

Oscar Leeser  
Mayor

Cary Westin  
Interim City Manager



CITY COUNCIL  
Brian Kennedy, District 1  
Alexandra Anello, District 2  
Cassandra Hernandez, District 3  
Joe Molinar, District 4  
Isabel Salcido, District 5  
Art Fierro, District 6  
Henry Rivera, District 7  
Chris Canales, District 8

## **NOTICE OF SPECIAL MEETING OF THE EL PASO CITY COUNCIL**

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**December 04, 2023**  
**COUNCIL CHAMBERS, CITY HALL, 300 N. CAMPBELL AND VIRTUALLY**  
**9:00 AM**

**Teleconference phone number 1-915-213-4096**  
**Toll free number: 1-833-664-9267**  
**Conference ID: 755-190-096#**

Notice is hereby given that a Special Meeting of the City Council of the City of El Paso will be conducted on December 4, 2023 at 9:00 A.M. Members of the public may view the meeting via the following means:

Via the City's website. <http://www.elpasotexas.gov/videos>  
Via television on City15,  
YouTube: <https://www.youtube.com/user/cityofelpasotx/videos>

In compliance with the requirement that the City provide two-way communication for members of the public, members of the public may communicate with Council during public comment, and regarding agenda items by calling the following number:

1-915-213-4096 or Toll free number: 1-833-664-9267

**At the prompt please enter Conference ID: 755-190-096#**

The public is strongly encouraged to sign up to speak on items on this agenda before the start of this meeting on the following link:

<https://app.smartsheet.com/b/form/7086be5f4ed44a239290caa6185d0bdb>

**The following members of City Council will be present via video conference:**

**A quorum of City Council must participate in the meeting.**

### **AGENDA**

1. Discussion and action on a Resolution authorizing the City Manager to sign a Chapter 380 Economic Development Program Agreement (“Agreement”) by and between the City of El Paso (“City”) and Worldwide LLC, (“Company”) in support of a project located north of Stan Roberts Sr. Ave. and west of US Highway 54, El Paso, Texas 79934. The Agreement requires the Company to invest a minimum on \$800,000,000.00, provide at least 50 full-time jobs, design and construct improvements to Stan Roberts Sr. Avenue. Over the term of the Agreement, the City shall provide economic incentives in the form of an 80% Real Property Tax Rebate. [23-1572](#)

**District 4**

Economic and International Development, Karina Brascgalla, (915) 212-1570

Economic and International Development, Elizabeth Triggs, (915) 212-0094

2. An Ordinance authorizing the City Manager to sign a contract of sale with Worldwide LLC, a Delaware Limited Liability Company for the sale of approximately 1,039 acres of property 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; known as tax parcels 78427 and 13470. [23-1510](#)

**District 4**

Economic and International Development, Karina Brascgalla, (915) 212-1570

Economic and International Development, Elizabeth Triggs, (915) 212-0094

3. Discussion and action on the appointment of two candidates to fill vacancies for Substitute Associate Municipal Court Judges per El Paso City Code 2.44.030 to serve four-year terms beginning January 1, 2024 through December 31, 2027. The candidates are: [23-1573](#)

Courtney Bowie

Melissa Warrick

**All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822

4. Discussion and action on the appointment of Lauren Ferris to fill the vacancy for Municipal Court Judge for Court # 4 resulting from the appointment of Judge Enrique Holguin to a federal magistrate position. The appointee will serve until the next general election, November 2024, pursuant to Municipal Code Section 2.44.030. [23-1574](#)

**All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822

**EXECUTIVE SESSION**

The City Council of the City of El Paso may retire into EXECUTIVE SESSION pursuant to Section

3.5A of the El Paso City Charter and the Texas Government Code, Chapter 551, Subchapter D, to discuss any of the following: (The items listed below are matters of the sort routinely discussed in Executive Session, but the City Council of the City of El Paso may move to Executive Session any of the items on this agenda, consistent with the terms of the Open Meetings Act and the Rules of City Council.) The City Council will return to open session to take any final action and may also, at any time during the meeting, bring forward any of the following items for public discussion, as appropriate.

- Section 551.071 CONSULTATION WITH ATTORNEY
- Section 551.072 DELIBERATION REGARDING REAL PROPERTY
- Section 551.073 DELIBERATION REGARDING PROSPECTIVE GIFTS
- Section 551.074 PERSONNEL MATTERS
- Section 551.076 DELIBERATION REGARDING SECURITY DEVICES OR SECURITY AUDITS
- Section 551.087 DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS
- Section 551.089 DELIBERATION REGARDING SECURITY DEVICES OR SECURITY AUDITS; CLOSED MEETING

**Discussion and action on the following:**

- EX1.** In re: Aqueous Film-Forming Foam Products Multi-District Litigation MDL NO. 2873 (551.071) [23-1599](#)  
City Attorney's Office, Karla M. Nieman, (915) 212-0033
- EX2.** Complaint regarding elected City Official - Matter No. HQ # 1453 (551.071) (551.074) [23-1601](#)  
Outside Council, Frank Garza, (210) 349-6484
- EX3.** Claim of Carlos Gonzalez; Claim-263; (551.071) [23-1598](#)  
City Attorney's Office, Matthew Marquez, (915) 212-0033
- EX4.** United States of America v. City of El Paso, Texas; United Road Towing Inc d/b/a URT Vehicle Management Solutions and Rod Robertson Enterprise, Inc; 3:23-CV-00044 (551.071) [23-1600](#)  
City Attorney's Office, Evan D. Reed, (915) 212-0033
- EX5.** Purchase, exchange, lease, or value of real property located in Downtown El Paso. HQ#23-1582 (551.071) (551.072) [23-1612](#)  
Economic and International Development, Elizabeth Triggs, (915) 212-0065  
City Attorney's Office, Juan Gonzalez, (915) 212-0033

**ADJOURN**

**NOTICE TO THE PUBLIC:**

If you need Spanish Translation Services, you must email [CityClerk@elpasotexas.gov](mailto:CityClerk@elpasotexas.gov) at least 72 hours in advance of the meeting.

**ALL REGULAR CITY COUNCIL AGENDAS ARE PLACED ON THE INTERNET THURSDAY PRIOR TO THE MEETING AT THE ADDRESS BELOW:**

<http://www.elpasotexas.gov/>



Legislation Text

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File #: 23-1572, Version: 1

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.  
No Title's, No emails. Please use ARIAL 10 Font.*

**District 4**

Economic and International Development, Karina Brasgalla, (915) 212-1570

Economic and International Development, Elizabeth Triggs, (915) 212-0094

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Discussion and action on a Resolution authorizing the City Manager to sign a Chapter 380 Economic Development Program Agreement ("Agreement") by and between the City of El Paso ("City") and Worldwide LLC, ("Company") in support of a project located north of Stan Roberts Sr. Ave. and west of US Highway 54, El Paso, Texas 79934. The Agreement requires the Company to invest a minimum on \$800,000,000.00, provide at least 50 full-time jobs, design and construct improvements to Stan Roberts Sr. Avenue. Over the term of the Agreement, the City shall provide economic incentives in the form of an 80% Real Property Tax Rebate.

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

**AGENDA DATE:** December 4, 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 Manager be authorized to sign a Chapter 380 Economic Development Program Agreement ("Agreement") by and between the City of El Paso, Texas ("City") and Wurldwide, LLC, a Delaware limited liability company, d/b/a Statue LLC ("Company") in support of the construction, in one or more phases which may extend over a period of years, one or more data center(s) and certain accessory uses on approximately 1,039 acres of land on the northside of Stan Roberts Sr. Avenue, west of U.S. Highway 54 within the City of El Paso, Texas (the "Project"). Subject to the terms and conditions of the Agreement and provided that Company expends or causes to expend a minimum of **\$800,000,000.00** in construction and personal equipment costs for the Project ("Initial Investment"), City agrees to provide Company with annual grants in an amount equal to 80 percent of the aggregate property tax revenue attributable to the Initial Investment over a 15-year period beginning the twelfth calendar year following the year in which the Company provides documentation to the City that it has met its Initial Investment requirements ("Property Tax Grants"). Company may develop additional phases, each representing a minimum **\$800,000,000.00** expenditure in construction and personal equipment costs; and if so, subject to the terms and conditions of the Agreement, shall be eligible for separate Property Tax Grants for each phase for up to five phases during the term of the Agreement.

**BACKGROUND / DISCUSSION:**

The City Council is considering authorizing the City Manager to sign an Economic Development Program Agreement with Wurldwide, LLC, for the construction of one or more data centers and related facilities on approximately 1,039 acres of land in El Paso. The agreement proposes that Wurldwide, LLC invest a minimum of \$800 million in construction and equipment costs for the project, with the city providing annual grants equal to 80 percent of the property tax revenue generated by this investment over a 15-year period.

**Key Points:**

1. **Project Description:** Wurldwide, LLC plans to construct one or more data centers and accessory uses on a significant parcel of land in El Paso.
2. **Investment Magnitude:** The company is committing to an initial investment of at least \$800 million in construction and personal equipment costs. Additional phases with similar investments may follow.
3. **Economic Impact:** The City anticipates positive economic development resulting from this project, with the potential for substantial capital injection into the community.
4. **Tax Base Growth:** In return for the investment, the City has proposed providing annual grants to Wurldwide, LLC. These grants would amount to 80 percent of the property tax revenue generated by the project over a 15-year period, starting in the twelfth calendar year following the fulfillment of the initial investment requirements.

Revised 04/09/2021

5. **Tax Burden Impact:** The agreement aims to shift the tax burden away from residential taxpayers by encouraging commercial development and diversifying the tax base.
6. **Phased Development:** Worldwide, LLC has the option to develop additional phases, each requiring a minimum \$800 million expenditure. If so, the company would be eligible for separate property tax grants for each phase, for up to five phases during the agreement's term.
7. **Job Creation Impact:** The Project will result in the creation of a minimum of 50 full-time jobs, offering diverse and quality job opportunities, and contributing to economic stability. In addition, the project is expected to generate temporary jobs during the construction phase(s), supporting the local construction industry and providing income for residents engaged in that construction.
8. **Multiplier Effects on Local Businesses:** Opportunities for local businesses to supply goods and services for the data center's operation will foster growth in ancillary industries and increase revenue for local businesses, diversifying the economy and potentially leading to additional job creation beyond the project.

In summary, the City of El Paso is considering a significant economic development opportunity with Worldwide, LLC, involving substantial capital investment in data center construction. The proposed agreement outlines a structured approach to incentivize this investment through property tax grants, with the goal of fostering economic growth, diversifying the tax base, and relieving residential taxpayers of some of the burden.

**PRIOR COUNCIL ACTION:**

City Council has or 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.

**December 5, 2023**

- **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.
- **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.

Revised 04/09/2021

- **Stan Roberts Sr. Ave. and U.S. Highway 54 Intersection Improvements Funding Resolution:** City Council will consider a resolution allocating funding for intersection improvements to Stan Roberts and US-54 for the purpose of facilitating access to the Project. Improvements will be funded by 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.

**AMOUNT AND SOURCE OF FUNDING:**

General Fund

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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



## RESOLUTION

**WHEREAS**, Worldwide LLC, a Delaware limited liability company (“**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**”); and

**WHEREAS**, 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 a Chapter 380 Economic Development Program Agreement (“**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; and

**WHEREAS**, 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; and

**WHEREAS**, 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**”); and

**WHEREAS**, 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; and

**WHEREAS**, 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; and

**WHEREAS**, in addition to this Agreement, the City is also considering entering into that certain Tax Abatement Agreement 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, 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 the City of El Paso, Texas ("City") and Worldwide, LLC, a Delaware limited liability company, d/b/a Statue LLC ("Company") in support of the construction, in one or more phases which may extend over a period of years, one or more data center(s) and certain accessory uses on approximately 1,039 acres of land on the northside of Stan Roberts Sr. Avenue, west of U.S. Highway 54 within the City of El Paso, Texas (the "Project"). Subject to the terms and conditions of the Agreement and provided that Company expends or causes to expend a minimum of **\$800,000,000.00** in construction and personal equipment costs for the Project ("Initial Investment"), City agrees to provide Company with annual grants in an amount equal to 80 percent of the aggregate property tax revenue attributable to the Initial Investment over a 15-year period beginning the twelfth calendar year following the year in which the Company provides documentation to the City that it has met its Initial Investment requirements ("Property Tax Grants"). Company may develop additional phases, each representing a minimum **\$800,000,000.00** expenditure in construction and personal equipment costs; and if so, subject to the terms and conditions of the Agreement, shall be eligible for separate Property Tax Grants for each phase for up to five phases during the term of the Agreement.

