grant for \$3 million to support the feasibility and design documents for the Ysleta Port of Entry Southbound Commercial Facilities Expansion Project: Phase I. The City is also seeking \$20,000,000 from the U.S. Department of Transportation's (USDOT) Rebuilding American Infrastructure with Sustainability and Equity (RAISE) grant program, with a \$5,000,000 match required from the TED Fund.

2. Chapter 380 Agreement for Amphitheater Development

On July 2, 2024, City Council approved a Chapter 380 Economic Development Program Agreement with VENU dba Notes Live Inc. to construct a 12,500-seat amphitheater in northeast El Paso. The company will invest a minimum of \$80 million into the project and secure an operator for at least 40 national touring events annually. The project is expected to open in 2026 and will provide an anchor for the Cohen Entertainment District, master-planned in 2018.

Under the terms of the agreement, the City will provide \$30,900,208 in incentives, including an \$8 million, 8-year Development Note backed by the TED Fund.

3. International Border Crossings System-wide Analysis

On July 30, 2024, City Council approved \$150,000.00 towards the El Paso Metropolitan Planning Organization's (EPMPO) local participation costs of an International Border Crossings System-wide Analysis as adopted in the EPMPO "Regional Mobility Strategy 2050 Metropolitan Transportation Plan" and "Regional Mobility Strategy FY2023-2026 Transportation Improvement Program". designed to identify and develop a regional crossings system that is more efficient and better suited to meet the needs of the City of El Paso and the region. The total cost of the Project is \$2,107,000.00, with allocations of federal, state, and local participation costs.

4. Chapter 380 Agreement for Advanced Manufacturing

On December 17, 2024, City Council approved a Chapter 380 Economic Development Program Agreement with the National Center for Defense Manufacturing and Machining (NCDMM). This project supports the expansion of NCDMM's business operations at 5 Butterfield Trail Blvd., with plans to relocate to the El Paso International Airport's Advanced Manufacturing District upon its completion.

NCDMM will invest \$900,000 in equipment and create 14 full-time, high-quality jobs in the defense industry. The City will provide up to \$244,800 in performance-based economic incentives in the form of a 10-year rental assistance grant. The funding for these incentives will come from the Texas Economic Development Fund (TED Fund). This project aligns with El Paso's Advanced Manufacturing Strategy and supports investments made as part of the 2022 Build Back Better Regional Challenge Award from the Economic Development Administration.

In addition to the approved commitments detailed above, the City continues to make the TED Program available to projects that align with one or more of the following TED Program categories:

1. Infrastructure Development Assistance: Financial assistance for public infrastructure improvements associated with projects benefiting companies committed to creating net-new jobs and/or making new capital investments within EPE's Texas Service Area. Examples include rail, public roadway, port, airport, water, sewer, gas, and telecommunications improvements.
2. Quality Jobs and Investment Assistance: Financial assistance to offset costs incurred by companies expanding or locating business operations in EPE's Texas Service Area, including job training, building retrofitting, real property acquisition, and equipment relocation. This assistance is reserved for exceptional cases with significant regional economic impact.

The City continues to collaborate with economic development partners to attract, retain, and expand businesses in EPE's Texas Service Area that meet TED Program criteria. **Exhibit B** provides a list of commitments extended and in various stages of pipeline activity. A total of 42 projects have been considered for participation in the TED Fund as of December 2024, with 40 currently active.

Section 3. Statement for Year Ended December 31, 2024

Exhibit C provides the statement of revenues, expenditures, and changes in fund balance for the year ended December 31, 2025. The year end fund balance is \$19,037,037.65, which includes payments to VENU (dba Notes Live) and match for the International Border Crossings System-wide Analysis.

Expected obligations for approved incentives include \$99,480 for 2025 and \$17,744,800 over a ten-year period running from 2025 to 2034.

Section 4. Previously Approved Projects

1. Chapter 380 Economic Incentive Program Agreement for Schneider Electric USA, Inc

On October 11, 2022, City Council approved a Chapter 380 Economic Incentive Program Agreement for Schneider Electric USA, Inc. to expand their current operations. This expansion will allow the company to manufacture complex engineered-to-order products. As part of the agreement, Schneider Electric will make a minimum investment of \$17 million, create 368 new full-time employment positions and retain its existing workforce (1,130 FTEs), making it the largest manufacturing employer in El Paso County.

Under the terms of the Agreement, Schneider Electric is eligible to receive up to \$877,000 in incentives, funded via the TED Fund. This includes a \$75,000 Sustainability Grant for electric vehicle charging infrastructure.

The Agreement also includes a Public Improvement Reimbursement capped at \$600,000, to be funded by Tax Increment Reinvestment Zone Number 10.

2. Chapter 380 Economic Incentive Program Agreement and a resolution for Wurldwide LLC

On December 5, 2023 City Council approved a Chapter 380 Incentive Program Agreement and a resolution for Wurldwide LLC to construct and operate a data center in northeast El Paso.

Under the terms of the agreements, Wurldwide LLC will receive an amount not to exceed \$7,500,000 to reimburse for costs incurred for the improvement of the non-proportionate share of Stan Roberts Sr. Drive. In addition, \$5,000,000 are dedicated to intersection improvements at Stan Roberts and US-54.

Exhibit A.

Texas Economic Development Fund Policy

Exhibit B.
Approved Agreements

RESOLUTION

WHEREAS, the City of El Paso, Texas (“City”) desires to provide incentives to Notes Live, Inc., a Colorado Corporation (“Applicant”), pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”), for the construction or renovation of a development located on the Applicant’s real property, subject to concurrent approval and execution of the Purchase and Sale Agreement, located at Northeast Corner of Cohen Avenue and Gateway Boulevard North, El Paso, TX 79924; Legal Description Portion of Block 7, Castner Range Subdivision No. 1 (approximately 17 AC) and the Applicant wishes to receive the incentives in exchange for compliance with the obligations set forth herein; and

WHEREAS, in 2017, the City of El Paso invited the public to reimagine Cohen Stadium and help shape a comprehensive master plan for the Cohen Stadium site; and

WHEREAS, on August 29, 2018, City Council adopted the Cohen Entertainment District Master Plan outlining a vision for a vibrant retail, entertainment, and recreation destination; and

WHEREAS, Applicant desires to construct a state-of-the-art luxury 12,500 seat amphitheater (“Development”) to host national touring acts; and

WHEREAS, the Development will support the goals of the Reimagine Cohen effort to revitalize the Cohen Stadium site, provide a catalyst for development in Northeast El Paso, create a regional project, and become destination point; and

WHEREAS, on May 29, 2018, the City Council established Tax Increment Reinvestment Zone Number 11 (“Zone”); and

WHEREAS, the Amended Final Project and Financing Plan (“Plan”) was adopted on June 4, 2024; and

WHEREAS, the proposed Chapter 380 Economic Development Program Agreement (“Agreement”) is consistent with the purpose and Plan for the Zone; and

WHEREAS, the Tax Increment Reinvestment Zone Number 11 Fund shall finance the Agreement Rebates, as defined in the Agreement, in accordance with the provisions of Chapter 311 of the Texas Tax Code and the Plan, unless otherwise stated in the Agreement; and

WHEREAS, Texas Economic Development Fund (“TED Fund”) was established on January 19, 2021 for the purpose of promoting economic development within El Paso Electric’s Texas Service Area; and

WHEREAS, the Development is considered a high-impact project within the Tourism Target Industry, and therefore is eligible for financial incentives for the TED Fund; and

WHEREAS, the City is conveying property under Section 253.0125 of the Texas Local Government Code; and

WHEREAS, the City Council has found that the conveyance of the City's Property to the Applicant is in the public interest because it will revitalize the Cohen Entertainment District, create a new tourism opportunity both regionally and internationally, provide direct and indirect benefits to the El Paso community, while also diversifying and expanding the local tax base and creating quality job opportunities; and

WHEREAS, the Chapter 380 Economic Development Program Agreement and related Purchase and Sale Agreement between the City and Applicant provide provisions therein granting the City sufficient control over the conveyance of City-owned land to ensure that the public purpose relating to economic development is accomplished; and

WHEREAS, the City concludes and hereby finds that the Agreement promotes economic development in the City and meets the requirements of Chapter 380.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement by and between the City of El Paso, Texas and Notes Live Inc, in support of the construction of a 12,500 seat amphitheater at Northeast Corner of Cohen Avenue and Gateway Boulevard North, El Paso, Texas. Subject to the terms and conditions of the Agreement and provided that Applicant expends or causes to expend a minimum of \$80,000,000 in Qualified Expenditures for the Project and secures an operator contract for a minimum 40 national touring events per year, the City agrees to provide Applicant with incentives totaling \$30,900,208 over the term of this Agreement. Incentives will take the form of a Real and Business Personal Property Tax Rebate; a Sales and Use Tax Rebate; a Mixed Beverage and Gross Receipts Tax Rebate; a Development Fee Waiver; a Construction Materials Sales Tax Rebate; and an 8-year Development Note backed by the Texas Economic Development Fund. Incentives also include the conveyance of City -owned land in accordance with Chapter 253.0125 of the Texas Local Government Code, executed via separate Purchase and Sale Agreement.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

PASSED AND APPROVED this 2nd day of July 2024.

THE CITY OF EL PASO:

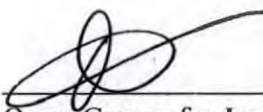


Oscar Leeser
Mayor


ATTEST:



Laura D. Prince
City Clerk

APPROVED AS TO FORM:



Oscar Gomez for Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Karina Bragalla, Interim Director
Economic & International Development

STATE OF TEXAS
COUNTY OF EL PASO

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CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT

This Chapter 380 Economic Development Program Agreement ("**Agreement**") is made this 2 day of July, 2024 ("**Effective Date**") between the City of El Paso, Texas, a Texas home rule municipal corporation, (the "**City**"), and **Notes Live Inc.**, and its subsidiaries/affiliates a **Colorado Corporation** (the "**Applicant**"). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

RECITALS

WHEREAS, the City has the authority under Chapter 380 of the Texas Local Government Code ("Chapter 380") to make loans or grants of public funds for the purpose of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, the City desires to provide incentives to the Applicant, pursuant to Chapter 380, for the construction or renovation of a development located on the Applicant's real property, subject to concurrent approval and execution of the Purchase and Sale Agreement, located at **Northeast Corner of Cohen Avenue and Gateway Boulevard North, El Paso, TX 79924; Legal Description Portion of Block 7, Castner Range Subdivision No. 1 (approximately 17 AC)** and the Applicant wishes to receive the incentives in exchange for compliance with the obligations set forth herein; and

WHEREAS in 2017, the City of El Paso invited the public to reimagine Cohen Stadium and help shape a comprehensive master plan for the Cohen Stadium site; and

WHEREAS, on August 29, 2018, City Council adopted the Cohen Entertainment District Master Plan outlining a vision for a vibrant retail, entertainment, and recreation destination; and,

WHEREAS, Applicant desires to construct a state-of-the-art luxury 12,500 seat amphitheater ("**Development**") to host national touring acts; and,

WHEREAS, the Development will support the goals of the Reimagine Cohen effort to revitalize the Cohen Stadium site, provide a catalyst for development in Northeast El Paso, create a regional project, and become destination point; and,

WHEREAS, on May 29, 2018, the City Council established Tax Increment Reinvestment Zone Number Eleven ("**Zone**") and,

WHEREAS, the Amended Final Project and Financing Plan ("**Plan**") was adopted on June 4, 2024; and,

WHEREAS, the Agreement is consistent with the purpose and Plan for the Zone; and,

WHEREAS, the Tax Increment Reinvestment Zone Number 11 Fund shall finance the Agreement Rebates, in accordance with the provisions of Chapter 311 of the Texas Tax Code and the Plan, unless otherwise stated in the Agreement; and,

WHEREAS, Texas Economic Development Fund ("TED Fund") was established on January 19, 2021 for the purpose of promoting economic development within El Paso Electric's Texas Service Area; and,

WHEREAS, the Development is considered a high-impact project within the Tourism Target Industry, and therefore is eligible for financial incentives for the TED Fund; and,

WHEREAS, the City is conveying property under Section 253.0125 of the Texas Local Government Code; and,

WHEREAS, the City Council has found that the conveyance of the City's Property to the Company is in the public interest because it will revitalize the Cohen Entertainment District, create a new tourism opportunity both regionally and internationally, provide direct and indirect benefits to the El Paso community, while also diversifying and expanding the local tax base and creating quality job opportunities; and,

WHEREAS, the Chapter 380 Agreement and related Purchase and Sale Agreement between the City and Company provide provisions under which the City is granted sufficient control to ensure that the public purpose relating to economic development is accomplished as a result of the conveyance; and,

WHEREAS, the City concludes and hereby finds that this Agreement promotes economic development in the City and meets the requirements of Chapter 380.

The parties agree as follows:

SECTION 1. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- A. **"Agreement"** means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached and incorporated herein by reference.
- B. **"Base Year Value"** means valuation of the real and business personal property by the El Paso Central Appraisal District on the rolls as of January 1st of the year of the Effective Date of this Agreement. The Base Year Value shall not be interpreted to be equivalent or determinative for appraisal purposes or used in any way to determine market value.
- C. **"Construction Materials Sales Tax Rebate"** means a one-time 100% rebate of the City's 1% Sales and Use Tax from receipts for materials and labor of taxable items used in the construction of the Development.
- D. **"Development"** means the construction of a 12,500-seat amphitheater, further described in Exhibit B, which is attached and incorporated for all purposes.
- E. **"Development Fee Waiver"** means a 100% waiver of all development, building permit, and inspections fees required for the Development under Title 18, Title 19, and Title 20 of the El Paso City Code; however, under no circumstances shall the City rebate reinspection and other building and inspection penalty fees associated with the development and construction of the Development.

- F. **“Effective Date”** means the date the El Paso City Council approves this Agreement.
- G. **“Entitlement”** Entitlement means all government authorizations required to develop and construct the Development.
- H. **“Rebate”** means each annual payment to APPLICANT under the terms of this Agreement computed as the sum of the applicable rebates; (i) Mixed Beverage Sales Tax Rebate; (ii) Sales and Use Tax Rebate; (iii) Real and Business Personal Property Tax Rebate; and (iv) the one-time payment for the Construction Materials Sales Tax Rebate.
- I. **“Rebate Submittal Package”** means the documentation required to be supplied to City as a condition of receipt of any Rebate, with such documentation more fully described in the Rebate Submittal Package, which is attached as Exhibit C to this Agreement.
- J. **“Minimum Investment”** means those costs incurred, self-performed or contracted to third parties by the Applicant over the course of the renovation or construction project or furnishing of the improvements for the Development. For purposes of this Agreement, the Minimum Investment is **\$80,000,000**.
- K. **“Business Personal Property Base Year Value”** means the value of the non-inventory, personal property on the El Paso Central Appraisal District rolls as of August 29 of the year in which this Agreement is executed with respect to the Development. However, under no circumstances shall the Business Personal Property Base Year Value be interpreted to be equivalent or determinative for appraisal purposes or to be utilized in any way to determine market value.
- L. **“Property Tax Rebate”** means a rebate, according to the Rebate Table found in Exhibit D of this Agreement, of the City’s portion of the incremental ad valorem real and business personal property tax revenue generated by the subject property above the Base Year Value for the Agreement Period (as defined herein).
- M. **“Mixed Beverage and Gross Receipts Tax Rebate”** means a rebate, according to the Rebate Table found in Exhibit D of this Agreement, of the City’s portion of the mixed beverage sales and gross receipts tax associated with the Applicant’s Tax ID number.
- N. **“Sales and Use Tax Rebate”** means a rebate, according to the Rebate Table found in Exhibit D of this Agreement, of the City’s portion of the sales and use tax generated by the subject property.
- O. **“Qualified Expenditures”** means the monetary expenditures paid or caused to be paid by Applicant after the Effective Date for material used in constructing or renovating the Development; and labor required for the construction or renovation of the Development.
- P. **“Real Property”** means the real property owned by Applicant located at the Northeast Corner of Cohen Avenue and Gateway Boulevard North, El Paso, TX 79924; Legal Description Portion of Block 7, Castner Range Subdivision No. 1, El Paso, Texas, and described on Exhibit A, which is attached and incorporated by reference. The Real Property is the location for Applicant’s proposed Development.

- Q. **"Development Note"** means an 8-Year promissory note in the amount of \$8,000,000 at 0% interest to Developer to be funded by the Texas Economic Development Fund.

SECTION 2. TERM AND REBATE PERIOD.

- A. This Agreement shall commence on the Effective Date and shall terminate on the first to occur of: (i) the date when the aggregate amount of Rebate payments is issued; (ii) **25** years from the Effective Date; (iii) the proper termination of this Agreement in accordance with the applicable provisions contained herein; or (iv) termination by mutual consent of the parties in writing ("Term").
- B. Applicant's eligibility for Rebate payments shall be limited to **20** consecutive years within the Term of this Agreement (the "Rebate Period"). The first year of the Rebate Period shall be the first tax year after the issuance of the Certificate of Occupancy for the Development. A Temporary Certificate of Occupancy does not qualify as a Certificate of Occupancy.

SECTION 3. OBLIGATIONS OF APPLICANT.

A. DEVELOPMENT.

- (1) Applicant shall or construct, at its sole cost and expense, the Development and shall expend a minimum of **\$80,000,000** in Qualified Expenditures to construct the Development.
- (2) **Operator Contract.** Developer is responsible for securing a venue operator for **10 years with two 5-year extensions**, for a minimum **40 events** per year, prior to obtaining a Temporary Certificate of Occupancy.
- (3) Applicant shall commence construction and/or improvements of the Development within **90 days** following Entitlement.
- (4) Within **36** months after Entitlement, Applicant shall submit documentation to the City to verify the following:
 - (1) The expenditure of a minimum of **\$80,000,000** in Qualified Expenditures; and
 - (2) That Applicant has received **Temporary Certificate of Occupancy** for the Development.
- (5) The Applicant shall submit documentation to the City to verify the **Certificate of Occupancy** within **42** months from the date of Entitlement, or 6 months after receipt of Temporary Certificate of Occupancy unless mutually agreed upon in writing by the Developer and City.
- (6) Applicant shall diligently and faithfully in a good and workmanlike manner pursue the completion of the Development and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations.

- (7) The Director of Economic and International Development may provide an extension not to exceed 6 months of Development deadlines, provided that Applicant has made a good faith effort to fulfill its obligations.
- (8) Applicant agrees that during the Term of this Agreement, the Real Property shall be limited to those uses consistent with the Development.
- (9) Applicant shall demonstrate, before the receipt of any payments, that Applicant has incurred no delinquency taxes by providing certified city tax certificates for any parcel of property owned in the City of El Paso.
- (10) Applicant agrees that during Tax Years 1-3 subsequent to the Effective Date they shall not challenge or permit anyone else to take actions on its behalf to challenge any assessments by the El Paso Central Appraisal District of **\$40,000,000** or less. This property value should in no way be interpreted to affect the values set by the Central Appraisal District for tax purposes. Upon the termination of this Agreement, Applicant agrees that neither this Agreement, nor the values contained within, will be utilized to contest appraisal values or in the determination of the market value of the Development.
- (11) Applicant, during normal business hours, at its principal place of business in El Paso, shall allow the City or its agents reasonable access to operating records, accounting books, and any other records related to the economic development considerations and incentives described herein, which are in Applicant's possession, custody, or control, for purposes of verifying the Qualified Expenditures and for audit, if so requested by the City. The confidentiality of such records will be maintained in accordance with all applicable laws.
- (12) Applicant agrees, at the Applicant's expense, to complete and provide a final Traffic Impact Analysis and Parking Study to the City of El Paso no later than August 15, 2024 unless an extension is mutually agreed upon from both the Applicant and the City of El Paso.

B. REBATE SUBMITTAL PACKAGE.

In order to receive the disbursement of the Rebate, the Applicant must submit a Rebate Submittal Package, as specified below.

- (1) The Applicant shall annually submit one Rebate Submittal Package which shall be in the form provided in Exhibit C, together with the requisite documentation. The Applicant shall submit to the City the initial Rebate Submittal Package within 60 business days of the Applicant's receipt of Certificate of Occupancy for the Development. Thereafter, the Applicant's annual Rebate Submittal Package must be submitted on or within 30 business days after the anniversary of the date of the Certificate of Occupancy of each year. A failure by the Applicant to timely submit a Rebate Submittal Package in accordance with this paragraph is a waiver by the Applicant to receive a Rebate payment for that Rebate year.

- (2) Concurrent with the submittal of a Rebate Submittal Package, the Applicant will submit to the City documentation as may be reasonably necessary to verify the expenditure to date of the Minimum Investment, which has not otherwise been verified as part of a prior submittal. The City will provide to the Applicant a written explanation for any Minimum Investment that the City determines cannot be verified. The Applicant may submit additional documentation to the City in order to obtain verification.
- (3) The City's determination of the amount of the Rebate payment due to the Applicant is final pending substantial compliance documentation is provided by the Applicant or its Representative that verifies a variance in valuation

SECTION 4. OBLIGATIONS OF THE CITY.

During the Term of this Agreement, and so long as an Event of Default has not occurred and Applicant is in compliance with the Agreement, the City agrees as follows:

- A. The City agrees to provide a one time, 100% Construction Materials Sales Tax Rebate on the City's portion of the sales and use tax on the Development's construction materials due to the Developer following submission of the first Rebate Submittal Package, in accordance with the terms and provisions of this Agreement.
- B. The City agrees to provide a 100% Development Fee Waiver in accordance with the terms and provisions of this Agreement.
- C. The City agrees to provide an exemption or waiver to any and all fees (e.g. Impact Fees) associated with the Development that are and/or will be subsequently approved by the City Council after the Term Sheet consideration and approval at the April 24, 2024 City Council meeting in accordance with the terms and provisions of this Agreement.
- D. The City agrees to provide a Property Tax Rebate in accordance with the terms and provisions of this Agreement, as detailed in Exhibit D.
- E. The City agrees to provide a Sales and Use Tax Rebate in accordance with the terms and provisions of this Agreement, as detailed in Exhibit D.
- F. The City agrees to provide a Mixed Beverage Sales and Gross Receipts Rebate in accordance with the terms and provisions of this Agreement, as detailed in Exhibit D.
- G. The City agrees to provide an 8-Year promissory note in the amount of \$8,000,000 at 0% interest, funded by the Texas Economic Development Fund. Development Note shall be disbursed to the Developer within 60 days of the Effective Date. Development Note shall be forgiven if Developer meets performance milestones detailed below:
 - (1) Completion of construction within 36 months from Entitlement; and,
 - (2) A minimum of 25 events per year in years 3-5 of the Rebate Period.

H. The City will process any eligible Rebate payment within **90 days** after receipt of the Applicant's first and annual Rebate Submittal Package.

I. CITY PARTICIPATION IN DEVELOPMENT OF COMPETING VENUES:

- (1) The intent of the parties is to support the successful construction & operation of the purpose-built development as previously defined in Sections 1.D., 3.A.; and Exhibit B.
 - (2) The City agrees to not develop a new live entertainment venue within 60 miles ("Restricted Area") of the Development having a capacity of more than 4,000 persons (a "Competing Venue") and with the intent of competing with the Development; including Applicant's Operator Contract(s) associated with this Development. This shall not be construed to limit the City's pursuit of voter-approved projects, projects affirmed by judicial decree, or participation in regional projects which will not diminish the intent and operation of the purpose-built Development as defined above.
 - (3) As allowable by law; the City shall provide Applicant with a first right of refusal to develop and/or operate any voter approved project as of the Effective Date of this Agreement. Notwithstanding the foregoing, the Applicant shall have the right to pursue and enter into bookings and exclusive booking agreements for any live entertainment venue within the Restricted Area.
 - (4) The provisions of this Section 4.I. will terminate with the termination of this Agreement.
- J. The City shall guarantee parking facilities for exclusive developer use on event days through lease agreements with City entities and or interlocal partnerships. The number of spaces shall be determined by a final Traffic Impact Analysis and Parking Study for site feasibility, except that the minimum number of spaces within a 1 mile radius shall be 3,600 subject to confirmation of the results of the completed the final Traffic Impact Analysis and Parking Study to be provided to the City of El Paso by August 15, 2024.

SECTION 5. EVENTS OF DEFAULT.

Each of the following Paragraphs A through D shall constitute an Event of Default:

- A. **Failure to Comply.** Applicant's failure to comply with, or to perform any obligation or condition of this Agreement or in any related documents, or Applicant's failure to comply with or to perform any obligation or condition of any other agreement between the City and Applicant.
- B. **False Statements.** Any representation or statement made or furnished to the City by Applicant pursuant to this Agreement or any document(s) related hereto, that is/are false or misleading in any material respect; or if Applicant obtains actual knowledge that any such representation or statement has become false or misleading after the time that it was made, and Applicant fails to provide written notice to the City of the false or misleading nature of such representation or statement within 10 days after Applicant learns of its false or misleading nature.

- C. **Insolvency.** Applicant files a voluntary petition in bankruptcy, a proceeding in bankruptcy is instituted against the Applicant and the Applicant is thereafter adjudicated bankrupt, a receiver for the Applicant's assets is appointed, or any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant.
- D. **Property Taxes.** If Applicant allows its personal or real property taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within 30 days after written notice thereof from the City and/or El Paso Central Appraisal District.
- E. **Notice and Opportunity to Cure.** If an Event of Default occurs, the City will provide Applicant with written notice of the default and Applicant shall have 90 days from the receipt of said notice to cure the default (the "Cure Period"). If the default cannot be remedied within the Cure Period but the Applicant has made a diligent effort to effect a cure, the Cure Period may be extended at the City's sole discretion for a reasonable time. The City, in its sole discretion, shall determine what constitutes "a reasonable time" and what constitutes "a diligent effort" for purposes of this provision. If the City agrees to extend the Cure Period past the 90 days, the City shall notify the Applicant, in writing, of the expiration date of the extended cure period.
- F. **Failure to Cure.** If an Event of Default occurs and, after receipt of written notice and opportunity to cure as herein provided, the Applicant fails to cure the default in accordance with the provisions herein, then this Agreement may be terminated by the City by written notice to the Applicant at which time the City's obligations hereunder will end and the City may exercise any other right or remedy available at law or in equity. Notwithstanding anything herein or elsewhere to the contrary, no termination of this Agreement shall cause a termination of, or otherwise diminish or effect, the lease agreement for parking contemplated herein and executed by the parties concurrently with closing of the Purchase and Sale Agreement.

SECTION 6. RECAPTURE.

Should the Applicant default under Section 5 of this Agreement and provided that the cure period of 90 days for such default has expired, Rebates previously provided for the preceding 5 years from the date of the Event of Default. City pursuant to this Agreement shall be recaptured and repaid by Applicant within 180 days of the Event of Default\.

SECTION 7. MISCELLANEOUS PROVISIONS

- A. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in mutually agreed in writing and signed by both parties.
- B. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created

hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.

- C. **Applicant's Sale or Transfer of the Development.** Prior to any sale or other transfer of fee ownership rights in the Development to any party that is not controlled by (or under common control with) Applicant, Applicant shall notify the City in writing of such sale or transfer 90 business days before the effective date of such sale or transfer. Nothing herein shall be interpreted to restrict the transfer of any leasehold or mortgage interest (or any transfer of rights relating to fire pit suites, owners' suites or similar investor amenities) by or require notice thereof from Applicant to the City.
- D. **Assignment.** Applicant understands and agrees that the City expressly prohibits Applicant from selling, transferring, assigning or conveying in any way any rights to receive the Rebate or Rebates that are subject of this Agreement without the City's consent to assignment. Any such attempt to sell, transfer, assign or convey without the City's prior written consent is void and may result in the immediate termination of this Agreement and recapture of the taxes rebated prior to the attempted transfer. Notwithstanding the foregoing, nothing herein or elsewhere shall be interpreted to restrict the transfer, assignment, sale, encumbrance or conveyance of any rights or interests hereunder from Applicant to any entity controlled by (or under common control with) Applicant.
- E. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Applicant warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Applicant to the same.
- F. **Confidentiality Obligations.** The confidentiality of records related to the City's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. To the extent permitted by state or federal law, the City shall maintain the confidentiality of any proprietary information and shall not copy any such information except as necessary for dissemination to the City's agents or employees and agrees that, as required by the Public Information Act, it will notify Applicant if a request relating to such proprietary information is received. Applicant represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of Applicant as a basis for nondisclosure.
- G. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute the same document.
- H. **Employment of Undocumented Workers.** During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the Rebate payments received by Applicant from the City as of the date of such violation not later than one hundred twenty (120) days after the date Applicant is notified by City of a violation of this section, plus interest from the date the Rebate payment(s) was paid to Applicant, at the rate of seven percent (7%) per

annum. The interest will accrue from the date the Rebate payment(s) were paid to Applicant until the date the reimbursement payments are repaid to City. City may also recover court costs and reasonable attorney's fees incurred in an action to recover the Rebate payment(s) subject to repayment under this section. Applicant is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Applicant contracts.

- I. **Force Majeure.** The parties agree that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- J. **Headings.** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- K. **No Joint Venture.** The parties acknowledge and agree that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture between the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the Development or the design, construction, or operation of the Development, or any portion thereof.
- L. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when (i) actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below; (ii) sent via electronic transmission to the email addresses set forth below; or (iii) when delivered by hand-delivery. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address. Applicant shall provide all required Rebate Submittal Packages and other required documentation to City electronically at the following address:
EDcompliance@elpasotexas.gov.

To the City:

The City of El Paso
Attn: City Manager
P. O. Box 1890
El Paso, Texas 79950-1890

With a Copy to:

The City of El Paso
Attn: Economic and International Development
P. O. Box 1890
El Paso, Texas 79950-1890

To the Applicant:

Notes Live, Inc.

Attn: Robert M. Mudd
Address: 1755 Telstar, Suite 501
Colorado Springs, CO 80920

With a Copy to:

Notes Live, Inc.
Attn: W. Wade Beavers
1755 Telstar, Suite 501
Colorado Springs, CO 80920


M. Ordinance Applicability. The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising.

N. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

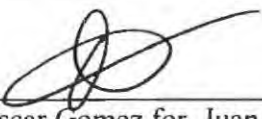
[Signatures begin on the following page]

IN WITNESS WHEREOF, the parties hereby execute this Agreement.

CITY OF EL PASO:


Cary Westin
Interim City Manager

APPROVED AS TO FORM:


Oscar Gomez for, Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:


Karina Brasgalla, Interim Director
Economic & International Development

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

Robert Cortines This instrument was acknowledged before me on the 3 day of July, 2024,
for by Cary Westin as Interim City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas.

My Commission Expires:

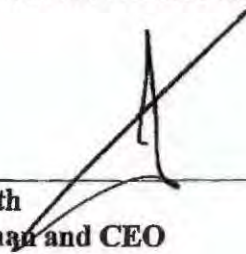
06-01-2026


Notary Public, State of Texas



[Signatures continue on the following page]

APPLICANT: NOTES LIVE, INC.


JW Roth
Chairman and CEO


ACKNOWLEDGMENT

STATE OF

§
§
§

COUNTY OF

This instrument was acknowledged before me on the 24 day of June, 2024, by
JW Roth as Chairman and CEO FOR Notes Live, Inc.

 Kristen Hoskins
Notary Public, State of Colorado

My Commission Expires:

6/20/2027



EXHIBIT A

Description of the Real Property

Address: Northeast Corner of Cohen Avenue and Gateway Boulevard North
El Paso, TX 79924

Property ID: 568428

Legal Description: Portion of Block 7, Castner Range Subdivision No. 1, El Paso County, Texas

Geographic ID: C23299900700150



EXHIBIT B

Description of Development

The proposed Project is the construction of a 12,500-seat amphitheater within the Cohen Entertainment District. Projected uses at the site include:

- The operation of the Development including the presentation and broadcasting, streaming or other transmission of concerts, live shows, theater performances, public or private exhibitions, civic events, public ceremonies, other forms of live entertainment and activities related thereto.
- Restaurants and private clubs.
- Sale of food and alcoholic and non-alcoholic beverages, souvenirs and other items customarily sold and marketed in amphitheater/outdoor entertainment facilities, subject to the requirements of Applicable Law.
- Conducting public tours of the Development Site.
- Retail uses, including such uses located in the Development, along the street level of the Development and in kiosks, carts and similar movable or temporary retail facilities.
- Educational, civic, and other public uses.
- Studio and related facilities for radio, television, and other broadcast, streaming and entertainment media within the Development, including support and production facilities.
- Storage of maintenance equipment and supplies used in connection with the operation of the Development Site.
- Presentation and broadcasting, streaming or other transmission of concerts and other entertainment events and activities related thereto, including exhibitions, promotional activities and events, community and public relations, advertising, and other marketing of concerts and events, ticket sales, and all other activities which, from time to time, are customarily conducted by or are related to the presentation and broadcasting or streaming of concerts and other entertainment events.