*[SIGNATURES BEGIN ON THE FOLLOWING PAGE]*

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

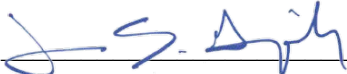
**THE CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leeser, Mayor


**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

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

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Elizabeth K. Triggs, Director  
Economic & International Development

STATE OF TEXAS §

COUNTY OF EL PASO §

## **380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

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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 1<sup>st</sup> 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 \_\_\_\_\_, 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. \_\_\_\_\_ 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:

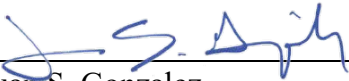
**CITY OF EL PASO, TEXAS**


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

**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: 11/30/2023

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_



**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**

<b>Date:</b>
<b>Company:</b>
<b>Effective Date of Agreement:</b>

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

**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**

<b>Date:</b>
<b>Company:</b>
<b>Effective Date of Agreement:</b>

<b>Number</b>	<b>Employer</b>	<b>Redacted Employee Number (last 3 digits)</b>	<b>Start Date</b>	<b>Full-Time (Yes/No)</b>	<b>Meets wage requirement (Yes/No)</b>
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**EXHIBIT “D”**

**Form of Subsequent Investment Report**

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

<b>Date:</b>
<b>Company:</b>
<b>Effective Date of Agreement:</b>

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

**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”**

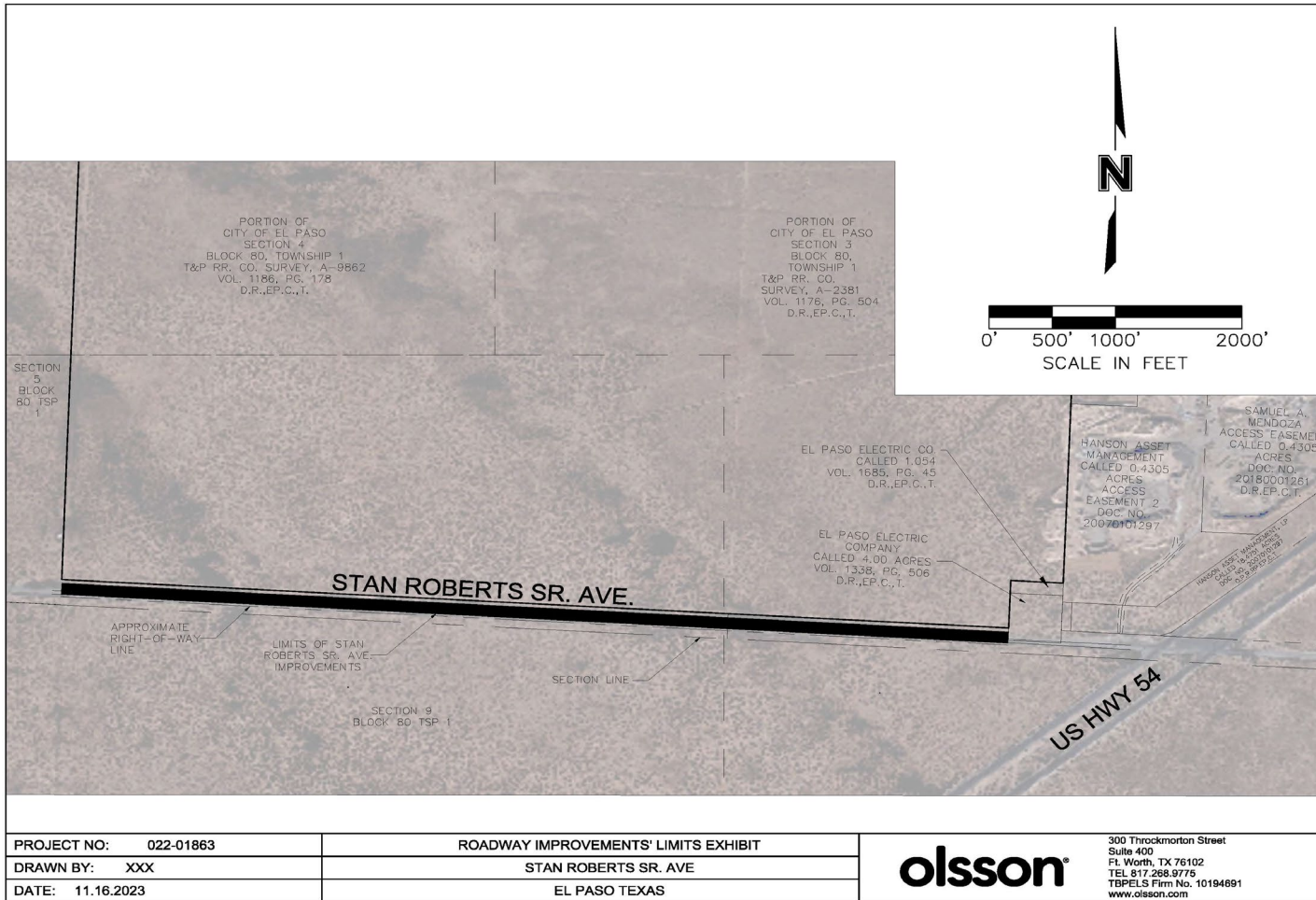
**Project Approvals**

1. The applicable zoning ordinance establishing the Existing Zoning for the Property, Ordinance No. \_\_\_\_\_ 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.

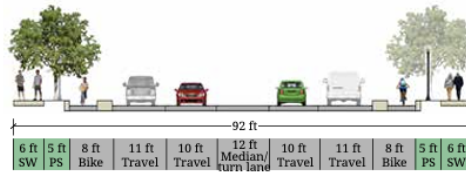
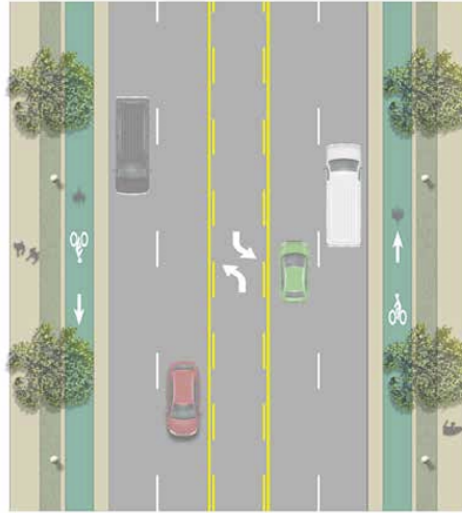
**EXHIBIT “F”**

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

(see attached)



**MAJOR ARTERIAL DRIVABLE SUBURBAN AREA TYPE**  
92 FT TOTAL ROW



Wider sidewalks are desirable, but in trade-offs and constrained situations, 6 ft minimum is critical to preserve in Drivable Suburban area types.

Medians are a preferred means of access management, with space to allow turn lanes. Two-way left turn lanes may be used in existing conditions with frequent driveway spacing or where access management is difficult to implement.

Number of travel lanes should be determined by traffic volumes (or projected volumes from new major developments). 11 ft outer lanes are preferred on major transit and truck route corridors.

Bicycle facilities should be included when designated in the El Paso Bike Plan, with protected facilities preferred. This may be substituted for on-street parking in space constrained areas and in industrial land use contexts where curbside parking is a low priority. Bike lane dimensions are inclusive of the gutter.

Planter strips or hardscape areas allow street trees and critical separation of pedestrians and moving traffic in Drivable Suburban area types, especially when parking or bike facilities are not included.

December 4, 2023



# Worldwide, LLC (Meta Platforms, Inc.) Data Center Project:

## Driving Economic Growth and Community Transformation

Items 1 and 2

Goal 1. Cultivate an environment conducive to strong, sustainable economic development

# Council Action Requested

**Six actions** are a **critical step** to facilitate the future construction and operation of a **hyperscale data center** in Northeast El Paso, fostering innovation, economic diversity and long-term prosperity for El Paso residents.

# Background & Next Steps

## 6 Council Actions

**Nov 2nd**

- Notice of Chapter 312 Hearing Published

**Nov 7th**

- First Readings:
  - Down Zoning
  - Condition Release

**Nov 16th**

- CPC Hearing:
  - Down Zoning
  - Condition Release

**Nov 21st**

- Adopt Abatement Zone
- First Reading of Contract of Sale

**Dec 4th**

- Public Hearing for Contract of Sale
- **Chapter 380 Agreement**

**Dec 5th**

- **Contract of Sale**
- **Chapter 312 Agreement**
- **Down Zoning**
- **Condition Release**
- **Funding Intersection Improvements**



# Overview:

## Hyperscale Data Centers

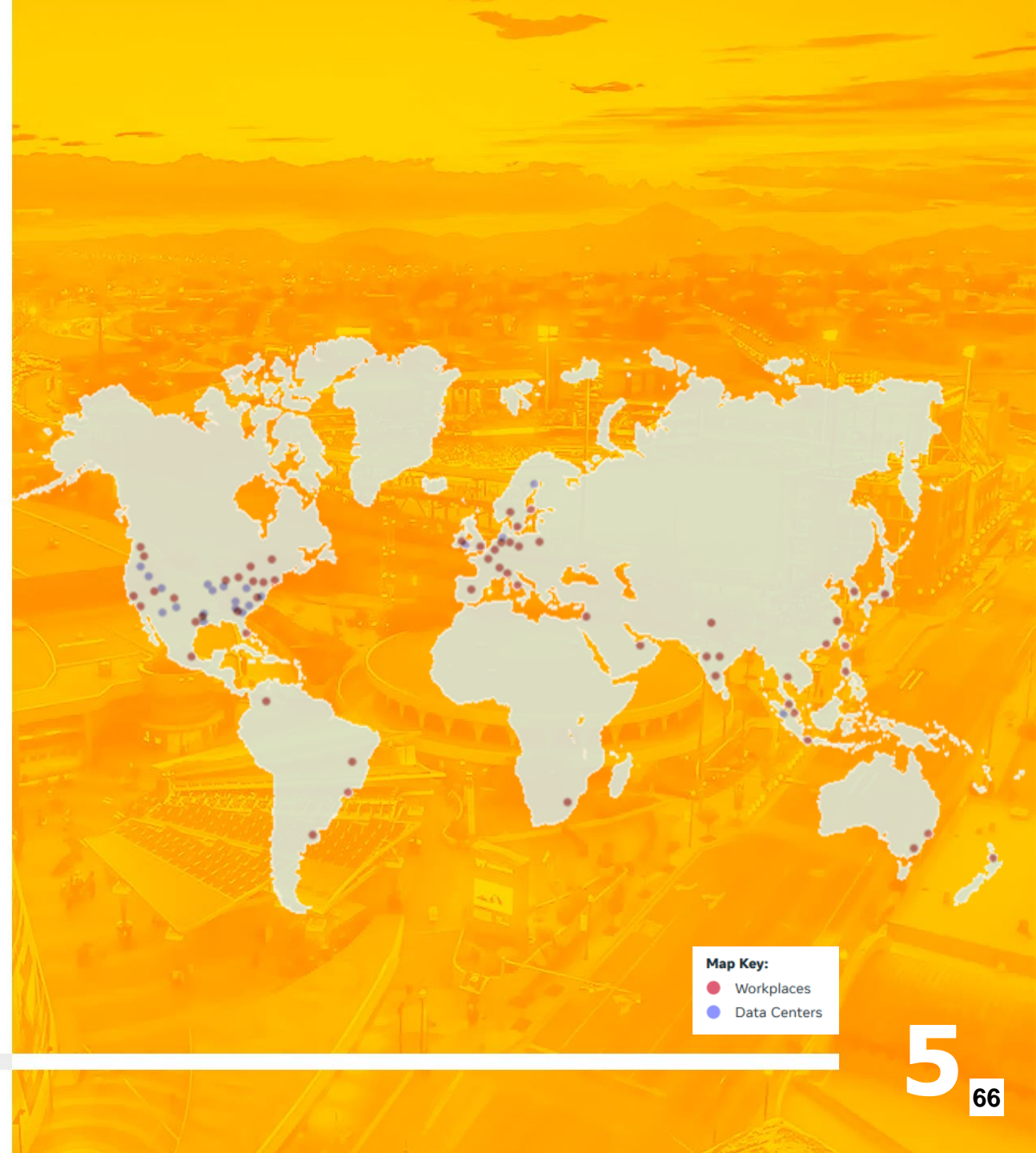
- Massive computing facilities designed for scalability and efficiency
- Imagine a technological campus covering acres, housing servers to process vast amounts of data
- Physical footprint, often covering the size of large shopping malls or several football fields combined
- Strategically located for efficient global internet connectivity



# Overview:

## Meta Platforms, Inc.

- Owns and operates Facebook, Instagram, Threads, WhatsApp, among others
- One of **Big Five** American information technology companies
- **Top 40** Fortune 500 company
- **3.96 billion people** using at least one core product monthly
- Workplace in 80+ cities worldwide
- **18 data center campuses** worldwide



# Overview:

## Meta's Data Center Campuses

- Serve as the **backbone** for Meta services
- Handle a **vast number of user requests** generated by Meta's platforms
- Employ **advanced technologies** to **ensure energy efficiency** through state-of-the-art cooling systems
- **Maintain net-zero emissions** by fully offsetting energy consumption with renewable energy sources
- **Strategically located worldwide** to ensure optimal global connectivity allowing for low-latency across different regions and efficient data transfer



# Overview: Meta's Data Center Campuses

Company's 18 campuses include 85 data center buildings

- On average, **2.2 million** square feet under roof per campus
- **\$1.1 billion** average capital investment per campus (not including equipment refreshes)
- On average, **196 FTEs** on-site at each data center campus



Altoona, IA

- \$2.5 billion+ investment
- Est. 2013
- 400+ jobs
- 10 buildings
- 5 million+ sf
- 7 expansions



Prineville, OR

- \$2.0 billion+ investment
- Est. 2010
- 350+ jobs
- 11 buildings
- 4.6 million sf



Los Lunas, NM

- \$2.0 billion investment
- Est. 2016
- 400+ jobs
- 8 buildings
- 3.8 million sf
- 750 acres

# Overview:

## Economic Benefits for El Paso

### 1 Property Tax Contributions:

- **Substantial Revenue:** The data center's assessed value **yields millions in annual property tax revenues for all local entities**, even after incentives
- **Increased Tax Base:** This additional revenue means more resources for essential services, reducing reliance on residential taxes

### 2 Job Creation and Income Effects:

- **Employment Opportunities:** Construction generates hundreds of temporary jobs; operational roles offer steady employment for residents as technicians and engineers
- **New Tax Revenue Generation:** Income generated by these jobs becomes a new tax revenue source for local taxing entities through spending on goods and services

# Overview:

## Economic Benefits for El Paso

3

### Economic Ripple Effects

- **Local Business Impact:** Increased data center demand boosts local businesses, leading to higher sales tax revenue
- **Hub for Innovation:** Creates a broader ecosystem of technological initiatives, research and development activities, and collaborations with local businesses and educational institutions

4

### Infrastructure Improvements

- **Collaboration with Local Governments:** Collaboration results in upgrades to roads and utilities, enhancing the data center's efficiency and community infrastructure
- **Enhanced Economic Environment:** Improved infrastructure enhances shovel-readiness for surrounding properties, facilitating future development

# Project Proposal: Summary

- **Project Description:** Worldwide, LLC (Meta) plans to construct one or more data center buildings and accessory uses on 1,039 acres of City-owned land.
- **Investment Magnitude:** The Company is committed to a minimum investment of \$800M in construction and personal equipment costs. Additional phases with similar investments may follow.
- **Economic Impact:** The City anticipates positive economic development resulting from the project, with the potential for substantial capital injection into the community.



# Project Proposal: Summary

## Incentive Proposal:

- To offset the cost associated with establishing and operating in El Paso and to **increase El Paso's competitiveness** as a future location for investment, the City proposes providing annual performance-based incentives to the Company.
- The incentives amount to **80 percent** of the City's portion of property tax revenue generated by the project **over a 25-year period** per phase, up to 5 phases, where each phase represents an \$800M investment.





# Project Proposal: Summary

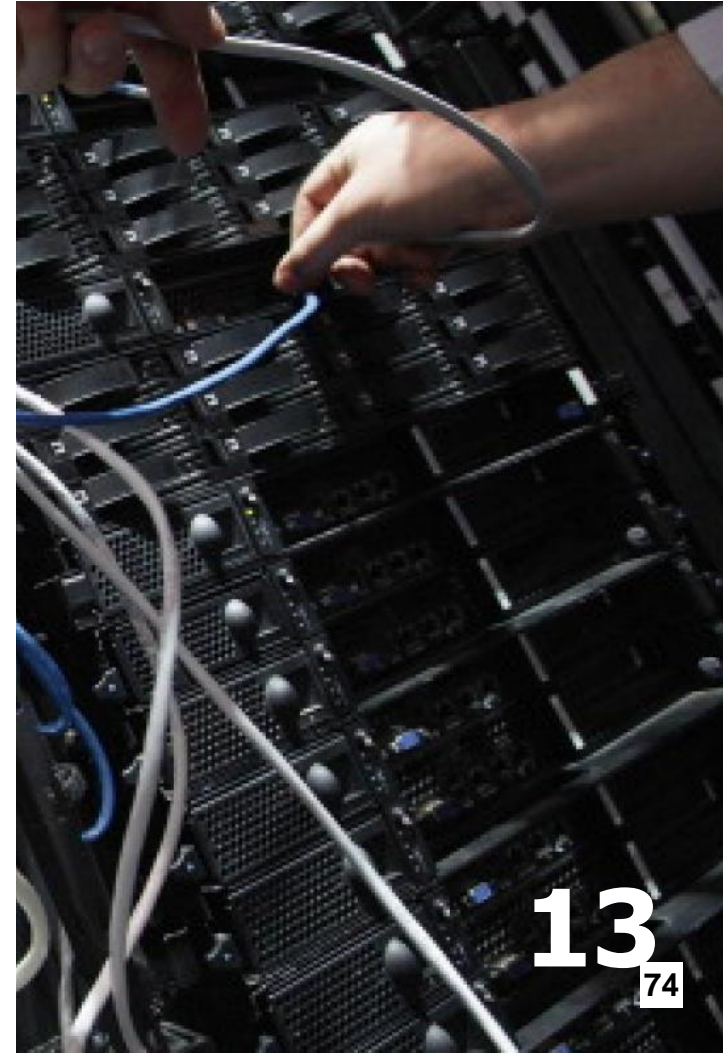
- **Tax Burden Impact:** The agreement aims to shift the tax burden away from residential taxpayers by encouraging commercial development and diversifying the tax base.
- **Phased Development:** The Company has the option to develop additional phases, each requiring a minimum \$800M expenditure. If so, the company may be eligible for separate 25-year property tax incentives for each phase, for up to five phases during the agreement's term.



# Project Proposal: Summary

## Job Creation Impact:

- The project will result in the creation of at least 50 quality full-time jobs, although existing data center campuses suggest approximately 200 full-time positions, including contractors.
- In addition, the project is expected to generate hundreds of temporary jobs during the construction phases(s), supporting the local construction industry and providing income for residents engaged in that construction.



# Project Proposal:

## Site Overview

- Approximately **1,039 acres**
- City Owned and managed
- Zoned M-2 with conditions
- Purchase price is appraised value of **~\$8.5 million** (or \$8,156.25 per acre)
- Access to existing electric utility infrastructure
- Offers opportunity to **scale + expand** operations over time



# Project Proposal:

## Initial Phase

### Minimum Investment

- Minimum **\$800M** capital investment\*
  - \$400M in construction
  - \$400M in equipment
- Approximately **800k** square foot building(s)

### Equipment Refresh

- Equipment refreshed every **3.5 to 5 years**
- Estimated value of each refresh is at least **\$400M**

### Job Creation

- Minimum **50 FTEs** on-site\*
- Expect **200+ FTEs** at full ramp-up
- Expect **1,000+** skilled trade workers at peak construction

**Over a 25-year period, each phase represents \$2.8 billion capital investment**

# Project Details: Party Obligations

## Company

- Minimum \$800 million in real and personal property investment
- Minimum of 50 FTEs following completion
- Purchase 1,039 acres at market value (~\$8.5 million)
- Within 5 years of closing, minimum \$5 million infrastructure improvements + Stan Roberts improvements
- City may repurchase the land if minimum infrastructure improvements are not made within 5 years of closing

## City

- Provide performance-based incentives as described on following slide for up to 5 phases, each phase representing a minimum \$800 million investment
- Incentives limited to a 35-year agreement term, encouraging Company to develop quickly to maximize incentive
- Cooperate in down-zoning to C-4, including condition release
- City to reimburse up to \$7.5M for its proportionate share of Stan Roberts (Texas Economic Development Fund is funding source)

# Project Details: Incentive Proposal

Over 25-Year Incentive Period per Phase (capped at 5 phases)

**City Property Tax Abatement / Rebate**  
(80% over 25 Years)  
**\$73.0M**

**County Property Tax Abatement / Rebate**  
(80% over 25 years)  
**\$36.0M**

**Park Fee Waiver**  
(one-time at 100%)  
**\$1.0M**

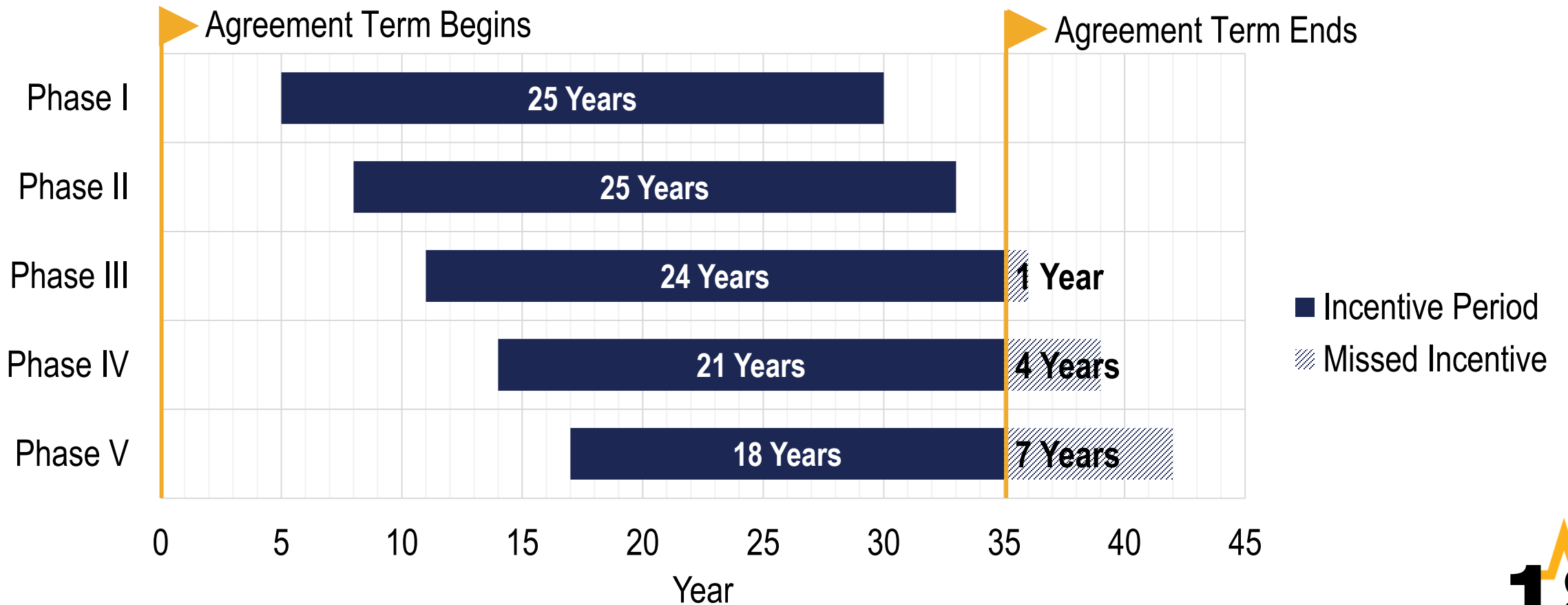
**Building Permit Fee Waiver**  
(100%)  
**\$350,000**

**Total Local Incentive = \$110M**

*(3.9% of total on an estimated \$2.8B investment including equipment refreshes)*

# Project Details:

## Illustration of “Shot Clock Approach”



# Project Details: **Contract of Sale**

- Company to purchase **1,039 acres** of City-owned land in Northeast El Paso
- Purchase price set at market value of \$8,156.25 per acre (or **~\$8.5M**)
- Closing to occur on or before **April 18, 2024, subject to contingencies** to closing being satisfied; company retains discretion to waive contingencies
- Following closing, within 5 years, Company is obligated to:
  - Make minimum investment of \$5M in infrastructure improvements
  - Improve full width of Stan Roberts located adjacent to property



# Project Details: Rezoning & Condition Release

- Two actions recommended:
  - **Downzone** from M-2 (Heavy Manufacturing) to C-4 (Commercial); and
  - **Release all conditions**
- **Less intense use** than what would be permitted in an M-2 zoning district, aligning with surrounding land uses and zoning classifications
- **City Plan Commission recommended unanimous approval** on November 16<sup>th</sup>
- Staff has not received communications in support or opposition of the request

# Project Details: **Intersection Improvements**

- Resolution allocating **funding for intersection improvements** at US-54 and Stan Roberts Sr. Ave. in an amount **capped at \$5M**
- Improvements provide for improved connection to the future data center site and surrounding 3,000+ acres of undeveloped City land to the north and south of Stan Roberts, further **improving shovel-readiness of surrounding sites**
- Funding source is the **Texas Economic Development Fund**, established by the City's franchise agreement with El Paso Electric