EXHIBIT B (continued)

Description of Development

Renderings/Building Plans:

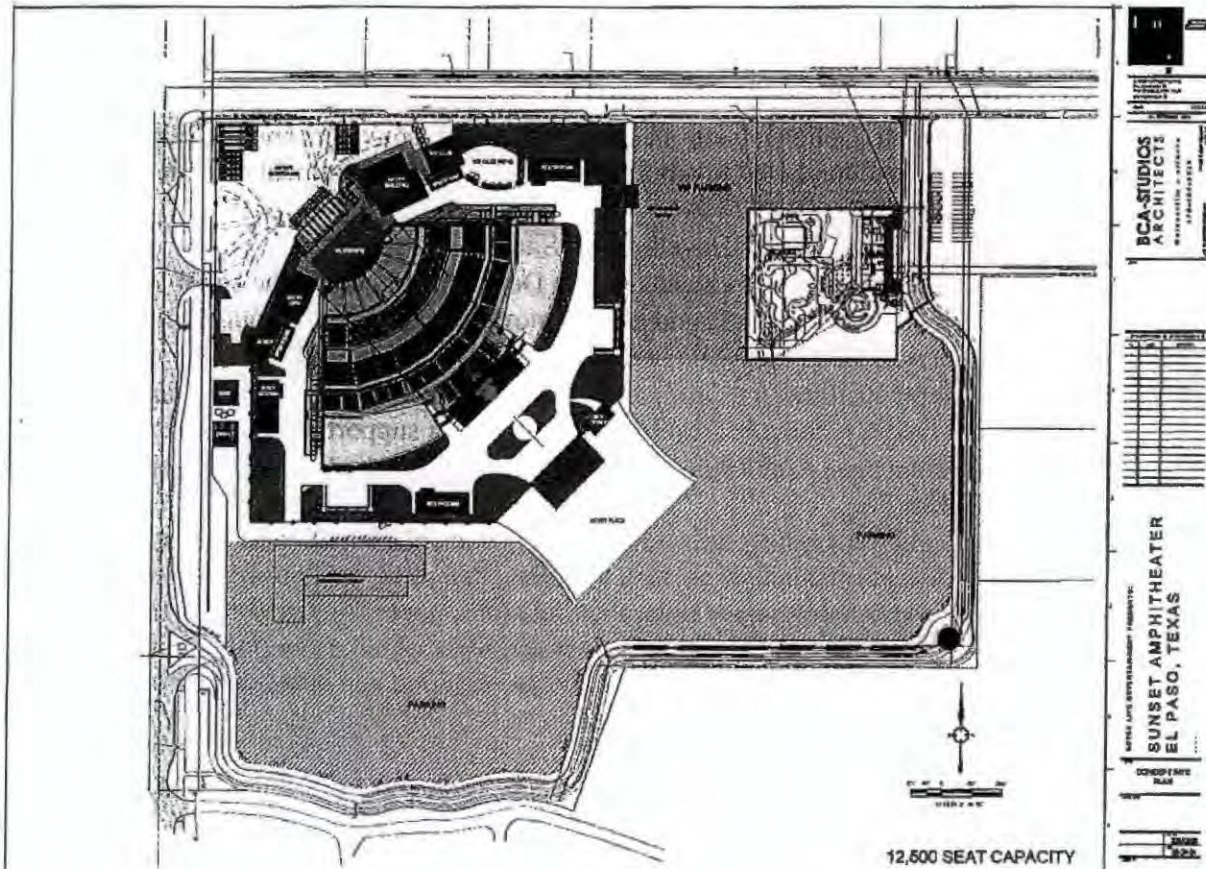


EXHIBIT C
Rebate Submittal Package Form

[Applicant] believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of ____ 20__ and signed by _____ of [Applicant]. Pursuant to the Agreement, [Applicant] submits this Rebate Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Rebate payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted:

1. Electronically to Email: EDCompliance@elpasotexas.gov;
2. Completed Rebate Submittal Package Form
3. **[INITIAL SUBMITTAL ONLY]** Written confirmation of the execution of the Operator Contract.
4. **[INITIAL SUBMITTAL ONLY]** Copy of Development Permits;
5. **[INITIAL SUBMITTAL ONLY]** Documentation to evidence the amount of development fees paid as a result of the Development (receipts, invoices, bank and/or credit card statements, checks);
6. **[INITIAL SUBMITTAL ONLY]** Documentation evidencing the materials and labor of Taxable Items used in the construction of the Development eligible for rebate to Applicant under the Construction Materials Sales Tax Rebate (receipts, invoices, bank and/or credit card statements, checks);
7. **[INITIAL SUBMITTAL ONLY]** Documentation to evidence minimum expenditures to date and not previously verified (receipts, invoices, bank and/or credit card statements, checks)
8. **[INITIAL SUBMITTAL ONLY]** Certificate of Occupancy
9. **[INITIAL SUBMITTAL ONLY]** [1295 Form](#)
10. Real and Business Personal Property tax payment receipt showing proof of payment for calendar tax year being requested (real and personal **if applicable**):
11. Parking Reimbursement Invoice
12. Sales and Use Tax Reports, Returns, and Proof of Payment to the Texas Comptroller's Office.
13. Documentation evidencing the Mixed Beverage and Gross Receipts Tax paid.

It is understood by [Applicant] that the City of El Paso has up to ninety (90) days to process this request and reserves the right to deny the Rebate request if the Applicant has not complied with the terms of the Agreement.

[Applicant]

Name: _____

Title: _____

EXHIBIT D**Tax Rebate Table**

Rebate Year	City Real and Business Personal Property	City Sales and Use	City Mixed Beverage Sales and Gross Receipts
1	100%	100%	80%
2	100%	100%	80%
3	100%	100%	80%
4	100%	100%	80%
5	100%	100%	80%
6	100%	100%	80%
8	100%	100%	80%
9	100%	100%	80%
10	100%	100%	80%
11	100%	100%	80%
12	75%	75%	50%
13	75%	75%	50%
14	75%	75%	50%
15	75%	75%	50%
16	75%	75%	50%
17	75%	75%	50%
18	75%	75%	50%
19	75%	75%	50%
20	75%	75%	50%

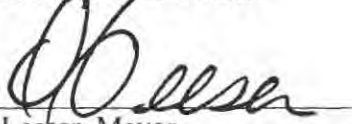
RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor is authorized to sign an Interlocal Agreement by and between the City of El Paso ("City") and the El Paso Metropolitan Planning Organization ("EPMPO") whereby the City shall pay an amount not to exceed \$150,000.00 towards the EPMPO's local participation costs of an International Border Crossings System-wide Analysis ("Project") as adopted in the EPMPO "Regional Mobility Strategy 2050 Metropolitan Transportation Plan" and "Regional Mobility Strategy FY2023-2026 Transportation Improvement Program", designed to identify and develop a regional crossings system that is more efficient and better suited to meet the needs of the City of El Paso and the region. The total cost of the Project is \$2,107,000.00, with allocations of federal, state, and local participation costs.

APPROVED this 30th day of July, 2024.

THE CITY OF EL PASO:


Oscar Leiser, Mayor


ATTEST:


Laura D. Prine, City Clerk

APPROVED AS TO FORM:


Roberta Brito
Senior Assistant City Attorney

APPROVED AS TO CONTENT:


Joaquin Rodriguez
CID Grant Funded Programs Director

EL PASO COUNTY)
)
STATE OF TEXAS)

INTERLOCAL AGREEMENT
International Border Crossing System-Wide Analysis

This Interlocal Agreement ("Agreement") is made and entered into by and between the El Paso Metropolitan Planning Organization (the "EPMPO"), a political subdivision of the State of Texas, and the City of El Paso, Texas (the "City"), a political subdivision of the State of Texas, and collectively referred to as the "Parties," or each individually referred to as a "Party."

RECITALS:

WHEREAS, Chapter 791 of the Texas Government Code provides that any one or more public agencies may contract with each other for the performance of governmental functions or services in which the contracting parties are mutually interested; and

WHEREAS, the EPMPO is the metropolitan planning organization for El Paso County, Texas, southern Doña Ana County, New Mexico, and a portion of Otero County, New Mexico; and

WHEREAS, on January 20, 2023, the EPMPO Transportation Policy Board (the "TPB") unanimously approved amending the RMS 2050 MTP and RMS 2023-2026 TIP to program the International Border Crossings System-wide Improvements Analysis using \$2,000,000.00 of CAT 7 STP MM funds (the "Plan"); and

WHEREAS, the Federal Highway Administration has approved a total estimated cost of \$2,107,000.00 for the completion of the Plan with the following cost allocation (1) **Federal Participation Costs** - \$1,612,000.00, (2) **State Participation Costs** - \$92,000.00, and (3) **Local Participation Costs** - \$403,000.00; and

WHEREAS, the Plan will provide recommendations on improvements to the international border crossing system in an effort to create a more efficient system that is better suited to meet the needs of the El Paso region; and

WHEREAS, the Texas Department of Transportation ("TxDOT") has authorized an Advance Funding Agreement between TxDOT and EPMPO to provide funding for the completion of the Plan as reflected in **Attachment A** (the Scope of Work) and **Attachment B** (the Budget Estimate), and which requires that EPMPO secure funding for the Local Participation Costs of \$403,000.00; and

WHEREAS, the City agrees to contribute an amount not to exceed \$150,000.00 towards the Local Participation Costs of \$403,000.00 for work completed by EPMPO towards completion of the Plan.

AGREEMENT:

NOW, THEREFORE, in consideration of the promises, covenants, and other good and valuable consideration exchanged between the Parties, the Parties hereby agree as follows:

1. RECITALS; ATTACHMENTS. The Recitals set forth above are incorporated herein for all purposes and are found by the Parties to be true and correct. The Attachments A and B are true and correct and are hereby expressly incorporated herein by reference as if set forth fully below.

2. RESPONSIBILITIES OF THE EPMPO.

- a. The EPMPO shall submit quarterly invoices to the City in a form and style agreed upon by the Parties to access the local match funds, and will apply those funds towards the payment of invoices for services provided in furtherance of performing and completing the Plan.
- b. Perform the work described in the Scope of Services, Attachment A to this Agreement.
- c. Perform the work in accordance with the Project Budget Estimate, Attachment B to this Agreement.
- d. Submit status reports supporting milestones completed as completion of the Plan progresses.
- e. Upon receiving reasonable requests, the EPMPO shall (1) furnish, at such times and in such form as may be requested, periodic information concerning the status of the Plan and the performance of the obligations under this Agreement, and (2) if feasible, authorize the inspection of work done and materials created for the Plan, at reasonable times and places. If the City believes the Project is not being developed as originally contemplated, the City's designated representatives shall meet with the EPMPO to discuss appropriate actions to ensure any defects in the Plan or deviations are remedied.
- f. Provide an electronic copy of the final approved Plan to the City.

3. RESPONSIBILITIES OF THE CITY.

- a. The City shall review all properly submitted invoices from the EPMPO and provide payment within a reasonable period to the EPMPO based on said invoices.
- b. In no event shall the amount that the City pays to the EPMPO exceed \$150,000.00.
- c. Funds provided by the City under this Agreement shall be used only for the work performed pursuant to Scope of Services, Attachment A to this Agreement.

4. TERM. The term of this Agreement will begin upon the execution of this Agreement by both Parties (the "Effective Date") and will remain in effect until the completion of the Project on or before May 31, 2026. This Agreement shall automatically terminate on May

31, 2026, unless the Parties renew or extend it via a separate written instrument mutually agreed upon by the Parties.

5. TERMINATION.

- a. **Termination for Convenience.** Either Party may terminate this Agreement without cause after 30 days written notice to the other Party of the intention to terminate this Agreement. The Party providing services under this Agreement will halt all work on behalf of the other Party when the termination notice sent by the terminating Party is received by the non-terminating Party.
- b. **Termination for Cause.** Either Party may terminate this Agreement if one Party fails to fulfill the obligations set out in this Agreement. Before terminating the Agreement pursuant to this provision, the terminating Party will provide written notice of intent to terminate enumerating the failures for which the termination is being sought and provide at least 30 calendar days to the non-terminating Party to cure the failure.

6. NO INDEMNIFICATION. The Parties agree that neither Party will have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, or damages arising from this Agreement. Each Party must handle any claims resulting from their actions in this Agreement. Each Party agrees that each will be responsible for the acts or omissions of its respective representatives.

7. COMPLIANCE WITH LAWS. The Parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, as well as the orders and decrees of any courts or administrative bodies in any matter affecting the performance of this Agreement.

8. COST PRINCIPLES. To the extent applicable, the Parties shall comply with the Cost Principles established in 2 CFR 200.

9. PRIVILEGES AND IMMUNITIES. All privileges and immunities from liability, exemptions from laws, ordinances, rules, and other benefits that apply to the activities of officers, agents, or employees of the Parties when performing a governmental function shall apply to such officers, agents, or employees to the same extent while engaged in the performance of any of their functions and duties under the terms and provisions of this Agreement.

10. GOVERNMENTAL FUNCTIONS. The Parties expressly agree that in all things relating to this Agreement, the Parties are performing a governmental function as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of either party, which, in any way, pertains to or arises out of this Agreement, falls within the definition of governmental function.

11. GOVERNMENTAL IMMUNITY. The Parties reserve and do not waive their respective rights of sovereign and governmental immunity and similar rights and do not waive their

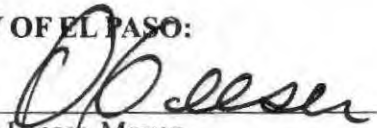
rights under the Texas Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

- 12. APPLICABLE LAW.** Any disputes arising in connection with this Agreement shall be governed and interpreted by the laws of the State of Texas without regard to its conflict of law provisions. Venue shall be in El Paso County, Texas.
- 13. ENTIRE AGREEMENT; AMENDMENTS.** This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof, and no amendment, modification, or alteration of the terms shall be binding unless the same is in writing, dated after the date hereof, and duly executed by the Parties.
- 14. INDEPENDENT STATUS:** No Party to this Agreement is an agent, servant, or employee of any other Party and each Party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.
- 15. SIGNATORY WARRANTY.** Each signatory warrants that the signatory has the necessary authority to execute this Agreement on behalf of the entity represented.
- 16. CONFIDENTIALITY.** The EPMPO acknowledges that this Agreement is subject to Chapter 552 of the Texas Governmental Code (Texas Public Information Act). The release of the Agreement as a whole or a part must comply with the Texas Public Information Act.
- 17. SEVERABILITY.** If any provision of this Agreement shall be held invalid or unenforceable, by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of the Parties shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practical, give effect to the intent of this Agreement and be deemed to be enforceable.
- 18. THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries to this Agreement.
- 19. SECTION 791.011 (d) (3), TEXAS GOVERNMENT CODE.** Pursuant to Section 791.011 (d) (3) of the Texas Government Code, each party paying for the performance of governmental function or services will make those payments from current revenues available to the paying party.

[Signatures on the following page.]

APPROVED this 30th day of July, 2024.

CITY OF EL PASO:


Oscar Leeser, Mayor


ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:


Roberta Brito
Senior Assistant City Attorney

APPROVED AS TO CONTENT:


Joaquin Rodriguez
CID Grant Funded Programs Director

(Signatures Continue on Next Page.)

APPROVED this 30th day of July, 2024.

**EL PASO METROPOLITAN PLANNING
ORGANIZATION:**

Signed by:
Eduardo Calvo July 29, 2024
C8A803FAGEB84D1...
Eduardo Calvo
Executive Director

APPROVED AS TO FORM:

DocuSigned by:
Sergio Estrada July 29, 2024
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Sergio M. Estrada
Kemp Smith LLP
Legal Counsel to EPMPO

TxDOT:				Federal Highway Administration:	
CCSJ #	0924-06-738	AFA ID	Z00009406	CFDA No.	20.205
AFA CSJs	0924-06-738			CFDA Title	Highway Planning and Construction
District #	24	Code Chart 64#	60797		
Project Name	Int'l Border Crossing System-Wide Analysis			AFA Not Used For Research & Development	

ATTACHMENT A SCOPE OF WORK

Project Goal:

The Local Government will develop a plan that will make recommendations on improvements to the system in an effort to create a Regional International Border Crossing System that is more efficient and better suited to meet the needs of the growing Borderplex region.

Scope of Work:

The Local Government will develop an International Border Crossing (IBC) Strategic Plan that includes three states in two countries that will analyze current conditions and operations of the six international IBCs within the El Paso MPO planning area.

The IBC Strategic Plan will be developed in coordination and participation from stakeholders, the public, and private sectors in Mexico and the United States. The evaluation of the recommended improvements will include an air quality element, which reduces the delays in the cross-border movement of people, vehicles, and goods. To accomplish this, the MPO will utilize new state of the art analytic tools, to include the Border Emissions Estimator for Microsimulation (BEEM), and the International Travel Demand Model (iTDM)

The Strategic Plan will also identify specific improvements to the existing infrastructure and develop these improvements with ample information to carry them out as specific projects.

The Local Government will research the feasibility of establishing a 3-State, bi-national port authority that could serve as the planning and operating entity for all the IBCs in the El Paso MPO region to allow the IBCs to function as a system.

Tasks: The Local Government shall:

1. Data Collection from past and present plans, studies, and reports
2. Stakeholder Outreach and public engagement.
3. Current Conditions Analysis -2024 IBC system
4. Develop and Evaluate Future Scenarios of the Regional IBC System.
5. Identify Specific Infrastructure Improvements to Individual IBCs
6. Identification of local and binational Economic Development Opportunities
7. Research the feasibility of a 3-State, Binational Port Authority

TxDOT:				Federal Highway Administration:	
CCSJ #	0924-06-738	AFA ID	Z00009406	CFDA No.	20.205
AFA CSJs	0924-06-738			CFDA Title	Highway Planning and Construction
District #	24	Code Chart 64#	60797		
Project Name	Int'l Border Crossing System-Wide Analysis			<i>AFA Not Used For Research & Development</i>	

Deliverables:

Submit Monthly status reports supporting milestones completed as study progresses. Final reports will be submitted at the completion of each task and contain associated data and documentation pertaining to the task completed. Status reports will be submitted electronically at ELP-Contracts@txdot.gov. The LG shall submit monthly invoices, to the state, electronically at ELP-Contracts@txdot.gov.

TxDOT:				Federal Highway Administration:	
CCSJ #	0924-06-738	AFA ID	Z00009406	CFDA No.	20.205
AFA CSJs	0924-06-738			CFDA Title	Highway Planning and Construction
District #	24	Code Chart 64#	60797		
Project Name	Int'l Border Crossing System-Wide Analysis			<i>AFA Not Used For Research & Development</i>	

ATTACHMENT B PROJECT BUDGET ESTIMATE

Costs will be allocated based on applicable Federal/Local funding, until maximum federal funding is reached. The Local Government will then be responsible for 100% of the costs.

Description	Total Estimated Cost	Federal Participation	State Participation	Local Participation
		Cost	Cost	Cost
Surface Transportation Program (by Local Government)	\$2,000,000.00	\$1,600,000.00	\$0	\$400,000.00
Direct State Costs	\$15,000.00	\$12,000.00	\$0	\$3,000.00
Indirect State Costs	\$92,000.00	\$0	\$92,000.00	\$0
TOTAL	\$2,107,000.00	\$1,612,000.00	\$92,000.00	\$403,000.00

Payment by the Local Government to the State: \$3,000
The final amount of Local Government participation will be based on actual costs.

24-1304
45

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City of El Paso City Council authorizes the submission of an application to the U.S. Department of Transportation (USDOT) Fiscal Year 2025 Rebuilding American Infrastructure with Sustainability and Equity (RAISE) grant program, with a \$5,000,000.00 match required from the City, for the Ysleta Port of Entry Southbound Commercial Facilities Expansion Project: Phase I.

THAT the City Manager, or designee, is authorized to sign any documents necessary for the proper submission of the Application;

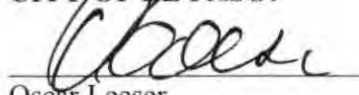
THAT the City Manager, or designee, is authorized to sign any documents necessary to accept a grant resulting from the Application, after consultation with the City Attorney's Office;

THAT the City Manager, or designee, is authorized to sign any documents related to a grant resulting from the Application, including, but not limited to, revisions to the project scope of work, revisions that increase, decrease or de-obligate program funds, revisions to the operation plan, and documents to reject, amend, correct, and/or terminate the grant;



THAT the City Manager, or designee, is authorized to explore funding sources and partnerships that leverage the strength of the Application and any grant resulting from the Application.

APPROVED this 8th day of October 2024.

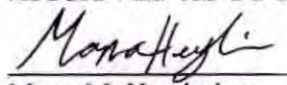
CITY OF EL PASO:


Oscar Leeser
Mayor

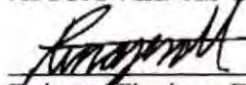
ATTEST:



Laura D. Prine
City Clerk

APPROVED AS TO FORM:


Mona M. Heydarian
Assistant City Attorney

APPROVED AS TO CONTENT:


Roberto Tinajero, Director
International Bridges Department

24-1725
53

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:


That the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement ("Agreement") by and between **CITY OF EL PASO**, a Texas home-rule municipal corporation ("City"), and **National Center for Defense Manufacturing and Machining**, a nonprofit organization ("Applicant"), in support of the Applicant's business operations located at 5 Butterfield Trail Blvd., Suites A and B, El Paso, Texas, 79906 ("Project"). The Project will likely encourage increased economic development in the City, provide increases in the City's property tax revenues, and improve the City's ability to provide for the health, safety and welfare of the general public within and around El Paso. The Agreement requires the Applicant to meet Full-Time Employment requirements and transition to and operate at the El Paso International Airport's Advanced Manufacturing District ("AMD") once construction is completed. Over the term of the Agreement, the City shall provide economic incentives not to exceed \$244,800 in the form of Lease Rental Cost assistance.

APPROVED this 17th day of December, 2024.


CITY OF EL PASO:


Oscar Leecer
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:


Oscar Gomez
Assistant City Attorney

APPROVED AS TO CONTENT:


Karina Brascalla, Interim Director
Economic & International Development

STATE OF TEXAS)
)
COUNTY OF EL PASO)

CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT

This Chapter 380 Economic Development Program Agreement (“**Agreement**”) is made this 17th day of December, 2024 (“**Effective Date**”) between the City of El Paso, Texas, a Texas home-rule municipal corporation, (the “**City**”), and National Center for Defense Manufacturing and Machining, a nonprofit organization (“**NCDMM**” or the “**Applicant**”), for the purposes and considerations stated below. The City and NCDMM will hereinafter collectively referred to as the “**Parties**” and individually to as the “**Party**”.

RECITALS

WHEREAS, the Applicant desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”) and the Texas Constitution Article III Section 52-a; and

WHEREAS, the City has the authority under Chapter 380 to make loans or grants of public funds, as a governmental function, for the purpose of promoting local economic development and stimulating business and commercial activity within and around the City; and

WHEREAS, the City desires to provide incentives to the Applicant, pursuant to Chapter 380, for the Applicant’s business operations located at *5 Butterfield Trail Blvd., Suites A and B, El Paso, Texas 79906*, and more fully described on *Exhibit A* attached hereto (the “**Project**”), and the Applicant wishes to receive the incentives in exchange for compliance with the obligations set forth herein; and

WHEREAS, the City concludes and hereby finds that this Agreement promotes economic development to the general public within and around the City and meets the requirements of Chapter 380 and further, is in the best interests of the City and Applicant.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- A. **Agreement.** The word *Agreement* means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached and incorporated herein by reference.
- B. **Effective Date.** The term *Effective Date* means the date the El Paso City Council (“City Council”) approves the Agreement. However, if the Lease Agreement referred to herein is not executed on or before the date City Council approves this Agreement, then the Effective Date will be on the date the Lease Agreement is executed.

- C. **Full-Time Employment.** The term *Full-Time Employment* means a job in El Paso requiring a minimum of 1,820 prorated hours of work in a year and which:
1. Is created and/or retained by the Applicant, with the employee being actively employed and on the Applicant's payroll as of the last day of the reporting year;
 2. Employee maintains employment with a requirement to work an average of at least 35 hours per week, calculated as: $\text{Total Hours Worked} \div \text{Number of Weeks Worked} = 35$ or more per;
 3. Has full company benefits, including allowance for vacation, holidays, sick leave, and company paid health insurance (employees must not be required to pay more than 50% of the health insurance premium); and
 4. Such jobs being located at the Project, within the City of El Paso, Texas;
 5. These requirements are more completely described in *Exhibit D*, which is attached hereto and incorporated herein for all purposes.
- D. **Grant.** The term *Grant* means each payment to Applicant under the terms of this Agreement computed as assistance for Lease Rental Costs in the amount of \$24,480 annually, capped at \$244,800 for the Term of the Agreement.
- E. **Grant Submittal Package.** The term *Grant Submittal Package* means the documentation required to be supplied to City as a condition of receipt of any Grant, with such documentation more fully described in the Grant Submittal Package, which is attached as *Exhibit C* to this Agreement.
- F. **Lease Rental Cost.** The term *Lease Rental Cost* means rent charged by the Robert E. Marble Trust at the Project's location per that certain *Lease Agreement* attached as *Exhibit E* to this Agreement. The Grant is limited to Lease Rental Costs associated specifically with the Lease Agreement and being paid by and charged to the Applicant as it pertains to that certain Lease Agreement at the Project's location as defined in this Agreement. However, at the discretion and approval by the Director of the City's Economic and International Development Department, the Applicant may qualify for Lease Rental Costs at the El Paso International Airport's Advanced Manufacturing District ("AMD") or other locations within the City. No other costs associated with the Lease Agreement, including but not limited to costs for damages, incidental expenses, late fees, penalties, or any other related expenses, shall be covered under this Agreement.
- G. **Project.** The term *Project* means the real property leased by Applicant located at 5 Butterfield Trail Blvd. Suites A and B, El Paso, Texas 79906, and more fully described on *Exhibit A*, which is attached and incorporated by reference.

SECTION 2. TERM AND GRANT PERIOD.

- A. This Agreement shall commence on the Effective Date and shall terminate on the first to occur of: (i) 10 years from the Effective Date; (ii) the proper termination of this Agreement

in accordance with the applicable provisions contained herein; or (iii) termination by mutual consent of the parties in writing ("Term").

- B. Applicant's eligibility for Grant payments shall be limited to 10 consecutive years within the Term of this Agreement (the "Grant Period").

SECTION 3. OBLIGATIONS OF APPLICANT.

A. PROJECT.

- (1) Applicant plans for this program to consist of two phases:
 - (a) Phase 1 – will include research and design services for contracts as awarded from the United States Navy and other Department of Defense branches. This phase will also include year 1 through year 3 of the employee scaling as indicated within the Agreement on *Exhibit D*. Applicant shall operate at the Project's location during Phase 1.
 - (b) Phase 2 – will include research and design services for contracts as awarded from the United States Navy and other Department of Defense branches. Applicant shall operate at the AMD. However, if the AMD's construction is not ready, or space therein is not available, by the end of the lease agreement at the Project's location, Applicant may find another location within the City to operate the Project.
- (2) Applicant agrees that during the Term of this Agreement, the Project shall be limited to those uses consistent with the Project Description in *Exhibit A*.
- (3) Applicant agrees to maintain the Lease Agreement for the duration of this Agreement. Receipt of any Grant payments pursuant to this Agreement are contingent upon the Applicant's complete compliance with this requirement. On an annual basis, or as required by the City's Economic and International Department, Applicant shall provide City with attestation from the Robert E. Marble Trust, as landlord, verifying Applicant's maintaining compliance with the terms of the Lease Agreement or Estoppel Certificate.
- (4) Applicant shall demonstrate, before the receipts of any Grant payments, that Applicant has incurred no delinquency taxes by providing certified City tax certificates for any parcel of real or personal property owned in the City of El Paso.
- (5) Applicant shall allow the City or its agents reasonable access to operating records, accounting books, and any other records related to the economic development considerations and incentives described herein, which are in Applicant's possession, custody, or control, for purposes of verifying the Lease Rental Costs and for audit purposes, if so requested by the City. The confidentiality of such records will be maintained in accordance with all applicable laws.

B. EMPLOYMENT POSITIONS

- (1) Applicant agrees that it shall create, staff, and maintain the Full-Time Employment positions described in *Exhibit D* for the Project as of *December 31, 2025*, and shall maintain the Full-Time Employment positions for the Project through the entire Grant Period of this Agreement. Applicant shall maintain the Full-Time Employment positions for each reporting year with the total per day hours worked averaged over each year. The transfer of an existing Full-Time Employment position from Applicant's existing business site to Applicant's Project *does not* qualify as creating and staffing a Full-Time Employment position for purposes of this Agreement. Failure to meet the Full-time Employment requirements is not an Event of Default and will have no effect on Grant payment eligibility, provided that Applicant conducts a best efforts approach to hiring and recruiting within the Term of the Agreement to meet such requirements. The City, in its sole discretion, shall determine what constitutes *best efforts* for purposes of this provision.
- (2) Applicant shall provide the City with an annual report by *January 31* of each reporting year during the Term of this Agreement, certifying the status of compliance through the preceding year. Such annual report shall include the number of new jobs created and retained for the Project, information on any new investments in the Project, and any other information relevant to the Project and the City's economic development goals. Documentation for jobs may be in the form of quarterly Internal Revenue Service Form 941 returns, or Texas Workforce Commission Employer Quarterly Reports, or employee rosters that show the hours worked and the positions filled. Applicant shall also provide the City with such other reports as may reasonably be required.

C. GRANT SUBMITTAL PACKAGE.

In order to receive the disbursement of the Grant, the Applicant must submit a Grant Submittal Package, as specified below.

- (1) The Applicant shall annually submit one Grant Submittal Package which shall be in the form provided in *Exhibit C*, together with the requisite documentation. The Applicant shall submit to the City the initial Grant Submittal Package on *January 1, 2026*, or within 30 business days after this date. A failure by the Applicant to timely submit a Grant Submittal Package in accordance with this paragraph is a waiver by the Applicant to receive a Grant payment for that Grant year.
- (2) Concurrent with the submittal of a Grant Submittal Package, the Applicant will submit to the City documentation as may be reasonably necessary to verify the expenditure to date of the Lease Rental Costs, which has not otherwise been verified as part of a prior submittal.
- (3) The City's determination of the amount of the Grant payment due to the Applicant is final.

SECTION 4. OBLIGATIONS OF THE CITY.

During the Term of this Agreement, and so long as an Event of Default has not occurred and Applicant is in compliance with the Agreement, the City agrees as follows:

- A. The City agrees to provide assistance for Lease Rental Costs not to exceed \$244,800 in accordance with the terms and provisions of this Agreement. The City will not be provide any Lease Rental Costs for any other costs associated with the Lease Agreement, including but not limited to costs for damages, incidental expenses, late fees, penalties, or any other related expenses, shall be covered under this Agreement.
- B. The City will process any eligible Grant payment within 90 days after receipt of the Applicant's complete annual Grant Submittal Package. Once Applicant is notified of incomplete submittal, they shall have 90 days to cure.

SECTION 5. EVENTS OF DEFAULT.

Each of the following Paragraphs A through D shall constitute an Event of Default:

- A. **Failure to Comply.** Applicant's failure to comply with, or to perform any obligation or condition of this Agreement or in any related documents, or Applicant's failure to comply with or to perform any obligation or condition of any other agreement between the City and Applicant, except that this clause shall not apply to the Full-Time Employment requirements set forth in this Agreement, provided that Applicant conducts a best efforts approach to hiring and recruiting within the Term of the Agreement to meet such requirements.
- B. **False Statements.** Any representation or statement made or furnished to the City by Applicant pursuant to this Agreement or any document(s) related hereto, that is/are false or misleading in any material respect; or if Applicant obtains actual knowledge that any such representation or statement has become false or misleading after the time that it was made, and Applicant fails to provide written notice to the City of the false or misleading nature of such representation or statement within 10 days after Applicant learns of its false or misleading nature.
- C. **Insolvency.** Applicant files a voluntary petition in bankruptcy, a proceeding in bankruptcy is instituted against the Applicant and the Applicant is thereafter adjudicated bankrupt, a receiver for the Applicant's assets is appointed, or any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant.
- D. **Property Taxes.** If Applicant allows its personal or real property taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within 30 days after written notice thereof from the City and/or El Paso Central Appraisal District.
- E. **Notice and Opportunity to Cure.** If an Event of Default occurs, the City will provide Applicant with written notice ("Notice") of the default and Applicant shall have 30 days from the receipt of said notice to cure the default (the "Cure Period"). If the default cannot be remedied within the Cure Period but the Applicant has made a diligent effort to effect a

cure, the Cure Period may be extended at the City's sole discretion for a reasonable time. The City, in its sole discretion, shall determine what constitutes *a reasonable time* and what constitutes *a diligent effort* for purposes of this provision. If the City agrees to extend the Cure Period past the 30 days, the City shall notify the Applicant, in writing, of the expiration date of the extended cure period.

- F. **Failure to Cure.** If an Event of Default occurs and, after receipt of written notice and opportunity to cure as herein provided, the Applicant fails to cure the default in accordance with the provisions herein, then this Agreement may be terminated by the City by written notice to the Applicant at which time the City's obligations hereunder will end and the City may exercise any other right or remedy available at law or in equity.

SECTION 6. RECAPTURE.

Should the Applicant default under Section 5 of this Agreement and provided that the Cure Period for such default has expired, all Grants previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant within 60 days from the date of such termination.

SECTION 7. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT.

The City may terminate this Agreement for convenience and without an event of default by Applicant, which shall become effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical, or illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement, is an unconstitutional debt.

SECTION 8. MISCELLANEOUS PROVISIONS

- A. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.
- B. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.
- C. **Assignment.** Applicant understands and agrees that the City expressly prohibits Applicant from selling, transferring, assigning, or conveying in any way any rights to receive the Grant or Grants that are subject of this Agreement without the City's consent to assignment. Any such attempt to sell, transfer, assign, or convey without the City's prior written consent is void and may result in the immediate termination of this Agreement and recapture of the taxes rebated prior to the attempted transfer.
- D. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Applicant warrants and represents that the individual executing

this Agreement on its behalf has full authority to execute this Agreement and bind Applicant to the same.