# Project Impact: *Initial Phase Economic Impact* (Operations + Construction)

## Summary of Initial Phase Economic Impact Over 25 Years

Impact	Direct	Indirect	Total
Jobs (FTEs On-Site)*	50.0	131.3	181.3
Annual Salaries/Wages	\$4.3M	\$5.2M	\$9.6M
Salaries/Wages over 25 Years	\$138.5M	\$167.9M	\$306.4M
Taxable Sales/Purchases over 25 Years**	\$2,060M	\$31.5M	\$2,091M

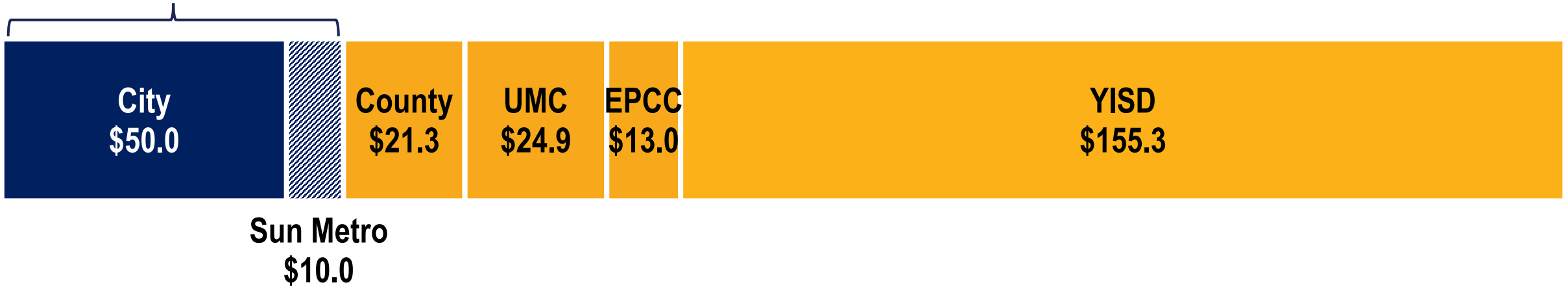
\*Direct jobs assume an average annual salary of **\$86,500**

\*\*Taxable Sales/Purchases includes sales resulting from temporary construction jobs (~1,000 at peak construction)

# Project Impact:

## Initial Phase Community Tax Benefit

**\$60M new revenue to the City**  
 (including \$10M in EPE Franchise Fees)



**Tax Benefit after Incentives Over 25-Year Term = \$275M**

# Project Impact: Project Benefits

## Property Tax Contributions

Substantial annual property tax revenues

Increased tax base, reducing reliance on residential taxes

## Job Creation and Income Effects

Hundreds of jobs during construction

Steady roles for technicians and engineers

Income from jobs boosts local tax revenue

## Economic Ripple Effects

Boosts local businesses, leading to higher sales tax revenue

Fosters technological innovation and collaboration

## Infrastructure Improvements

Upgrades to roads and utilities enhance efficiency

Improved infrastructure accelerates future development

# Council Action Requested

**Six actions** are a **critical step** to facilitate the future construction and operation of a **hyperscale data center** in Northeast El Paso, fostering innovation, economic diversity and long-term prosperity for El Paso residents.

## Dec 4<sup>th</sup>

- Contract of Sale  
Public Hearing
- **Chapter 380 Agreement**

## Dec 5<sup>th</sup>

- Contract of Sale
- Chapter 312 Agreement
- Down Zoning
- Condition Release
- Funding Intersection Improvements

## MISSION



Deliver exceptional services to support a high quality of life and place for our community.

## VISION



Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government.



## VALUES

Integrity, **R**espect, **E**xcellence,  
**A**ccountability, **P**eople



Legislation Text

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File #: 23-1510, Version: 1

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.  
No Title's, No emails. Please use ARIAL 10 Font.*

**District 4**

Economic and International Development, Karina Brasgalla, (915) 212-1570

Economic and International Development, Elizabeth Triggs, (915) 212-0094

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

An Ordinance authorizing the City Manager to sign a contract of sale with Worldwide LLC, a Delaware Limited Liability Company for the sale of approximately 1,039 acres of property 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; known as tax parcels 78427 and 13470.



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

**AGENDA DATE:** November 21, 2023

**PUBLIC HEARING:** December 4, 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:**

An ordinance authorizing the City Manager to sign a contract of sale with Wurldwide LLC, a Delaware limited liability company for the sale of approximately 1,039 acres of property 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; Known As Tax Parcels 78427 And 13470.

**BACKGROUND / DISCUSSION:**

This ordinance would authorize the City Manager to effectuate the sale of 1,039 acres of City-owned property located in Northeast El Paso, North of Stan Roberts Sr. Ave. and West of US Highway 54. The purchase price is set at \$8,156.25 per acre.

Section 253.0125 of the Texas Local Government Code authorizes a municipality to transfer real property with an entity that has entered into a Chapter 380 economic development agreement. Under the proposed terms of the 380 Agreement, Wurldwide LLC will make certain real and personal property improvements necessary to establish a data center. Total estimated costs to be invested by Wurldwide LLC for real and personal property improvements is \$800,000,000.

Note that under Section 7.6 of City Charter, the proceeds from the sale of capital assets shall be used for the purchase of other capital assets or to retire bonded debt.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT OF SALE WITH WURLDWISE LLC, A DELAWARE LIMITED LIABILITY COMPANY FOR THE SALE OF APPROXIMATELY 1,039 ACRES OF PROPERTY 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; KNOWN AS TAX PARCELS 78427 AND 13470.**

**WHEREAS**, the City of El Paso (“**City**”) is a municipal corporation organized and existing under the laws of the State of Texas and is the owner of approximately 1,039 acres of property 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 the deeds to City of El Paso recorded in Volume 1176, Page 504, and Volume 1186, Page 178, Deed Records, El Paso County, Texas; known as Tax Parcels 78127 and 13470 (the “**Property**”); and

**WHEREAS**, the City entered into a Chapter 380 Economic Development Program Agreement (the “**380 Agreement**”) with Worldwide LLC, a Delaware limited liability company (“**Company**”) on the 4<sup>th</sup> day of December, 2023 in order to facilitate the establishment of a hyperscale data processing center, as defined in Title 20 of the El Paso Municipal Code, which will contribute to the creation and growth of a regional information and data value chain, creating opportunities in highly related sectors and technologies, including highly specialized advanced manufacturing and clean energy opportunities, while also diversifying and expanding the local tax base and creating quality job opportunities, both directly and indirectly; and

**WHEREAS**, Section 253.0125 of the Texas Local Government Code (the “**Code**”) authorizes a municipality that has entered into an economic development agreement with an entity, as authorized by Chapter 380 of the Code, to transfer to that entity real property or interest in real property for consideration; and

**WHEREAS**, such consideration must be provided in the form of an agreement between the parties that requires the entity to use the property in a manner that primarily promotes a public purpose of the municipality relating to economic development (the “**Contract of Sale**”); and further requires that the Contract of Sale include provisions under which the municipality is granted sufficient control to ensure that the public purpose is accomplished and the municipality receives the return benefit; 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 facilitate the creation and growth of a regional information and data

value chain, creating opportunities in highly related sectors and technologies, while also diversifying and expanding the local tax base and creating quality job opportunities; and

**WHEREAS**, the Contract of Sale and related Chapter 380 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

**NOW THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager is authorized to sign, on behalf of the City of El Paso, the Contract of Sale between the City and Company, for the sale of approximately 1,039 acres of real property 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 the deeds to City of El Paso recorded in Volume 1176, Page 504, and Volume 1186, Page 178, Deed Records, El Paso County, Texas; known as Tax Parcels 78127 and 13470; and that the City Manager is further authorized to sign all documents necessary to effectuate this transaction, as approved by the City Attorney’s Office.

**PASSED AND ADOPTED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

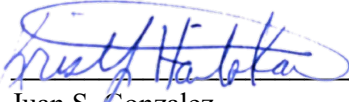
**THE CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leeser  
Mayor

**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

 /for/ \_\_\_\_\_  
Juan S. Gonzalez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

 \_\_\_\_\_  
Elizabeth K. Triggs, Director  
Economic & International Development

**ORDINANCE NO.** \_\_\_\_\_  
23-478-TRAN-506577-Seafox - JSG

[This document is a draft document for discussion purposes only and is not intended to be and shall not be deemed to be contractually binding in any way on any person. This document does not obligate any person to negotiate in good faith or proceed to completion and execution of a final agreement. No person is bound by any provision of this document until this document has been mutually executed by the Buyer and Seller.]

THE STATE OF TEXAS        )  
  )  
  )                    **CONTRACT OF SALE**  
COUNTY OF EL PASO        )

This Contract of Sale (“**Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (“**Effective Date**”) between the City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas (“**Seller**”) and Wurldwide LLC, a Delaware limited liability company (“**Buyer**”). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

The parties agree as follows:

**SECTION 1. SALE AND PURCHASE AND CONVEYANCE OF THE PROPERTY.**

A. **SALE AND PURCHASE.** Subject to the terms of this Agreement, the Seller will sell to the Buyer and the Buyer will purchase from the Seller the property described as follows:

1. Approximately 1,039 acres of real property 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 the deeds to City of El Paso recorded in Volume 1176, Page 504, and Volume 1186, Page 178, Deed Records, El Paso County, Texas; known as Tax Parcels 78427 and 13470, as further described in **Attachment “A”**, the “**Property**”.
2. The groundwater estate related to the Property, including the Groundwater (as defined herein below) and Groundwater Rights (as defined herein below) are reserved by and for the Seller. The term "**Groundwater**" shall mean the underground water, percolating water, artesian water, and any other water existing now and in the future from any and all depths, formations, and horizons beneath the surface of the Property. The term "Groundwater" shall not include water delivered to Buyer by El Paso Water (defined below) pursuant to the W&WW Agreement (defined below), surface water, and Buyer-managed reservoirs and aquifers permitted pursuant to the W&WW Agreement. The term "**Groundwater Rights**" shall mean, subject to the following sentence, (1) the right to access, test, capture, explore for, drill for, develop, withdraw, produce, store, treat, transport or otherwise acquire and beneficially use, the Groundwater beneath the Property from adjacent land; and (2) the right to apply for and obtain all permits, licenses, or other governmental authorizations relating to any of the foregoing, including but not limited to any permit issued by a groundwater conservation district or other governmental entity existing now or in the future and having jurisdiction over the Groundwater and/or the exploration, drilling, production, use, storage, treatment, reuse, recharge or transport of Groundwater that may be necessary for the exercise of the Seller's limited rights therein, but only from adjacent land. The term “Groundwater Rights” shall expressly exclude any rights granted by El Paso Water to Buyer pursuant to the W&WW Agreement, including the right for Buyer to manage, store, recharge, and withdraw water from reservoirs and aquifers. Seller irrevocably waives all rights of ingress and egress and all other rights of every kind and character whatsoever to enter upon or to use all or any part of the surface of the Property for any purpose in connection with such Groundwater Rights, including without limitation the right

to enter upon all or any part of the surface of the Property for purposes of exploring for, mining, drilling, producing, transporting, marketing, storing or any other purposes incident to the development or the production of the Groundwater. Seller may only produce such Groundwater from land adjacent to the Property, provided that such production does not interfere with the surface or subsurface support of any improvements constructed or to be constructed on the Property, and further provided that the drilling for such Groundwater shall enter the Property at a depth greater than 400 feet.

- B. **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT.** Seller and Buyer entered into a Chapter 380 Economic Development Program Agreement authorized by Chapter 380 of the Texas Local Government Code on the 4<sup>th</sup> day of December, 2023 (the “**380 Agreement**”) to facilitate the establishment of a hyperscale data processing center, as defined in Title 20 of the El Paso Municipal Code, which will contribute to the creation and growth of a regional information and data value chain, creating opportunities in highly related sectors and technologies, including highly specialized advanced manufacturing and clean energy opportunities, while also diversifying and expanding the local tax base and creating quality job opportunities, both directly and indirectly. Seller and Buyer agree that the purposes for which the Property will be developed and used is consistent with the purposes of the 380 Agreement and will further the public purpose of the municipality relating to economic development, and thus Seller has concluded that the conveyance of the Property is permitted as authorized by Section 253.025 of the Texas Local Government Code.

## **SECTION 2. PURCHASE PRICE AND TITLE COMPANY.**

- A. **PURCHASE PRICE.** The Buyer will pay the Seller a total amount of **\$8,156.25** per acre or portion thereof for each acre included in the Property (“**Purchase Price**”). As of the Effective Date, Buyer has commissioned at Buyer’s expense a survey for the purpose of determining the land area of the Property and shall, prior to the end of the Inspection Period, as described by Section 4(C)(1) of this Agreement, provide Seller a copy of same. The Purchase Price above is to be paid by the Buyer to the Seller through the Title Company selected by the Buyer (“**Title Company**”) at the Closing of this Agreement.
- B. **ACCESS DEPOSIT.** As of the Effective Date, Buyer has previously deposited **\$333,600** to Seller (“**Access Deposit**”), pursuant to the terms and conditions of that certain Temporary Right of Entry dated April 18, 2022 (as amended, the “**Access Agreement**”). Buyer and Seller irrevocably stipulate and agree that the Access Deposit shall constitute adequate consideration of Seller’s execution and delivery of this Agreement and for Buyer’s right to review and inspect the Property. If the sale of the Property is in accordance with the provisions in this Agreement, then the Access Deposit shall be credited against the Purchase Price of the Property at Closing.
- C. **TITLE COMPANY.** The Title Company will act as the escrow holder in this transaction. The Seller will deliver signed copies of this Agreement to the Title Company which will serve as instructions for the closing of this transaction.

## **SECTION 3. SELLER’S WARRANTIES, OBLIGATIONS, AND RIGHTS.**

- A. **WARRANTIES.** To the best of the Seller’s knowledge the Seller warrants to the Buyer that:
1. The Seller has the full right to convey the Property, as such the Buyer’s rights to the Property conveyed through this Agreement will not be adversely affected by a superior title;
  2. No leasehold rights or interests have been granted and are currently in effect involving the

Property and Seller is in exclusive possession of the entire Property and no other party occupies any portion of the Property or has any valid claim or interest in possessing the Property or any portion thereof, whether by reason of agreement, lease, farm lease or license, cell phone tower lease, adverse possession, prescriptive easement or establishment of a boundary by acquiescence;

3. No work has been performed on the Property or any materials have been provided for work on the Property that could result in a mechanic's or materialman's lien;
4. There are no claims, actions, or legal proceedings pending before any judicial or quasi-judicial body, and there is neither threat thereof nor any basis therefor, with respect to the Property (or any portion thereof);
5. The Seller has not received any notices of (i) condemnation or taking of all or any portion of the Property by eminent domain, or (ii) with the exception of water and wastewater impact fees as authorized by Chapter 15.22 of the El Paso Municipal Code and adopted pursuant to Chapter 395 of the Texas Local Government Code, special assessments that would affect the Property;
6. There are no unpaid utility bills or unfulfilled maintenance contracts regarding the Property;
7. The Property is in compliance with all existing laws, rules, regulations, ordinances and orders of all federal, state and local authorities having jurisdiction over the Property;
8. Seller has not received any written or oral communication alleging that, with respect to the Property, Seller is in violation of any environmental law; and
9. Seller has provided Buyer with all material documents in its possession relating to the Property, and such documents do not contain any untrue statement of a material fact or fail to state a material fact necessary to make the statements contained therein not materially misleading.
10. LIMITATIONS ON WARRANTY The warranties provided in this section of the Agreement will survive for one year following the date of conveyance as shown in the executed Special Warranty Deed signed by the Seller. Except for the warranties made above and in the Special Warranty Deed executed by the Seller, the Buyer agrees that the conveyance of the Property is an "as is, where is and with all faults" transaction and that the Seller disclaims all other warranties pertaining to the condition of the Property available under law whether express or implied including but not limited to any warranties pertaining to the nature and condition of water, soil, geology, or other environmental hazards or conditions (including the presence of asbestos). Notwithstanding anything to the contrary in this Agreement, the Seller shall have no liability for breaches of any representations, warranties and certificates which are made by the Seller in this Agreement or in any of the documents or instruments required to be delivered by Seller under this Agreement if the Buyer or its employees, managers, contractors or agents ("Buyer Parties") had knowledge of such breach at Closing where Buyer elects to proceed to close the transaction contemplated by this Agreement. Buyer shall not otherwise have the right to bring any lawsuit or other legal action against Seller, nor pursue any other remedies against Seller, as a result of the breach of such Seller's representations of which the Buyer Parties had knowledge prior to Closing, but Buyer's remedies shall be as set forth in this Agreement. The terms and provisions of this Section survive the Closing.

B. OBLIGATIONS. The Seller will comply with the following obligations:

1. Within 10 business days of the Effective Date, the Seller will deliver the following documents to the Buyer, to the extent such items are in Seller's possession or control or in the possession or control of Seller's agents, auditors, independent contractors or representatives:
  - a. Any "as-built" plans for any improvements on the Property, if any;
  - b. Tax bills showing the amount of the current real property tax and the assessed value of the land;
  - c. All environmental reports of the Property and the improvements on the Property; and
  - d. All documents and information regarding the Property, including without limitation, all surveys, plats and plans, drawings and specifications (including without limitation, CAD drawings and aerial photographs), title commitments, title policies, prior title abstracts, insurance information, property condition and/or environmental reports, leases, agreements, and other materials, books and records pertinent to the ownership, operation, occupancy, use, or management of the Property.
2. If the Seller has contracted a real estate broker or agent to represent the Seller in the transaction of this Agreement, then the Seller is responsible for the payments of that contract.
3. Seller shall not (i) directly or indirectly lease, sell, franchise, assign or create any right, title or interest whatsoever in or to the Property (including entering into any occupancy agreement), (ii) take any action, create, commit, permit to exist or suffer any acts which would (A) give rise to a variance from the current legal description of the Property, except as expressly provided herein (and in no event may the size of the Property or boundaries thereof be changed), or (B) cause the creation of any lien, charge or encumbrance, or (iii) enter into any agreement to do any of the foregoing without Buyer's prior written consent (which consent may be withheld in Buyer's sole and absolute discretion). Seller shall promptly notify Buyer of any change in any condition with respect to the Property or any portion thereof or of any event or circumstance of which Seller obtains knowledge after the Effective Date which (i) materially, adversely affects the Property or any portion thereof or the use or operation of the Property or any portion thereof, (ii) makes any representation or warranty of Seller to Buyer under this Agreement untrue or misleading, or (iii) makes any covenant or agreement of Seller under this Agreement incapable or less likely of being performed, it being expressly understood that Seller's obligation to provide information to Buyer under this Section shall in no way relieve Seller of any liability for a breach by Seller of any of its representations, warranties, covenants or agreements under this Agreement.
4. Except as otherwise specifically set forth herein, Seller shall not take any actions with respect to the development of the Property without Buyer's prior written consent. Seller hereby agrees to cooperate with Buyer (including, if necessary or helpful, through the execution of applications, owner's affidavits, and other documents) in Buyer's efforts to obtain such governmental approvals, including approval of any rezoning of the Property as a planned unit development or otherwise, special use permits, variances and waivers of development standards, site plan approval, design reviews, platting and subdivision approval and other approvals as Buyer deems necessary or appropriate to permit Buyer to develop and/or operate the Property as Buyer wishes. Seller shall, at Buyer's cost, reasonably cooperate with Buyer and any municipality or utility in obtaining the appropriate extension of required utility services to the Property. At the request of Buyer, Seller agrees to appear at public hearings, city staff meetings or other meetings related to Buyer's development activities. Seller shall not, without

Buyer's prior written consent, which consent shall be in Buyer's sole discretion: (i) execute or otherwise agree to any deed restrictions, restrictive covenants or other documents affecting the use of all or any portion of the Property, (ii) establish or consent to the establishment of any special association, community association, property owners' association, architectural control committee or any other such committee having jurisdiction over all or any portion of the Property, (iii) apply for or consent to any change or modification with respect to the zoning, development or use of any portion of the Property; (iv) consent to any special assessment affecting the Property, or (v) make any public comment regarding the Property except as explicitly set forth in Section 7(E).

5. Neither Seller nor any person acting on behalf of Seller shall offer, entertain, solicit or negotiate with respect to any inquiries or proposals relating to the possible direct or indirect acquisition of the Property or any portion thereof (or any other form of transaction having a similar effect) or make any information about the Property or any portion thereof available (for purpose of sale or finance) to any person other than Buyer during the term of this Agreement.
6. The Seller is responsible for Seller's share of all closing costs related to this transaction ("**Closing Costs**"). For purposes of this Agreement, Closing Costs include, but are not limited to, the following:

<b>COST</b>	<b>RESPONSIBLE PARTY</b>
Title Commitment required to be delivered pursuant to Section 4(C)(2)	Buyer
Basic premium for Title Policy required to be delivered pursuant to Section 4(C)(2)	Seller
Premium for any upgrade of Title Policy for any extended or additional coverage and any endorsements desired by Buyer, any inspection fee charged by the Title Company, tax certificates, municipal and utility lien certificates, and any other Title Company charges	Buyer
Costs of Survey and/or any revisions, modifications or recertifications thereto	Buyer
Recording fees	Seller
Any escrow fee charged by Escrow Agent for holding the Earnest Money or conducting the Closing	Buyer: ½ Seller: ½
All other closing costs, expenses, charges, and fees	Buyer

**C. RIGHTS.**

1. The Buyer may select the Title Company that will assist with the sale of the Property. Either party may forward this Agreement to the Title Company to be used at escrow instructions.

**SECTION 4. BUYER'S WARRANTIES, OBLIGATIONS, AND RIGHTS.**

**A. WARRANTIES.** The Buyer warrants that:

1. There will be no unpaid bills or claims in connection with the inspection of the Property.

**B. OBLIGATIONS.** The Buyer will comply with the following obligations:



1. As consideration for Seller's agreement to sell the Property to Buyer and Seller's cooperation with Buyer as set forth in Section 3(b)(4) above, Buyer agrees to Develop (defined below) the Property within 5 years of the Closing (the "**Development Deadline**"). Notwithstanding the foregoing, Seller is authorized to issue a letter to Buyer to extend the Development Deadline for up to an additional year in Seller's sole discretion. For purposes of this section, "**Develop**" shall mean (a) funding, commencing, and completing construction of the Stan Roberts Sr. Ave. Improvements pursuant to the terms set forth in the 380 Agreement; and (b) funding and commencing construction of infrastructure improvements to the site in the form of roads, electric connections, water connections, sewer connections, or fiber optic connections; and/or funding and commencing on-site construction activities such as grading, landscaping, soil stabilization, or drainage; and (c) expending at least \$5,000,000.00 in the construction of said improvements and/or on-site construction activities identified in Subsection (b) of this paragraph. If Buyer fails to Develop the Property on or before the Development Deadline, Seller shall have the right, as its sole and exclusive remedy, to elect either to (a) repurchase the Property from Buyer (the "**Springing Repurchase Right**"), in accordance with the terms and conditions set forth herein, or (b) demand payment of liquidated damages in an amount equal to \$5,000,000.00 ("**Liquidated Damages**," and collectively with the Springing Repurchase Right the "**Seller Election Remedies**"). No later than 60 days after the Development Deadline, Buyer shall provide Seller evidence that Buyer has Developed the Property in accordance with this Agreement (the "**Development Report**"). If, in the Seller's reasonable determination, Buyer has not Developed the Property by the Development Deadline, then within 30 days after receipt of the Development Report, Seller shall give written notice to Buyer of Buyer's failure to timely Develop the Property ("**Development Remedies Notice**"). Buyer shall have a period of sixty (60) days ("**Development Cure Period**") to either negotiate with Seller a revised development plan for the Property to be memorialized by a separate written agreement ("**Revised Development Plan**") or provide sufficient evidence of Development. If, in Seller's sole discretion, Buyer provides sufficient evidence to Seller that Buyer has Developed the Property, or if Buyer and Seller enter into a Revised Development Plan, then Seller's right to exercise the Seller Election Remedies shall terminate and Seller shall have no further remedies hereunder. If Buyer fails to Develop the Property within the Development Cure Period, then within 30 days after the expiration of the Development Cure Period, Seller shall give a second written notice to Buyer (the "**Second Notice**") informing Buyer that Seller is electing either the Springing Repurchase Right or the Liquidated Damages. If Seller elects the Springing Repurchase Right in the Second Notice, the notice shall set forth the closing date on which Seller shall take title to the Property pursuant to special warranty deed (the "**Repurchase Closing Date**"), provided that the Repurchase Closing Date shall be no earlier than 30 days and no more than 90 days after Buyer's receipt of the Second Notice. Upon the Repurchase Closing Date, Seller shall pay to Buyer, by wire transfer of valid funds, an amount equal to 100% of the Purchase Price paid by Buyer to Seller pursuant to this Agreement, as adjusted by prorations for real estate taxes in accordance with the proration terms set forth herein. If Seller elects to receive the Liquidated Damages in the Second Notice, then Buyer shall pay the Liquidated Damages to Seller by wire transfer of valid funds within 60 days of the Second Notice (the "**Damages Payment Date**"). Notwithstanding any statement to the contrary herein, if Buyer and Seller enter into a Revised Development Plan prior to the Repurchase Closing Date or the Damages Payment Date, as applicable, then the Second Notice shall be void, the Seller Election Remedies shall automatically terminate, and Seller shall not have any further right to the Springing Repurchase Right or the Liquidated Damages. The Seller Election Remedies shall automatically terminate upon the earlier of (a) Buyer Developing the Property; (b) the failure of Seller to timely deliver the Development Remedies Notice to Buyer; or (c) the failure of Seller to timely deliver the Second Notice to Buyer. If requested by Seller, at

Closing the parties shall each execute and deliver a memorandum evidencing Seller's Springing Repurchase Right, which shall be filed of record in the appropriate records of El Paso County, Texas. Upon the termination or expiration of the Springing Repurchase Right, Buyer shall have the right to record a memorandum, confirming that such termination or expiration has occurred, and such memorandum may be conclusively relied upon by all interested parties as to the termination or expiration of the Springing Repurchase Right. Additionally, upon Buyer's request, Seller agrees to provide to Buyer an affidavit in recordable form confirming that the Springing Repurchase Right has terminated or expired. BUYER AND SELLER AGREE THAT THE LIQUIDATED DAMAGES SET FORTH IN THIS SECTION DO NOT CONSTITUTE A PENALTY BUT RATHER CONSTITUTE THE PARTIES' BEST ESTIMATE AS TO ACTUAL DAMAGES THAT MAY BE INCURRED UPON THE FAILURE OF BUYER TO TIMELY COMMENCE CONSTRUCTION. IN THE EVENT BUYER FAILS TO DEVELOP BY THE DEVELOPMENT DEADLINE, THE SELLER ELECTION REMEDIES SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY AND BUYER'S SOLE LIABILITY. THE PARTIES HEREBY AGREE THAT THE LIQUIDATED DAMAGES DESCRIBED HEREIN ARE REASONABLE AND REFLECT THE BARGAINED FOR RISK ALLOCATION AGREED TO BY THE PARTIES.