- E. **Compliance with the Law.** The Parties will comply with all applicable laws, administrative order, and any rules or regulations relating to the obligations under this Agreement. If applicable, then the Applicant will procure all licenses and pay all fees or other charges as required to meet its obligations under this Agreement.
- F. **Confidentiality Obligations.** The confidentiality of records related to the City's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. To the extent permitted by state or federal law, the City shall maintain the confidentiality of any proprietary information and shall not copy any such information except as necessary for dissemination to the City's agents or employees and agrees that, as required by the Public Information Act, it will notify Applicant if a request relating to such proprietary information is received. Applicant represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of Applicant as a basis for nondisclosure.
- G. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute the same document.
- H. **Employment of Undocumented Workers.** During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the Grant payments received by Applicant from the City as of the date of such violation not later than 120 days after the date Applicant is notified by City of a violation of this section, plus interest from the date the Grant payment(s) was paid to Applicant, at the rate of 7% per annum. The interest will accrue from the date the Grant payment(s) were paid to Applicant until the date the reimbursement payments are repaid to City. City may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant payment(s) subject to repayment under this section. Applicant is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Applicant contracts.
- I. **Governmental Function.** The Parties agree that the City is entering into this Agreement as a governmental entity performing a governmental function, implementing a government grant program intended to provide a public benefit.
- J. **Force Majeure.** The parties agree that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- K. **Headings.** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

L. **No Joint Venture.** The parties acknowledge and agree that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture between the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the Project or the design, construction, or operation of the Project, or any portion thereof.

M. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when (i) actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below; (ii) sent via electronic transmission to the email addresses set forth below; or (iii) when delivered by hand-delivery. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address. Applicant shall provide all required Grant Submittal Packages and other required documentation to City electronically at the following address: EDcompliance@elpasotexas.gov.

To the City: The City of El Paso
Attn: City Manager
P. O. Box 1890
El Paso, Texas 79950-1890

With a Copy to: Economic and International Development
Attn: Director of Economic Development
P. O. Box 1890
El Paso, Texas 79950-1890

To the Applicant: NCDMM
Attn: Gene D. Berkebille, VP and CFO
5 Butterfield Trail Blvd.
Suites A and B
El Paso, Texas 79906

M. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising.

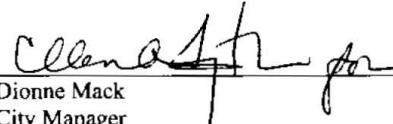
N. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

O. **Third-Party Beneficiaries.** There are no third-party beneficiaries for this Agreement.

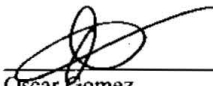
[Signatures begin on the following page.]

IN WITNESS WHEREOF, the parties hereby execute this Agreement.

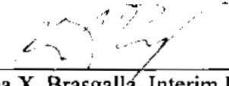
CITY OF EL PASO:


Dionne Mack
City Manager

APPROVED AS TO FORM:


Oscar Gomez
Assistant City Attorney

APPROVED AS TO CONTENT:


Karina X. Brasgalla, Interim Director
Economic & International Development

ACKNOWLEDGMENT

STATE OF TEXAS


§

§

COUNTY OF EL PASO

§

Ellen Smyth for This instrument was acknowledged before me on the 18 day of December, 2024, for **Dionne Mack** as **City Manager** of the **City of El Paso, Texas**, on behalf of the City of El Paso, Texas.


Notary Public, State of Texas

My Commission Expires:

06-01-2026

[Signatures continue on the following page]



APPLICANT: NCDMM

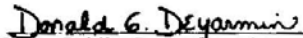


Gene D. Berkebile
VP and CFO

ACKNOWLEDGMENT

STATE OF PA §
COUNTY OF Cambria §

This instrument was acknowledged before me on the 11th day of DECEMBER, 2024, by Gene D. Berkebile, VP and CFO for NCDMM.


Notary Public, State of PA

My Commission Expires:

10-7-27

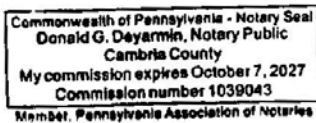


EXHIBIT A

Project Description

NCDMM is looking at El Paso as a new location to expand and fulfill some of its Department of Defense contracts. The Project will consist of two phases.

Phase 1

The initial phase of this project will be operated at a leased facility located at *5 Butterfield Trail Blvd., Suites A and B, El Paso, Texas 79906*. This phase will include research and design services for contracts awarded by the United States Navy and other Department of Defense branches.

Phase 2

The second phase will include research and design services for contracts as awarded from the United States Navy and other Department of Defense branches. NCDMM shall operate at the AMD. However, if the AMD's construction is not ready, or space therein is not available, by the end of the lease agreement at the Project's location, Applicant may find another location within the City to operate the Project.

EXHIBIT B

Rent Expense

Incentive Type	Total for 10 years	Payment Frequency	Payment Type	Payment To	Initial Grant Submittal Date
Lease Rent Costs	\$244,800	Annual	Reimbursed	Applicant	1/31/2026

EXHIBIT C

Grant Submittal Package Form

NCDMM believes that it has substantially met its obligations under the Chapter 380 Agreement dated the _____ day of _____ 20____ and signed by _____ of NCDMM. Pursuant to the Agreement, NCDMM submits this Grant Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted:

1. Electronically to Email: EDCompliance@elpasotexas.gov;
2. Completed Grant Submittal Package Form
3. [INITIAL GRANT SUBMITTAL ONLY] 1295 Form;
4. Job Certification Report Spreadsheet with the following breakdown:
 - a. Employee Roster:

Last Name	First Name	Job Title	Hire Date	Termination Date	Job Category (New/retained)	Total Hours Worked In the Year	Weeks Worked In the Year	Hourly Wage	Gross Annual Salary	Employment Status (FTRPT)	Percentage employee pays for medical premium	Percentage company pays for medical premium
-----------	------------	-----------	-----------	------------------	-----------------------------	--------------------------------	--------------------------	-------------	---------------------	---------------------------	----------------------------------------------	---------------------------------------------

- b. Insurance Benefits Packet
- c. Employee Benefits Packet (pto, vacation, sick leave, etc.)
- d. 941 IRS Reports
- e. Any other document reasonably necessary to verify expenditures.

It is understood by NCDMM that the City of El Paso has up to 30 days to process this request and reserves the right to deny the Grant request if the Applicant has not complied with the terms of the Agreement.

NCDMM

Name: _____

Title: _____

EXHIBIT D

Employment Requirements & Grant Payment Eligibility

SECTION 1. MINIMUM JOB CREATION AND RETENTION REQUIREMENTS.

In order for the Applicant or its Affiliate to be eligible for the incentive, the Applicant is required to create and maintain the Full-Time Employment positions by January 31, 2027 of each full tax year during the Grant Period as follows:

	Year 1 (2025)	Year 2 (2026)	Year 3 (2027)
Jobs retained		6	10
Jobs created	6	4	4
Total jobs	6	10	14

SECTION 2. ELIGIBILITY FOR GRANT PAYMENTS.

After Year 1, the Applicant must retain the total amount of Full-Time Employment positions shown for the remainder of the Grant Period, to be eligible to receive the Grant payments. By Year 3, NCDMM will create 14 new full-time jobs of which will meet, or exceed, the current Median County Wage (\$17.31/hr.). Failure to meet Full-time Employment requirements is not an Event of Default and will have no effect on Grant payment eligibility, provided that Applicant conducts a best efforts approach to hiring and recruiting within the Term of the Agreement. The City, in its sole discretion, shall determine what constitutes *best efforts* for purposes of this provision.

EXHIBIT E

Lease Agreement
with the Robert E. Marble Trust
for property located at
5 Butterfield Trail Blvd., Suites A and B, El Paso, Texas 79906



COMMERCIAL LEASE

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. IS NOT AUTHORIZED.
©Texas Association of REALTORS®, Inc. 2022

CONCERNING THE LEASED PREMISES AT **5 Butterfield Trail Blvd., Ste. A & B, El Paso, TX 79906**
between **Robert E. Marble Trust, Robert R. Marble, Trustee** (Landlord)
and **National Center for Defense Manufacturing and Machining (NCDMM)** (Tenant).

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1.	Parties	2	<input checked="" type="checkbox"/> Exhibit "A" Floor Plan
2.	Leased Premises	2	<input checked="" type="checkbox"/> Exhibit "B" Sign Criteria
3.	Term	2	<input type="checkbox"/> Exhibit
4.	Rent and Expenses	3	<input type="checkbox"/> Commercial Property Condition Statement (TXR-1408)
5.	Security Deposit	5	<input type="checkbox"/> Commercial Lease Addendum for Broker's Fee (TXR-2102)
6.	Taxes	6	<input type="checkbox"/> Commercial Lease Addendum for Option to Extend Term (TXR-2104)
7.	Utilities	6	<input type="checkbox"/> Commercial Lease Addendum for Tenant's Right of First Refusal (TXR-2105)
8.	Insurance	7	<input type="checkbox"/> Commercial Lease Addendum for Percentage Rent (TXR-2108)
9.	Use and Hours	7	<input type="checkbox"/> Commercial Lease Addendum for Parking (TXR-2107)
10.	Legal Compliance	7	<input checked="" type="checkbox"/> Commercial Landlord's Rules and Regulations (TXR-2108)
11.	Signs	8	<input type="checkbox"/> Commercial Lease Guaranty (TXR-2109)
12.	Access By Landlord	8	<input type="checkbox"/> Commercial Lease Addendum for Tenant's Option for Additional Space (TXR-2110)
13.	Move-In Condition	9	<input checked="" type="checkbox"/> Commercial Lease Construction Addendum (TXR-2111) or (TXR-2112)
14.	Move-Out Condition	9	<input type="checkbox"/> Commercial Lease Addendum for Contingencies (TXR-2119)
15.	Maintenance and Repairs	9	<input checked="" type="checkbox"/> Information About Brokerage Services (TXR-2501)
16.	Alterations	11	<input checked="" type="checkbox"/> Acknowledgement of Sublease
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M-A-B



COMMERCIAL LEASE

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1. PARTIES: The parties to this lease are:

Landlord: **Robert E. Marble Trust, Robert R. Marble, Trustee**

; and

Tenant: **National Center for Defense Manufacturing and Machining (NCDMM)**

2. LEASED PREMISES:

A. Landlord leases to Tenant the following described real property, known as the "leased premises," along with all its improvements (Check only one box):

- ☒ (1) **Multiple-Tenant Property:** Suite or Unit Number **A & B** containing approximately **4,080** square feet of rentable area ("rsf") in (project name) at **5 Butterfield Trail Blvd., Ste. A & B** (address) in **El Paso, TX 79908** (city), **El Paso** (county), Texas, which is legally described on attached Exhibit **2 BUTTERFIELD TRAIL IND PK RPL A IMPS ONLY DN WLY 270' OF 5 (OUT OF B853-999-0020-1410), City of El Paso, El Paso County, TX** or as follows:

- ☐ (2) **Single-Tenant Property:** The real property containing approximately _____ square feet of rentable area ("rsf") at _____ (address) in _____ (city), _____ (county), Texas, which is legally described on attached Exhibit _____ or as follows:

B. If Paragraph 2A(1) applies:

- (1) "Property" means the building or complex in which the leased premises are located, inclusive of any common areas, drives, parking areas, and walks; and
(2) the parties agree that the rentable area of the leased premises may not equal the actual or useable area within the leased premises and may include an allocation of common areas in the Property. The rentable area ☐ will ☒ will not be adjusted if re-measured.

3. TERM:

A. **Term:** The term of this lease is **36** months and **0** days, commencing on **December 1, 2024** (Commencement Date) and ending on **November 30, 2027** (Expiration Date).

B. **Delay of Occupancy:** If Tenant is unable to occupy the leased premises on the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Landlord will not be liable to Tenant

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for such delay and this lease will remain enforceable. In the event of such a delay, the Commencement Date will automatically be extended to the date Tenant is able to occupy the Property and the Expiration Date will also be extended by a like number of days, so that the length of this lease remains unchanged. If Tenant is unable to occupy the leased premises after the day after the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Tenant may terminate this lease by giving written notice to Landlord before the leased premises become available to be occupied by Tenant and Landlord will refund to Tenant any amounts paid to Landlord by Tenant. This Paragraph 3B does not apply to any delay in occupancy caused by cleaning or repairs.

- C. Certificate of Occupancy: Unless the parties agree otherwise, Tenant is responsible for obtaining a certificate of occupancy for the leased premises if required by a governmental body.

4. RENT AND EXPENSES:

- A. Base Monthly Rent: On or before the first day of each month during this lease, Tenant will pay Landlord base monthly rent as described on attached Exhibit or as follows:

Dates		Rate per rentable square foot (optional)		Base Monthly
From	To	\$ Monthly Rate	\$ Annual Rate	Rent \$
12/01/2024	12/31/2024	/ rsf / month	0.00 / rsf / year	0.00
01/01/2025	01/31/2025	/ rsf / month	9.00 / rsf / year	3,060.00
02/01/2025	11/30/2025	/ rsf / month	18.00 / rsf / year	6,120.00
12/01/2025	11/30/2026	/ rsf / month	18.72 / rsf / year	6,364.80
12/01/2026	11/30/2027	/ rsf / month	19.47 / rsf / year	6,819.80
		/ rsf / month	/ rsf / year	

- B. Additional Rent: In addition to the base monthly rent, Tenant will pay Landlord the expense reimbursement detailed in Paragraph 4J (if applicable) and all other amounts, as provided by the attached (Check all that apply.):

- ☐ (1) Commercial Lease Addendum for Percentage Rent (TXR-2106)
☐ (2) Commercial Lease Addendum for Parking (TXR-2107)
☐ (3)

All amounts payable under the applicable addenda are deemed to be "rent" for the purposes of this lease.

- C. First Full Month's Rent: The first full monthly rent is due on or before Lease execution

- D. Prorated Rent: If the Commencement Date is on a day other than the first day of a month, Tenant will pay Landlord as prorated rent, an amount equal to the base monthly rent multiplied by the following fraction: the number of days from the Commencement Date to the first day of the following month divided by the number of days in the month in which this lease commences. The prorated rent is due on or before the Commencement Date.

- E. Place of Payment: Tenant will remit all amounts due to Landlord under this lease to the following person at the place stated or to such other person or place as Landlord may later designate in writing:

Name: Robert E. Marble Trust, Robert R. Marble, Trustee
Address: 5 Butterfield Trail Blvd., Suite I, El Paso, TX 79906-4920

- F. Method of Payment: Tenant must pay all rent timely without demand, deduction, or offset, except as permitted by law or this lease. If Tenant fails to timely pay any amounts due under this lease or if any check of Tenant is returned to Landlord by the institution on which it was drawn, Landlord after providing written notice to Tenant may require Tenant to pay subsequent amounts that become due under this lease in certified funds. This paragraph does not limit Landlord from seeking other remedies under this lease for Tenant's failure to make timely payments with good funds.
- G. Late Charges: If Landlord does not actually receive a rent payment at the designated place of payment within 5 days after the date it is due, Tenant will pay Landlord a late charge equal to 10% of the amount due. In this paragraph, the mailbox is not the agent for receipt for Landlord. The late charge is a cost associated with the collection of rent and Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 20.
- H. Returned Checks: Tenant will pay \$ 25.00 for each check Tenant tenders to Landlord which is returned by the institution on which it is drawn for any reason, plus any late charges until Landlord receives payment.
- I. Application of Funds: Regardless of any notation on a payment, Landlord may apply funds received from Tenant first to any non-rent obligations of Tenant, including but not limited to: late charges and returned check charges, repairs, brokerage fees, periodic utilities and thereafter to rent.

(Check box only if Tenant reimburses Landlord for some or all expenses. Do not check for "gross" leases.)

- ☐ J. Expense Reimbursement. In addition to base monthly rent stated in Paragraph 4A, Tenant will pay Landlord the expense reimbursement described in this Paragraph 4J. Tenant will pay the expense reimbursement as additional rent each month at the time the base-monthly rent is due. All amounts payable under this Paragraph 4J are deemed to be "rent" for the purposes of this lease.
- ☐ (1) Reimbursable Periods. Additional rent under this Paragraph 4J is due for all months listed in the chart in Paragraph 4A, even if the base monthly rent is zero.

(2) Definitions:

- (a) "Tenant's pro rata share" is 28.770 %.
- (b) "CAM" means all of Landlord's expenses reasonably incurred to maintain, repair, operate, manage, and secure the Property (for example, security, lighting, painting, cleaning, decorations, utilities, trash removal, pest control, promotional expenses, and other expenses reasonably related the Property's operations); including all expenses incurred by Landlord under Paragraph 15, but not including expenses for structural components and roof replacement; CAM does not include capital expenditures, interest, depreciation, tenant improvements, insurance, taxes, or brokers' leasing fees. Notwithstanding the foregoing, CAM does include the amortized costs incurred by Landlord in making capital improvements or other modifications to the Property to the extent such improvements or modifications reduce CAM overall. These costs will be amortized over the useful life of the improvement or modification on a straight-line basis; however, in no event will the charge for such amortization included in CAM exceed the actual reduction in CAM achieved by the improvements and modifications.
- (c) "Insurance" means Landlord's costs to insure the leased premises and the Property including but not limited to insurance for casualty loss, general liability, and reasonable rent loss.
- (d) "Taxes" means the real property ad valorem taxes assessed against the leased premises and Property inclusive of all general and special assessments and surcharges.

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- (e) "Structural" means all of Landlord's expenses reasonably incurred to maintain, repair, and replace the roof, foundation, exterior walls, load bearing walls and other structural components of the Property.
- (f) "Roof" means all roofing components including, but not limited to decking, flashing, membrane, and skylights.
- (3) Method: The additional rent under this Paragraph 4J will be computed under the following method (Check only one box): Note: "CAM" does not include taxes and insurance costs.
- ☒ (a) Base-year expenses: Each month Tenant will pay Tenant's pro rata share of the projected monthly expenses for the Property that exceed the amount of the monthly base-year expenses for the calendar year 2024 for: ☒ taxes; ☒ insurance; ☒ CAM; ☐ structural; and ☐ roof replacement.
- ☐ (b) Expense stop: Each month Tenant will pay Tenant's pro rata share of the projected monthly expenses for the Property that exceed \$ _____ per square foot per year for: ☐ taxes; ☐ insurance; ☐ CAM; ☐ structural; ☐ roof replacement; and ☐.
- ☐ (c) Net: Each month Tenant will pay Tenant's pro rata share of the projected monthly expenses for the Property for: ☐ taxes; ☐ insurance; ☐ CAM; ☐ structural; ☐ roof replacement; and ☐.
- (4) Projected Monthly Expenses: On or about December 31 of each calendar year, Landlord will project the applicable monthly expenses (those that Tenant is to pay under this lease) for the following calendar year and will notify Tenant of the projected expenses. The projected expenses are based on Landlord's estimates of such expenses. The actual expenses may vary.

Notice: The applicable projected expenses at the time the lease commences are shown in the table below. The total area of the Property presently used by Landlord for calculating expense reimbursements is 14,184 rentable square feet (including any add on factor for common areas).

Projected Expenses	
\$ Monthly Rate	\$ Annual Rate
/ rsf / month	4.88 / rsf / year

- (5) Reconciliation: Within 120 days after the end of each calendar year, Landlord will notify Tenant of the actual costs of the applicable expenses (those that Tenant is to pay under this lease) for the previous year. If the actual costs of the applicable expenses exceed the amounts paid or owed by Tenant for the previous year, Tenant must pay the deficient amount to Landlord within 30 days after Landlord notifies Tenant of the deficient amount. If the actual costs of the applicable expenses are less than the amounts paid by Tenant for the previous year, Landlord will refund the excess to Tenant or will credit the excess to Tenant's next rent payment(s). Tenant may audit or examine those items in Landlord's records that relate to Tenant's obligations under this Paragraph 4J. Landlord will promptly refund to Tenant any overpayment revealed by an audit or examination. If the audit or examination reveals an error of more than 5% over the amounts Landlord collected in a calendar year from Tenant under this lease, Landlord will pay the reasonable cost of the audit or examination. Landlord may not seek a deficiency from Tenant under this paragraph if Landlord fails to timely provide the required notice.

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5. SECURITY DEPOSIT:

- A. Upon execution of this lease, Tenant will pay \$ 0.00 to Landlord as a security deposit.
- B. Landlord may apply the security deposit to any amounts owed by Tenant under this lease. If Landlord applies any part of the security deposit during any time this lease is in effect to amounts owed by Tenant, Tenant must, within 10 days after receipt of notice from Landlord, restore the security deposit to the amount stated.
- C. Within 60 days after Tenant surrenders the leased premises and provides Landlord written notice of Tenant's forwarding address, Landlord will refund the security deposit less any amounts applied toward amounts owed by Tenant or other charges authorized by this lease.
6. **TAXES:** Unless otherwise agreed by the parties, Landlord will pay all real property ad valorem taxes assessed against the leased premises. Tenant waives all rights to protest the appraised value of the leased premises and the Property, or appeal the same and all rights to receive notices of reappraisal set forth in sections 41.413 and 42.015 of the Texas Tax Code.

7. UTILITIES:

- A. The party designated below will pay for the following utility charges to the leased premises and any connection charges for the utilities. (Check all that apply.)

	N/A	Landlord	Tenant
(1) Water		<input checked="" type="checkbox"/>	
(2) Sewer		<input checked="" type="checkbox"/>	
(3) Electric		<input checked="" type="checkbox"/>	
(4) Gas		<input checked="" type="checkbox"/>	
(5) Telephone			<input checked="" type="checkbox"/>
(6) Internet			<input checked="" type="checkbox"/>
(7) Cable			<input checked="" type="checkbox"/>
(8) Trash		<input checked="" type="checkbox"/>	
(9) Security			<input checked="" type="checkbox"/>
(10) All other utilities	<input checked="" type="checkbox"/>		

- B. The party responsible for the charges under Paragraph 7A will pay the charges directly to the utility service provider. The responsible party may select the utility service provider, except that if Tenant selects the provider, any access or alterations to the Property or leased premises necessary for the utilities may be made only with Landlord's prior consent, which Landlord will not unreasonably withhold. If Landlord incurs any liability for utility or connection charges for which Tenant is responsible to pay and Landlord pays such amount, Tenant will immediately upon written notice from Landlord reimburse Landlord such amount.
- C. **Notice:** Tenant should determine if all necessary utilities are available to the leased premises and are adequate for Tenant's intended use.
- D. **After-Hours HVAC Charges:** "HVAC services" means heating, ventilating, and air conditioning of the leased premises. (Check one box only.)
- ☒ (1) Landlord is obligated to provide the HVAC services to the leased premises only during the Property's operating hours specified under Paragraph 9C.

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- ☐ (2) Landlord will provide the HVAC services to the leased premises during the operating hours specified under Paragraph 9C for no additional charge and will, at Tenant's request, provide HVAC services to the leased premises during other hours for an additional charge of \$ _____ per hour. Tenant will pay Landlord the charges under this paragraph immediately upon receipt of Landlord's invoice. Hourly charges are charged on a half-hour basis. Any partial hour will be rounded up to the next half hour. Tenant will comply with Landlord's procedures to make a request to provide the additional HVAC services under this paragraph.
- ☐ (3) Tenant will pay for the HVAC services under this lease.

8. INSURANCE:

- A. During all times this lease is in effect, Tenant must, at Tenant's expense, maintain in full force and effect from an insurer authorized to operate in Texas:
- (1) commercial general liability insurance naming Landlord as an additional insured with policy limits on an occurrence basis in a minimum amount of: (check only (a) or (b) below)
- ☒ (a) \$1,000,000; or
- ☐ (b) \$2,000,000.
- If neither box is checked the minimum amount will be \$1,000,000.
- (2) personal property damage insurance for the business operations being conducted in the leased premises and contents in the leased premises in an amount sufficient to replace such contents after a casualty loss; and
- ☒ (3) business interruption insurance sufficient to pay 12 months of rent payments.
- B. Before the Commencement Date, Tenant must provide Landlord with a copy of insurance certificates evidencing the required coverage. If the insurance coverage is renewed or changes in any manner or degree at any time this lease is in effect, Tenant must, not later than 10 days after the renewal or change, provide Landlord a copy of an insurance certificate evidencing the renewal or change.
- C. If Tenant fails to maintain the required insurance in full force and effect at all times this lease is in effect, Landlord may:
- (1) purchase insurance that will provide Landlord the same coverage as the required insurance and Tenant must immediately reimburse Landlord for such expense; or
- (2) exercise Landlord's remedies under Paragraph 20.
- D. Unless the parties agree otherwise, Landlord will maintain in full force and effect insurance for: (1) fire and extended coverage in an amount to cover the reasonable replacement cost of the improvements of the Property; and (2) any commercial general liability insurance in an amount that Landlord determines reasonable and appropriate.
- E. If there is an increase in Landlord's insurance premiums for the leased premises or Property or its contents that is caused by Tenant, Tenant's use of the leased premises, or any improvements made by or for Tenant, Tenant will, for each year this lease is in effect, pay Landlord the increase immediately after Landlord notifies Tenant of the increase. Any charge to Tenant under this Paragraph 8E will be equal to the actual amount of the increase in Landlord's insurance premium.

9. USE AND HOURS:

- A. Tenant may use the leased premises for the following purpose and no other:
Office and administrative

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- B. Unless otherwise specified in this lease, Tenant will operate and conduct its business in the leased premises during business hours that are typical of the industry in which Tenant represents it operates.
- C. The Property maintains operating hours of (specify hours, days of week, and if inclusive or exclusive of weekends and holidays): 24/ 7/ 365

10. LEGAL COMPLIANCE:

- A. Tenant may not use or permit any part of the leased premises or the Property to be used for:
 - (1) any activity which is a nuisance or is offensive, noisy, or dangerous;
 - (2) any activity that interferes with any other tenant's normal business operations or Landlord's management of the Property;
 - (3) any activity that violates any applicable law, regulation, zoning ordinance, restrictive covenant, governmental order, owners' association rules, tenants' association rules, Landlord's rules or regulations, or this lease;
 - (4) any hazardous activity that would require any insurance premium on the Property or leased premises to increase or that would void any such insurance;
 - (5) any activity that violates any applicable federal, state, or local law, including but not limited to those laws related to air quality, water quality, hazardous materials, wastewater, waste disposal, air emissions, or other environmental matters;
 - (6) the permanent or temporary storage of any hazardous material; or
 - (7)
- B. "Hazardous material" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent, or oil as defined by any federal, state, or local environmental law, regulation, ordinance, or rule existing as of the date of this lease or later enacted.
- C. Landlord does not represent or warrant that the leased premises or Property conform to applicable restrictions, zoning ordinances, setback lines, parking requirements, impervious ground cover ratio requirements, and other matters that may relate to Tenant's intended use. Tenant must satisfy itself that the leased premises may be used as Tenant intends by independently investigating all matters related to the use of the leased premises or Property. Tenant agrees that it is not relying on any warranty or representation made by Landlord, Landlord's agent, or any broker concerning the use of the leased premises or Property.

11. SIGNS:

- A. Tenant may not post or paint any signs or place any decoration outside the leased premises or on the Property without Landlord's written consent. Landlord may remove any unauthorized sign or decorations, and Tenant will promptly reimburse Landlord for its cost to remove any unauthorized sign or decorations.
- B. Any authorized sign must comply with all laws, restrictions, zoning ordinances, and any governmental order relating to signs on the leased premises or Property. Landlord may temporarily remove any authorized sign to complete repairs or alterations to the leased premises or the Property.
- C. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all signs or decorations that were placed on the Property or leased premises by or at the request of Tenant. Any signs or decorations that Landlord does not require Tenant to remove and that are fixtures, become the property of the Landlord and must be surrendered to Landlord at the time this lease ends. ^ See Special Provisions

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12. ACCESS BY LANDLORD:

- A. During Tenant's normal business hours Landlord may enter the leased premises for any reasonable purpose, including but not limited to purposes for repairs, maintenance, alterations, and showing the leased premises to prospective tenants or purchasers. Landlord may access the leased premises after Tenant's normal business hours if: (1) entry is made with Tenant's permission; or (2) entry is necessary to complete emergency repairs. Landlord will not unreasonably interfere with Tenant's business operations when accessing the leased premises.
- B. During the last 90 days of this lease, Landlord may place a "For Lease" or similarly worded sign on the leased premises.

13. MOVE-IN CONDITION: Tenant has inspected the leased premises and accepts it in its present (as-is) condition unless expressly noted otherwise in this lease or in an addendum. Landlord and any agent have made no express or implied warranties as to the condition or permitted use of the leased premises or Property.

14. MOVE-OUT CONDITION AND FORFEITURE OF TENANT'S PERSONAL PROPERTY:

- A. At the time this lease ends, Tenant will surrender the leased premises in the same condition as when received, except for normal wear and tear. Tenant will leave the leased premises in a clean condition free of all trash, debris, personal property, hazardous materials, and environmental contaminants.
- B. If Tenant leaves any personal property in the leased premises after Tenant surrenders possession of the leased premises, Landlord may: (1) require Tenant, at Tenant's expense, to remove the personal property by providing written notice to Tenant; or (2) retain such personal property as forfeited property to Landlord.
- C. "Surrender" means vacating the leased premises and returning all keys and access devices to Landlord. "Normal wear and tear" means deterioration that occurs without negligence, carelessness, accident, or abuse.
- D. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all fixtures that were placed on the Property or leased premises by or at the request of Tenant. Any fixtures that Landlord does not require Tenant to remove become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

15. MAINTENANCE AND REPAIRS:

- A. Cleaning: Tenant must keep the leased premises clean and sanitary and promptly dispose of all garbage in appropriate receptacles. Landlord ☒ Tenant will provide, at its expense, janitorial services to the leased premises that are customary and ordinary for the property type. Tenant will maintain any grease trap on the Property which Tenant uses, including but not limited to periodic emptying and cleaning, as well as making any modification to the grease trap that may be necessary to comply with any applicable law.
- B. Repairs of Conditions Caused by a Party: Each party must promptly repair a condition in need of repair that is caused, either intentionally or negligently, by that party or that party's guests, patrons, invitees, contractors or permitted subtenants.
- C. Repair and Maintenance Responsibility: Except as otherwise provided by this Paragraph 15, the party designated below, at its expense, is responsible to maintain and repair the following specified items in the leased premises (if any). The specified items must be maintained in clean and good operable

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condition. If a governmental regulation or order requires a modification to any of the specified items, the party designated to maintain the item must complete and pay the expense of the modification. The specified items include and relate only to real property in the leased premises. Tenant is responsible for the repair and maintenance of its personal property. (Check all that apply.)

	N/A	Landlord	Tenant
(1) Foundation, exterior walls and other structural components	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(2) Roof replacement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(3) Roof repair	<input type="checkbox"/>		<input checked="" type="checkbox"/>
(4) Glass and windows	<input type="checkbox"/>		<input checked="" type="checkbox"/>
(5) Fire protection equipment	<input type="checkbox"/>		<input checked="" type="checkbox"/>
(6) Fire sprinkler systems	<input checked="" type="checkbox"/>		
(7) Exterior and overhead doors, including closure devices, molding, locks, and hardware	<input type="checkbox"/>		<input checked="" type="checkbox"/>
(8) Grounds maintenance, including landscaping and irrigation systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(9) Interior doors, including closure devices, frames, molding, locks, and hardware	<input type="checkbox"/>		<input checked="" type="checkbox"/>
(10) Parking areas and walks	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(11) Plumbing systems, drainage systems and sump pumps	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(12) Electrical systems, mechanical systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(13) Ballast and lamp replacement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(14) Heating, Ventilation and Air Conditioning (HVAC) systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(15) HVAC system replacement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(16) Signs and lighting:			
(a) Pylon	<input checked="" type="checkbox"/>		
(b) Fascia	<input type="checkbox"/>		<input checked="" type="checkbox"/>
(c) Monument	<input checked="" type="checkbox"/>		
(d) Door/Suite	<input type="checkbox"/>		<input checked="" type="checkbox"/>
(e) Directional	<input type="checkbox"/>		<input checked="" type="checkbox"/>
(f) Other:	<input type="checkbox"/>		<input checked="" type="checkbox"/>
(17) Extermination and pest control, excluding wood-destroying insects.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(18) Fences and Gates	<input checked="" type="checkbox"/>		
(19) Storage yards and storage buildings	<input checked="" type="checkbox"/>		
(20) Wood-destroying insect treatment and repairs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(21) Cranes and related systems	<input checked="" type="checkbox"/>		
(22) N/A			
(23) N/A			
(24) All other items and systems.			<input checked="" type="checkbox"/>

D. Repair Persons: Repairs must be completed by trained, qualified, and insured repair persons.

E. HVAC Service Contract: If Tenant maintains the HVAC system under Paragraph 15C(14), Tenant ☐ is ☒ is not required to maintain, at its expense, a regularly scheduled maintenance and service contract for the HVAC system. The maintenance and service contract must be purchased from a HVAC maintenance company that regularly provides such contracts to similar properties. If Tenant fails to maintain a required HVAC maintenance and service contract in effect at all times during this lease, Landlord may do so and Tenant will reimburse Landlord for the expense of such maintenance and service contract or Landlord may exercise Landlord's remedies under Paragraph 20.

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- F. Common Areas: Landlord will maintain any common areas in the Property in a manner as Landlord determines to be in the best interest of the Property. Landlord will maintain any elevator and signs in the common area. Landlord may change the size, dimension, and location of any common areas, or allocate areas for short term or reserved parking for specific tenants, provided that such change does not materially impair Tenant's use and access to the leased premises. Tenant has the non-exclusive license to use the common areas in compliance with Landlord's rules and regulations. Tenant may not solicit any business in the common areas or interfere with any other person's right to use the common areas. This paragraph does not apply if Paragraph 2A(2) applies.
- G. Notice of Repairs: Tenant must promptly notify Landlord of any item that is in need of repair and that is Landlord's responsibility to repair. All requests for repairs to Landlord must be in writing.
- H. Failure to Repair: Landlord must make a repair for which Landlord is responsible within a reasonable period of time after Tenant provides Landlord written notice of the needed repair. If Tenant fails to repair or maintain an item for which Tenant is responsible within 10 days after Landlord provides Tenant written notice of the needed repair or maintenance, Landlord may: (1) repair or maintain the item, without liability for any damage or loss to Tenant, and Tenant must immediately reimburse Landlord for the cost to repair or maintain; or (2) exercise Landlord's remedies under Paragraph 20.

16. ALTERATIONS:

- A. Tenant may not alter (including making any penetrations to the roof, exterior walls or foundation), improve, or add to the Property or the leased premises without Landlord's written consent. Landlord will not unreasonably withhold consent for the Tenant to make reasonable non-structural alterations, modifications, or improvements to the leased premises.
- B. Tenant may not alter any locks or any security devices on the Property or the leased premises without Landlord's consent. If Landlord authorizes the changing, addition, or rekeying of any locks or other security devices, Tenant must immediately deliver the new keys and access devices to Landlord.
- C. If a governmental order requires alteration or modification to the leased premises, the party obligated to maintain and repair the item to be modified or altered as designated in Paragraph 15 will, at its expense, modify or alter the item in compliance with the order and in compliance with Paragraphs 16A and 17.
- D. Any alterations, improvements, fixtures or additions to the Property or leased premises installed by either party during the term of this lease will become Landlord's property and must be surrendered to Landlord at the time this lease ends, except for those fixtures Landlord requires Tenant to remove under Paragraph 11 or 14 or if the parties agree otherwise in writing.
17. LIENS: Tenant may not do anything that will cause the title of the Property or leased premises to be encumbered in any way. If Tenant causes a lien to be filed against the Property or leased premises, Tenant will within 20 days after receipt of Landlord's demand: (1) pay the lien and have the lien released of record; or (2) take action to discharge the lien. Tenant will provide Landlord a copy of any release Tenant obtains pursuant to this paragraph.
18. LIABILITY: To the extent permitted by law, Landlord is NOT responsible to Tenant or Tenant's employees, patrons, guests, or invitees for any damages, injuries, or losses to person or property caused by:
- A. an act, omission, or neglect of: Tenant; Tenant's agent; Tenant's guest; Tenant's employees; Tenant's patrons; Tenant's invitees; or any other tenant on the Property;

- B. fire, flood, water leaks, ice, snow, hail, winds, explosion, smoke, riot, strike, interruption of utilities, theft, burglary, robbery, assault, terrorism, vandalism, other persons, environmental contaminants, or other occurrences or casualty losses.

19. **INDEMNITY:** Each party will indemnify, defend, and hold the other party harmless from any property damage, personal injury, suits, actions, liabilities, damages, cost of repairs or service to the leased premises or Property, or any other loss caused, negligently or otherwise, by that party or that party's employees, patrons, guests, or invitees.

20. **DEFAULT:**

- A. If Landlord fails to comply with this lease within 30 days after Tenant notifies Landlord of Landlord's failure to comply, Landlord will be in default and Tenant may seek any remedy provided by law. If, however, Landlord's non-compliance reasonably requires more than 30 days to cure, Landlord will not be in default if the cure is commenced within the 30-day period and is diligently pursued.
- B. If Landlord does not actually receive at the place designated for payment any rent due under this lease within 5 days after it is due, Tenant will be in default. If Tenant fails to comply with this lease for any other reason within 20 days after Landlord notifies Tenant of its failure to comply, Tenant will be in default.
- C. If Tenant is in default, Landlord may, with at least 3 days written notice to Tenant: (i) terminate this lease, or (ii) terminate Tenant's right to occupy the leased premises without terminating this lease and may accelerate all rents which are payable during the remainder of this lease or any renewal period. Landlord will attempt to mitigate any damage or loss caused by Tenant's breach by using commercially reasonable means. If Tenant is in default, Tenant will be liable for:
- (1) any lost rent;
 - (2) Landlord's cost of reletting the leased premises, including brokerage fees, advertising fees, and other fees necessary to relet the leased premises;
 - (3) repairs to the leased premises for use beyond normal wear and tear;
 - (4) all Landlord's costs associated with eviction of Tenant, such as attorney's fees, court costs, and prejudgment interest;
 - (5) all Landlord's costs associated with collection of rent such as collection fees, late charges, and returned check charges;
 - (6) cost of removing any of Tenant's equipment or fixtures left on the leased premises or Property;
 - (7) cost to remove any trash, debris, personal property, hazardous materials, or environmental contaminants left by Tenant or Tenant's employees, patrons, guests, or invitees in the leased premises or Property;
 - (8) cost to replace any unreturned keys or access devices to the leased premises, parking areas, or Property; and
 - (9) any other recovery to which Landlord may be entitled under this lease or under law.

21. **ABANDONMENT, INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND LOCKOUT:** Chapter 93 of the Texas Property Code governs the rights and obligations of the parties with regard to: (a) abandonment of the leased premises; (b) interruption of utilities; (c) removal of Tenant's property; and (d) "lock-out" of Tenant.

22. **HOLDOVER:** If Tenant fails to vacate the leased premises at the time this lease ends, Tenant will become a tenant-at-will and must vacate the leased premises immediately upon receipt of demand from Landlord. No holding over by Tenant, with or without the consent of Landlord, will extend this lease. Tenant will indemnify Landlord and any prospective tenants for any and all damages caused by the holdover. Rent for

(TXR-2101) 07-08-22 Initialed for Identification by Landlord: _____, and Tenant: _____ Page 12 of 18

any holdover period will be 150% of the base monthly rent plus any additional rent calculated on a daily basis and will be immediately due and payable daily without notice or demand.

23. LANDLORD'S LIEN AND SECURITY INTEREST: To secure Tenant's performance under this lease, Tenant grants to Landlord a lien and security interest against all of Tenant's nonexempt personal property that is in the leased premises or on the Property. This lease is a security agreement for the purposes of the Uniform Commercial Code. Landlord may file a financing statement to perfect Landlord's security interest under the Uniform Commercial Code.

24. ASSIGNMENT AND SUBLETTING: Landlord may assign this lease to any subsequent owner of the Property. Tenant may not assign this lease or sublet any part of the leased premises without Landlord's written consent. An assignment of this lease or subletting of the leased premises without Landlord's written consent is voidable by Landlord. If Tenant assigns this lease or sublets any part of the leased premises, Tenant will remain liable for all of Tenant's obligations under this lease regardless if the assignment or sublease is made with or without the consent of Landlord.

25. RELOCATION:

☐ A. By providing Tenant with not less than 90 days advanced written notice, Landlord may require Tenant to relocate to another location in the Property, provided that the other location is equal in size or larger than the leased premises then occupied by Tenant and contains similar leasehold improvements. Landlord will pay Tenant's reasonable out-of-pocket moving expenses for moving to the other location. "Moving expenses" means reasonable expenses incurred by Tenant payable to professional movers, utility companies for connection and disconnection fees, wiring companies for connecting and disconnecting Tenant's office equipment required by the relocation, and printing companies for reprinting Tenant's stationary, business cards, and marketing materials containing Tenant's address. A relocation of Tenant will not change or affect any other provision of this lease that is then in effect, including rent and reimbursement amounts, except that the description of the suite or unit number will automatically be amended.

☒ B. Landlord may not require Tenant to relocate to another location in the Property without Tenant's prior consent.

26. SUBORDINATION:

- A. This lease and Tenant's leasehold interest are and will be subject, subordinate, and inferior to:
- (1) any lien, encumbrance, or ground lease now or hereafter placed on the leased premises or the Property that Landlord authorizes;
 - (2) all advances made under any such lien, encumbrance, or ground lease;
 - (3) the interest payable on any such lien or encumbrance;
 - (4) any and all renewals and extensions of any such lien, encumbrance, or ground lease;
 - (5) any restrictive covenant affecting the leased premises or the Property; and
 - (6) the rights of any owners' association affecting the leased premises or Property.

B. Tenant must, on demand, execute a subordination, attornment, and non-disturbance agreement that Landlord may request that Tenant execute, provided that such agreement is made on the condition that this lease and Tenant's rights under this lease are recognized by the lien-holder.

27. ESTOPPEL CERTIFICATES AND FINANCIAL INFORMATION:

A. Within 10 days after receipt of a written request from Landlord, Tenant will execute and deliver to Landlord an estoppel certificate that identifies the terms and conditions of this lease.

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- B. Within 30 days after receipt of a written request from Landlord, Tenant will provide to Landlord Tenant's current financial information (balance sheet and income statement). Landlord may request the financial information no more frequently than once every 12 months.

28. CASUALTY LOSS:

- A. Tenant must immediately notify Landlord of any casualty loss in the leased premises. Within 20 days after receipt of Tenant's notice of a casualty loss, Landlord will notify Tenant if the leased premises are less than or more than 50% unusable, on a per square foot basis, and if Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss.
- B. If the leased premises are less than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord will restore the leased premises to substantially the same condition as before the casualty. If Landlord fails to substantially restore within the time required, Tenant may terminate this lease.
- C. If the leased premises are more than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord may: (1) terminate this lease; or (2) restore the leased premises to substantially the same condition as before the casualty. If Landlord chooses to restore and does not substantially restore the leased premises within the time required, Tenant may terminate this lease.
- D. If Landlord notifies Tenant that Landlord cannot substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss, Landlord may: (1) choose not to restore and terminate this lease; or (2) choose to restore, notify Tenant of the estimated time to restore, and give Tenant the option to terminate this lease by notifying Landlord within 10 days.
- E. If this lease does not terminate because of a casualty loss, rent will be reduced from the date Tenant notifies Landlord of the casualty loss to the date the leased premises are substantially restored by an amount proportionate to the extent the leased premises are unusable.

29. CONDEMNATION: If after a condemnation or purchase in lieu of condemnation the leased premises are totally unusable for the purposes stated in this lease, this lease will terminate. If after a condemnation or purchase in lieu of condemnation the leased premises or Property are partially unusable for the purposes of this lease, this lease will continue and rent will be reduced in an amount proportionate to the extent the leased premises are unusable. Any condemnation award or proceeds in lieu of condemnation are the property of Landlord and Tenant has no claim to such proceeds or award. Tenant may seek compensation from the condemning authority for its moving expenses and damages to Tenant's personal property.

30. ATTORNEY'S FEES: Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this lease is entitled to recover prejudgment interest, reasonable attorney's fees, and all other costs of litigation from the nonprevailing party.

31. REPRESENTATIONS:

- A. Tenant's statements in this lease and any application for rental are material representations relied upon by Landlord. Each party signing this lease represents that he or she is of legal age to enter into a binding contract and is authorized to sign this lease. If Tenant makes any misrepresentation in this lease or in any application for rental, Tenant is in default.
- B. Landlord is not aware of any material defect on the Property that would affect the health and safety of an ordinary person or any environmental hazard on or affecting the Property that would affect the health or safety of an ordinary person, except: _____

- C. Each party and each signatory to this lease represents that: (1) it is not a person named as a Specially Designated National and Blocked Person as defined in Presidential Executive Order 13224; (2) it is not acting, directly or indirectly, for or on behalf of a Specially Designated and Blocked Person; and (3) is not arranging or facilitating this lease or any transaction related to this lease for a Specially Designated and Blocked Person. Any party or any signatory to this lease who is a Specially Designated and Blocked person will indemnify and hold harmless any other person who relies on this representation and who suffers any claim, damage, loss, liability or expense as a result of this representation.

32. BROKERS:

- A. The brokers to this lease are:

Principal Broker:

Cushman & Wakefield | PIREs

Agent: **Brett C. Preston, SIOR, CCIM**

Address: **123 W. Mills Avenue, Suite 220
El Paso, TX 79901**

Phone & Fax: **(915)843-8888 (915)843-8889**

E-mail: **bpreston@piresintl.com**

License No.: **9003421**

Cooperating Broker:

Agent:

Address:

Phone & Fax:

E-mail:

License No.:

Principal Broker: *(Check only one box)*

☒ represents Landlord only.

☐ represents Tenant only.

☐ is an intermediary between Landlord and Tenant.

Cooperating Broker represents Tenant.

B. Fees:

- ☒ (1) Principal Broker's fee will be paid according to: *(Check only one box)*.

☒ (a) a separate written commission agreement between Principal Broker and:

☒ Landlord ☐ Tenant.

☐ (b) the attached Commercial Lease Addendum for Broker's Fee (TXR-2102).

- ☐ (2) Cooperating Broker's fee will be paid according to: *(Check only one box)*.

☐ (a) a separate written commission agreement between Cooperating Broker and:

☐ Principal Broker ☐ Landlord ☐ Tenant.

☐ (b) the attached Commercial Lease Addendum for Broker's Fee (TXR-2102).

- 33. ADDENDA:** Incorporated into this lease are the addenda, exhibits and other information marked in the Addenda and Exhibit section of the Table of Contents. If Landlord's Rules and Regulations are made part of this lease, Tenant agrees to comply with the Rules and Regulations as Landlord may, at its discretion, amend from time to time.

- 34. NOTICES:** All notices under this lease must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, sent by a national or regional overnight delivery service that provides a delivery receipt, or sent by confirmed facsimile transmission to:

Landlord at: Robert E. Marble Trust, Robert R. Marble, Trustee
Address: 5 Butterfield Trail Blvd., Suite I, El Paso, Texas 79906-4920
Attention: Mr. Robert R. Marble
Fax: (915)276-8980 (Cell)

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Page 15 of 18

5 Butterfield Trail Blvd., Ste. A & B
Commercial Lease concerning: El Paso, TX 79906,

and a copy to:

Address: _____
Attention: _____
Fax: _____

☒ Landlord also consents to receive notices by e-mail at: rmrble@remteip.com

Tenant at the leased premises,

and to: **National Center for Defense Manufacturing and Machining (NCDMM)**
Address: **699 Scalp Avenue, Johnstown, PA 15904**
Attention: **Gene Berkebile, Randy Gilmore, David Espalin**
Fax: **(915)306-1277 (Tel)**

and a copy to: **(*) gene.berkebile@ncdmm.org; randy.gilmore@ncdmm.org; david.espalin@ncdmm.org**

Address: _____
Attention: _____
Fax: _____

☒ Tenant also consents to receive notices by e-mail at: **(*)** _____

35. SPECIAL PROVISIONS: The following special provisions apply and will control in the event of a conflict with other provisions of this lease. (If special provisions are contained in an addendum, identify the applicable addendum on the cover page of this lease.)

1. Tenant may use the previous tenant's furniture currently in Suite B in either suite. Tenant shall be responsible for moving and setting up furniture and it will become Tenant's personal property.
2. Landlord shall remove the existing signs and frames above each suite. Tenant shall install a new building-standard frame and sign, at its expense in a size to be mutually acceptable.
3. Security - For purposes of protecting the data managed by the tenant, advanced written notice of a minimum of 72 hours is required before others can access the premises. This requirement excludes emergency situations such as fire, safety, water leaks, electrical, HVAC or plumbing issues, etc., or where required by law.
4. Tenant may install security cameras on the exterior of the building with Landlord's prior approval of the location.

36. AGREEMENT OF PARTIES:

- A. **Entire Agreement:** This lease contains the entire agreement between Landlord and Tenant and may not be changed except by written agreement.
- B. **Binding Effect:** This lease is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, successors, and permitted assigns.
- C. **Joint and Several:** All Tenants are jointly and severally liable for all provisions of this lease. Any act or notice to, or refund to, or signature of, any one or more of the Tenants regarding any term of this lease, its renewal, or its termination is binding on all Tenants.

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- D. **Controlling Law:** The laws of the State of Texas govern the interpretation, performance, and enforcement of this lease.
- E. **Severable Clauses:** If any clause in this lease is found invalid or unenforceable by a court of law, the remainder of this lease will not be affected and all other provisions of this lease will remain valid and enforceable.
- F. **Waiver:** Landlord's delay, waiver, or non-enforcement of acceleration, contractual or statutory lien, rental due date, or any other right will not be deemed a waiver of any other or subsequent breach by Tenant or any other term in this lease.
- G. **Quiet Enjoyment:** Provided that Tenant is not in default of this lease, Landlord covenants that Tenant will enjoy possession and use of the leased premises free from material interference.
- H. **Force Majeure:** If the performance of any party to this lease is delayed by strike, lock-out, shortage of material, governmental restriction, riot, war, epidemic, pandemic, quarantine, or by other cause, without fault and beyond the control of the party obligated (financial inability excepted), performance of such act will be abated for the period of the delay; provided, however, nothing in this paragraph excuses Tenant from the prompt payment of rent or other charge, nor will Tenant's inability to obtain governmental approval for its intended use of the leased premises excuse any of Tenant's obligations hereunder.
- I. **Time:** Time is of the essence. The parties require strict compliance with the times for performance.
- J. **Counterparts:** If this lease is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.
37. **EFFECTIVE DATE:** The effective date of this lease is the date the last party executes this lease and initials any changes.
38. **LICENSE HOLDER DISCLOSURE:** Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale or rental agreement. Disclose if applicable:

(TXR-2101) 07-08-22 Initialed for Identification by Landlord: _____, and Tenant: _____ Page 17 of 18

5 Butterfield Trail Blvd., Ste. A & B
Commercial Lease concerning: El Paso, TX 79906,

Brokers are not qualified to render legal advice, property inspections, surveys, engineering studies, environmental assessments, tax advice, or compliance inspections. The parties should seek experts to render such services. READ THIS LEASE CAREFULLY. If you do not understand the effect of this Lease, consult your attorney BEFORE signing.

Robert E. Marble Trust, Robert R. Marble,
Landlord: Trustee _____

National Center for Defense Manufacturing and
Tenant: Machining (NCDMM)

By: _____

By: _____

By (signature):
Printed Name: Robert R. Marble
Title: Trustee Date: _____

By (signature):
Printed Name: Gene Berkebile
Title: Vice President & CFO Date: _____

By: _____

By: _____

By (signature):
Printed Name: _____
Title: _____ Date: _____

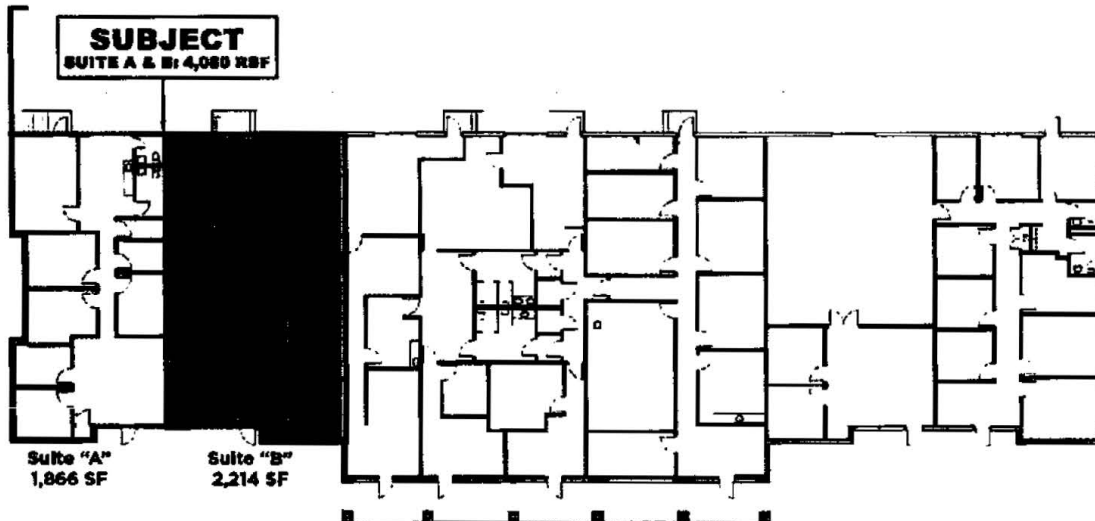
By (signature):
Printed Name: _____
Title: _____ Date: _____



COMMERCIAL LEASE EXHIBIT

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EXHIBIT "A"
TO COMMERCIAL LEASE BETWEEN THE UNDERSIGNED PARTIES CONCERNING THE LEASED
PREMISES AT 5 Butterfield Trail Blvd., Ste. A & B, El Paso, TX 79906,



Landlord: Robert E. Marble Trust, Robert R. Marble,
Trustee

By: _____

By (signature): _____

Printed Name: Robert R. Marble

Title: Trustee

By: _____

By (signature): _____

Printed Name: _____

Title: _____

Tenant: National Center for Defense Manufacturing and
Machining (NCDMM)

By: _____

By (signature): _____

Printed Name: Gene Berkebile

Title: Vice President & CFO

By: _____

By (signature): _____

Printed Name: _____

Title: _____

(TXR-2115) 1-28-10

Page 1 of 1



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EXHIBIT "B"
TO COMMERCIAL LEASE BETWEEN THE UNDERSIGNED PARTIES CONCERNING THE LEASED
PREMISES AT 5 Butterfield Trail Blvd., Ste. A & B, El Paso, TX 79906,



SIGN FRAME INSERT SIZE

- 36" X 96"
- 80 GAUGE ALUMINUM
- <1/8" ACRYLIC SHEET
- VIEWABLE AREA: 34" X 94"

Landlord: Robert E. Marble Trust, Robert R. Marble,
Trustee

By: _____

By (signature): _____

Printed Name: Robert R. Marble

Title: Trustee

By: _____

By (signature): _____

Printed Name: _____

Title: _____

Tenant: National Center for Defense Manufacturing and
Machining (NCDMM)

By: _____

By (signature): _____

Printed Name: Gene Berkebile

Title: Vice President & CFO

By: _____

By (signature): _____

Printed Name: _____

Title: _____

(TXR-2115) 1-26-10

Page 1 of 1

Cushman & Wakefield | 1000 135 W. 14th Avenue, Suite 200 El Paso, TX 79901
Email: Preston

Phone: (915) 843-8888 Fax: (915) 843-8889
Produced with Lone Wolf Transactions (zipForm Editor) 231 Shearson Cir. Cambridge, Ontario, Canada N1Y 1J5 www.lwtf.com

16-1189



COMMERCIAL LANDLORD'S RULES AND REGULATIONS

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REGARDING THE COMMERCIAL LEASE CONCERNING THE LEASED PREMISES AT 5 Butterfield Trail Blvd., Ste. A & B, El Paso, TX 79906,

NOTICE: These rules and regulations are adopted to maintain and enhance the safety and appearance of the Property. From time to time Landlord, at its discretion, may amend these rules and regulations for the purposes for which they were adopted. Under the above-referenced lease, Tenant agrees to comply with these rules and regulations as they may be amended. Exceptions or waivers must be authorized by Landlord in writing. "Property" means the building or complex in which the leased premises are located, inclusive of any common areas, drives, parking areas, and walks, and landscaped areas.

- A. Goods, merchandise, equipment, or any personal property may not be stored on the Property, except for inventory within the leased premises necessary for Tenant's normal business operations.
- B. Food is not permitted on the Property, except as inventory for sale and for a small amount of food for Tenant's personal consumption.
- C. Other than those provided by Landlord or specifically authorized by Landlord, no vending machines are permitted on the Property.
- D. The Property may not be used for lodging or sleeping quarters in any manner.
- E. Unless authorized by law or the lease, no animals may be brought or kept on the Property.
- F. No obstruction or interference that impedes use of the common areas, walks, drives, loading areas, parking areas, corridors, hallways, vestibules, and stairs is permitted on the Property.
- G. Persons parking on the Property must comply with all posted signs and directions regulating the parking areas.
- H. No flammable, toxic, noxious, or hazardous materials may be kept on the Property except for over-the-counter cleaning materials kept in enclosed storage closets or cabinets.
- I. Tenants moving in or out of the Property must use only the service entrances and service elevators during the move. All moves must be made at times that do not cause inconvenience in the normal use of the Property.
- J. Deliveries and shipping of goods and merchandise in or out of the Property must be made only through the service entrances, service elevators, loading docks, or other designated shipping and receiving areas. Shipments and deliveries must be made at times that do not cause inconvenience to tenants or patrons on the Property.
- K. Leased premises must be kept clean and free of debris. Trash must be deposited into appropriate receptacles. Trash receptacles controlled by Tenant must not be allowed to overflow, attract rodents or vermin, or emit odors.

(TXR-2108) 1-26-10

Initialed for Identification by Landlord: _____, _____, and Tenant: _____, _____

Page 1 of 2

Cushman & Wakefield | 10005 130 W. 13th Avenue, Suite 200 El Paso, TX 79901
Brett Proctor

Phone: (915) 843-8886 Fax: (915) 843-8889
Produced with Lease Wall Transactions (appForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.leasewall.com

16-A-9-B

Landlord's Rules and Regulations concerning **6 Butterfield Trail Blvd., Ste. A & B, El Paso, TX 79906.**

- L. Repair requests must be submitted to Landlord in writing in compliance with the lease.
- M. No modification to the Property and leased premises may be made unless authorized by Landlord, in writing, or permitted by the lease.
- N. No illegal or offensive activity is permitted on the Property nor is any activity that constitutes a nuisance or interferes with the rights of other tenants.
- O. Unless specifically authorized by Landlord, no solicitation or business operations are permitted in the common areas.
- P. Other:
E-bikes, hoverboards and similar equipment are not allowed inside the Premises and may not be charged on-site.



**COMMERCIAL LEASE CONSTRUCTION ADDENDUM
(Landlord to Complete Construction)**

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**ADDENDUM TO THE COMMERCIAL LEASE BETWEEN THE UNDERSIGNED PARTIES CONCERNING
THE LEASED PREMISES AT 5 Butterfield Trail Blvd., Ste. A & B, El Paso, TX 79906,**

The following provisions apply and will control in the event of a conflict with other provisions stated in the lease:

A. On or before _____ occupancy _____, Landlord will substantially complete the improvements to the leased premises as described below.

☒ (1) Landlord will complete the following improvements:
(*)

| (2) On or before _____, Tenant will specify in a separate written notice to Landlord the improvements that Tenant desires Landlord to complete. If Landlord objects to any desired improvement, Tenant will promptly amend Tenant's notice to comply with Landlord's objections. Landlord will not unreasonably object to Tenant's desired improvements.

B. On or before _____, Landlord will notify Tenant of the total cost to complete the improvements described in Paragraph A, including but not limited to costs of construction, permits, and plans. The total cost to complete the improvements may not exceed _____ (maximum cost). Landlord will pay _____ of the cost to complete the improvements and Tenant will pay the remainder. If the total cost to complete the improvements exceeds the maximum cost, the lease will terminate and have no further effect unless a party notifies the other party within _____ days after Landlord notifies Tenant of the cost to complete the improvements that it will pay the excess.

C. Unless otherwise agreed by the parties in writing, any amount required to be paid by Tenant under this addendum must be paid by Tenant to Landlord before construction of the improvements commences.

D. All construction required by this addendum will be performed by trained and qualified persons in a good workman-like manner and will comply with applicable building codes, local ordinances, governmental regulations, and statutes (e.g., ADA, Architectural Barriers). Landlord will obtain any required certificate of occupancy.

(TXR-2111) 4-1-18

Initialed for Identification by Landlord: _____, _____, and Tenant: _____, _____

Page 1 of 2

Cushman & Wakefield | 1500 E. 12th Street, Suite 220 El Paso, TX 79901
Direct: (915) 543-8888

Phone: (915) 543-8888 Fax: (915) 543-8888
Produced with Lona Wolf Transactions (zipForm Edition) 717 N. Harwood St., Suite 2200, Dallas, TX 75201 www.lw.com

M-A-B

- E. Tenant may, at reasonable times during construction, inspect the construction of the improvements. Tenant may object to any deficiencies in the completion of the improvements by providing specific written notice to Landlord and Landlord will promptly cure the deficiencies. Upon completion of the improvements, Tenant will acknowledge in writing that the improvements have been completed and that Tenant accepts the leased premises for the purposes of the lease (*the Commercial Lease Acceptance Form (TXR-2113) may be used*).
- F. Paragraph 3B of the lease governs any delay in the commencement of the lease or occupancy by Tenant caused by the construction of the improvements.
- G. Special Provisions:
N/A.

(*)1. Suite A: Prior to occupancy Landlord shall:

- a.) Open a wall between Suite A and Suite B to provide access between both suites.
- b.) Install in offices building-standard carpet and cove base to be chosen by Tenant.

2. Suite B: Prior to occupancy Landlord shall:

- a.) Install building-standard paint, carpet and cove base in all rooms except restrooms, to match Suite A.
- b.) Remove existing glass wall.
- c.) Remove partial wall in breakroom.
- d.) Remove ceramic tile in breakroom only.
- e.) Remove window film on remaining glass wall.
- f.) Remove door at rear of conference room and replace with wall.
- g.) Remove front door and replace with matching window (tenant to reimburse landlord for expense).
- h.) Open a wall between hallway and "copy" room.

3. Landlord to configure Suite A and Suite B rear doors to be "Exit Only" (tenant to reimburse landlord expense).

Landlord: Robert E. Marble Trust, Robert R. Marble,
Trustee

Tenant: National Center for Defense Manufacturing and
Machining (NCDMM)

By:

By:

By (signature): _____
Printed Name: Robert R. Marble
Title: Trustee

By (signature): _____
Printed Name: Gene Berkebile
Title: Vice President & CFO

By:

By:

By (signature): _____
Printed Name: _____
Title: _____

By (signature): _____
Printed Name: _____
Title: _____

(TXR-2111) 4-1-18

Page 2 of 2



COMMERCIAL LEASE ACCEPTANCE FORM

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ACCEPTANCE OF THE LEASED PREMISES AT 5 Butterfield Trail Blvd., Ste. A & B, El Paso, TX 79906,
REGARDING THE COMMERCIAL LEASE BETWEEN THE UNDERSIGNED PARTIES.

- A. The parties have inspected the leased premises. The parties acknowledge that any improvements, construction, repairs, or other items required by the lease have been substantially completed. Tenant acknowledges that Tenant has inspected the leased premises and that the condition of the leased premises is acceptable to Tenant for the purposes of the lease. On or before _____
- ☐ Landlord ☐ Tenant will complete the following (punch list):

B. The parties ratify the lease and confirm the following:

- (1) The term of the lease is for 36 months and 0 days.
- (2) The Commencement Date of the lease is December 1, 2024.
- (3) The Expiration Date of the lease is November 30, 2027.
- (4) Other than as indicated on this Commercial Lease Acceptance Form, neither Landlord nor Tenant is in default of the terms and conditions of the lease.

C. Special Provisions:

Landlord: Robert E. Marble Trust, Robert R. Marble,
Trustee

By: _____

By (signature): _____
Printed Name: Robert R. Marble
Title: Trustee

By: _____

By (signature): _____
Printed Name: _____
Title: _____

Tenant: National Center for Defense Manufacturing and
Machining (NCDMM)

By: _____

By (signature): _____
Printed Name: Gene Berkebile
Title: Vice President & CFO

By: _____

By (signature): _____
Printed Name: _____
Title: _____

(TXR-2113) 1-26-10

Page 1 of 1

**ADDENDUM
ACKNOWLEDGEMENT OF SUBLEASE**

Robert E. Marble Trust, Landlord, possesses a leasehold estate in the Building known as 5 Butterfield Trail Boulevard pursuant to that certain Butterfield Trail Industrial Park Lease dated August 1, 1985 by and between El Paso International Airport as Landlord (the "Master Landlord"), and Landlord as Tenant, as amended by the City of El Paso, Texas (as amended, the "Master Lease"). As a result of such tenancy pursuant to the Master Lease, (i) the provisions of this Lease are junior, subordinate and subject to the terms and conditions of the Master Lease, and (ii) this Lease is a "sublease" in accordance with the applicable law, statutes and ordinances. During the Term of this Lease, Landlord, using its commercially reasonable efforts, shall not violate the provisions of the Master Lease. The termination of the Master Lease for any reason shall result in the automatic termination of this Lease, without liability to Tenant or Landlord, as a result of such termination, in which case the parties shall have no further obligation under this Lease. Tenant hereby acknowledges and agrees that if it wishes to review a copy of the Master Lease Landlord will provide one. Tenant shall not cause or take any action or inaction or cause or permit any Tenant Representatives to take any action which would constitute a default by Landlord under the Master Lease, and any such occurrence shall be deemed to be a default by Tenant under Section 20 of this Lease.

Tenant acknowledges and agrees that pursuant to the provisions of, and in accordance with the Master Lease, Master Landlord, its agents, employees, contractors and subcontractors, have the right to enter upon all areas within the Property, which includes, but is not limited to, the Premises, to implement hazardous waste remediation activities, whether imposed by law or regulatory agencies, and to perform various tasks, repairs, maintenance and obligations required by the Master Lease. Tenant acknowledges that some or all of these actions may interfere with Tenant's quiet use and enjoyment of the Premises, and that such entrance may disrupt, interfere, and/or adversely affect Tenant's Building operations, including the Permitted Use, for the duration of such entrance. Such entrance shall not constitute an actual or construction eviction and will not cause any form of liability, offset, abatement and/or claim against Landlord and/or Master Landlord; provided, however, (i) if such interruption is material and, as a result thereof, Tenant, in accordance with Law, is forced to discontinue business operations at the Premises in excess of five consecutive days within any given calendar month due to Master Landlord's activities described herein, then for each day thereafter that such business operations are interrupted as a result of such interference, Tenant shall be entitled to one (1) day of Base Rent-free possession of the Premises, and (ii) if such interruption continues for twenty successive business days (not including weekends or holidays), for a period of fifteen (15) calendar days thereafter, Tenant, as its sole and exclusive remedy, shall have the right to terminate this Lease by providing Landlord with written notice of such election. The failure of Tenant to provide such notice within such time period shall be deemed Tenant's waiver of its right to terminate this Lease pursuant to this Addendum.

Tenant Initials _____

Landlord Initials _____



Information About Brokerage Services

Texas law requires all real estate license holders to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.

11-2-2015



TYPES OF REAL ESTATE LICENSE HOLDERS:

- A **BROKER** is responsible for all brokerage activities, including acts performed by sales agents sponsored by the broker.
- A **SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
- Treat all parties to a real estate transaction honestly and fairly.