2. AFTER THE CLOSING, THE BUYER WILL BE RESPONSIBLE FOR ALL ENVIRONMENTAL MATTERS THAT ARISE, EVEN IF SUCH ENVIRONMENTAL MATTERS WERE KNOWN BEFORE THE CLOSING. AFTER THE CLOSING, THE BUYER RELEASES THE SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM LIABILITY FROM ENVIRONMENTAL PROBLEMS THAT AFFECT THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE.
3. Each party agrees that there is no broker, finder, or intermediary with whom it has dealt in connection with this transaction. Both parties agree to indemnify each other against all claims for fees, commissions or other compensation claimed to be due to any broker, finder, or intermediary with whom the indemnifying party may have dealt in connection with this transaction.
4. The Buyer is responsible for Buyer's share of all Closing Costs related to this transaction set forth in Section 3(B)(6).

C. RIGHTS. The Buyer is responsible for all costs associated with exercising the following rights:

1. INSPECTION. The Buyer may inspect the Property through April 18, 2024 ("**Inspection Period**"). Buyer shall have 2 options to extend the Inspection Period by 180 days each (each, an "**Extension Option**"). To exercise an Extension Option, Buyer shall deliver written notice of such exercise to Seller and Title Company prior to the expiration of the then-current Inspection Period (as the same may be extended hereunder), and at the same time, Buyer shall deposit with Title Company an additional **\$83,400** (each, an "**Extension Deposit**"). The Title Company will hold the Extension Deposit in an escrow to be applied as provided by this Agreement. If Buyer timely exercises an Extension Option, the Inspection Period shall be extended for an additional period of 180 days, the Extension Deposit shall be non-refundable to Buyer but shall be credited against the Purchase Price at Closing. Commencing on the Effective Date and continuing until the earlier to occur of the termination of this Agreement or Closing, Buyer and its employees, agents and consultants shall have the right, at all reasonable

times, to enter upon the Property for the purpose of making inspections, assessments, evaluations and studies, and conducting such tests as it deems advisable, including but not limited to geotechnical studies, seismic studies, soil tests, environmental (including Phase I and/or Phase II environmental site assessments) and ecological studies, wetlands assessment and feasibility studies to develop plans and budgets for development of the Property and otherwise determine that the Property meets the criteria and requirements of Buyer. Phase II environmental site assessments may include drilling and sampling of soil, soil vapor, and groundwater. The Access Agreement is hereby terminated in its entirety and neither party shall have any further obligations thereunder. The Buyer will be responsible for all expenses related to the inspection or any other examination of the Property. The Buyer will ensure that its representatives, agents, consultants, or any other persons related to the inspection of the Property, if any, have general liability insurance of at least \$500,000.00 and property damage insurance of at least \$500,000.00 during the Inspection Period. The Buyer will ensure the insurance policies are with an insurance provider that is licensed in the State of Texas and are acceptable to the Seller. The Seller disclaims any warranties regarding the condition of the Property and/or the suitability of the Property. The Buyer may terminate this Agreement during the Inspection Period in accordance with Section 5(A)(1). The Buyer acknowledges that the Buyer was given an opportunity to inspect the Property and is relying on information gathered during the inspection and not information provided to the Buyer by the Seller. The Buyer acknowledges that the information the Buyer has obtained about the Property has been from a variety of sources and that the Seller makes no representation as to the accuracy of that information. THE BUYER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE CITY'S OFFICER'S AND EMPLOYEES FROM ANY THIRD-PARTY CLAIMS RELATED TO ANY INSPECTIONS PERFORMED BY THE BUYER OR THE BUYER'S EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS. SUCH INDEMNIFICATION RESPONSIBILITY ON BUYER INCLUDES THE OBLIGATION TO PAY FOR ALL ATTORNEY'S FEES AND COURT COSTS INCURRED BY THE SELLER.

2. **TITLE INSURANCE.** The Buyer will, at the Buyer's sole expense, order a current commitment for Title Insurance for the Property within thirty (30) days of the Effective Date of this Agreement. The Buyer will send a copy of the title commitment and any documents related to title insurance to the Seller.
3. **SURVEY.** The Buyer may update an existing survey at the Buyer's expense within ninety (90) days of the Effective Date of this Agreement. If the metes and bounds description of the Property in the survey obtained by the Buyer are different from the ones described in Attachment "A", then the parties shall use the updated survey to describe the Property in this Agreement.
4. **TITLE REVIEW PERIOD.** The Buyer may review the commitment for title insurance and the survey within 90 days of receiving the commitment for title insurance and the updated survey ("**Title Review Period**") and send a written notice to the Seller, before the expiration of the Title Review Period, listing the Buyer's objections ("**Objections**"), if any. Seller shall, at Seller's sole cost and expense, remove or cause the removal of all of the following (or in the alternative, obtain for Buyer, at Seller's sole cost and expense, title insurance coverage insuring over the following, in form and substance satisfactory to Buyer in its sole discretion): (a) any and all rights of parties in possession; (b) all exceptions to title and survey matters created by Seller on or after the Effective Date without the prior written consent of Buyer (which consent may be withheld in Buyer's sole and absolute discretion); (c) any and all liens and encumbrances, including but not limited to monetary liens, affecting the Property which secure an obligation to pay money or can be removed by payment of a liquidated sum of money (other

than installments of real estate taxes or assessments not delinquent as of the Closing); (d) any mechanic's, materialman's, or similar liens, or right to such liens, whether or not shown by the public records, (e) easements or claims of easements not shown in the chain of title or by the public records, and (f) all taxes and assessments due and payable for any period prior to the Closing (the foregoing clauses (a) through (f), collectively, the "**Obligatory Removal Exceptions**"). If the Buyer does not send the Seller a written notice with the Objections within the Title Review Period, then the parties will proceed with the purchase and sale of the Property in accordance with the provisions of this Agreement. If the Seller receives Objections from the Buyer, then the Seller will perform one of the following within 10 calendar days of receiving Buyer's objections:

- a. Notify the Buyer that the Seller will cure all of the Objections before the Closing Date. If the Seller elects this option, then the Seller will cure all of the Objections before the Closing Date; or
  - b. Notify the Buyer that the Seller will not cure all of the Objections, in which case Buyer may, in its sole discretion, either (i) terminate this Agreement and recover the Extension Deposit, or (ii) take title to the Property subject to the Objections; however, to the extent Seller refuses to remove any Obligatory Removal Exceptions, Buyer shall receive a credit against the Purchase Price for any expenses incurred or reasonably expected to be incurred by Buyer in removing all such Obligatory Removal Exceptions. Failure by Seller to respond to the Objections within the time period set forth above shall be deemed an election by Seller not to cure the Objections.
  - c. In either case, if reasonably requested by Seller, Buyer and Seller shall extend the Closing Date to allow additional time for Seller to remove or cause the removal of such Objections. If Buyer elects to extend the Closing Date under the foregoing clause and the Objections are not subsequently cured to the satisfaction of Buyer within a reasonable amount of time following such election, then Buyer may elect either of the options set forth in the immediately preceding subsection.
5. WATER RIGHTS. Seller acknowledges that Buyer may establish redundant and/or back up water and wastewater resources to serve the Property in accordance with applicable laws and subject to the terms and conditions of the W&WW Agreement. If Buyer so elects to establish redundant and/or backup water sources by (i) collecting rainwater on the Property, or (ii) otherwise lawfully storing water on the Property for potential use as needed, Seller acknowledges that Seller shall not be entitled to access, capture, or otherwise acquire and beneficially use such redundant and/or backup water collected and/or stored by Buyer. Seller acknowledges that Buyer may construct any infrastructure or install any equipment necessary for such purposes.

## SECTION 5. TERMINATION.

A. This Agreement may be terminated as provided in this Section.

1. TERMINATION DURING INSPECTION PERIOD. The Buyer may terminate this Agreement for any reason at any time only during the Inspection Period by providing written notice to the Seller. The Buyer may afford the Seller a certain time to cure any defects on the Property that are discovered and notified to the Seller during the Inspection Period in accordance with Section 4(C)(4). The Seller may cure the defects notified by the Buyer or Buyer may choose to terminate this Agreement if the Seller refuses to cure the defects in accordance with Section

- 4(C)(4). If the Agreement is terminated under this provision, then the Seller will refund, or direct the Title Company to refund, the Extension Deposit to the Buyer.
2. **TERMINATION FOR CAUSE.** Either party may terminate this Agreement before or on the Closing Date if the other party fails to fulfill the obligations of this Agreement following written notice allowing for a 10 calendar day opportunity to cure. If the Seller terminates this Agreement pursuant to this provision, then the Seller may keep the Access Deposit and the Extension Deposit made by the Buyer. Seller and Buyer agree that Seller's damages resulting from Buyer's default are difficult, if not impossible, to determine and the Access Deposit and the Extension Deposit are a fair estimate of those damages which has been agreed to in an effort to cause the amount of such damages to be certain. If the Buyer terminates this Agreement for cause, then Buyer may, in its sole and absolute discretion, either (a) file a *lis pendens* and/or seek specific performance to cause Seller to convey the Property to Buyer pursuant to the terms and conditions of this Agreement, or (b) recover the Access Deposit and Extension Deposit and such will be the Buyer's sole remedy under this Agreement. Seller acknowledges that the Property is unique in nature and that this Agreement relates to an interest in real property; and, accordingly, that Buyer shall be entitled to specific performance of this Agreement. 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.
  3. **TERMINATION DURING TITLE REVIEW PERIOD.** If during the Title Review Period, Buyer decides to terminate this Agreement in accordance with Section 4(C)(4), then Buyer will send a written termination notice to Seller, and Seller will refund, or direct the Title Company to refund, the Extension Deposit to Buyer.
  4. **TERMINATION FOR CASUALTY.** If any damages occur to the Property before the Closing Date due to fire or another casualty, then the parties may mutually agree to postpone the Closing Date to allow the Seller time to repair the damages. The Buyer may only terminate this Agreement if the repairs to the Property by the Seller will lead to the Closing Date being postponed. If the Buyer does not want to postpone the Closing Date to allow the Seller to remedy the damages, then the Buyer may terminate this Agreement by sending a termination notice to the Seller after becoming aware of the damages to the Property. If the Buyer terminates this Agreement under this provision, then the Seller will refund, or direct the Title Company to refund, the Extension Deposit to the Buyer.