A LICENSE HOLDER CAN REPRESENT A PARTY IN A REAL ESTATE TRANSACTION:

AS AGENT FOR OWNER (SELLER/LANDLORD): The broker becomes the property owner's agent through an agreement with the owner, usually in a written listing to sell or property management agreement. An owner's agent must perform the broker's minimum duties above and must inform the owner of any material information about the property or transaction known by the agent, including information disclosed to the agent or subagent by the buyer or buyer's agent.

AS AGENT FOR BUYER/TENANT: The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

AS AGENT FOR BOTH - INTERMEDIARY: To act as an intermediary between the parties the broker must first obtain the written agreement of *each party* to the transaction. The written agreement must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. A broker who acts as an intermediary:

- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with, provide opinions and advice to, and carry out the instructions of each party to the transaction.
- Must not, unless specifically authorized in writing to do so by the party, disclose:
 - that the owner will accept a price less than the written asking price;
 - that the buyer/tenant will pay a price greater than the price submitted in a written offer; and
 - any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

AS SUBAGENT: A license holder acts as a subagent when aiding a buyer in a transaction without an agreement to represent the buyer. A subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first.

TO AVOID DISPUTES, ALL AGREEMENTS BETWEEN YOU AND A BROKER SHOULD BE IN WRITING AND CLEARLY ESTABLISH:

- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

LICENSE HOLDER CONTACT INFORMATION: This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

Cushman & Wakefield PIREs	9003421	bpreston@piresintl.com	915-843-8888
Licensed Broker / Broker Firm Name or Primary Assumed Business Name	License No.	Email	Phone
Brett C. Preston, SIOR, CCIM	414041	bpreston@piresintl.com	915-843-8888
Designated Broker of Firm	License No.	Email	Phone
Licensed Supervisor of Sales Agent/ Associate	License No.	Email	Phone
Sales Agent/Associate's Name	License No.	Email	915-843-8888 Phone

Buyer/Tenant/Seller/Landlord Initials

Date

Regulated by the Texas Real Estate Commission

Information available at www.trec.texas.gov

IABS 1-0

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement by and between the **CITY OF EL PASO, TEXAS**, a home-rule municipality of El Paso County, Texas and **SCHNEIDER ELECTRIC USA, INC.**, a Delaware Corporation for the expansion of its operations within the city limits of the City of El Paso.

PASSED AND APPROVED this 11th day of October 2022.

CITY OF EL PASO, TEXAS

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Juan S. Gonzalez
Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Elizabeth Triggs
Elizabeth Triggs, Director
Economic & International Development

STATE OF TEXAS)
)
 COUNTY OF EL PASO) **CHAPTER 380 ECONOMIC DEVELOPMENT
 PROGRAM AGREEMENT**

This Chapter 380 Economic Development Program Agreement ("Agreement") is made the ____ day of October, 2022 ("**Effective Date**") between the **CITY OF EL PASO, TEXAS** a Texas home rule municipal corporation, (the "**City**") and **Schneider Electric USA, Inc.**, a Delaware Corporation (the "**Applicant**"), for the purposes and considerations stated below:

WHEREAS, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code, an incentive to Applicant to support the Development as more fully described below; and

WHEREAS, the City has the authority under Chapter 380 of the Texas Local Government Code to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso; and

WHEREAS, the City determines that a grant of funds to Applicant will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the City; and

WHEREAS, the City and Applicant desire that the Development occur in the City of El Paso; and

WHEREAS, the Development will likely result in increased economic development in the City, provide increases in the City's property tax revenues, and improve the City's ability to provide for the health, safety and welfare of the citizens of El Paso; and

WHEREAS, the City has concluded and hereby finds that this Agreement embodies an eligible "program" and promotes economic development in the City of El Paso and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the City and Applicant.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- A. **Agreement.** The word "Agreement" means this Chapter 380 Economic Development Program Agreement, together with all exhibits attached to this Agreement.

- B. **Applicant.** The word "Applicant" means Schneider Electric USA, Inc., a Delaware Corporation.
- C. **Applicant Affiliate.** Means with respect to Applicant, any other person or entity that, directly or indirectly, controls, is under common control with, or is controlled by Applicant. For purposes of this definition, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, through ownership of voting securities or through partnership interest.
- D. **Base Year Value.** The words "Base Year Value" shall have the meaning in Section 3(A)(4) of this Agreement.
- E. **Construction Materials Sales Tax Rebate** means a one-time 100% rebate of the City's 1% Sales and Use Tax from receipts for materials and labor of taxable items used in the construction of the Development. The Construction Materials Sales Tax Rebate shall not exceed **\$57,000**.
- F. **Development.** The word "Development" means the expansion of Applicant's existing manufacturing operations as more fully described on **Exhibit "A"**, which is attached hereto and incorporated herein for all purposes.
- G. **Development and Building Fee Rebate** means a one-time 100% rebate of certain development fees and building fee costs associated with the construction of the Development, which shall not exceed **\$30,000** (the "Development and Building Fee Rebate Cap"). The Development and Building Fee Rebate shall be limited to the lesser of: (i) the development and building fee costs associated with the construction of the Development or (ii) the Development and Building Fee Rebate Cap. Under no circumstances shall the City rebate reinspection fees or inspection penalty fees associated with construction of the Development.
- H. **Development Location** shall mean within the geographic boundaries of the City of El Paso and more particularly described in **Exhibit "A-1"**, which is attached hereto and incorporated herein for all purposes.
- I. **Effective Date** the Effective Date of this Agreement shall be the date indicated in the preamble to this Agreement.
- J. **Existing Facilities.** The words "Existing Facilities" mean Applicant's existing facilities located at 1601 & 1701 Northwestern Drive and 7801 Northern Pass, in El Paso, Texas, and any new facility (other than the Development) that Applicant or any Applicant Affiliate own or operate in El Paso, Texas.
- K. **Full-Time Employment.** Full-Time Employment position shall mean a position requiring a minimum of 2,080 straight-time paid hours in Applicant's fiscal year, including allowance for vacation and sick leave, with the opportunity to participate in Applicant's

employee benefits programs, including Applicant's health plan. Such Full-Time Employment positions shall be located at the Development or the Existing Facilities. For purposes of meeting the required job numbers for all purposes under this Agreement, "Full-Time Employment" shall (i) be calculated using only filled positions; and (ii) shall include employees of Applicant and any Applicant Affiliate. These requirements are more completely described in **Exhibit "B"**, which is attached hereto and incorporated herein for all purposes.

- L. **Grant Payments.** The words "Grant Payments" mean the Public Improvements Reimbursement, the Sustainability Grant, the Construction Materials Sales Tax Rebate, the Development and Building Fee Rebate, and the Property Tax Rebate.
- M. **Grant Submittal Package.** The words "Grant Submittal Package" mean the documentation required to be supplied to City on a yearly basis during the Grant Period, with such documentation more fully described in Section 3 (C)(1) and **Exhibit "C"**, which is attached hereto and incorporated herein for all purposes.
- N. **Landlord.** The word "Landlord" shall mean Applicant's landlord under the lease for the Development and any subsidiary of Applicant's landlord or any entity affiliated with Applicant's landlord.
- O. **Minimum Investment.** In accordance with Section 3(A)(1), Applicant agrees that it, or any Applicant Affiliate, shall make, or cause Landlord to make, Qualified Expenditures of not less than **\$15,064,000** in the Development, where "Qualified Expenditures" means those costs incurred by the Applicant, an Applicant Affiliate and/or Landlord, in the acquisition, construction or furnishing of the Development.
- P. **Property Tax Rebate** means a rebate of a percentage of the City's portion of: (1) the incremental ad valorem property tax revenue generated by the Development above the ad valorem property tax revenue that would have been generated at the Base Year Value for the Development for each tax year during the Grant Period; and (2) the incremental ad valorem personal property tax revenue generated by the Development above the ad valorem personal property tax revenue that would have been generated at the Personal Property Base Year Value for the Development for each tax year during the Grant Period (collectively, (1) and (2), the "Incremental Ad Valorem Property Tax Revenue"). The Incremental Ad Valorem Property Tax Revenue will be determined each tax year during the Grant Period based on the ad valorem property taxes due under the tax statements issued by the El Paso Central Appraisal District for Property ID 712032 and Property ID 507027, pursuant to the calculation formula described in **Exhibit "D"**, which is attached hereto and incorporated herein for all purposes. The Property Tax Rebate payments: (i) for any calendar year shall not exceed 75 percent of the Incremental Ad Valorem Property Tax Revenue; and (ii) shall not exceed **\$715,000** (whichever comes first) during the Grant Period.

- Q. **Public Improvements Reimbursement.** The City shall use available revenue in the fund created for Tax Increment Reinvestment Zone Number 10, City of El Paso, Texas as reimbursement to Applicant for Public Improvements, up to **\$600,000** (the "Public Improvement Reimbursement Cap").
- R. **Sustainability Grant.** The City shall reimburse the Applicant up to **\$75,000** for actual costs incurred by Applicant, any Applicant Affiliate and/or Landlord in connection with the electric vehicle charging infrastructure ("Sustainability Grant Cap"). Under no circumstances shall reimbursement exceed the lesser of: (i) actual costs for the design, construction, and installation of the electric vehicle charging infrastructure; or (ii) the Sustainability Grant Cap.

SECTION 2. TERM AND GRANT PERIOD.

The term of this Agreement ("Term") shall begin on the Effective Date and shall terminate upon the earlier of: (I) the end of the Grant Period; or (II) termination of this Agreement as otherwise provided in this Agreement.

The Effective Date of this Agreement shall be the date upon which both parties have fully executed the Agreement. However, Applicant's eligibility for Property Tax Rebate payments shall be limited to ten (10) consecutive calendar years (the "Grant Period") within the Term of this Agreement, with the first year being 2024. The Grant Period shall terminate upon payment by City of the Property Tax Rebate payment corresponding to the Grant Submittal Package submitted by Applicant on March 1, 2033 (for the compliance period covering from January 1, 2032 through December 31, 2032). Failure of the Applicant to obtain a permanent Certificate of Occupancy for the Development by April 30, 2023 shall result in the immediate termination of this Agreement, unless such failure is due to a Force Majeure or a delay caused by the City.

SECTION 3. OBLIGATIONS OF APPLICANT.

A. DEVELOPMENT

1. **Development.** Applicant agrees that the Development will be constructed at the Development Location in El Paso, Texas. Applicant shall, or cause its Landlord to, commence construction and or improvements of the Development within twelve (12) months of the Effective Date of this Agreement. The Applicant agrees that it shall obtain a Certificate of Occupancy for the Development by **April 30, 2023**, as set forth in Section 2. Applicant agrees that it or an Applicant Affiliate shall make, or cause Landlord to make, Qualified Expenditures of not less than \$15,064,000 relating to the Development. The City shall be permitted to review Applicant's or its Landlord's receipts of Qualified Expenditures to evidence the expenditure of a minimum amount of \$15,064,000. It is anticipated that the Applicant may from time to time require or benefit from relocation or reconfiguration of personal property between the Existing Facilities and the Development Location. As such, with respect to Qualified Expenditures and the calculation of Incremental Ad Valorem Property Tax Revenue, the situs of personal property is deemed to be at the Development regardless of whether the personal

property in question is physically located at the Existing Facilities or the Development Location.

Applicant shall provide all required invoices and other required documentation to City electronically at the following address: EDcompliance@elpasotexas.gov.

2. **Public Improvements.** It is the intent of the parties that the Applicant shall be responsible for the design, construction and installation of certain roadway infrastructure improvements including, but not necessarily limited to, traffic control devices, intersection and signalization improvements, roadway lighting, and landscaping within the City rights-of-way abutting the Applicant's Existing Facilities and the Development Location to facilitate the safe movement of people and goods between those facilities, as determined by Applicant (the "Public Improvements"). The City hereby grants Applicant and Landlord the right to construct Public Improvements in the City rights-of-way abutting the Applicant's Existing Facilities and the Development Location, subject to Applicant or Landlord adhering with city code provisions associated with same and subject to Applicant or Landlord complying with any payment and performance bond requirements applicable to the construction of the Public Improvements. The Public Improvements shall be designed, constructed, and installed in compliance with all applicable laws. The Applicant shall advance funds for the purpose of the design, construction, and installation of the Public Improvements in accordance with the development schedule of the Applicant. Upon inspection and approval of the Public Improvements by the City, the Applicant shall promptly transfer or dedicate ownership of the Public Improvements to the City. Upon Public Improvements completion, the City shall reimburse the Applicant up to the Public Improvements Reimbursement Cap. Public Improvements shall be deemed complete upon submission and approval of all approved construction plans, as-built drawings, and inspections, and a letter of acceptance from the City Engineer certifying that the Public Improvements were constructed in accordance with all applicable laws. Under no circumstances shall the Public Improvements reimbursement exceed the lesser of: (i) the actual costs incurred in connection with design, construction and installation of the Public Improvements or (ii) the Public Improvement Reimbursement Cap.
3. **Sustainability Grant.** It is the intent of the parties that the Applicant or an Applicant Affiliate will purchase, or cause its Landlord to purchase, and use electric vehicles in connection with its operations at the Existing Facilities and the Development Location. Applicant shall be responsible for the design, construction and installation of necessary electric vehicle charging infrastructure, which shall be designed, constructed, and installed in compliance with all applicable laws. Upon electric vehicle charging infrastructure completion and submittal of documentation of actual costs pursuant to Section 3(C)(2) to the City, the City shall reimburse the Applicant up to **\$75,000** for actual costs incurred in connection with the electric vehicle charging infrastructure ("Sustainability Grant Cap"). Under no circumstances shall reimbursement exceed the lesser of: (i) actual costs for the design, construction, and installation of the electric vehicle charging infrastructure; or (ii) the Sustainability Grant Cap.
4. **Minimum Appraised Value; Base Year Values.** Applicant or its Landlord shall pay by January 31 of each year all of the real and business personal property ad valorem taxes due for

the previous tax year on the Development and any other property owned by the Applicant within the City. The parties agree that the taxable value of the Development for purposes of determining the Incremental Ad Valorem Property Tax Revenue will be: (1) **\$722,678.00** (being the 2022 assessed land value for Property ID 712032)(the “Base Year Value”); and (2) **\$26,006,649.00** (being the 2022 taxable value for Property ID 507027)(the “Personal Property Base Year Value”).

Applicant and its Landlord shall have the right to contest the appraised values of the Development as provided by law. However, Applicant covenants and agrees that after completion of construction of the Development, except in the event of a Force Majeure, it shall not protest or permit anyone under direct authority from Applicant to take actions on Applicant’s behalf to protest any assessments by the El Paso Central Appraisal District to the extent such protest would reduce the aggregate assessed value of the Development on the tax rolls below **\$10,222,678** (being the sum of \$9,500,000 and the Base Year Value)(the “Minimum Appraised Value”). Any such action will be deemed an Event of Default if not cured within the cure periods prescribed in **Section 5** of this Agreement.

B. EMPLOYMENT POSITIONS

1. Applicant agrees that it: (i) will create at least 239 Full-Time Employment positions by December 31, 2023; (ii) create an additional 129 Full-Time Employment positions by December 31, 2024; and (iii) thereafter maintain at least such 368 Full-Time Employment positions through December 31, 2032, in each case such Full-Time Employment positions being as described in **Exhibit “B”** and **Section 1(K)**. Furthermore, Applicant agrees that it shall retain a combined aggregate workforce at its Existing Facilities and the Development Location of 1,130 Full-Time Employment positions (the “Threshold”) through December 31, 2032. The parties agree that Full-Time Employment positions shall be considered “created” if they are above the Threshold.
2. It is anticipated that the Applicant may from time to time require or benefit from relocation or creation of Full-Time Employment positions between the Existing Facilities and the Development Location. As such, with respect to Full-Time Employment position requirements and the calculation of positions created or retained, the situs of Full-Time Employment positions is deemed to be at the Development regardless of whether the position in question is physically located at the Existing Facilities or the Development Location.
3. Applicant, during normal business hours, at its principal place of business in El Paso, shall allow the City or its agents reasonable access to Applicant’s employment records and books, and other records that are related to this Agreement and the Grant Payments described herein, to verify Applicant’s compliance with the provisions of this Agreement. In order to protect these records, the City shall maintain the confidentiality of such records in accordance with and subject to commercially reasonable practices and all applicable laws to the extent allowed by the Texas Public Information Act.

C. GRANT SUBMITTAL PACKAGE AND REIMBURSEMENT REQUESTS

1. Unless otherwise agreed by the City and Applicant, the initial **Grant Submittal Package** will be due no later than **March 1, 2024** (covering the compliance period from January 1, 2023 through December 31, 2023), and continuing every calendar year thereafter through March 1, 2033, shall be due by **March 1st** of each calendar year. Each Grant Submittal Package shall include a verification signed by a duly authorized representative of Applicant that shall certify the number of and generally describe the Full-Time Employment positions existing at its Existing Facilities and at the Development Location as of December 31 of the year preceding and provide the hourly wage for all Full-Time Employment positions. There will be a total of ten (10) Grant Submittal Packages due under this Agreement, covering jobs created and maintained in calendar years 2023 through 2032, with the last Grant Submittal Package being due by March 1, 2033. All Grant Submittal Packages shall be in the form provided in **Exhibit "C"** and shall provide reasonable verification for the Full-Time Employment position numbers provided, including the Threshold. A failure by Applicant to timely submit a Grant Submittal Package in accordance with this paragraph or a reimbursement request in accordance with Section 3(C)(2) below is a waiver by the Applicant to receive a Property Tax Rebate payment for the period covered by the late Grant Submittal Package, or a waiver by the Applicant to receive the Public Improvements Reimbursement, the Sustainability Grant, the Construction Materials Sales Tax Rebate, and/or the Development and Building Fee Rebate, as applicable.
2. If during the Term Applicant incurs the costs relating to the Public Improvements Reimbursement, the Sustainability Grant, the Construction Materials Sales Tax Rebate, and/or the Development and Building Fee Rebate prior to the due date of the applicable Grant Submittal Package, Applicant shall have the right to submit a request for reimbursement of such costs to the City prior to the due date of the applicable Grant Submittal Package. If Applicant submits a request to the City for reimbursement under this Section 3(C)(2), Applicant's submittal shall include documentation evidencing the costs incurred by Applicant relating to the Public Improvements Reimbursement, the Sustainability Grant, the Construction Materials Sales Tax Rebate, and/or the Development and Building Fee Rebate. City shall reimburse Applicant for such costs in accordance with Section 4 of this Agreement.
3. The City's determination of the amount of the applicable Grant Payment due to Applicant is final if such determination is in compliance with the terms of this Agreement.

SECTION 4. OBLIGATIONS OF CITY.

During the Term of this Agreement, and so long as an Event of Default by Applicant has not occurred, the City agrees to make the following Grant Payments to Applicant:

- A. The City agrees to provide a **Construction Materials Sales Tax Rebate** not to exceed **\$57,000** within ninety (90) days of City's receipt of Applicant's submittal of a Grant Submittal Package or a reimbursement request pursuant to Section 3(C)(2) of this Agreement, as applicable.

- B. The City agrees to provide a **Development and Building Fee Rebate** not to exceed **\$30,000** within ninety (90) days of City's receipt of Applicant's submittal of a Grant Submittal Package or a reimbursement request pursuant to Section 3(C)(2) of this Agreement, as applicable.
- C. The City agrees to provide **Property Tax Rebates** not to exceed **\$715,000** during the Grant Period in accordance with the terms and provisions of this Agreement within 90 days after receipt of the Applicant's annual Grant Submittal Package.
- D. The City agrees to provide a **Public Improvement Reimbursement** not to exceed **\$600,000** within ninety (90) days of City's receipt of Applicant's submittal of a Grant Submittal Package or a reimbursement request pursuant to Section 3(C)(2) of this Agreement, as applicable. The City shall use available revenue in the fund created for Tax Increment Reinvestment Zone Number 10, City of El Paso, Texas as reimbursement to Applicant for Public Improvements, up to the Public Improvement Reimbursement Cap.
- E. The City agrees to provide a **Sustainability Grant** not to exceed **\$75,000** within ninety (90) days of City's receipt of Applicant's submittal of a Grant Submittal Package or a reimbursement request pursuant to Section 3(C)(2) of this Agreement, as applicable.

SECTION 5. EVENTS OF DEFAULT.

The events described in subsections (A) through (F) below shall constitute an Applicant Event of Default under this Agreement:

- A. **Failure to Comply.** Applicant's failure to comply with, or to perform any obligation or condition of this Agreement other than an obligation or condition described in subsections (B) through (F) below, and Applicant's refusal to cure within sixty (60) days after written notice from the City describing such failure. However, if such failure cannot be cured by its nature within such sixty (60) day period and the Applicant has commenced such cure within such sixty (60) day period and continuously thereafter diligently prosecutes the cure of such failure, such failure shall not be deemed an Event of Default.
- B. **Failure to Maintain Development and Job Requirements.** Applicant's failure or refusal to maintain operations at the Development Location during the Grant Period or maintain the required Full-Time Employment positions pursuant to Section 3(B)(1) of this Agreement through December 31, 2032, and Applicant's failure or refusal to cure within sixty (60) days after written notice from the City describing such failure, shall be deemed an Event of Default. However, if such failure cannot be cured by its nature within such sixty (60) day period and the Applicant has commenced such cure within such sixty (60) day period and continuously thereafter diligently prosecute the cure of such failure, such failure shall not be deemed an Event of Default.
- C. **False Statements.** In the event the Applicant provides any written warranty, representation or statement under this Agreement or a Grant Submittal Package that is/are false in any material respect, either now or at the time made or furnished, and Applicant fails to cure same within thirty (30) days after written notice from the City describing the violation shall be deemed an Event of

Default. If such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, and Applicant commences such cure within such thirty (30) day period and continuously thereafter diligently prosecutes the cure of such violation, such actions or omissions shall not be deemed an Event of Default. Further, if Applicant obtains actual knowledge that any previously provided warranty, representation or statement has become materially false or misleading after the time that it was made, and Applicant fails to provide written notice to the City of the false or misleading nature of such warranty, representation or statement within thirty (30) days after Applicant learns of its false or misleading nature, such action or omission shall be deemed an Event of Default.

- D. **Insolvency.** The dissolution or termination of Applicant's existence as a going business or concern, Applicant's insolvency, appointment of receiver for any part of Applicant's company, any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Applicant shall all be deemed an Event of Default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no Event of Default shall be deemed to have occurred.
- E. **Construction of Development.** Applicant's failure to comply with its construction obligations set forth in Section 3(A)(1) of this Agreement and Applicant's failure to cure same within ninety (90) days after written notice from the City shall be deemed an Event of Default. If such failure cannot be cured within such ninety (90) day period and Applicant fails or refuses to commence such cure within such ninety (90) day period, except to the extent such failure is caused by any act or failure to act on the part of the City, such actions or omissions shall be deemed an Event of Default.
- F. **Property Taxes.** In the event Applicant allows any property taxes owed to the City by Applicant to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) days after written notice thereof from the City and/or El Paso Central Appraisal District, such actions or omissions shall be deemed an Event of Default. Subject to the restrictions noted herein, Applicant shall have the right to contest the appraised value of the Development.
- G. **City Event of Default.** City shall be in default under this Agreement if it defaults in the performance of any of its obligations under this Agreement and such failure continues uncured for a period of thirty (30) days from and after the date Applicant notifies City of such failure. Upon a City Event of Default, Applicant shall be entitled to terminate this Agreement by written notice to City or seek any right or remedies available to it at law or in equity, including without limitation, bringing an action to required City to specifically perform its obligations hereunder including, without limitation, a mandamus action to compel such performance.
- H. **Applicant Failure to Cure.** If any Applicant Event of Default shall occur, and after Applicant fails to cure same in accordance herewith, then this Agreement may be terminated by written notice from the City to Applicant and the City shall be entitled to recapture certain Grant Payments

as provided in Section 6 of this Agreement. The City's termination and recapture rights shall be City's sole and exclusive remedies in the event of an Applicant Event of Default.

- I. **Liability.** In no event will either party be liable to the other party for any indirect, special, punitive, exemplary, incidental or consequential damages. In no event shall the liability of either party exceed the value of Grant Payments paid hereunder. This limitation will apply regardless of whether or not the other party has been advised of the possibility of such damages.

SECTION 6. RECAPTURE.

Should the Applicant default under **Section 5** of this Agreement and provided that the applicable cure period for such Applicant Event of Default has expired, the City shall have the right to recapture Grant Payments (other than any Grant Payments attributable to the Public Improvements Reimbursements which shall not be subject to recapture) previously paid by the City pursuant to this Agreement pursuant to the following schedule and Applicant shall repay such recaptured Grant Payments to City within **60 days** from the date of such termination:

<u>Grant Period Year in Which Recapture Occurs</u>	<u>Total Percentage of Grant Payments to be Recaptured</u>
1-3	100%
4	70%
5	60%
6	50%
7	40%
8	30%
9	20%
10	10%

SECTION 7. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT.

If any state or federal statute, regulation, case law, or other law renders this Agreement illegal, including any case law holding that a Chapter 380 of the Texas Local Government Code Economic Development Agreement such as this Agreement is an unconstitutional debt, then the City may terminate this Agreement for its convenience and without the requirement of an Event of Default by Applicant, which such termination shall become effective immediately upon written notice from the City to Applicant. In the event of such termination, Applicant shall be entitled to keep all Grant Payments received prior to such termination. For clarification, the repeal or sunset of Chapter 380 of the Texas Local Government Code by the Texas Legislature shall not affect the validity of this Agreement.

SECTION 8. GENERAL PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- A. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.
- B. **Assignment of Applicant's Rights.** Applicant understands and agrees that the City expressly prohibits Applicant from selling, transferring, assigning or conveying in any way any rights to receive the Grant Payments proceeds without the City's prior written consent. Any such attempt to sell, transfer, assign or convey rights to receive Grant Payments without the City's prior written consent is void and may result in the immediate termination of this Agreement, with no ability for the Applicant to cure.
- C. **Applicant's Sale or Transfer of the Development.** Prior to any sale or other transfer of ownership rights in the Development by Applicant, Applicant shall notify the City in writing of such sale or transfer within **thirty (30) business days** of the Applicant's knowledge of effectiveness of such sale or transfer. This provision is a material term of this Agreement and the failure to notify the City of such sale or transfer within the applicable period shall constitute an Event of Default.
- D. **Binding Obligation.** This Agreement shall become a binding obligation on the City and Applicant upon execution by all signatories hereto. Applicant and City warrant and represent that the individuals executing this Agreement on behalf of City and Applicant have full authority to execute this Agreement and bind City and Applicant to the same.
- E. **Completion of Development.** As consideration for the agreements of the City as contained herein, Applicant agrees that it or its Landlord will diligently and in a good and workmanlike manner pursue the completion of the Development and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations.
- F. **Confidentiality Obligations.** The confidentiality of all records and information provided to the City by Applicant under this Agreement will be maintained in accordance with and subject to all applicable laws, including the Texas Public Information Act, Chapter 552, of the Texas Government Code. Specifically, the City will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Texas Public Information Act, it will promptly notify Applicant if a request relating to Applicant's information is received. Applicant represents that it understands that the Texas Public Information Act applies to information provided to the City pursuant to this Agreement and that it will need to assert the applicable exceptions to disclosure under the Texas Public Information Act if it objects to disclosure.
- G. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

- H. **Employment of Undocumented Workers.** During the Term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the Grant Payments received by Applicant from the City during which such violation occurred, not later than one hundred twenty (120) days after the date Applicant is notified by City of a violation of this section, plus interest from the date the Grant Payment(s) was paid to Applicant, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant Payment(s) were paid to Applicant until the date the reimbursement payments are repaid to City. City may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant Payment(s) subject to repayment under this section. Applicant is not liable for a violation by any Applicant Affiliate or franchisee, or by a person with whom Applicant contracts.
- I. **Execution of Agreement.** The El Paso City Council has authorized the City Manager to execute this Agreement on behalf of the City.
- J. **Filing.** The City shall promptly file this Agreement with the Texas State Comptroller in accordance with Section 380.004 of the Texas Local Government Code.
- K. **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed beyond such party's reasonable control by reason of war, pandemic, quarantines, civil commotion, acts of God, severe weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was reasonably delayed.
- L. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or if deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below, shall be effective five business days after deposit. Any party may change its address for notices under this Agreement by giving formal written notice to the other party, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address. The City agrees that Grant Submittal Packages may be submitted electronically by Applicant.

Applicant shall provide all required invoices and other required documentation to City electronically at the following address: **EDcompliance@elpasotexas.gov**.

APPLICANT: Schneider Electric USA, Inc.
One Boston Place, Suite 2700
Boston, Massachusetts 02108

CITY: The City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

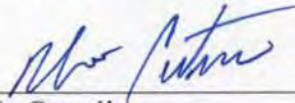
Copy To: The City of El Paso
Attn: Economic Development Department Director
P.O. Box 1890
El Paso, Texas 79950-1890

- M. **Ordinance Applicability.** Applicant shall be subject to all ordinances of the City, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish Applicant's contractual rights or obligations under this Agreement. This Agreement shall confer no vested rights on the Development unless specifically enumerated herein.
- N. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- O. **Termination or Expiration.** Upon termination or expiration of the Term of this Agreement, Applicant or its assigns agree that neither the term sheet executed by Applicant and City in connection with the Development or this Agreement, nor the values contained within will be used as a basis to contest appraisal values or in the determination of the market value of the Development, and that the Grant Payments established within this Agreement between the parties shall not be considered in valuing the Development Location for tax purposes.
- P. The City acknowledges that notwithstanding execution of this Agreement, Applicant shall continue to be eligible for incentive payments under the Chapter 380 Economic Development Program Agreement executed by Applicant and the City on July 15, 2014, in accordance with the terms of such agreement.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

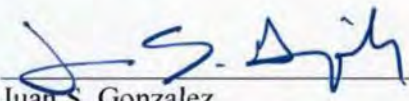
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

CITY OF EL PASO, TEXAS:



Tomás González
City Manager

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:




Elizabeth Triggs, Director
Economic and International Development

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

APPLICANT:

Schneider Electric USA, Inc., a Delaware Corporation

By: 

Name: Steven P. Sacco

Title: Vice President

EXHIBIT A
DEVELOPMENT

The proposed development located at Northwestern Drive and Northern Pass Drive is an expansion of existing manufacturing operations of the Applicant at its Existing Facilities. The incremental real property component of the Development is proposed as a proximately located standalone facility to be developed by the Applicant's Landlord and operated by Applicant under lease at the Development Location. The Development is estimated to require approximately 160,000 square feet of industrial facility.

EXHIBIT A-1

DEVELOPMENT LOCATION METES & BOUNDS & SURVEY MAP

The parcel of land herein described is a 10.369-acre portion of Lot 1, Block 6, Northwestern Corporate Center Unit Five (Book 73, Page 61, Plat Records, El Paso County, Texas), El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

COMMENCING at a city monument at the centerline intersection of Northwestern Drive (90-foot right-of-way, Northwestern Corporate Center Unit Three, Book 69, Page 15, Plat Records, El Paso County, Texas) and Northern Pass Drive (90-foot right-of-way, Plexxar South, Book 72, Page 32, Plat Records, El Paso County, Texas) from which a city monument at the centerline P.I. of Northwestern Drive, opposite Lot 2, Block 1, Plexxar South (Book 72, Page 32, Plat Records, El Paso County, Texas) bears South $17^{\circ}02'18''$ East, a distance of 1034.42 feet; Thence, North $17^{\circ}02'20''$ West, along the centerline of North-western Drive, a distance of 63.99 feet; Thence, North $72^{\circ}57'33''$ East, a distance of 45.00 feet to a 5/8" rebar with cap marked "RPLS 4178" found on the easterly right-of-way of Northwestern Drive for the POINT OF BEGINNING of this description;

THENCE, North $17^{\circ}02'27''$ West, along said right-of-way, a distance of 23.91 feet to a found 5/8" rebar with cap marked "RPLS 4178";

THENCE, 395.06 feet continuing along said right-of-way and along the arc of a curve to the right, having a radius of 2795.64 feet, a central angle of $8^{\circ}05'48''$, and a chord which bears North $12^{\circ}59'33''$ West, a distance of 394.73 feet to a found 5/8" rebar with cap marked "RPLS 4178";

THENCE, North $8^{\circ}56'39''$ West, continuing along said right-of-way, a distance of 488.20 feet to a 5/8" rebar with cap marked "RPLS 4178" found on the southerly right-of-way of Drainage right of-way (varied width right-of-way, Northwestern Corporate Center Unit Five);

THENCE, South $70^{\circ}12'32''$ East, along said right-of-way, a distance of 28.44 feet to a set marked "X";

THENCE, North $86^{\circ}35'36''$ East, continuing along said right-of-way, a distance of 185.47 feet to a found 5/8" rebar with cap marked "RPLS 4178";

THENCE, North $82^{\circ}00'52''$ East, continuing along said right-of-way, a distance of 294.83 feet to a set marked "X";

THENCE, South $8^{\circ}56'39''$ East, a distance of 902.33 feet to 5/8" re bar with cap marked "RPLS 6489" set on the northerly right-of-way of Northern Pass Drive;

THENCE, South $82^{\circ}00'57''$ West, along said right-of-way, a distance of 443.96 feet to a found 5/8" rebar with cap marked "RPLS 4178";

Said parcel of land contains 10.369 acres (451,663 square feet) of land more or less.

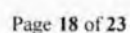


EXHIBIT B

Employment Requirements & Property Tax Rebate Eligibility

SECTION 1. MINIMUM JOB CREATION AND RETENTION REQUIREMENTS.

In order to be eligible for any Property Tax Rebate payment, Applicant is required to create the Full-Time Employment positions during the applicable time-period as set forth in Section 3(B)(1) of this Agreement.

SECTION 2. PHYSICAL LOCATION OF FULL-TIME EMPLOYMENT POSITIONS.

It is anticipated the Applicant may from time to time require or benefit from relocation of Full-Time Employment positions between the Existing Facilities and the Development Location. As such, with respect to Full-Time Employment positions and the calculation of positions created or retained, as applicable, the situs of Full-Time Employment positions is deemed to be at the Development Location regardless of whether the position in question is physically located at the Existing Facilities or the Development Location.

SECTION 3. ELIGIBILITY FOR PROPERTY TAX REBATE PAYMENTS.

The Applicant's eligibility for Property Tax Rebate payments made by the City to the Applicant shall be determined pursuant to and in accordance with the following:

- A. Property Tax Rebate payments shall be made equivalent to **fifty-percent (50%)** of the Incremental Ad Valorem Property Tax Revenue for the given tax year during the Grant Period, upon the Applicant's certification in a Grant Submittal Package that at least **eighty-percent (80%)** of the created and retained Full-Time Employment positions required for the applicable time-period were paid wages at or above **ninety-percent (90%)** of the Median Area Wage for the year covered by the applicable Grant Submittal Package.
- B. Property Tax Rebate payments shall be made equivalent to at least **seventy five-percent (75%)** of the Incremental Ad Valorem Property Tax Revenue for the given tax year during the Grant Period, upon the Applicant's certification that at least **ninety-percent (90%)** of the created and retained Full-Time Employment positions required for the applicable time-period were paid wages at or above **ninety-percent (90%)** of the Median Area Wage for the year covered by the applicable Grant Submittal Package.
- C. For example, if during calendar year 2023:
 - Applicant retained 1,130 Full-Time Employment positions;
 - Applicant created 245 Full-Time Employment positions for a total retained and created Full-Time Employment positions of 1,375;
 - the Median Area Wage for calendar year 2023 was \$16.00/hour;
 - the wages paid to 1,238 of the 1,375 Full-Time Employment positions was \$15.00/hour; and

- the Incremental Ad Valorem Property Tax Revenue amount was \$60,000; then
- the amount of Property Tax Rebate payment due to Applicant corresponding to the Grant Submittal Package submitted by Applicant no later than March 1, 2024 would be \$45,000 (being 75% of \$60,000).

SECTION 4. MEDIAN AREA WAGE.

For purposes of this Agreement, the "Median Area Wage" is the median hourly wage established for the El Paso, Texas Metropolitan Area by the U.S. Bureau of Labor Statistics, as adjusted on January 1 of each year, for the applicable year during the Grant Period. However, in no event shall the applicable Median Area Wage used for determination of Property Tax Rebate payment eligibility be less than the Median Area Wage established for 2022, which is \$14.71 per hour.

For clarification, the Median Area Wage shall only be used to determine the amount of Property Tax Rebate payments pursuant to Section 3 of this Exhibit, but shall not be used in determining whether an employment position constitutes a Full-Time Employment position for purposes of this Agreement.

EXHIBIT C

Grant Submittal Package Form

Schneider Electric USA, Inc. believes that it has substantially met its obligations under the Chapter 380 Economic Development Program Agreement dated the ___ day of October, 2022 (the "Agreement"). Pursuant to the Agreement, **Schneider Electric USA, Inc.** submits this Grant Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Grant Payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted.

1. **[INITIAL GRANT SUBMITTAL ONLY]** Copy of reasonable documentation (which may be a construction or building permit issued by the City) to evidence that construction of the Development commenced within twelve **(12) months** of the effective date of the Agreement.
2. **[INITIAL GRANT SUBMITTAL ONLY]** Copy of permanent Certificate of Occupancy.
3. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation to evidence minimum Qualified Expenditures to date, including:
 - a. Stamped **PAID** invoices.
 - b. Copies of checks proving payment – corresponding to paid invoices.
 - c. Receipts for purchase of construction materials (must show amount of taxes paid).
 - d. Bank statements (in the event a transaction was paid with credit or debit card).
 - e. Contractor pay applications, notarized with lien releases.
4. **[INITIAL GRANT SUBMITTAL ONLY—if not previously submitted and reimbursed in accordance with Section 3(C)(2) of the Agreement]** Documentation evidencing the materials and labor of Taxable Items used in the construction of the Development eligible for rebate to Applicant under the **Construction Materials Sales Tax Rebate**.
5. **[INITIAL GRANT SUBMITTAL ONLY—if not previously submitted and reimbursed in accordance with Section 3(C)(2) of the Agreement]** Documentation to evidence the amount of development and building fees paid relating to the Development eligible for rebate to Applicant under the **Development and Building Fee Rebate**.
6. **[If not already reimbursed in accordance with Section 3(C)(2) of the Agreement]** Documentation to evidence the costs of Public Improvements necessary to request the Public Improvement Reimbursement.
7. **[If not already reimbursed in accordance with Section 3(C)(2) of the Agreement]** Documentation necessary to evidence the costs of the electric vehicle charging infrastructure necessary to request the Sustainability Grant.

8. Full-Time Employment positions verification plus attachment(s) as referenced in Section 3(C)(1) of the Agreement.
9. Property tax payment receipts showing proof of payment for the immediately preceding tax year.

It is understood by **Schneider Electric USA, Inc.** that the City of El Paso has up to **(90) days** to process this request and reserves the right to deny the Grant Payment claim if the terms of the Agreement have not been complied with.

Schneider Electric USA, Inc., a Delaware Corporation

By: _____

Name: _____

Title: _____

Date of submission: _____

EXHIBIT D

Incremental Ad Valorem Property Tax Revenue Calculation

The following exhibit depicts an example of Real and Personal Property Tax rebate calculation, the dollar amounts utilized are for *illustrative purposes* only, and do not reflect an actual rebate that will be or has been issued by the City of El Paso.

****For illustrative purposes only, the rebate will be calculated assuming a 75% reimbursement****

REAL property tax rebate calculation

Base Value 2022	\$722,678.00
<u>Tax Value</u>	
Property Value 2023	1,500,000.00
Base Year Value 2022	<u>- 722,678.00</u>
Increased Tax Value	\$777,322.00
<u>Rebate Calculation</u>	
Increased Tax Value	\$777,322.00
Tax Rate per \$100	<u>x .907301</u>
Rebate	\$705,265.03/100
75% REAL property tax rebate	\$7,052.65 * .75
REAL Property Tax Rebate	\$5,289.49

PERSONAL property tax rebate calculation

Base Value 2022	\$26,006,649.00
<u>Tax Value</u>	
Property Value 2023	30,000,000.00
Base Year Value 2022	<u>- 26,006,649.00</u>
Increased Tax Value	\$3,993,351.00
<u>Rebate Calculation</u>	
Increased Tax Value	\$3,993,351.00
Tax Rate per \$100	<u>x .907301</u>
Rebate	\$3,623,171.36/100
75% PERSONAL property tax rebate	\$36,231.71 * .75
PERSONAL Property Tax Rebate	\$27,173.79
TOTAL Combined Rebates (Real + Personal)	\$32,463.27

****For the purposes of this agreement, the base value of personal property, and the personal property rebate calculation is determined by the El Paso Central Appraisal District's "Owner within a Taxing Jurisdiction" assessment method. ****

STATE OF TEXAS §

COUNTY OF EL PASO §

380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This **380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** (“**Agreement**”) is entered into by and between the **CITY OF EL PASO, TEXAS** (the “**City**”), a home rule municipality organized under the laws of the State of Texas, and **WORLDWIDE LLC**, a Delaware limited liability company, d/b/a Statue LLC (“**Company**”). The City and the Company are sometimes referred to herein collectively as the “**Parties**” and each individually as a “**Party**”.

RECITALS

The City and Company hereby agree that the following statements are true and correct and constitute the basis upon which the City and Company have entered into this Agreement:

A. The Company is considering the purchase of approximately 1,038.948 acres of Land (defined herein) owned by the City and located on the northside of Stan Roberts Sr. Avenue, West of U.S. Highway 54 (“**U.S. 54**”) in the City. If Company acquires the Land, contingent upon receipt of the grants provided for herein, Company proposes to construct in one or more phases, which may extend over a period of years, one or more Data Center(s) (as defined herein), as well as certain accessory uses or buildings located on the Land and other related or associated uses, buildings or structures such as utility buildings, structures, improvements and appurtenants (collectively, the “**Project**”).

B. Company’s proposed Project, including its proposed construction of the Project Improvements (defined herein), will benefit the City by developing currently vacant land into a viable commercial operation with significant opportunities for employment and tax base growth. In recognition of the potential economic benefits that will accrue to the City as a result of the proposed Project, the City desires to enter into this Agreement to provide economic incentives in return for verifiable commitments from Company with regard to improvements, employment and other benefits to be made or invested in the City.

C. The City has an interest in partnering with companies that give back to the local community and Company is a business that has a track record of being a good business partner.

D. In accordance with a resolution adopted by the City Council of the City (the “**City Council**”) on January 19, 2021, the City has established an economic development program pursuant to which the City may offer economic incentives authorized by Chapter 380 of the Texas Local Government Code that may include grants of public money to projects, businesses and entities that the City Council determines will promote state or local economic development and stimulate business and commercial activity in the City (the “**380 Program**”).

E. The City Council has determined that by entering into this Agreement, the potential economic benefits that will accrue to the City under the terms and conditions of this Agreement are consistent with the City’s economic development objectives and the 380 Program and that Company’s plans for development and use of the Land will further the goals espoused by the 380 Program. In addition, the City Council has determined that the Project as described herein is eligible for the grants provided for in this Agreement pursuant to Section S of the 380 Program and the 380 Program is an appropriate means to facilitate the construction of the Project Improvements. The City Council has determined that the potential economic benefits that will accrue to the City pursuant the terms and conditions of this Agreement are consistent with the City’s economic development objectives as outlined in the 380 Program. The Agreement is authorized by Chapter 380 of the Texas Local Government Code.

F. The City has determined that the feasibility of the Project described herein is contingent on Company’s receipt of the Property Tax Grants, as provided in this Agreement. The City believes that the Project will provide economic benefits to the City by stimulating economic growth in the region. The City is entering into this Agreement to recruit the Project to the City by providing certain benefits and assurances to the Company. The City understands that the Company would not develop the Project in the City without such benefits and assurances, which the Company is reasonably and in good faith relying on to independently evaluate the economic feasibility and commercial reasonability of developing the Project in the City.

G. In addition to this Agreement, the City has also entered into that certain Tax Abatement Agreement of even date herewith between the City and Company under which the City will grant Company abatement on City ad valorem taxes on the Land and any improvements thereon, including the Project Improvements, as further described and set forth in such agreement (the “**Tax Abatement Agreement**”).

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

The City Council has found, and the City and Company hereby agree, that the recitals set forth above are true and correct and form the basis upon which the Parties have entered into this Agreement.

2. DEFINITIONS.

In addition to any terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

380 Program has the meaning ascribed to it in Recital D.

Affiliate means all persons or entities, incorporated or otherwise, under common control with, controlled by or controlling Company.

Applicable City Rules means all of the rules, regulations, ordinances and official policies of the City in force and effect.

Annual Area Median Wage means the median hourly wage as determined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics Program for all occupations within the El Paso Metropolitan Statistical Area, as adjusted on January 1st of each applicable calendar year, and multiplied by 2,080 hours; provided, however that in no event shall the applicable median hourly wage used to calculate the Annual Area Median Wage be less than the 2022 median hourly wage as currently established for the El Paso Metropolitan Statistical Area, which is \$16.43.

Annual Payment Date means by July 1st of each year in which a Property Tax Grant is due and owing to Company.

Business Day shall mean a day that is not a Saturday, Sunday or legal holiday in the State of Texas. All other references to "days" hereunder shall mean calendar days.

City Council has the meaning ascribed to that term in Recital D.

City's Proportionate Share has the meaning ascribed to that term in Section 4.6.1 herein.

Commencement of Construction shall mean when clearing and grading on the land has commenced.

Commencement of Vertical Construction shall mean when Company or an Affiliate has executed a construction contract and commenced or caused the commencement of installation of footings for buildings to begin vertical construction on the Land.

Company's Proportionate Share means the costs attributable to the portion of the design and construction of the Stan Roberts Sr. Avenue Improvements that are the responsibility of the Company as the property owner of the Land under Title 19 (Subdivision and Development Plats) of the El Paso Municipal Code. The Parties agree that Company's Proportionate Share under Title 19 of the El Paso Municipal Code with respect to the Stan Roberts Sr. Avenue Improvements is one-half of the right-of-way width. Otherwise stated, Company's Proportionate Share will equal half of the total Construction Costs for the Stan Roberts Sr. Avenue Improvements.

Completion Date means the date as of which Company receives a temporary or permanent certificate of occupancy for one or more buildings or portion of a building on the Land. The Completion Date must occur on or before the Completion Deadline.

Completion Deadline means seven (7) years from the Commencement of Vertical Construction, subject to extension on account of Force Majeure, as provided in Section 23.

Comprehensive Plan means the City's Plan El Paso Comprehensive Plan, adopted pursuant to Ordinance No. 017751, adopted by the City Council on March 6, 2012.

Confidential Business Information has the meaning ascribed to that term in Section 19.

Construction Costs means the aggregate of the following costs expended or caused to be expended by or on behalf of Company or an Affiliate relating to construction and installation of Project Improvements and related infrastructure, including costs such as land acquisition; site development and construction costs; general contractor and subcontractor fees; the costs of supplies, materials and construction labor; buildings (foundation, interior, and exterior improvements); structures; utilities; paving; grading; demolition; environmental remediation; lighting; signage; landscaping; engineering fees and costs; surveying costs; fees of consultants; architectural and design fees; legal fees; financing costs and fees; zoning fees; building permit, development, and other city fees (if applicable); sewer basin fees; water and sewer tap fees; water, wastewater and thoroughfare impact fees (if applicable); insurance and taxes directly related to the construction of the Project Improvements; and other costs and fees for the construction and completion of the Project Improvements (or portion thereof).

Contract of Sale for the Land means that certain Contract of Sale for the Land entered into between the City as seller and Company as buyer, effective as of December 5, 2023, as may be amended.

Data Center means one or more data centers and/or other facilities used to house, and in which are operated, maintained and replaced from time to time, computer systems and associated components, such as telecommunications and storage systems, cooling systems, power supplies and systems for managing property performance (including generators and mechanical and electrical yards), and equipment used for the transformation, transmission, distribution and management of electricity (including private substations), internet-related equipment, data communications connections, private communication towers, environmental controls and security devices, structures and site features, as well as certain accessory uses or buildings located on the land and other related or associated uses, buildings or structures such as utility buildings; private utility facilities; office(s); buildings for support staff; warehousing for logistics, storage and/or other similar uses; cafeteria; guardhouse; diesel storage tanks; fuel storage for emergency generators; water storage tanks; security fencing; and other structures, improvements and appurtenants.

Effective Date has the meaning ascribed to it in Section 3.

El Paso Certified M/WBE Company means an El Paso Company that has received certification as either a minority-owned business enterprise (MBE), a woman-owned business enterprise (WBE) or a disadvantaged business enterprise (DBE) by the El Paso Hispanic Chamber.

El Paso Company(ies) means a business that has a principal business office located within the corporate limits of the City; and from such principal business office, performs a function or provides a service useful or necessary for construction of the Project Improvements. For the purposes of this definition, a “principal” office does not mean its headquarters and can be one of multiple offices throughout the State of Texas and/or the United States maintained by such company. An El Paso Company may or may not also be classified as an El Paso Certified M/WBE Company.

Employment Commitment has the meaning ascribed to it in Section 4.3.

Employment Commitment Date has the meaning ascribed to it in Section 4.3.

Employment Report has the meaning ascribed to it in Section 4.4.2.

EPCAD means the El Paso Central Appraisal District.

Existing Zoning means the zoning of the Land as of the Effective Date, which is the C-4 (Commercial District) as further described by Title 20 (Zoning) of the El Paso Municipal Code.

First Grant Year (i) for the Initial Project Improvements, shall mean the twelfth calendar year following the year in which Company provides the City with the Initial Completion Report; and (ii) for each Subsequent Phase, shall mean the twelfth calendar year following the year in which the Company provides the City with the Subsequent Investment Report for such Subsequent Phase, as applicable. For the avoidance of doubt, the intent of the timing for the First Grant Year is that the first Property Tax Grant (for each Phase, respectively) includes the Property Tax Revenues attributable to the eleventh calendar year following the year in which Company provides the City with the applicable completion report, which such taxes are due in January of the twelfth calendar year (hence the reason that the grant payments begin in the twelfth calendar year). The Tax Abatement Agreement abates taxes in the first through tenth years following the year in which Company provides the City with the applicable completion report.

Force Majeure shall mean any delay due to any of the following acts or events: (i) transportation disasters, whether by sea, rail, air or land; (ii) strikes, lockouts, work stoppage or slowdown or other labor disputes or material shortages; (iii) actions or failures to act of a governmental authority, including any changes to the plans and specifications required as a condition to issuance of any permits or any changes in laws or codes not reasonably foreseeable, and any delay in issuance of necessary permits by any governmental authority having jurisdiction, including unreasonable delays by the City (based on the then-current workload of the City department(s) responsible for undertaking the activity in question) in issuing any permits, consents, or certificates of occupancy or conducting any inspections of or with respect to the Land and Project Improvements, but excluding delays due to work conditions that violate applicable codes and regulations; (iv) adverse weather conditions, including rain of unusual duration or volume, hurricanes, lightning, tornadoes, earthquakes, floods or the acts of God; (v) epidemics or pandemics (including the COVID-19 pandemic) or any governmental orders, actions, shut-downs, mandates, restrictions or quarantines, or any quasi-governmental orders, actions, shut-downs, mandates, restrictions or quarantines resulting from any epidemics or pandemics, and any public health emergencies, whether declared by local, state or federal governmental authorities or agencies; (vi) wars, terrorism, civil disturbances, riots, insurrections, civil unrest, vandalism and sabotage; (vii) labor shortages or moratoriums; (viii) fire or other material casualty; (ix) mechanical failure of equipment; (x) utility delays or interruptions; (xi) any emergency event that threatens imminent harm to property or injury to persons; (xii) any force majeure event or excusable delay under the general contractor's construction contract; (xiii) discovery or remediation of an environmental issue on the Land; (xiv) inability or delay in obtaining a permit or approval from TxDOT or another entity required for construction of any of the Stan Roberts Sr. Avenue Improvements; (xv) inability or delay in obtaining any easements needed for construction of the Stan Roberts Sr. Avenue Improvements; and (xvi) any other causes of any kind whatsoever, whether similar to those enumerated or not, which are beyond the control of such Party in the performance of its obligations hereunder.

Full-Time Job means a job located at or based out of the Project Improvements that: (i) is filled by an individual for (a) forty (40) hours per week or (b) less than forty (40) hours per week if such other measurement is used by Company or an Affiliate to define full-time employment in accordance with its then current personnel policies and regulations (including paid time off); and (ii) pays at least the Annual Area Median Wage. For example, if Company or an Affiliate has a company-wide policy that considers full-time employment to be thirty-five (35) hours per week, a job provided by Company or an Affiliate for at least thirty-five (35) hours per week shall be considered a Full-Time Job. A Full-Time Job is considered “based out of” the Project Improvements if the Full-Time Job is on the payroll at such location. A Full-Time Job may include remote employees so long as the remote employees are Regional Residents.

Grant Year means a calendar year in which the City is obligated pursuant to this Agreement to pay Company one or more Property Tax Grant(s).

Initial Completion Report is defined in Section 4.4.1.

Initial Project Improvements means the first building, portion of a building, or group of buildings to be constructed and completed on the Land (including any Personal Property located therein) which meets the Investment Commitment, and may be designated by Company as the Initial Project Improvements (also referred to as Phase 1) or otherwise considered a part of the Initial Project Improvements in accordance with the terms of this Agreement, including but not limited to Section 4.2 herein.

Initial Project Improvements Boundary means the physical boundary in which the Initial Project Improvements are located, as identified by metes and bounds and a survey map provided by Company. The Initial Project Improvements Boundary shall be within Company’s sole discretion.

Investment shall mean costs expended by or on behalf of Company or an Affiliate for (i) Construction Costs, and/or (ii) Personal Property.

Investment Commitment has the meaning ascribed to that term in Section 4.1.

Land means the real property described on Exhibit “A” which is attached hereto and incorporated herein by reference for all purposes under this Agreement, plus any additional land within a half-mile radius of the real property boundaries referenced on Exhibit “A” that is acquired by Company or an Affiliate subsequent to the Effective Date. If Company or an Affiliate acquires any such additional land, upon notice thereof to the City, this Agreement shall automatically apply with respect thereto, and the definition of “Land” hereunder shall include such additional property regardless of whether the legal description of such additional property is attached hereto.

Mortgage means a mortgage, deed of trust, sale and leaseback or other form of secured financing.

Mortgagee means the holder of a Mortgage on the Land.

Personal Property means any personal property that (i) is subject to ad valorem taxation and is rendered for that purpose to the appraisal district having jurisdiction over the Land; (ii) is located on the Land (or within improvements on the Land); and (iii) was not located in the City prior to the Effective Date.

Phase means the Initial Project Improvements and any Subsequent Phase, as applicable. The total number of Phases eligible for Property Tax Grants as described hereunder shall be limited to five (5) Phases. Each Phase will require one or more separately identifiable Tax Account(s) as further described in Section 4.2 herein.

Phase 1 means the Initial Project Improvements.

Project has the meaning ascribed to that term in Recital A.

Project Approvals means the approvals and other actions set forth on Exhibit “E” hereto.

Project Improvements means improvements constructed or caused to be constructed on the Land by Company and/or an Affiliate.

Property Tax Grants has the meaning ascribed to that term in Section 5.1.2.

Property Tax Revenues means the total amount of City ad valorem taxes on (i) the Land and any improvements thereon, including the Project Improvements; and (ii) Personal Property, paid by or on behalf of Company or an Affiliate. For the avoidance of doubt, taxes “paid by or on behalf of Company or an Affiliate” includes without limitation taxes received by the City that are paid by or on behalf of Company or an Affiliate to the State of Texas or other entity and are then remitted to the City.

Regional Resident(s) means individuals who reside (1) within El Paso County, Texas and/or (2) at any location within fifty (50) miles of the real property boundaries of the Land.

Reports means the Initial Completion Report, the Employment Report, and the Subsequent Investment Report(s) (if any).

Stan Roberts Sr. Avenue Improvements means improvements to Stan Roberts Sr. Avenue to include the full reconstruction and widening of approximately 7,500 linear feet of Stan Roberts Sr. Avenue, in the location generally depicted on Exhibit “F” hereto, which will include: a four lane divided road (two lanes in each direction); landscaped raised medians; sidewalks with landscaped parkways; street illumination; and bicycle facilities, as further illustrated on the street cross-section included with Exhibit “F” attached hereto or any equivalent cross-section included as part of the City’s adopted Street Design Manual, in Company’s discretion. Otherwise stated, Company may elect,

in its discretion, to comply with the street cross-section included with **Exhibit “F”** or another equivalent street cross-section included as part of the City’s adopted Street Design Manual. The Stan Roberts Sr. Avenue Improvements do not include water, sewer, or storm water improvements.

State means the State of Texas.

Subsequent Investment Report or **Subsequent Investment Reports** has the meaning ascribed to that term in **Section 4.4.3**.

Subsequent Investment Threshold has the meaning ascribed to that term in **Section 4.4.3**.

Subsequent Phase means any building, portion of a building, or group of buildings (including any Personal Property located therein) constructed and completed on the Land subsequent to the Initial Project Improvements which meets the Subsequent Investment Threshold, and may be designated by Company or otherwise considered part of a Subsequent Phase in accordance with the terms of this Agreement, including but not limited to **Section 4.2** herein. Any Subsequent Phase(s) will be numbered in sequential order of development by Company in its discretion. By way of example, the second Phase shall be “Phase 2,” the third Phase shall be “Phase 3,” and so on and so forth.

Subsequent Phase Boundary means the physical boundary or boundaries in which a Subsequent Phase is located, as identified by metes and bounds and survey map(s) provided by Company. The Subsequent Phase Boundary shall be within Company’s sole discretion.

Tax Abatement Agreement has the meaning ascribed to it in Recital G.

Tax Account means a business personal property account or a real property account established with and/or recognized by EPCAD or its successor that has an identifying property ID number.

Tax Year has the meaning assigned to such term in Section 1.04 of the Texas Tax Code (i.e., the calendar year).

Taxes means any and all taxes, special taxes, assessments, levies, impositions, duties, deductions, withholding, charges and fees, including those imposed with respect to any assessment districts, infrastructure financing, community facilities districts, community taxing districts, maintenance districts or other similar districts.

Term has the meaning ascribed to it in **Section 3**.

TPIA has the meaning ascribed to that term in **Section 19**.

Twelve-Month Period means the period between February 1 of a given year and January 31 of the following year.

Water and Wastewater Agreement means that certain Water and Wastewater Agreement between the Company and the El Paso Water Utilities Public Service Board, a component unit of the City (“EPWater”), pursuant to which EPWater agrees to provide water and wastewater services and certain infrastructure for the Project, all as more particularly described therein.

3. TERM.

This Agreement will take effect on the last date of execution of this Agreement by all Parties (the “**Effective Date**”) and, unless terminated earlier in accordance with its terms and conditions, will expire thirty-five (35) years from the Effective Date (the “**Term**”). The Company may at any time and for any reason terminate this Agreement automatically upon notice thereof to the City, and upon such termination this Agreement shall be null and void and the Parties shall have no further rights or obligations with respect hereto.

4. COMPANY OBLIGATIONS, GOALS AND COMMITMENTS.

4.1. Investment Commitment and Use.

As conditions to receipt of the Property Tax Grants, subject to Force Majeure in accordance with Section 23 herein, (i) the Commencement of Construction must occur within five (5) years of the Effective Date; (ii) the Completion Date must occur on or before the Completion Deadline, and (iii) Company must expend or cause the expenditure by the Completion Deadline of an Investment of at least Eight Hundred Million Dollars (\$800,000,000.00) (the “**Investment Commitment**”). For the avoidance of doubt, the same Investment counted and reported for purposes of measuring attainment of the Investment Commitment under this Agreement will also be counted for purposes of measuring attainment of the Investment Commitment under the Tax Abatement Agreement. After the Completion Deadline during the Term, when in use, the Project Improvements must be used for a lawful use related to the support and/or operation of Company’s commercial, business, retail, or industrial uses. Notwithstanding the terms of this Agreement, Company will have no obligation to construct the Project Improvements (including without limitation any Phase thereof) and may elect to construct or not to construct the Project Improvements in its sole and absolute discretion.

4.2 Phasing; Timing of Development.

Company may develop the Land in one or more Phases extending over a period of years; and, if so, Company shall be eligible for separate Property Tax

Grants for each Phase that meets either the initial Investment Commitment or the Subsequent Investment Threshold (as defined herein) as further provided herein, for up to five (5) Phases. Grant Years for separate Phases may run concurrently or sequentially. Company will designate separate Phases by providing notice to the City (a “**Designation Notice**”), which notice(s) may describe the Initial Project Improvements Boundary or a Subsequent Phase Boundary, as applicable, to describe what constitutes a Phase, without the necessity of further approval or signature of the Parties, with such updates being sequentially numbered. Along with the Designation Notice, Company will provide the applicable property ID number(s) for the Tax Account(s) applicable to such Phase. Company will work with EPCAD to establish one or more separate Tax Account(s) to distinguish the Land, Project Improvements and Personal Property that make up each Phase. Company may adjust the Initial Project Improvements Boundary or a Subsequent Phase Boundary to include additional land (and improvements/Personal Property thereon) not included in the initial boundaries of such Phase by providing notice of such boundary adjustment and updated legal description, survey map and applicable Tax Account information to the City. If Company completes new Investment after submitting the Initial Completion Report, but does not designate any Subsequent Phases, then all improvements on the Land (including all Personal Property) will be considered a part of Phase 1 and will be included in the calculation of the Property Tax Grants for Phase 1 during the applicable Grant Years for Phase 1. Upon the City’s request, Company will provide any reasonable Tax Account information needed to for such calculation. Similarly, if Company designates Subsequent Phases and then later completes or installs additional improvements on the Land (including Personal Property) that were not designated as part of a Phase, such improvements shall be considered a part of the final Phase that Company designated and will be included in the calculation of Property Tax Grants for the remaining Grant Years for such final Phase. Upon the City’s request, Company will provide any reasonable Tax Account information needed for such calculation. By way of example, if Company designates five (5) Phases and then completes additional improvements and/or installs additional Personal Property, then all such additional improvements and/or Personal Property will be considered a part of Phase 5 and will be included in the calculation of the Property Tax Grants for the remaining Grant Years for Phase 5. There is no cap on the amount of Investment or improvements that may constitute a Phase (e.g., what constitutes a Phase is not limited by the Investment reported in the Initial Completion Report or Subsequent Investment Report for each such Phase, as applicable).

The Designation Notice for Phase 1 may be (but is not required to be) provided in the Initial Completion Report. A Designation Notice for a Subsequent Phase may be (but is not required to be) provided in a Subsequent Investment Report. Notice of designation of a Phase under the Tax Abatement Agreement may also count as notice for designation of a Phase under this Agreement.

Notwithstanding any statement to the contrary herein, all terms, conditions and obligations of this Agreement shall apply to each Phase independently.

The City acknowledges that as of the Effective Date, the Company cannot predict if, when or at what rate the development of the Project will occur, which will depend upon numerous factors, including factors outside of the control of the Company, such as market orientation and demand, competition, availability of qualified laborers and weather conditions. The Company may develop the Project Improvements in such order and at such rate and times as the Company deems appropriate in its sole and absolute discretion, which the City agrees is consistent with the intent, purpose and understanding of the Parties. Nothing in this Agreement shall be construed to require the Company to proceed with developing the Project or any Phase or portion thereof; however, development of the Project Improvements (or Phase or portion thereof) in accordance with the terms of this Agreement is a condition precedent to receipt of the Property Tax Grants (for each Phase, as applicable).

4.3 Employment Commitment.

Within four (4) years following the Completion Deadline (“**Employment Commitment Date**”), Company will provide or cause to be provided at least fifty (50) Full-Time Jobs (the “**Employment Commitment**”). Thereafter, Company will maintain at least fifty (50) Full-Time Jobs during any remaining Grant Years in which one or more Phase(s) is receiving Property Tax Grant(s). The Full-Time Jobs that are counted for the Employment Commitment are cumulative and may include Full-Time Jobs for any Phase. Otherwise stated, the fifty (50) Full-Time Jobs required herein is a total of at least fifty (50) Full-Time Jobs for all Phases combined (and it is not required to have fifty (50) Full-Time Jobs for each separate Phase). Jobs as of December 31 of the year they were created may be included for reporting purposes if they otherwise meet the requirements of being a Full-Time Job. Full-Time Jobs counted for purposes of measuring attainment of the Employment Commitment under this Agreement will also be counted for purposes of measuring attainment of the Employment Commitment under the Tax Abatement Agreement. Nothing in this Agreement shall be construed to require the Company to achieve the Employment Commitment; however, after the Employment Commitment Date, the Employment Commitment is a condition to receipt of the full Property Tax Grants (for each Phase, as applicable). Failure to meet the Employment Commitment will have no effect on Property Tax Grants already provided prior to the Employment Commitment Date, if any.

4.4 Reports and Filings by Company.

4.4.1 Initial Completion Report.

Provided that the Completion Date occurred on or before the

Completion Deadline, on or before April 30 of the first full calendar year following the calendar year in which the Completion Deadline occurs, Company must provide a written report to the City, substantially in the form attached hereto as **Exhibit “B”**, that confirms Company achieved the Investment Commitment (the “**Initial Completion Report**”). For the avoidance of doubt, in order to satisfy the reporting requirement for receipt of the Property Tax Grants for the Initial Project Improvements, Company is only required to submit sufficient documentation in the Initial Completion Report to show that at least \$800,000,000.00 in Investment was achieved (and shall not be required to submit additional documentation for any Investment that exceeds \$800,000,000.00). Provision of the Initial Completion Report under the Tax Abatement Agreement will also constitute provision of the Initial Completion Report under this Agreement. If the Completion Date occurs in a year prior to the year of the Completion Deadline, Company may submit the Initial Completion Report in an earlier year, in its sole discretion.

4.4.2 Employment Report.

On or before April 30 of the first full calendar year following the year in which the Employment Commitment Date occurs, Company must provide the City with a report that sets forth the total number of individuals who held Full-Time Jobs as of December 31 of the previous year, in the form attached hereto as **Exhibit “C”** (the “**Employment Report**”). Company may redact employee identification numbers and in no event will Company be required to provide social security numbers or other nonpublic personal information about the employees. If the Employment Commitment was not met, Company must include an explanation as to why Company believes the Employment Commitment was not met and the efforts that were utilized to meet the Employment Commitment. Provision of the employment report under the Tax Abatement Agreement will also constitute provision of the Employment Report provided under this Agreement.

4.4.3 Subsequent Investment Report.

At any time prior to expiration of the Term, Company may (but is not required to) file one or more “**Subsequent Investment Reports**” with the City substantially in the form attached hereto as **Exhibit “D”**. Each Subsequent Investment Report shall confirm that Company has made or caused to be made additional Investment on the Land in an aggregate amount of at least \$800,000,000.00 (the “**Subsequent Investment Threshold**”), which may be comprised of additional Investment that was not outlined in the Initial Completion Report or a prior Subsequent Investment Report. For the avoidance of doubt, in order to satisfy the

reporting requirement for receipt of the Property Tax Grants for a Subsequent Phase, Company is only required to submit sufficient information in the Subsequent Investment Report for such Phase to show that the Subsequent Investment Threshold was achieved (and shall not be required to submit additional documentation for any Investment that exceeds \$800,000,000.00). The Subsequent Investment Report may include solely new real property improvements, solely Personal Property or a combination of both real property improvements and Personal Property that constitutes a Subsequent Phase. For the avoidance of doubt, Company shall not be obligated to submit any Subsequent Investment Reports and failure to submit any such reports shall not be a default hereunder or a condition to receipt of the Property Tax Grants for the Initial Project Improvements. Provision of the Subsequent Investment Report under the Tax Abatement Agreement will also constitute provision of the Subsequent Investment Report provided under this Agreement. As noted in Section 4.2, the Subsequent Investment Report may serve as Company's notice to the City to designate a Subsequent Phase.