## **SECTION 6. CLOSING.**

- A. **CLOSING DATE.** Provided that the parties have not terminated this Agreement, the parties will meet all the obligations of this Agreement, including finalizing the sale and transfer of the Property ("Closing") within 30 calendar days following the expiration of the Inspection Period or such earlier date as may be specified by the Buyer by not less than five calendar days advance written notice to the Seller ("Closing Date"). A party's failure to meet all the obligations of this Agreement by or on the Closing Date is a breach of this Agreement.
- B. **SELLER'S OBLIGATIONS.** Before or on the Closing Date the Seller will deliver the following to the Buyer through the Title Company:

1. A fully executed special warranty deed (“**Deed**”) conveying the title to the Property included in this Agreement as **Attachment “B”**;
  2. The environmental reports, test results and disposal documentation with regard to the demolition and removal of asbestos from the site, if any;
  3. All keys or other access devices in the possession of the Seller or its agents to the locks located on the Property, if any;
  4. All Closing Costs attributable to Seller; and
  5. Any other items requested by the Title Company and Buyer reasonably necessary to provide clear title and finalize the closing of this Agreement, including without limitation, a gap indemnity and any title affidavits confirming, inter alia, the absence of any mechanics’, materialmans’, or similar liens on, or parties in possession of, all or any portion of the Property requested by Title Company.
- C. **BUYER’S OBLIGATIONS.** At the closing of this Agreement the Buyer will deliver the following to the Seller through the Title Company:
1. The Purchase Price minus the Access Deposit being held by Seller and the Extension Deposit that is being held by the Title Company;
  2. All Closing Costs attributable to Buyer; and
  3. Any other items requested by the Title Company to finalize the closing of this Agreement.
- D. **TAXES.** General real estate taxes, if any, for the then current year relating to the Property will be prorated on midnight before the Closing Date. If the Closing occurs before the tax rate is fixed for the then current year, the apportionment of taxes shall be made upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation of the Land and Improvements. Within 30 Business Days after the actual taxes for the year in which the Closing occurs are determined, Seller and Buyer shall adjust the proration of such taxes and Seller and Buyer, as the case may be, shall pay to the other any amount required as a result of such adjustment and this covenant shall not merge with the Deed delivered hereunder but shall survive the Closing. All special taxes or assessments assessed prior to the Closing Date shall be paid by Seller. The provisions of this Section 6(D) shall survive Closing for a period of 12 months.
- E. **POSSESSION.** Possession of the Property will be transferred to the Buyer from the Seller at the Closing of this Agreement, as such the Buyer acknowledges that the risk of loss transfers along with the possession of the Property.
- F. **BUYER’S CONDITIONS PRECEDENT TO CLOSING.** The obligation of Buyer to render performance under this Agreement is subject to the following conditions precedent (and conditions concurrent, with respect to deliveries and requirements required at Closing) (collectively, “Buyer’s Conditions”):
1. Water and Wastewater Agreement. Buyer and El Paso Water Utilities Public Service Board (“**El Paso Water**”) shall have entered into a written agreement acceptable to Buyer in Buyer’s sole and absolute discretion pursuant to which El Paso Water shall have agreed to provide water and wastewater service to the Property (“**W&WW Agreement**”), and as of Closing, such

W&WW Agreement shall be in full force and effect, all applicable appeals periods shall have run, and El Paso Water shall not be in default thereunder nor shall there have occurred any event or omission that would constitute a default but for the passage of time or giving of notice or both.

2. Power Purchase Agreement. Buyer and El Paso Electric Company (“**El Paso Electric**”) shall have entered into a written agreement pursuant to which El Paso Electric shall have unconditionally agreed to provide electricity service to the Property in quantities and upon rates, terms and conditions acceptable to Buyer in Buyer’s sole and absolute discretion, and as of Closing, such agreement shall be in full force and effect, all applicable appeals periods shall have run, and El Paso Electric shall not be in default thereunder, nor shall there have occurred any event or omission that would constitute a default but for the passage of time or giving of notice or both.
3. Development Agreement and/or Incentive Programs. Buyer, shall have entered into (a) an agreement with the City of El Paso (the “**City**”) pursuant to which the City shall have agreed to provide Buyer with certain economic development incentives (“**City EDA**”); and (b) an agreement with the County pursuant to which the County shall have agreed to provide Buyer with certain economic development incentives (“**County EDA**”, and collectively with the City EDA, are the “**EDAs**”), in each case on terms and conditions acceptable to Buyer in Buyer’s sole and absolute discretion. As of Closing the EDAs shall be in full force and effect, all applicable appeals periods shall have run, and neither the City nor the County shall be in default thereunder nor shall there have occurred any event or omission that would constitute a default but for the passage of time or giving of notice or both under either of the EDAs.
4. Title. The Title Company shall be prepared and irrevocably committed to issue to Buyer the Title Policy with no Obligatory Removal Exceptions. The Title Policy shall otherwise be in form and substance acceptable to Buyer.
5. Permits. Buyer shall have received all Permits and other approvals required (a) for the commencement of construction of improvements on the Property in accordance with the plans developed and adopted by Buyer, in its sole discretion, (b) for the disturbance of the ground at the Property and the grading of the Property, and (c) to operate the improvements in the manner contemplated by Buyer once complete, and all applicable appeals periods with respect to such Permits shall have run. “**Permits**” means approvals, licenses, permits, consents, certificates, registrations, exemptions, waivers, or other authorizations required by applicable law.
6. Subdivision. Seller shall have procured final approval of, and shall have filed in the El Paso County, Texas real estate records, a subdivision or summary plat which creates the Land as a legally subdivided parcel (“**Subdivision**”) upon terms and conditions acceptable to Buyer in its sole discretion and all applicable appeals periods shall have run. Buyer shall select and retain the engineer(s) and other consultants to prepare the materials to be submitted and filed with respect to the Subdivision.
7. Water Line Easement. Seller shall have delivered to Title Company a properly executed and acknowledged permanent easement agreement in favor of Buyer (the “**Water Line Easement**”) that is sufficient to allow Buyer or its utility provider to install and maintain water and wastewater lines and other equipment to serve the Property and Buyer’s infrastructure and equipment located on or adjacent to the Property and not less than 30 feet in width for its entire length.

8. No Moratoria. No moratorium, statute, regulation, ordinance, or federal, state, county or local legislation, or order, judgment, ruling or decree of any governmental agency or of any court shall have been enacted, adopted, issued, entered or pending which would adversely affect Buyer's intended use of the Property.
9. Actions, Suits, etc. As of the Closing Date, there shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings that could adversely affect the operation or value of the Property or Seller's ability to perform its obligations under this Agreement.
10. Waiver of Surface Rights. No later than 3 Business Days prior to the Closing Date, if there has been any prior severance or reservation of all or any portion of the mineral estate or subsurface rights with respect to the Property, Seller shall provide a waiver of all rights of ingress and egress and all other rights of every kind and character whatsoever to enter upon or to use all or any part of the surface of the Property for any purpose in connection with such mineral reservation, including without limitation the right to enter upon all or any part of the surface of the Land for purposes of exploring for, mining, drilling, producing, transporting, marketing, storing or any other purposes incident to the development or the production of the mineral estate, executed and acknowledged by all owners, holders or lessees of any portion of the mineral estate in form acceptable to Buyer for recordation in the official records of the County.
11. No Default. Seller shall have kept, performed and observed each and every agreement and obligation on its part to be kept, performed and observed hereunder; all of Sellers' covenants, representations and warranties herein shall be true and correct in all material respects on, and as if made on, the Closing Date.
12. Abandonment of Electrical Easement. Seller shall have abandoned, or caused to be abandoned, that certain electric transmission utility easement between Seller, as grantor, and the El Paso Electric Company and Mountain States Telephone and Telegraph Company, their successors and assigns ("**El Paso Electric**") as grantee, recorded May 15, 1957 in Volume 1343, Page 54, of the Official Public Records of El Paso County, Texas (the "**Electrical Easement**"). Seller agrees to obtain from El Paso Electric a release of any easement or other rights of El Paso Electric to the Electrical Easement or in any way relating to the Electrical Easement in recordable form and in substance satisfactory to remove such easement(s) or other such rights as encumbrances to title of the Property, as determined by the Title Company.
13. Stan Roberts Sr. Ave. Improvements. Seller shall have executed and obtained any instruments reasonably necessary to permit Buyer to develop the Stan Roberts Sr. Ave. Improvements pursuant to the terms set forth in the 380 Agreement, including but not limited to a quitclaim deed from the County of El Paso to Seller conveying any rights, title, and interest in the portion of Stan Roberts Sr. Avenue that Buyer will develop pursuant to the terms of the 380 Agreement.

Buyer may, in its sole and absolute discretion, waive conditionally or absolutely the fulfillment of any one or more of these conditions, or any part thereof, at any time; provided, that any waiver or declaration shall be binding upon Buyer only if made in a writing signed by Buyer. Any waiver shall not affect Buyer's ability to pursue any remedy to which it may be entitled hereunder. If Buyer's obligations under this Agreement are excused by reason of the failure of one or more of Buyer's Conditions, then upon written notice from Buyer to Seller and Title Company of Buyer's election to terminate this Agreement, Seller and Title Company shall immediately disburse to Buyer the Extension Deposit.



**SECTION 7. GENERAL PROVISIONS.**

- A. NO WAIVER. Either party may waive any default without waiving any prior or subsequent defaults. Either party’s failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- B. INDEPENDENT CONTRACTOR RELATIONSHIP. This Agreement does not create an employee-employer relationship between the Buyer and the Seller. As such, the Seller is not subject to the liabilities or obligations the Buyer obtains under the performance of this Agreement.
- C. TIME IS OF THE ESSENCE. The times and dates specified in this contract are material to this Agreement. For the purpose of this agreement “business days” means Monday through Friday excluding City of El Paso holidays and “calendar days” means Monday through Sunday excluding City of El Paso holidays. In the event that the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or City of El Paso holiday, the date for performance thereof shall be extended to the next business day.
- D. NOTICES. The parties will send all notices required by this Agreement in writing (i) both postmarked and delivered by certified mail or (ii) by electronic mail with a confirming copy being forwarded by a reputable overnight courier service within 24 hours thereafter to the recipient at the mailing address set forth below. All mailed notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

Seller:	The City of El Paso Attn: City Manager P. O. Box 1890 El Paso, Texas 79950-1890 Email: <a href="mailto:CityManager@elpasotexas.gov">CityManager@elpasotexas.gov</a>
Copy:	The City of El Paso Attn: City Attorney P.O. Box 1890 El Paso, Texas 79950-1890 Email: <a href="mailto:CityAttorney@elpasotexas.gov">CityAttorney@elpasotexas.gov</a>
Copy:	City of El Paso Attn: Director of Economic Development P.O. Box 1890 El Paso, Texas 79950-1890 Email: <a href="mailto:EDCompliance@elpasotexas.gov">EDCompliance@elpasotexas.gov</a> Telephone: 915-212-0094
To the Buyer:	Worldwide LLC c/o Winstead PC 500 Winstead Building 2728 N. Harwood Street Dallas, Texas 75201 Attn: Harrison Papaila

Email: [hpapaila@winstead.com](mailto:hpapaila@winstead.com)  
Telephone: 214-745-5328

Copy:

Winstead PC  
500 Winstead Building  
2728 N. Harwood Street  
Dallas, Texas 75201  
Attn: Paul Wageman  
Email: [pwageman@winstead.com](mailto:pwageman@winstead.com)  
Telephone: 214-745-5173

- E. CONFIDENTIALITY. Buyer acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- F. GOVERNING LAW. This Agreement is governed by Texas law.
- G. VENUE; WAIVER OF JURY TRIAL. The venue for disputes regarding this Agreement between the parties will be federal courts of the Northern District of Texas, Dallas Division, except in the limited instance where said federal courts do not have jurisdiction over the applicable dispute, in which case venue shall instead exclusively lie in El Paso County, Texas. The provisions of this Section shall survive the termination of this Agreement and the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment. BUYER AND SELLER EACH 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. BUYER AND SELLER AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT EITHER OF THEM MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS EVIDENCE OF SUCH WAIVER.
- H. SEVERABILITY. A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- I. HEADINGS. The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- J. GOVERNMENTAL FUNCTIONS. The parties agree that the Seller is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the Seller is entering into this Agreement as a governmental entity performing a governmental function.
- K. COMPLIANCE WITH THE LAWS. The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement.
- L. FORCE MAJEURE. Subject to Section 5(A)(4), there is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's

reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.

- M. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the Seller and the Buyer, and the Buyer's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other. Notwithstanding the foregoing, Buyer shall have the right, at Buyer's expense, to assign and transfer all, or any part of its interest in, this Agreement to any affiliate controlling, controlled by or under common control with the Buyer (and upon such assignment the assigning entity shall be relieved of its covenants, commitments and obligations hereunder) without the consent of Seller.
- N. **THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries for this Agreement.
- O. **REPRESENTATIONS AND WARRANTIES.** The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- P. **COUNTERPARTS.** The parties may execute this Agreement in counterparts. A scanned or photocopy signature on this Agreement, any amendment hereto, any non-recorded Closing Document, or any notice delivered hereunder will have the same legal effect as an original signature.
- Q. **FURTHER ASSURANCES.** In addition to the actions recited herein and contemplated to be performed, executed, and/or delivered by Seller and Buyer, Seller and Buyer agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered at or after Closing any and all such further acts, instruments, deeds and assurances as may be reasonably required to consummate the transactions contemplated hereby. Without limiting the foregoing, Seller hereby expressly agrees to, diligently and in good faith, cooperate with Buyer and provide any assistance as shall be reasonably requested by Buyer in connection with Buyer's efforts to cause the satisfaction of Buyer's Conditions.
- R. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties. No agreement, representation or inducement shall be effective to change, modify or terminate this Agreement, in whole or in part, unless in writing and signed by the party or parties to this Agreement to be bound by such change, modification or termination.