Notwithstanding any statement to the contrary herein, as stated in Section 4.2, Company may (but shall not be required to) designate one or more Phases. Any improvements (including Project Improvements and Personal Property) in excess of the improvements included as part of the Subsequent Investment Threshold for the final Phase that Company designates will be considered a part of such final Phase and shall be included in the calculation of the Property Tax Grants for any remaining Grant Years for the final Phase. The "final" Phase may be Phase 1 if Company only designates one Phase.

4.5 El Paso Companies and El Paso Certified M/WBE Companies.

Company intends to use commercially reasonable efforts to expend or cause the expenditure of a portion of the Construction Costs with El Paso Companies and El Paso Certified M/WBE Companies in the construction of the Project Improvements, in Company's discretion. For the avoidance of doubt, Company's failure to expend or cause the expenditure of a portion of the Construction Costs with El Paso Companies and/or El Paso Certified M/WBE Companies shall not be considered a default hereunder and such expenditures shall be within Company's sole discretion.

4.6 Stan Roberts Sr. Avenue Improvements.

4.6.1 Subject to the Parties' obtaining any required permits or approvals from the Texas Department of Transportation ("TxDOT") and subject to extension for events of Force Majeure, the Parties agree that the Company shall design and construct or cause the design and construction of the Stan

Roberts Sr. Avenue Improvements within five (5) years of the Effective Date. The Stan Roberts Sr. Avenue Improvements may be constructed, completed and/or accepted in phases, in Company's discretion. The Company agrees to initially fund when due the cost of the Stan Roberts Sr. Avenue Improvements and the City agrees to reimburse the Company for all Construction Costs associated with the Stan Roberts Sr. Avenue Improvements that are beyond the Company's Proportionate Share in an amount not to exceed \$7,500,000.00, (subject to adjustment as described herein, the "**Maximum Reimbursement Amount**") (collectively, the "**City's Proportionate Share**"). The Maximum Reimbursement Amount may be increased by up to twenty percent (20%) if the actual Construction Costs incurred for the Stan Roberts Sr. Avenue Improvements exceed the City's construction cost estimates shared with Company as of the Effective Date, subject to approval by the City's engineer which shall not be unreasonably withheld.

4.6.2 As a condition to receipt of the reimbursement set forth in Section 4.6.1, Company agrees to provide a written disbursement request to the City accompanied by reasonable supporting documentation evidencing Construction Costs paid or incurred for the Stan Roberts Sr. Avenue Improvements, which such supporting documentation may include but not be limited to, invoices or affidavits of payment/affidavits as to debts and liens ("**Disbursement Request**"). Upon completion of the Stan Roberts Sr. Avenue Improvements, the City will accept such improvements (which acceptance will not be unreasonably withheld, conditioned, or delayed) and from and after such acceptance, the City will own the Stan Roberts Sr. Avenue Improvements and be responsible for all maintenance and operation related thereto, except for any maintenance required of the abutting property owner for sidewalks, gutters, and curbs pursuant to Section 13.04.050 of the El Paso, Texas Code of Ordinances. Otherwise stated, the City will accept the Stan Roberts Sr. Avenue Improvements if the improvements are constructed to City standards set forth in applicable City ordinances, as confirmed by Company's engineer. The City will disburse the City's Proportionate Share to the Company upon the City's acceptance of the Stan Roberts Sr. Avenue Improvements and within 90 calendar days following the City's receipt of the Disbursement Request.

4.6.3 Company agrees to coordinate construction of the Stan Roberts Sr. Avenue Improvements with TxDOT, if required by TxDOT. The City agrees to assist in facilitating obtaining any approvals required by TxDOT for the Stan Roberts Sr. Avenue Improvements (if any such approvals are required). Further, Company agrees to coordinate construction of the Stan Roberts Sr. Avenue Improvements with EPWater for EPWater's construction of any related water, sanitary sewer and storm improvements.

4.6.4 The City agrees that Company's construction of the Stan Roberts Sr. Avenue Improvements will not be subject to competitive or public bidding requirements under applicable law.

4.6.5 For the avoidance of doubt, the City agrees that completion of the Stan Roberts Sr. Avenue Improvements (or any portion thereof) shall not be a condition to any plat approval for the Land (or portion thereof), approval of construction plans, building permits, certificates of occupancy, acceptance of on-site public improvements, or any other approval required for the Company to begin construction on the Land and complete the Project Improvements (or portion thereof).

4.6.6 The City agrees to obtain any third-party rights-of-way, consents, or easements needed for the construction and/or use of the Stan Roberts Sr. Avenue Improvements (if any are required for such construction and/or use), which the City may obtain through the use of its power of eminent domain or through other means, in the City's discretion. Any reasonable and necessary costs paid or incurred in obtaining such third-party rights-of-way, consents, or easements shall be considered Construction Costs for the Stan Roberts Sr. Avenue Improvements. Nothing in this subsection is intended to constitute a delegation of the police powers or governmental authority of the City, and the City reserves the right, at all times, to control its proceedings in eminent domain. Further, the Parties agree to cooperate in any future amendments to this Agreement needed to enable Company to construct the Stan Roberts Sr. Avenue Improvements.

4.7 Inspections of Land and Project Improvements.

From and after the date that Company submits any Reports, at a time scheduled by Company during Company's normal business hours and following at least thirty (30) calendar days' prior written notice to Company, but no more than once per calendar year, the City will have the right, in the remaining months of the calendar year in which Company submits any Reports, for up to two City employees to inspect and evaluate the Land and the Project Improvements solely in order for the City to ensure that the Project Improvements are made according to the terms and conditions of this Agreement. Notwithstanding the foregoing, Company shall have the right to require that any representative of the City be escorted by a representative or security personnel of Company during any such inspection and evaluation, and that any such City representatives follow all security rules and requirements of Company during any inspection. Company shall be able to exercise its sole, reasonable discretion in scheduling a requested inspection so as not to interfere with its operations or activity on the Land. Company may require that any and all individuals inspecting the Land or the Project Improvements must first sign a confidentiality agreement under which they agree to not discuss or publicize any information they observe during an

inspection. Further, Company may require that any information or documents that the City representatives view as part of an inspection are left at the Project Improvements.

5. **PROPERTY TAX GRANTS; WAIVER OF FEES.**

5.1 **Property Tax Grants.**

5.1.1 **Initial Project Improvements.**

Subject to the terms and conditions of this Agreement, provided that Company achieves the Investment Commitment by the Completion Deadline, subject to all extensions of time allowed by this Agreement, the City agrees to provide Company with annual grants on each Annual Payment Date in an amount equal to eighty percent (80%) of the aggregate Property Tax Revenue attributable to the Initial Project Improvements for the Twelve-Month Period ending in the same Grant Year (for each Grant Year, as applicable) (the “**Initial Property Tax Grants**”), beginning in the First Grant Year for the Initial Project Improvements, and continuing for 14 additional consecutive Grant Years thereafter, for a total of 15 consecutive Initial Property Tax Grants for the Initial Project Improvements; provided, however that (i) the City has received, prior to the applicable Annual Payment Date, the City ad valorem taxes assessed against the Initial Project Improvements (including any Personal Property located thereon) in full for the respective Grant Year (i.e., the Tax Year immediately preceding the year in which an annual Property Tax Grant is to be made), with it being understood that the immediately preceding Tax Year is used to determine the amount of the annual Initial Property Tax Grant; and (ii) Company shall not be entitled to receive Initial Property Tax Grants after the expiration of the Term.

5.1.2 **Additional Grants for Subsequent Phases.**

Subject to the terms and conditions of this Agreement, for each Subsequent Phase that meets the Subsequent Investment Threshold, the City agrees to provide Company with annual grants on each Annual Payment Date in an amount equal to eighty percent (80%) of the aggregate of Property Tax Revenue attributable to each eligible Subsequent Phase, as applicable, for the Twelve-Month Period ending in the same Grant Year in which the Property Tax Grant(s) for that Grant Year are payable (collectively with the Initial Property Tax Grants, the “**Property Tax Grants**”). A Subsequent Phase shall be eligible for and receive Property Tax Grants if such Phase meets the Subsequent Investment Threshold (as

confirmed in a Subsequent Investment Report). Property Tax Grants for each Subsequent Phase shall be paid to the Company beginning in the First Grant Year for each Subsequent Phase, as applicable, and continuing for 14 additional consecutive Grant Years thereafter, for a total of 15 consecutive Property Tax Grants for each eligible Subsequent Phase; provided, however that (i) the City has received, prior to the applicable Annual Payment Date, the City ad valorem taxes assessed against the applicable Subsequent Phase, if applicable (including any Personal Property located thereon) in full for the respective Grant Year (i.e., the Tax Year immediately preceding the year in which an annual Property Tax Grant is to be made), with it being understood that the immediately preceding Tax Year is used to determine the amount of the annual Property Tax Grant; and (ii) Company shall not be entitled to receive Property Tax Grants after the expiration of the Term. For the avoidance of doubt, the Property Tax Grant (and respective Property Tax Revenues attributable to each Phase) shall be calculated separately for each Phase that is eligible to receive a Property Tax Grant in any applicable year. By way of example, if Company completes four Phases (in its discretion) and meets the Subsequent Investment Threshold for all of Phases 2, 3, and 4, then Company will be entitled to fifteen (15) annual Property Tax Grants for Phase 2, fifteen (15) annual Property Tax Grants for Phase 3, and fifteen (15) annual Property Tax Grants for Phase 4 (in addition to the Initial Property Tax Grants). The Property Tax Grants for separate Phases may be paid concurrently or sequentially depending on when the First Year of Property Tax Grant begins for each Phase. For the avoidance of doubt, if Company designates a final Phase and then later completes or installs additional improvements on the Land (including Personal Property) that were not designated as part of a Phase, then all such subsequent Investment (including Project Improvements and Personal Property used to meet a Subsequent Investment Threshold and all Project Improvements and Personal Property in excess of the Subsequent Investment Threshold) will be considered a part of the final Phase and included in the calculation of any remaining Property Tax Grants for the final Phase.

5.2 Appropriation of Funds for Property Tax Grants.

It is acknowledged that all Property Tax Grants paid pursuant to this Agreement shall come from currently available revenues of the City and may, but are not required to, come directly from Property Tax Revenues. In the event that the City does not appropriate funds for a Property Tax Grant payable pursuant to the terms of this Agreement, Company shall have the right to pursue all available rights and remedies under the law. Further, City and Company acknowledge that

the Property Tax Grants potentially available under this Agreement are a major factor in Company's decision to locate its operations on the Land, and any failure to appropriate funds for a Property Tax Grant would be a substantial detriment to Company. Therefore, the Term of this Agreement shall automatically be extended by one year for every year in which the City does not appropriate funds for a Property Tax Grant payable pursuant to the terms of this Agreement.

5.3 Waiver of Fees; No Parkland Dedication Required. Except as expressly provided in this Section 5.3, the City hereby waives, or shall cause to be waived, any and all impact fees and any and all other City fees, including but not limited to fees in lieu of parkland dedication, park fees, filing fees, development fees, application fees, review fees, inspection fees and permit fees, related to the Land and the Project (or portion thereof) or the design, development, construction or occupancy of the Project Improvements (or portion thereof). Further, by way of clarification, the City confirms that no parkland dedication is required under any applicable City ordinance, policy, or regulation since the Project is non-residential. Notwithstanding the foregoing, the City does not waive and Company agrees to pay: (a) reinspection fees (i.e., fee(s) for reinspection after failing an initial inspection) or other penalty fees incurred by the Company related to the Land and the Project (or portion thereof) or the design, development, construction or occupancy of the Project Improvements (or portion thereof); and (b) water and wastewater impact fees to the extent such fees are (i) duly adopted by the City Council of the City in accordance with Chapter 395 of the Texas Local Government Code and other applicable law; and (ii) generally applicable on a City-wide basis.

6. DEFAULT, TERMINATION AND FAILURE BY COMPANY TO MEET VARIOUS DEADLINES AND COMMITMENTS.

6.1 Failure to Meet Investment Commitment.

If the Completion Date does not occur on or before the Completion Deadline, or if the Investment Commitment is not met by the Completion Deadline, the City shall have the right to terminate this Agreement by providing written notice to Company without further obligation to Company, as its sole and exclusive remedy.

6.2 Failure to Timely Cause Commencement of Construction.

If Commencement of Construction does not occur within five (5) years of the Effective Date, the City shall notify Company in writing and Company shall have ninety (90) calendar days from receipt of the City's notice of such failure to cure such failure. If Company does not cure the failure within such ninety-day period, then as the City's sole and exclusive remedy under this Agreement, the City may reduce the number of Grant Years that Company is entitled to receive a Property Tax Grant for Phase 1 for each year or portion of a year that the Commencement of Construction is delayed beyond the initial five (5) years. By way of example, if the Commencement of Construction occurs more than five (5) years after the Effective Date but on or prior to the sixth anniversary of the Effective Date, then the City may reduce the number of Property Tax Grants from fifteen (15) to fourteen (14) consecutive years of Property Tax Grants for Phase 1. Failure to cause the timely Commencement of Construction shall only impact the number of Property Tax Grants for Phase 1.

6.3 Failure to Meet Employment Commitment.

In any year after the Employment Commitment Date in which Company is eligible to receive Property Tax Grant(s), if the employment level does not meet the Employment Commitment set forth in Section 4.3, the City shall notify Company in writing detailing the specific alleged failure and Company shall have one-hundred eighty (180) calendar days from receipt of the City's notice of such failure to cure such failure. If Company does not cure the failure within such one-hundred eighty day period, then the City may reduce the amount of any Property Tax Grant(s) Company is eligible to receive for that year as set forth herein, as its sole and exclusive remedy. Notwithstanding the foregoing, if Company meets the Employment Commitment in the following years, Company shall be entitled to the full amount of the Property Tax Grant(s) for such years.

6.3.1 After the Employment Commitment Date and subject to the notice and cure period set forth above, if the number of Full-Time Jobs falls below the Employment Commitment of fifty (50) Full-Time Jobs, but does not fall below forty-one (41) Full-Time Jobs (i.e., the number of Full-Time Jobs provided is between 41-49), any Property Tax Grant(s) for that year will be reduced by eight percent (8%) for each one Full-Time Job deficiency for that year. By way of example, a total of forty-five (45) Full-Time Jobs would be a deficiency of five (5) Full-Time Jobs, which would mean a forty percent (40%) reduction in the percentage of Property Tax Revenue that makes-up the Property Tax Grant from eighty percent (80%) to forty percent (40%).

6.3.2 After the Employment Commitment Date and subject to the notice and cure period set forth above, if the number of Full-Time Jobs falls

below forty-one (41) Full-Time Jobs (i.e., 40 or less), the Company will not be eligible to receive a Property Tax Grant in that year. Company will still be eligible in future years to receive Property Tax Grants if Company meets the Employment Commitment in future years.

6.4 Failure to Pay City Taxes.

A default shall occur if any City taxes owed on the Land or on Personal Property owned by Company, become delinquent and Company does not pay such taxes, cause such taxes to be paid or properly follow the legal procedures for protest and/or contest of any such taxes within the cure period specified herein. If any City taxes owed on the Land or on the Personal Property owned by Company become delinquent, the City shall notify Company in writing and Company shall have sixty (60) calendar days to cure such default. If the default has not been cured by such time, the City shall have the right to terminate this Agreement (limited to and solely with respect to the applicable Phase that has delinquent City taxes) immediately by providing written notice to Company and shall have all other rights and remedies that may be available to it under the law or in equity necessary to collect such delinquent taxes, as the City's sole and exclusive remedies. Either payment of such taxes or initiation of and ongoing engagement in legal proceedings for protest and/or contest of such taxes shall constitute a full cure. Notwithstanding anything to the contrary herein, Company shall have the right, to the extent permitted by law, to protest, oppose and vote against any and all Taxes, and to contest the appraised value of the Land and any improvements or Personal Property located thereon.

6.5 Foreclosure.

Subject to any rights of a Mortgagee hereunder, upon the occurrence of any of the following events, the City will have the right to terminate this Agreement (with respect to the applicable Phase(s) for which the event occurs), as its sole and exclusive remedy, immediately upon provision of written notice to Company of: (i) the completion of an action to foreclose or otherwise enforce a lien, Mortgage or deed of trust on the Land or improvements located on the Land; (ii) the involuntary conveyance to a third party of the Land or improvements located on the Land; or (iii) the appointment of a trustee or receiver for the Land or improvements located on the Land.

6.6 Failure to Submit Reports.

If Company fails to submit the Initial Completion Report in accordance with Section 4.4.1 or the Employment Report in accordance with Section 4.4.2, the City shall provide written notice to Company. If Company fails to provide any such report within thirty (30) calendar days following receipt of such written notice, the City will provide a second written notice to Company. If Company fails to provide the Initial Completion Report within thirty (30) calendar days following receipt of this second written notice, as its sole and exclusive remedy, the City may (but is not required to) delay the First Grant Year for Phase 1 until the calendar year following the year in which Company provides the City with the Initial Completion Report. If Company fails to provide the Employment Report within thirty (30) calendar days following receipt of this second written notice, as its sole and exclusive remedy, the City may (but is not required to) delay the Property Tax Grant for the year in which the Employment Report was due but not submitted (for any applicable Phase(s) otherwise eligible to receive a Property Tax Grant) until Company provides the City with the Employment Report. For the avoidance of doubt, failure to submit the Initial Completion Report or the Employment Report shall not be a default hereunder, but the City may withhold the Property Tax Grants in such a year until the City receives such reports.

6.7 Knowing Employment of Undocumented Workers.

Company acknowledges that the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. Company hereby certifies that Company, and any branches, divisions, or departments of Company, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Company, or any branch, division, or department of Company, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens), subject to any appellate rights that may lawfully be available to and exercised by Company, Company shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the value of any Property Tax Grant(s) received by Company hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum.

For the purposes of this Section 6.7, “**Simple Interest**” is defined as a rate of interest applied only to an original value, in this case the aggregate value of any Property Tax Grant(s) received by Company pursuant to this Agreement. This rate of interest can be applied each year, but will only apply to the amount of the Property Tax Grant(s) received hereunder and is not applied to interest calculated. For example, if the value of the Property Tax Grants received by Company

hereunder is \$10,000 and it is required to be paid back with four percent (4%) interest five years later, the total amount would be $\$10,000 + [5 \times (\$10,000 \times 0.04)]$, which is \$12,000. This Section 6.7 does not apply to violations of any subsidiary or other Affiliate of Company, any franchisees of Company, or any person or entity with whom Company contracts.

6.8 Failure to Construct the Stan Roberts Sr. Avenue Improvements.

If Company does not timely complete construction of the Stan Roberts Sr. Avenue Improvements in accordance with Section 4.6.1 herein, the City shall notify Company in writing and Company shall have ninety (90) calendar days (or, if Company is diligently and continuously attempting to cure following receipt of such written notice but reasonably requires more than ninety (90) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure) from receipt of the City's notice of such failure to cure such failure. If Company does not cure the failure within the aforementioned cure period, then as the City's sole and exclusive remedy under this Agreement, the City may reduce the number of Grant Years that Company is entitled to receive a Property Tax Grant for Phase 1 for each year or portion of a year that the completion of construction of the Stan Roberts Sr. Avenue Improvements is delayed beyond the initial five (5) years. By way of example, if the completion of construction of the Stan Roberts Sr. Avenue Improvements (as evidenced by Company's dedication of the same to the City) occurs more than five (5) years after the Effective Date but on or prior to the sixth anniversary of the Effective Date, then the City may reduce the number of Property Tax Grants from fifteen (15) to fourteen (14) consecutive years of Property Tax Grants for Phase 1. Failure to cause the timely completion of construction of the Stan Roberts Sr. Avenue Improvements shall only impact the number of Property Tax Grants for Phase 1. For the avoidance of doubt, the City may have other, separate remedies for failure to timely complete construction of the Stan Roberts Sr. Avenue Improvements under the Contract of Sale for the Land.

6.9 General Breach.

Unless and to the extent stated elsewhere in this Agreement, a Party will be in default under this Agreement if such Party breaches any material term or condition of this Agreement and such breach remains uncured after sixty (60) calendar days following receipt of written notice from the other Party referencing this Agreement and identifying the default and curative action required to cure the same (or, if the Party in breach has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than sixty (60) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure), the non-breaching Party, will have the right to terminate this Agreement (with respect to the applicable Phase(s) in which an uncured breach occurred) immediately by providing written notice to the other Party.

Notwithstanding the foregoing, the aforementioned cure period shall not be applicable to any monetary obligations of a Party hereunder. For the avoidance of doubt, a Party shall not be considered in default unless and until such Party receives a notice of default and fails to cure such failure within the cure period stated herein. In the event of City's default that is not cured within any applicable cure period, Company may terminate this Agreement, pursue an action for specific performance, or seek any other remedy allowable at law or in equity, except as limited by Section 6.11 herein.

6.10 City's Sole Remedy in the Event of Breach.

Except as otherwise specifically provided herein, the City's sole remedy in the event of Company's uncured breach of any condition or obligation under this Agreement will be the City's right to terminate this Agreement (with respect to the applicable Phase(s) in which an uncured breach occurred), after expiration of the applicable notice and cure period, upon written notice to Company of such termination and a detailed explanation citing the City's right to such termination. In addition, except as required by Section 6.7 of this Agreement, Company will not be required to repay any Property Tax Grants received in the event of a default.

6.11 Mutual Waiver of Consequential Damages.

Except in the case of gross negligence, bad faith or willful misconduct, for which claims for consequential damages are expressly reserved by the Parties, each Party hereby waives all claims against the other Party for any consequential or indirect damages that may arise out of or relate to this Agreement.

6.12 No Cross-Defaults.

Notwithstanding any statement to the contrary in this Agreement, all terms, conditions and obligations of this Agreement shall apply to each Phase independently. By way of example and for the avoidance of doubt, in the event of a default with respect to Phase 3 (if Company chooses, in its sole discretion, to develop Phase 3, or any Subsequent Phases), such default would have no impact on the Property Tax Grants, or Company's obligations with respect to the Initial Project Improvements, Phase 2, Phase 4 or any other Phase, as applicable (if such Phases exist), except Phase 3. Further, all terms, conditions and obligations of this Agreement shall apply independent of all terms, conditions, and obligations under the Tax Abatement Agreement. A default or termination under this Agreement does not constitute a default under the Tax Abatement Agreement, or vice versa.

7. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed that Company shall operate as an independent contractor in each and every respect under this Agreement and not as an

agent, representative or employee of the City. Company shall have the exclusive right to control all details and day-to-day operations relative to the Land and any improvements thereon and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. Company acknowledges that the doctrine of *respondeat superior* will not apply as between the City and Company, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. The Parties agree that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and Company.

8. INDEMNIFICATION AND RELEASE.

COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS SERVANTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) COMPANY'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF COMPANY, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, RELATED TO THE LAND, IMPROVEMENTS ON THE LAND, INCLUDING THE PROJECT IMPROVEMENTS, AND ANY OPERATIONS AND ACTIVITIES THEREON, OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE COMPANY SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE CITY AGAINST CLAIMS CAUSED BY THE CITY'S SOLE NEGLIGENCE OR WILLFUL MISCONDUCT, AND IF THE CITY INCURS CLAIMS THAT ARE CAUSED BY THE CONCURRENT FAULT OR NEGLIGENCE OF COMPANY AND THE CITY, THE COMPANY'S INDEMNITY OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL CLAIMS EQUIVALENT TO THE COMPANY'S OWN PERCENTAGE OF RESPONSIBILITY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

TO THE EXTENT ALLOWABLE BY TEXAS LAW; CITY HEREBY RELEASES AND AGREES TO HOLD HARMLESS COMPANY, ITS OFFICERS, AGENTS, AFFILIATES AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) THE CITY'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR

OMISSION OR INTENTIONAL MISCONDUCT OF THE CITY, ITS OFFICERS, SERVANTS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, RELATED TO THE LAND, IMPROVEMENTS ON THE LAND, INCLUDING THE PROJECT IMPROVEMENTS, AND ANY OPERATIONS AND ACTIVITIES THEREON, OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE CITY SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE COMPANY AGAINST CLAIMS CAUSED BY THE COMPANY'S SOLE NEGLIGENCE OR WILLFUL MISCONDUCT, AND IF THE CITY INCURS CLAIMS THAT ARE CAUSED BY THE CONCURRENT FAULT OR NEGLIGENCE OF COMPANY AND THE CITY, THE CITY'S OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL CLAIMS EQUIVALENT TO THE CITY'S OWN PERCENTAGE OF RESPONSIBILITY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

9. NOTICES.

Whenever any notice is required or permitted under this Agreement, it shall be in writing and shall be delivered (i) by electronic mail with a confirming copy being forwarded by a reliable overnight courier service within 24 hours thereafter to the recipient at the mailing address set forth below; (ii) personally, with acknowledgment of receipt being obtained by the delivering Party, (iii) by U.S. Certified Mail, return receipt requested; or (iv) by overnight delivery service by a reliable company, such as Federal Express or United Parcel Service, with acknowledgement of receipt being obtained by the delivering Party; provided that, any notice delivered to Company in the manner described in items (ii), (iii), or (iv) shall also be sent by electronic mail addressed as provided herein. Notice shall be deemed given when received. Until further notification by written notice in the manner required by this Section 9, notices to the Parties shall be delivered as follows:

City:

City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890
EDCompliance@elpasotexas.gov

Company:

Worldwide LLC
c/o Winstead PC
Attn: Laura Hoffmann
2728 N. Harwood Street, Suite 500
Dallas, Texas 75201
lhoffmann@winstead.com

10. ASSIGNMENT AND SUCCESSORS.

10.1 Affiliates and Future Owners or Lessees.

Company may at any time assign, transfer or otherwise convey any of its rights or obligations under this Agreement, in whole or in part, to an Affiliate, future owner of all or a portion of the Land or lessee of all or a portion of the Land or Project Improvements without the consent of the City, but upon written notice to the City (and upon such assignment the assigning entity shall be relieved of its covenants, commitments and obligations hereunder to the extent of the rights and obligations so assigned).

10.2 Collateral Assignment.

Company may assign its rights and obligations under this Agreement, in whole or in part, to a financial institution or other lender for purposes of granting a Mortgage in the Land and/or improvements thereon without the consent of the City, but upon written notice to the City.

10.3 Sale/Leaseback.

So long as Company or an Affiliate to which this Agreement has been assigned remains a lessee, or its substantial equivalent, Company may transfer fee simple title to the Land to a third party and continue to exercise its rights and obligations under this Agreement, including but not limited to the rights to receive Property Tax Grants hereunder, and may choose to retain its rights and obligations under this Agreement (in lieu of an assignment).

10.4 Other Assignment.

Except as otherwise provided by Sections 10.1, 10.2 and 10.3 herein, Company may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the consent of the City Council, which consent shall not be unreasonably withheld, conditioned or delayed, but conditioned on: (i) the prior approval of the assignee or successor and finding by the City Council that the proposed assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with the City under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of Company under this Agreement. Any attempted assignment other than an assignment pursuant to Sections 10.1, 10.2 or 10.3 without the City Council's prior consent shall constitute grounds for termination of this Agreement following ten (10) calendar days after receipt of written notice from the City to Company (provided that the City shall only be entitled to send such termination notice after Company's failure to cure within the cure period set forth in Section 6.9 herein). Any permitted assignee or successor in interest of Company of rights and/or obligations under this Agreement shall be deemed "Company" for all purposes under this Agreement.

11. ESTOPPEL CERTIFICATE.

Upon written request by Company to the City, the City will provide Company with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Company is in breach of this Agreement, the nature of the breach and the curative action required to cure the same; (ii) a statement as to whether this Agreement has been amended and, if so, the identity of each amendment; and (iii) any other factual matters reasonably requested that relate to this Agreement. The City Manager or its authorized designee may execute, after review as to form by the City Attorney's Office, on behalf of the City, any estoppel certificate requested by the Company that is consistent with this Section 11. The City acknowledges that an estoppel certificate may be relied upon by transferees or successors in interest to the Company and by Mortgagees holding an interest in the Land.

12. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations.

13. LIMITED WAIVER OF IMMUNITY.

The Parties are entering into this Agreement in reliance upon its enforceability. Consequently, the City unconditionally and irrevocably waives all claims of sovereign and governmental immunity which it may have (including, but not limited to, immunity from suit and immunity to liability), if any, to the extent, but only to the extent, that a waiver is necessary to enforce specific performance of this Agreement (including all of the remedies provided under this Agreement) and to give full effect to the intent of the Parties under this Agreement. Notwithstanding the foregoing, the waiver contained herein shall not waive any immunities that the City may have with respect to claims of injury to persons or property, which claims shall be subject to all of their respective immunities and to the provisions of the Texas Tort Claims Act. Further, the waiver of immunity herein is not enforceable by any party not a Party to this Agreement.

14. ADDITIONAL PROVISIONS.**14.1 Future Land Uses and Zoning.**

The City acknowledges that as of the Effective Date Company's proposed land use is consistent with and allowed pursuant to the C-4 (Commercial District) zoning classification of the Land. Moreover, the current Comprehensive Plan provides that uses consistent with this zoning classification are the most appropriate for the Land. In the event that the City receives any request for a residential zoning classification within 250 feet of the Land, the City will promptly provide Company with written notice of such request.

14.2 Compliance With and Changes in Applicable City Rules.

The City represents to the Company that no Applicable City Rule conflicts with the provisions of this Agreement. The City shall not add or modify any Applicable City Rule, including any zoning, land use or building regulation, with the express or inferred intent to specifically or inequitably target the Project, the Land, the Company or the data center industry or in a manner that adversely affects the Project, the Land or the data center industry.

14.3 Expedited Permitting.

During the Term, the City shall expedite the review and any response to the permits, approvals, maps, plans, inspections, applications and other requests in connection with the Land and Project Improvements (including staff review processing and actions by any boards and commissions). The City shall appoint an appropriate staff member with knowledge and experience in the relevant subject area dedicated to the prompt review of any and all plans and the prompt performance of any and all inspections required for the design, construction, development and occupancy of the Project Improvements (or portion thereof), and otherwise to organize and expedite such permit approval and review.

14.4 New Taxes.

City staff shall not during the Term recommend or support any new Taxes that are applicable solely to the Project, the Company, the Land, operators of computer equipment, or the data center industry or with the express or inferred intent to specifically or inequitably target the Project, the Company, the Land or the data center industry.

14.5 Entitlement to Develop.

The City represents to the Company that as of the Effective Date: (i) the Existing Zoning applies to the Property pursuant to Ordinance No. 019573 approved by the City Council on December 5, 2023, an ordinance validly adopted by the City Council in accordance with applicable law; and (ii) electronic data management businesses, corporate campuses, offices, and research and development uses are permitted uses under the Existing Zoning. The Company has the vested right to develop and operate the Project pursuant to Chapter 245 of

the Texas Local Government Code, including the right to maintain, remodel, renovate, rehabilitate, rebuild, replenish or replace the Project or any portion thereof (including any equipment used in operating the Project) throughout the Term for any reason, including in the event of damage, destruction or obsolescence of the Project or any portion thereof (including any equipment used in operating the Project). To the extent that the Project or any portion thereof (including any equipment used in operating the Project) is remodeled, renovated, rehabilitated, rebuilt, replenished or replaced, the Company may locate the Project or any portion thereof (including any equipment used in operating the Project) anywhere on the Land and still be eligible for the Property Tax Grants hereunder.

14.6 Calculation of Dates.

If the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday in the State of Texas, then the date for performance thereof shall be extended to the next Business Day.

14.7 Alternative Energy.

The City acknowledges that the Company is exploring (but shall not be obligated to pursue) options to use alternative energy sources, including solar panels, geothermal cooling and wind energy, to operate the Project or a portion thereof. The City represents to the Company that such alternative energy sources are permitted uses on the Land under the Applicable City Rules.

14.8 Project Approvals.

The City has taken all required actions with respect to the Project Approvals indicated on **Exhibit "E"**. The City shall assist and cooperate in good faith with the Company in connection with obtaining any other City approvals, permits, and similar documents, as may be necessary or desirable in connection with the development or operation of the Project. If City action is required in connection with obtaining any such approvals, permits, or other documents, the City shall take final action within ten (10) Business Days following its receipt of each such request; provided that such period shall be tolled for any period during which the City is awaiting revisions or additional information from the Company that are necessary to complete the City process.

14.9 Moratoria or Interim Control Ordinances.

No ordinance, resolution, policy or other measure enacted after the Effective Date that relates directly or indirectly to the Project or to fees associated with or the timing, sequencing or phasing of the development or construction of the Project shall apply to the Property or this Agreement, unless it is (i) reasonably found by the City to be necessary to the public health and safety of the residents of the City and (ii) generally applicable on a City-wide basis (except to

the extent necessary in the event of a natural disaster).

14.10 Other Approvals.

The City shall assist and cooperate in good faith with the Company in connection with obtaining any (i) approvals and permits from other governmental or quasi-governmental agencies having jurisdiction over the Land or the Project, and (ii) similar documents and instruments from third parties, as may be necessary or desirable in connection with the development or operation of the Project. If City action is required in connection with obtaining any such approvals, permits, documents or instruments, the City shall take final action within ten (10) Business Days following its receipt of each such request; provided that such period shall be tolled for any period during which the City is awaiting revisions or additional information from the Company that are necessary to complete the City process.

14.11 Ethical Business Practices; No Procurement Process.

In connection with the negotiation and performance of this Agreement, the City represents and warrants that it has complied and covenants that it shall comply with all Applicable City Rules and applicable laws, including without limitation anti-corruption legislation, and that it has used and shall use only legitimate and ethical business practices. The performance of any obligations under this Agreement does not require the Company to submit any bid or otherwise participate in any procurement process of the City or to undertake any other obligations required by procurement laws and regulations of the City or other applicable law.

15. NO WAIVER.

The failure of either Party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that Party's right to insist upon appropriate performance or to assert any such right on any future occasion.

16. VENUE AND JURISDICTION; ATTORNEYS' FEES.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in and be brought exclusively in either the federal courts of the Northern District of Texas, Dallas Division, or in the State District Courts of El Paso County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas. In the event any action is brought by either Party hereto against the other Party, relating to or arising out of this Agreement, the transaction described herein or the enforcement hereof, the prevailing Party shall be entitled to recover from the other Party the reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including, without limitation, the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section 16 shall survive the termination of this Agreement and the entry of any judgment, but shall not merge, or be deemed to have merged, into any judgment.

17. MORTGAGES.**17.1 Mortgages.**

This Agreement shall not prevent or limit the Company from encumbering the Land or any estate or interest therein, portion thereof, or any improvement thereon, in any manner whatsoever by one or more Mortgages with respect to the construction, development, use or operation of the Project or any portion thereof. The City acknowledges that Mortgagees may require certain interpretations and modifications of this Agreement. Upon the Company's request from time to time, the City shall meet with the Company and such Mortgagees to negotiate in good faith any such requests for interpretation or modification. The City shall not withhold its consent to any such requested interpretation or modification that is consistent with the intent and purposes of this Agreement.

17.2 Mortgagee Not Obligated.

A Mortgagee shall not have any obligation or duty to perform pursuant to the terms set forth in this Agreement.

17.3 Mortgagee Notice and Cure Rights.

If requested in writing by a Mortgagee, the City shall deliver to such Mortgagee any notice of default delivered to the Company hereunder. Notwithstanding any statement to the contrary herein, a Mortgagee shall have the right, but not the obligation, to cure such default within one hundred twenty (120) days after such Mortgagee receives such notice, during which period the City shall not exercise any remedies hereunder.

17.4 Disaffirmation.

If this Agreement is terminated with respect to a portion of the Land by reason of any default by the Company or as a result of a bankruptcy proceeding of the Company, or if this Agreement is disaffirmed by a receiver, liquidator or trustee for the Company or its property, then the City, if requested by a Mortgagee, shall negotiate in good faith, with the most senior requesting Mortgagee, a new agreement for the Project as to such portion of the Land. This Agreement does not require any Mortgagee or the City to enter into a new agreement pursuant to this Section 17.4.

18. SEVERABILITY; CONFLICTING LAW.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. If any law is enacted after the Effective Date that prohibits either Party from materially performing its duties and obligations under this Agreement or that affects the ability of Company to receive the Property Tax Grants hereunder, the Parties agree to meet and confer in good faith for a period of no less than thirty (30) and no more than ninety (90) days to seek to effectuate an amendment to this Agreement that preserves, to the extent reasonably possible, the original intentions of the Parties under this Agreement, with the understanding that this Agreement cannot be amended without the approval of the City Council.

19. CONFIDENTIAL INFORMATION.

Company may designate any trade secrets or confidential business information included in any report or other writing delivered to City pursuant to or in connection with this Agreement by any method intended to clearly set apart the specific material that Company claims to be either its trade secrets or confidential business information that, if released, would give an advantage to competitors or result in unfair competitive injury to Company (such information, whether specifically designated by Company or not, collectively, “**Confidential Business Information**”). Unless or until the Texas Attorney General renders a final decision indicating that all or part of the information must be disclosed (after City opposes the release as described below), City shall redact or delete any Confidential Business Information from any records it makes available for inspection or of which it provides copies. Within two (2) Business Days following City’s receipt of any request to inspect or obtain copies of public records relating to this Agreement or the Project, City shall provide written notice of the same to Company, which notice shall include a copy of such request. Such notice shall also include instructions and deadline(s) for Company to make its argument of confidentiality to the Texas Attorney General. City shall not allow inspection or provide copies of any such requested records until Company shall have had not less than 10 Business Days (following and excluding the day on which Company receives such notice) to determine whether to contest the right of any party to inspect or receive copies of such records. Additionally, upon such a request for public records and within the time periods required pursuant to the Texas Public Information Act (“**TPIA**”), City shall submit a brief to the Texas Attorney General’s Office opposing the release of any Confidential Business Information and identifying the basis for any claimed exceptions under the TPIA; provided, however, nothing herein shall prevent or limit Company’s right to claim any exemption from disclosure it believes applicable directly to the Texas Attorney General. City shall not allow inspection or provide copies of any Confidential Business Information unless and until the Texas Attorney General renders a final decision indicating that all or part of the information must be disclosed (after opposing the release of such information as described above and pursuant to the processes outlined in the TPIA). Any such action to enjoin the release of Confidential Business Information may be brought in the name of Company or City. The costs, damages, if any, and attorneys’ fees in any proceeding commenced by Company or at its request by City to prevent or enjoin the release of Confidential Business Information in any public records relating to this Agreement or the Project shall be borne by Company.

20. MUTUAL ASSISTANCE; DISPUTE RESOLUTION.

The Parties will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions, including without limitation, the City facilitating approval of City permits, documents, and other instruments as may be reasonably necessary in carrying out such objectives. In case of any disputes arising under this Agreement, the City and Company agree to attempt to resolve such disputes through good faith negotiations between authorized representatives of both Parties. If necessary, both Parties agree to submit a dispute to a non-binding mediation. If a dispute cannot be resolved through non-binding mediation, either Party may pursue any available

legal remedies in any court of competent jurisdiction that satisfies the requirements of Section 16, or, if both Parties mutually agree, the dispute may be submitted to binding arbitration in accordance with procedures to which both Parties agree.

21. CITY PROCEDURES AND ACTIONS.

The City Council, after conducting a duly-noticed public meeting, adopted a resolution on December 4, 2023, effective immediately upon adoption, which resolution (i) confirmed the City Council's approval of this Agreement and the City Council's finding that the provisions of this Agreement are consistent with the Comprehensive Plan and the Applicable City Rules and (ii) authorized the execution of this Agreement. The City represents and warrants to the Company that (a) the City has the full power and authority to enter into this Agreement and to perform its obligations hereunder, (b) this Agreement is a valid and binding obligation, enforceable against the City in accordance with the terms hereof and (c) the execution and delivery of this Agreement has been validly authorized by all necessary governmental or other action and does not conflict with any other agreements entered into by the City.

22. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the Parties, including any successor or permitted assign of Company, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

23. FORCE MAJEURE.

It is expressly understood and agreed by the Parties to this Agreement that, except for payments of Property Tax Grants rightfully due hereunder, if the performance of any obligations hereunder is delayed by reason of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement and the completion deadline shall be extended for a period of time equal to the period such Party was delayed; provided, however, in all cases, only to the extent that the Party claiming Force Majeure (1) did not cause such Force Majeure condition, and (2) throughout the pendency of such Force Majeure condition, utilizes commercially reasonable efforts to minimize the impact and delays caused by such Force Majeure condition.

24. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any Party, regardless of the actual drafter of this Agreement. Each Party was represented by legal counsel in the negotiation of this Agreement.

25. CAPTIONS.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

26. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Parties as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement, and superseded by this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both Parties and approved by the City Council.

27. WAIVER OF JURY TRIAL.

EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO. EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT EITHER PARTY MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS EVIDENCE OF SUCH WAIVER.

28. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument. A scanned or photocopy signature on this Agreement, any amendment hereto or any notice delivered hereunder shall have the same legal effect as an original signature.

29. CONFLICTS OF INTEREST.

Neither the Land nor any improvements thereon are owned or leased by any member of the City Council or any member of the City Planning and Zoning Commission.

30. EFFECT ON OTHER VESTED RIGHTS.

This Agreement does not abrogate any rights established or preserved by any applicable law, or by the Water and Wastewater Agreement or by any other agreement or contract executed by the City and the Company or an Affiliate in connection with the Project, or that have vested or may vest pursuant to common law or otherwise.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)]

EXECUTED as of the last date indicated below:

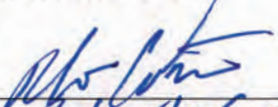
CITY OF EL PASO, TEXAS

By: _____

Name: _____

Title: _____

Date: _____


Robert Cortinas
CFO

12/7/2023

APPROVED AS TO FORM:


Juan S. Gonzalez

Senior Assistant City Attorney

Date: November 30, 2023

APPROVED AS TO CONTENT:


Elizabeth Triggs

Director of Economic and
International Development

Date: 11/30/2023

WORLDWIDE LLC,
a Delaware limited liability company,
d/b/a Statue LLC

By: _____

Name: _____

Title: _____

Date: _____

380 Economic Development Program Agreement – Signature Page

EXECUTED as of the last date indicated below:

CITY OF EL PASO, TEXAS

By: _____
Name: _____
Title: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Juan S. Gonzalez
Senior Assistant City Attorney

Elizabeth Triggs
Director of Economic and
International Development

Date: _____

Date: _____

WORLDWIDE LLC,
a Delaware limited liability company,
d/b/a Statue LLC

By: Pamela A. Gregorski
Name: Pamela A. Gregorski
Title: CEO, President, Treasurer & Secretary
Date: December 5, 2023

EXHIBITS

“A” – Description of the Land

“B” – Form of Initial Completion Report

“C” – Form of Employment Report

“D” – Form of Subsequent Investment Report

“E” – Project Approvals

“F” – Location of Stan Roberts Sr. Avenue Improvements and Proposed Cross Section

EXHIBIT "A"**Description of the Land**

Being a tract of land situated in Section 3, Block 80, Township 1, Texas and Pacific Railroad Survey, Abstract No. 2381 and Section 4, Block 80, Township 1, Texas and Pacific Railroad Survey, Abstract No. 9862, City of El Paso, El Paso County, Texas further being portions of tracts of land described in deeds to City of El Paso recorded in Volume 1176, Page 504, and Volume 1186, Page 178, Deed Records, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a 2 inch pipe found in concrete marking the common corner of Section 3, 4, 9, and 10, Block 80, Township 1, Thence, North 02 degrees 06 minutes 58 seconds East, along the common line of said Sections 3 and 4, a distance of 220.30 feet to a 1/2 inch capped iron rod found (unreadable) for corner on the North right-of-way line of Stan Roberts Sr. Avenue (Farm to Market Road 2529) (variable width right-of-way), said corner being THE POINT OF BEGINNING;

Thence North 86 degrees 45 minutes 26 seconds West, along the South line of the herein described tract and said North right-of-way line of Stan Roberts Sr. Avenue (Farm to Market Road 2529), a distance of 5,279.75 feet to a 1/2 inch iron rod found for the Southwest corner of the herein described tract, called to be on the West line of said Section 4 and the East line of Section 5, Block 80, Township 1;

Thence North 02 degrees 06 minutes 25 seconds East, along the West line of the herein described tract and the common line of said Section 4 and Section 5, a distance of 4,894.97 feet to a 5/8 inch iron rod found for the Northwest corner of the herein described tract and the Southwest corner of a called 36.3628 acre tract within said Section 4 described in a deed to El Paso Electric Co., recorded in Volume 1226, Page 0532, Deed Records, El Paso, Texas;

Thence South 87 degrees 08 minutes 05 seconds East, along the North line of the herein described tract and the South line of said 36.3628 acre tract a distance of 5,279.39 feet to a 5/8 inch iron rod found on the called common line of said Sections 3 and 4 and being the Southeast corner of said 36.3628 acre tract in said Section 4 and the Southwest corner of a 36.4457 acre tract within said Section 3 to said El Paso Electric Co. recorded in said Volume 1226, Page 0532;

Thence along the North line of the herein described tract and a South line of said 36.4457 acre tract the following (3) three courses and distances;

South 87 degrees 07 minutes 56 seconds East, a distance of 5,179.86 feet to a El Paso Electric marker in concrete found for corner;

South 51 degrees 37 minutes 43 seconds East, a distance of 124.06 feet to a 5/8 inch iron rod found for an ell corner of the herein described tract and Southeast corner of said El Paso Electric Co. tract;

North 02 degrees 08 minutes 29 seconds East, passing through at a distance of 72.13 feet a 3/4 inch iron pipe found for reference, passing through a 2 inch iron pipe found at a distance of 372.37 feet, a total distance of 373.43 feet to a point for corner on the called Texas and New Mexico State Line and the South right-of-way line of State Line Drive for the most Northerly Northwest corner of the herein described tract, and the Northeast corner of said 36.4457 acre tract;

Thence South 87 degrees 10 minutes 50 seconds East, along a North line of the herein described tract and in the called Texas and New Mexico State Line, along the South right-of-way line of said State Line Drive, a distance of 18.23 feet to a 1/2 inch iron rod found for the Northeast corner of the herein described tract and being the Northwest corner of a tract of land described in a deed to El Paso Electric Company, recorded in Volume 1314, Page 1466, said Deed Records;

Thence South 02 degrees 19 minutes 11 seconds West, along the common line of called Section 2 and said Section 3, a distance of 2,736.66 feet to a 1/2 inch iron rod found for the most Easterly Southeast corner of the herein described tract and the Northeast corner of a tract of land described in a deed to Samuel A. Mendoza, recorded in Document Number 20180001261, Official Public Records, El Paso County Texas from which a 5/8 inch iron rod found bears South 03 degrees 34 minutes 10 seconds East, a distance of 5.70 feet;

Thence North 87 degrees 05 minutes 39 seconds West, along a South line of the herein described tract and the North line of said Mendoza Tract, a tract of land to the Mullen Family Limited Partnership, recorded in Document Number 20160048262, said Official Public Records, and Bernard A. Goldberg and E. Molly Goldberg Trustees, recorded in 20050055318, said Official Public Records, a distance of 2,644.56 feet to a 1/2 inch iron rod found for an ell corner of the herein described tract and the Northwest corner of said Goldberg Tract, from which a 1/2 inch iron rod found for reference bears North 22 degrees 48 minutes 51 seconds East, a distance of 10.30 feet;

Thence South 02 degrees 13 minutes 07 seconds West, along an East line of the herein described tract and the West line of the said Goldberg Tract and said Mullen Tract, a distance of 2,095.99 feet to a 1/2 inch iron rod found for the North most Southeast corner of the herein described tract and the Northeast corner of a called 1.054 acre tract described in a deed to El Paso Electric Co., recorded in Volume 1043, Page 100 of said Deed Records;

Thence North 86 degrees 43 minutes 50 seconds West, along a South line of the herein described tract, and the North Line of said El Paso Electric Co. tract, a distance of 417.18 feet to an iron rod with cap (unreadable) found for an ell corner of the herein described

tract and the Northwest corner of said El Paso Electric Tract;

Thence South 02 degrees 09 minutes 10 seconds West, along an East line of the herein described tract, passing at a distance of 110.57 feet to a 2 inch Epeco Aluminum cap found for the Northwest corner of a tract of land described in a deed to the El Paso Electric Co., recorded in Volume 1338, Page 506, said Deed Records, continuing along said course for a total distance of 417.68 feet to a 5/8 inch iron rod with cap stamped "Olsson" set in the North right-of-way line of said Stan Roberts Sr. Avenue for a South most Southeast corner of the herein described tract;

Thence North 86 degrees 45 minutes 16 seconds West, along the South line of the herein described tract and the North Right-of-way Line of said Stan Roberts Sr. Avenue, passing through at a distance of 675.59 feet, a 1/2 inch iron rod found, continuing along said course for a total distance of 2,222.58 feet to the POINT OF BEGINNING, containing 45,256,585 Square Feet or 1,038.948 Acres of Land.

EXHIBIT "B"

Form of Initial Completion Report

**CITY OF EL PASO – 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
INITIAL COMPLETION REPORT**

Date:
Company:
Effective Date of Agreement:

Calendar Year	Reported Investment in Construction Costs for Initial Project Improvements	Reported Investment in Personal Property for Initial Project Improvements	Total Reported Annual Investment for Initial Project Improvements
Total	\$	\$	\$

Notes:

- (1) Initial Completion Report to be accompanied by invoices and proof of payment for dollars reported necessary to properly document the above referenced totals.

EXHIBIT “C”

Form of Employment Report

(see attached)

CITY OF EL PASO – 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Employment Report

Date:
Company:
Effective Date of Agreement:

Number	Employer	Redacted Employee Number (last 3 digits)	Start Date	Full-Time (Yes/No)	Meets wage requirement (Yes/No)
1					
2					
3					
4					
5					
6					
7					
8					
9					
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11					
12					
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15					
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Legal Approval

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EXHIBIT "D"

Form of Subsequent Investment Report

**CITY OF EL PASO – 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
SUBSEQUENT INVESTMENT REPORT**

Date:
Company:
Effective Date of Agreement:

Calendar Year	Reported Investment in Construction Costs for Applicable Phase	Reported Investment in Personal Property for Applicable Phase	Total Reported Annual Investment for Applicable Phase
Total	\$	\$	\$

Notes:

(1) Subsequent Investment Report to be accompanied by invoices and proof of payment for any dollars reported necessary to properly document the above referenced totals.

EXHIBIT “E”

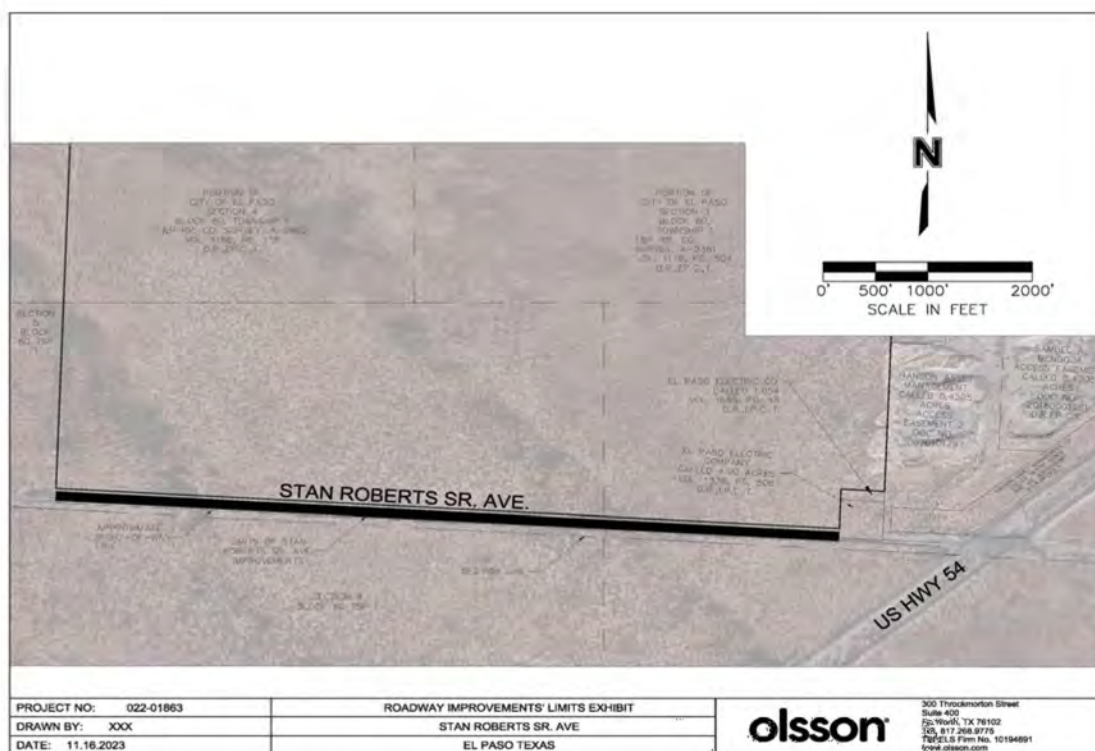
Project Approvals

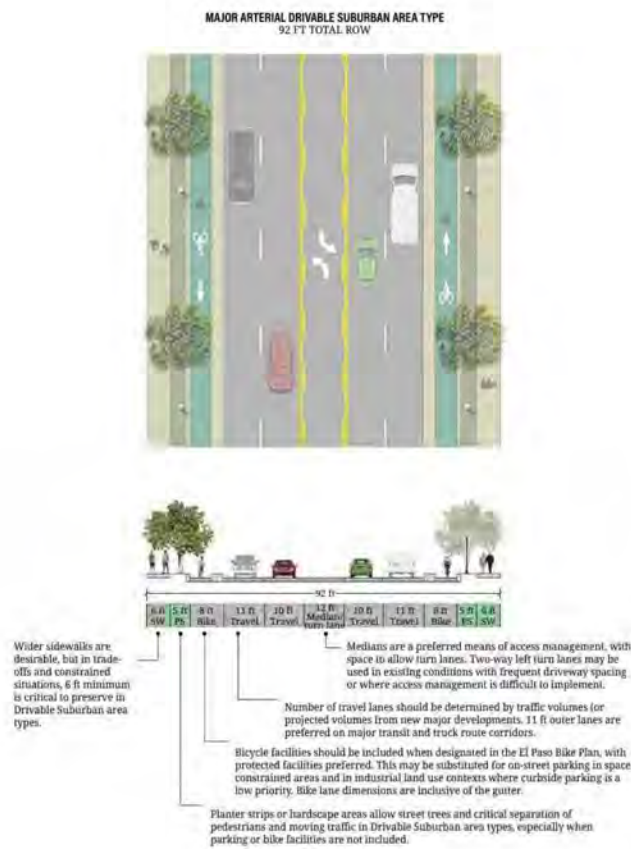
1. The applicable zoning ordinance establishing the Existing Zoning for the Property, Ordinance No. 019573 approved by the City Council on December 5, 2023.
2. City Council resolution adopted on December 4, 2023, approving this Agreement.
3. City Council resolution adopted on December 5, 2023, approving the Tax Abatement Agreement.

EXHIBIT “F”

Location of Stan Roberts Sr. Avenue Improvements and Proposed Cross Section

(see attached)





**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: December 5, 2023

CONTACT PERSON(S) NAME AND PHONE NUMBER: Karina Brasgalla, (915) 212-1570
Elizabeth Triggs, (915) 212-0094

DISTRICT(S) AFFECTED: District 4

STRATEGIC GOAL: Goal 1 - Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

Discussion and action that the City Council approves the allocation of funds from the Texas Economic Development Incentive Program to fund the intersection improvements at Stan Roberts and US-54 to support and facilitate development of the approximate 1,039 acres of land on the north side of Stan Roberts Sr. Avenue, west of U.S. Highway 54 within the City of El Paso, Texas in connection with the development contemplated in the Chapter 380 Economic Development Program Agreement entered into between the City of El Paso and Worldwide LLC, a Delaware limited liability company, in the estimated amount not to exceed \$5,000,000; and that the City Manager, or designee, be authorized to effectuate any budget transfers and associated agreements in order to effectuate the intent of this Resolution.

BACKGROUND / DISCUSSION:

The City Council agenda item proposes the allocation of funds from the Texas Economic Development Incentive Program to support intersection improvements at Stan Roberts and US-54 in El Paso, Texas. This initiative is a critical component for the development of approximately 1,039 acres of land on the north side of Stan Roberts Sr. Avenue, west of U.S. Highway 54. The funding is directly linked to the Chapter 380 Economic Development Program Agreement between the City of El Paso and Worldwide LLC, a Delaware limited liability company.

The purpose of this allocation is to enhance infrastructure, specifically at the mentioned intersection, with the aim of providing a competitive edge in the site selection process. By investing in these improvements, the City aims to attract and facilitate the development outlined in the agreement with Worldwide LLC. The strategic allocation of funds not only supports the growth of the specific project but also contributes to the broader economic development of the region.

PRIOR COUNCIL ACTION:

The Texas Economic Development fund established through Ordinance No. 019022, the amended franchise agreement between the City and El Paso Electric Company; and in accordance with the Texas Economic Development Incentive Program, as approved by the City Council on January 20, 2021.

In addition, City Council, will consider the following related items:

December 4, 2023

- **Contract of Sale:** City Council will consider the sale of 1,039 acres of City-owned land on the northside of Stan Roberts Sr. Avenue, west of U.S. Highway 54 within the City of El Paso, Texas (the "Land") to Company for the development of one or more data center(s) and certain accessory uses.
- **Chapter 380 Economic Development Agreement:** City Council will consider a resolution authorizing the City Manager to sign a Chapter 380 Economic Development Program Agreement ("380 Program Agreement") with Company for the annual property tax grant, subject to the terms and conditions of the 380 Program Agreement, in amount equal to 80 percent of the City property taxes generated by the project over a 15-year period, starting the twelfth calendar year following the year in which Company provides the City documentation demonstrating it has met the minimum investment requirement. Company has the option to develop additional phases, each requiring a minimum \$800 million expenditure; and if so, subject to the terms and conditions of the 380 Program Agreement, Company would be eligible for separate property tax grants in an amount equal to 80 percent of the City property taxes attributable to the investment for 15 years for each phase, for up to five phases.

December 5, 2023

- **Rezoning and Condition Release:** City Council will consider rezoning the Land from M-2 (Industrial) to C-4 (Commercial) to allow for the development and operation of one or more data center(s) on the Land; and will concurrently consider releasing all conditions currently running with the Land. On November 16, 2023, the City Plan Commission unanimously recommended approval of the proposed rezoning and condition release.
- **Chapter 312 Property Tax Abatement Agreement:** City Council will consider a resolution authorizing the City Manager to sign a Chapter 312 Property Tax Abatement Agreement ("Abatement Agreement") with Company for the annual waiver, subject to the terms and conditions of the Abatement Agreement, of 80 percent of the property taxes generated by the project and otherwise due to the City over a 10-year period, starting the calendar year following the year in which Company provides the City documentation demonstrating it has met the minimum investment requirement. Company has the option to develop additional phases, each requiring a minimum \$800 million expenditure; and if so, subject to the terms and conditions of the Abatement Agreement, Company would be eligible for separate property tax abatements in amount equal to 80 percent of the property taxes attributable to the investment and otherwise due to the City for ten years for each phase, for up to five phases.

AMOUNT AND SOURCE OF FUNDING:

Texas Economic Development Fund

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Revised 04/09/2021

RESOLUTION

WHEREAS, the El Paso City Council ("City") approved the Texas Economic Development Incentive Program ("TED Program") – Policy and Guidelines on January 20, 2021; and

WHEREAS, the purpose of the TED Program is to make funds available for financial incentives in the form of economic development grants and/or loans to promote economic development within El Paso Electric's Texas Service Area through various categories, including Infrastructure Development Assistance; and

WHEREAS, the contemplated intersection improvements to Stan Roberts and US-54 meet the criteria of the TED Program; and

WHEREAS, the City desires to allocate funds from the TED Program in an amount not to exceed \$5,000,000 to the intersection improvements to Stan Roberts and US-54 in connection with the development contemplated in the Chapter 380 Economic Development Program Agreement entered into between the City and WURLDWISE LLC, a Delaware limited liability company.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the above recitals are accepted as true and correct;

THAT the City approves the allocation of funds from the Texas Economic Development Incentive Program to fund the intersection improvements at Stan Roberts and US-54 to support and facilitate development of the approximate 1,039 acres of land on the north side of Stan Roberts Sr. Avenue, west of U.S. Highway 54 within the City of El Paso, Texas in connection with the development contemplated in the Chapter 380 Economic Development Program Agreement entered into between the City of El Paso and Wurldwise LLC, a Delaware limited liability company, in an amount not to exceed \$5,000,000; and

THAT the City Manager, or designee, be authorized to execute any budget transfers and associated agreements in order to effectuate the intent of this Resolution.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

PASSED AND APPROVED this _____ day of _____ 2023.

THE CITY OF EL PASO:

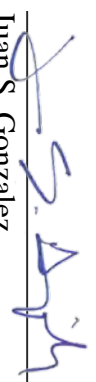
Oscar Leeser, Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Juan S. Gonzalez
Senior Assistant City Attorney



Elizabeth K. Triggs, Director
Economic & International Development

Exhibit C.

TED Program Project Pipeline

Name	Date Submitted	Project	Description of Company Type	Industry Type	Jobs	Investment	Project Status
A	1/2/2024	Pueblo	Warehousing and storage	Advanced Logistics	97	\$2,400,000	Active
B	1/7/2024	Zen Zebra	Carbon / graphite manufacturing	Advanced Manufacturing	500	\$633,000,000	Active
C	1/24/2024	Chestnut	Carbon / graphite manufacturing	Advanced Manufacturing	205	\$600,000,000	Active
D	1/31/2024	Night Sky	Pharma manufacturing	Advanced Manufacturing	100	\$192,000,000	Active
E	2/15/2024	Air Red	Aircraft manufacturing	Advanced Manufacturing	1,000	\$176,000,000	Active
F	2/21/2024	Spur	Telemarketing service	Business Services	126	\$890,000	Active
G	2/27/2024	Hendron Dune	Semiconductor manufacturing	Advanced Manufacturing	74	\$40,000,000	Active
H	3/12/2024	Take Off	Aircraft manufacturing	Advanced Manufacturing	40,000	\$2,100,000,000	Active
I	3/14/2024	Del Norte Masonry	Brick production	Advanced Manufacturing	43	\$1,500,000	Closed
J	3/14/2024	Eagle Bird	Battery manufacturing	Advanced Manufacturing	35	\$10,000,000	Active
K	3/24/2024	High Rise	Metal tank manufacturing	Advanced Manufacturing	26	\$6,000,000	Active
L	4/15/2024	Jade Luck	Crop growing - covered	Advanced Manufacturing	150	\$240,000,000	Active
M	4/25/2024	Dream Matrix	Medical equipment manufacturing	Advanced Manufacturing	100	\$15,800,000	Active
N	5/9/2024	Tyson	Building contractor	Other	90	\$10,000,000	Active
O	6/17/2024	Gigabolt	Fabricated metal manufacturing	Advanced Manufacturing	400	\$250,000,000	Active
P	6/24/2024	Aura	Amphitheatre	Regional Tourism		\$80,000,000	Active
Q	6/27/2024	Atlas Earth	Aircraft manufacturing	Advanced Manufacturing	10,000	\$3,000,000,000	Closed
R	7/14/2024	Neighborhood Club	Battery manufacturing	Advanced Manufacturing	388	\$550,000,000	Active
S	7/19/2024	Boomerang	Warehousing and storage	Advanced Logistics	175	\$48,000,000	Active
T	7/23/2024	Panama Wave	Energy transmission components	Advanced Manufacturing	700	\$314,000,000	Active

U	7/29/2024	Honey Bee	Switchgear manufacturing	Advanced Manufacturing	200	\$22,600,000	Active
V	8/12/2024	Kettle	Machinery manufacturing	Advanced Manufacturing	63	\$81,900,000	Active
W	8/12/2024	Sunrise Energy	Solar power generation	Advanced Manufacturing	802	\$199,000	Active
X	9/4/2024	Motion Motors	Vehicle parts manufacturing	Advanced Manufacturing	160	\$30,000,000	Active
Y	9/10/2024	Vend Tech	Vending products distribution	Advanced Logistics	32	\$6,800,000	Active
Z	9/10/2024	A4	Battery manufacturing	Advanced Manufacturing	1,120	\$3,900,000,000	Active
AA	9/12/2024	Starlight	Energy transmission components	Advanced Manufacturing	221	\$45,500,000	Active
BB	9/23/2024	1.21	Battery storage	Advanced Manufacturing	1,820	\$880,000,000	Active
CC	9/23/2024	Bernese	Health call center	Business Services	289	\$7,700,000	Active
DD	9/30/2024	Joseph Gold	Mixing operation	Advanced Manufacturing	50	\$12,000,000	Active
EE	10/7/2024	Prometheus Fire	Chemical processing plant	Advanced Manufacturing	375	\$300,000,000	Active
FF	10/15/2024	Labrador Max	Chemical production	Advanced Manufacturing	300	\$5,000,000,000	Active
GG	10/28/2024	BRT	Battery manufacturing	Advanced Manufacturing	115	\$704,000,000	Active
HH	11/7/2024	Helix	Commercial laundry	Advanced Logistics	12	\$10,500,000	Active
II	11/12/2024	Oppidan	Data center developer	Other	-	\$40,000,000	Active
JJ	11/12/2024	The District	Outdoor entertainment	Regional Tourism	tbd	\$38,220,000	Active
KK	11/13/2024	Rouge Roller	Tire manufacturing	Advanced Manufacturing	600	\$650,000,000	Active
LL	11/15/2024	Salsa	Energy transmission components	Advanced Manufacturing	500	\$50,333,000	Active
MM	12/10/2024	Prime Optix	Chemical processing plant	Advanced Manufacturing	80	\$250,000,000	Active
NN	12/3/2024	Dig-It	Children's STEM activities	Tourism / Retail	tbd	\$1,200,000	Active
OO							
					60,773	\$ 20,252,542,000	

Exhibit D.

**Statement of Revenues, Expenditures, and Changes in Fund Balance
for Year Ending December 31, 2024**

TED Fund Income	
Annual Deposit	\$5,333,333.33
Interest Accrued	\$705,043.26
Total Income	\$6,038,376.59
 Expenditures	
VENU (dba Notes Lives)	(\$8,000,000)
Border Crossing Analysis	(\$150,000)
 Net Change in Fund Balance	(\$2,816,666.67)
 Beginning Fund Balance	\$21,853,704.32
Ending Fund Balance	\$19,037,037.65