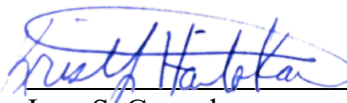
EXECUTED by Seller the \_\_\_ day of \_\_\_\_\_, 20\_\_.

**SELLER**


**CITY OF EL PASO, TEXAS**

\_\_\_\_\_  
Cary Westin  
Interim City Manager

**APPROVED AS TO FORM:**

 /for/  
\_\_\_\_\_  
Juan S. Gonzalez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Elizabeth Triggs, Director  
Economic and International Development

EXECUTED by Buyer the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BUYER**

**WORLDWIDE LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT "A"**  
**PROPERTY DESCRIPTION**

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 06 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.

**ATTACHMENT "B"**  
**SPECIAL WARRANTY DEED**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Effective Date: \_\_\_\_\_, 20

Grantor: [Grantor name]

Grantor's Mailing Address: [Grantor mailing address]

Grantee: [Grantee Name]

Grantee's Mailing Address: [Grantee mailing address]

PROPERTY (INCLUDING ANY IMPROVEMENTS):

The real property in El Paso County, as more particularly described in Attachment "A".

CONSIDERATION

\$10.00 and other valuable consideration, receipt of which is hereby acknowledged.

RESERVATION FROM CONVEYANCE

Grantor reserves, retains, and does not convey by this deed the Groundwater (as defined herein below) and Groundwater Rights (as defined herein below). The term "**Groundwater**" shall mean the underground water, percolating water, artesian water, and any other water existing now and in the future from any and all depths, formations, and horizons beneath the surface of the Property. The term "Groundwater" shall not include water delivered to Grantee by El Paso Water Utilities Public Service Board ("**El Paso Water**") pursuant to the \_\_\_\_\_ between El Paso Water and Grantee dated \_\_\_\_\_ (the "**W&WW Agreement**"), surface water, and Grantee-managed reservoirs and aquifers permitted pursuant to the W&WW Agreement. The term "**Groundwater Rights**" shall mean, subject to the following sentence, (1) the right to access, test, capture, explore for, drill for, develop, withdraw, produce, store, treat, transport or otherwise acquire and beneficially use, the Groundwater beneath the Property from adjacent land; and (2) the right to apply for and obtain all permits, licenses, or other governmental authorizations relating to any of the foregoing, including but not limited to any permit issued by a groundwater conservation district or other governmental entity existing now or in the future and having jurisdiction over the Groundwater



and/or the exploration, drilling, production, use, storage, treatment, reuse, recharge or transport of Groundwater that may be necessary for the exercise of the Grantor's limited rights therein, but only from adjacent land. The term "Groundwater Rights" shall expressly exclude any rights granted by El Paso Water to Grantee pursuant to the W&WW Agreement, including the right for Grantee to manage, store, recharge, and withdraw water from reservoirs and aquifers. Grantor irrevocably waives all rights of ingress and egress and all other rights of every kind and character whatsoever to enter upon or to use all or any part of the surface of the Property for any purpose in connection with such Groundwater Rights, including without limitation the right to enter upon all or any part of the surface of the Property for purposes of exploring for, mining, drilling, producing, transporting, marketing, storing or any other purposes incident to the development or the production of the Groundwater. Grantor may only produce such Groundwater from land adjacent to the Property, provided that such production does not interfere with the surface or subsurface support of any improvements constructed or to be constructed on the Property, and further provided that the drilling for such Groundwater shall enter the Property at a depth greater than 400 feet.

#### EXCEPTIONS TO CONVEYANCE

See permitted exceptions attached to this Deed as Attachment "B"

#### EXCEPTIONS TO WARRANTY

Conveyance of the Property is an "as is, where is and with all faults" transaction and that the Grantor disclaims all other warranties pertaining to the condition of the Property available under law whether express or implied including but not limited to any warranties pertaining to the nature and condition of water, soil, geology, or other environmental hazards or conditions (including the presence of asbestos or lead paint).

#### WARRANTY AND CONVEYANCE

The GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance and exceptions to warranty, GRANTS, BARGAINS, SELLS, and CONVEYS to the GRANTEE the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to the GRANTEE, the GRANTEE'S administrators, successors and assigns forever. The GRANTOR binds the GRANTOR and the GRANTOR'S successors and assigns to warrant and forever defend all and singular the Property to the GRANTEE and the GRANTEE'S administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, subject to the permitted exceptions attached to this Deed as Attachment "B" and the reservations from conveyance.

EXECUTED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR:  
CITY OF EL PASO

\_\_\_\_\_  
\_\_\_\_\_, City Manager

STATE OF TEXAS                    )  
COUNTY OF EL PASO)

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, City Manager, City of El Paso.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission expires: \_\_\_\_\_

December 4, 2023



# Worldwide, LLC (Meta Platforms, Inc.) Data Center Project:

## Driving Economic Growth and Community Transformation

Items 1 and 2

Goal 1. Cultivate an environment conducive to strong, sustainable economic development

# Council Action Requested

**Six actions** are a **critical step** to facilitate the future construction and operation of a **hyperscale data center** in Northeast El Paso, fostering innovation, economic diversity and long-term prosperity for El Paso residents.

# Background & Next Steps

## 6 Council Actions

**Nov 2nd**

- Notice of Chapter 312 Hearing Published

**Nov 7th**

- First Readings:
  - Down Zoning
  - Condition Release

**Nov 16th**

- CPC Hearing:
  - Down Zoning
  - Condition Release

**Nov 21st**

- Adopt Abatement Zone
- First Reading of Contract of Sale

**Dec 4th**

- Public Hearing for Contract of Sale
- **Chapter 380 Agreement**

**Dec 5th**

- **Contract of Sale**
- **Chapter 312 Agreement**
- **Down Zoning**
- **Condition Release**
- **Funding Intersection Improvements**

# Overview:

## Hyperscale Data Centers

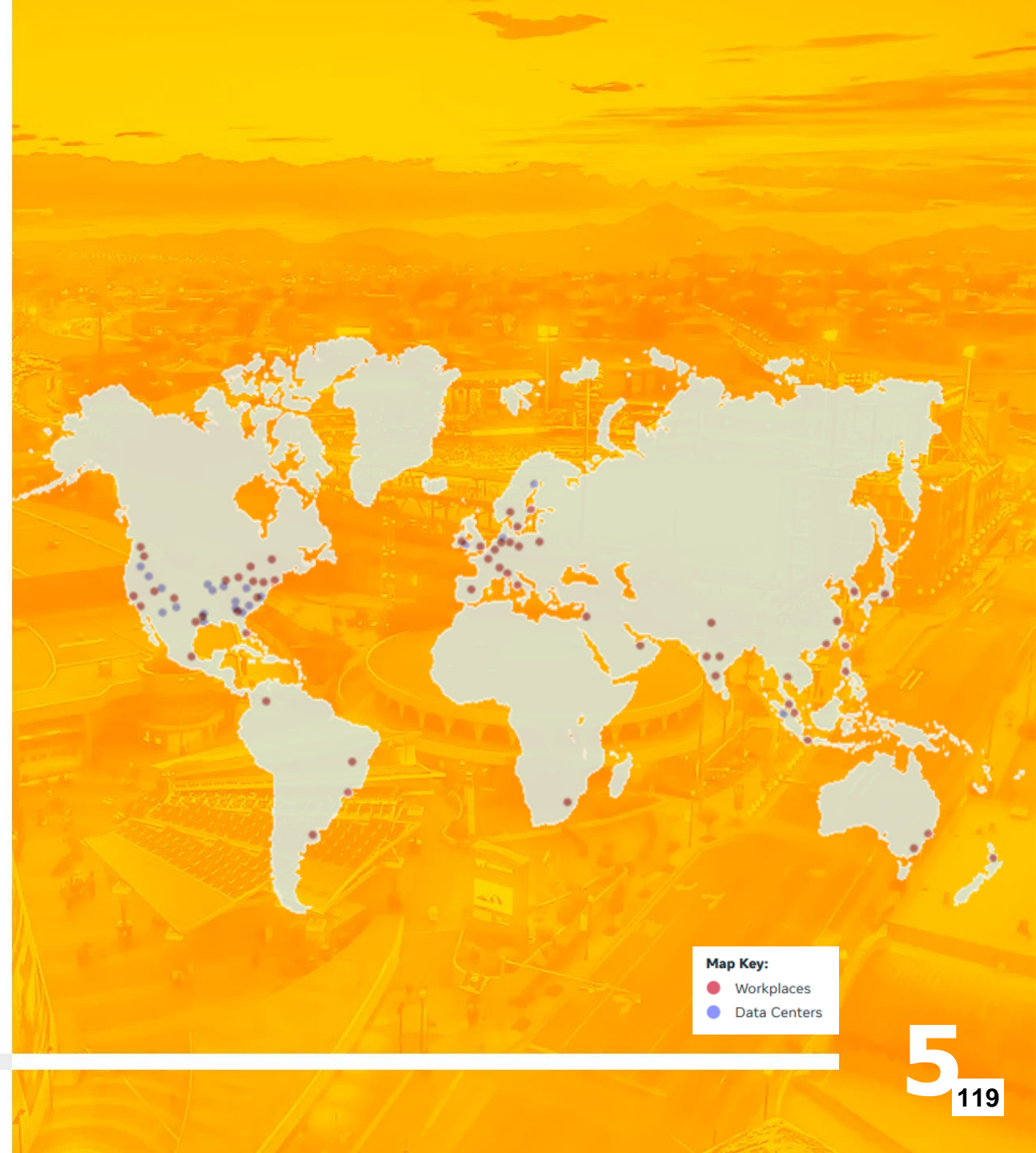
- Massive computing facilities designed for scalability and efficiency
- Imagine a technological campus covering acres, housing servers to process vast amounts of data
- Physical footprint, often covering the size of large shopping malls or several football fields combined
- Strategically located for efficient global internet connectivity



# Overview:

## Meta Platforms, Inc.

- Owns and operates Facebook, Instagram, Threads, WhatsApp, among others
- One of **Big Five** American information technology companies
- **Top 40** Fortune 500 company
- **3.96 billion people** using at least one core product monthly
- Workplace in 80+ cities worldwide
- **18 data center campuses** worldwide



Map Key:  
● Workplaces  
● Data Centers

# Overview:

## Meta's Data Center Campuses

- Serve as the **backbone** for Meta services
- Handle a **vast number of user requests** generated by Meta's platforms
- Employ **advanced technologies** to **ensure energy efficiency** through state-of-the-art cooling systems
- **Maintain net-zero emissions** by fully offsetting energy consumption with renewable energy sources
- **Strategically located worldwide** to ensure optimal global connectivity allowing for low-latency across different regions and efficient data transfer





# Overview: Meta's Data Center Campuses

Company's 18 campuses include 85 data center buildings

- On average, **2.2 million** square feet under roof per campus
- **\$1.1 billion** average capital investment per campus (not including equipment refreshes)
- On average, **196 FTEs** on-site at each data center campus



Altoona, IA

- \$2.5 billion+ investment
- Est. 2013
- 400+ jobs
- 10 buildings
- 5 million+ sf
- 7 expansions



Prineville, OR

- \$2.0 billion+ investment
- Est. 2010
- 350+ jobs
- 11 buildings
- 4.6 million sf



Los Lunas, NM

- \$2.0 billion investment
- Est. 2016
- 400+ jobs
- 8 buildings
- 3.8 million sf
- 750 acres

# Overview:

## Economic Benefits for El Paso

### 1 Property Tax Contributions:

- **Substantial Revenue:** The data center's assessed value **yields millions in annual property tax revenues for all local entities**, even after incentives
- **Increased Tax Base:** This additional revenue means more resources for essential services, reducing reliance on residential taxes

### 2 Job Creation and Income Effects:

- **Employment Opportunities:** Construction generates hundreds of temporary jobs; operational roles offer steady employment for residents as technicians and engineers
- **New Tax Revenue Generation:** Income generated by these jobs becomes a new tax revenue source for local taxing entities through spending on goods and services

# Overview:

## Economic Benefits for El Paso

### 3 Economic Ripple Effects

- **Local Business Impact:** Increased data center demand boosts local businesses, leading to higher sales tax revenue
- **Hub for Innovation:** Creates a broader ecosystem of technological initiatives, research and development activities, and collaborations with local businesses and educational institutions

### 4 Infrastructure Improvements

- **Collaboration with Local Governments:** Collaboration results in upgrades to roads and utilities, enhancing the data center's efficiency and community infrastructure
- **Enhanced Economic Environment:** Improved infrastructure enhances shovel-readiness for surrounding properties, facilitating future development

# Project Proposal: Summary

- **Project Description:** Worldwide, LLC (Meta) plans to construct one or more data center buildings and accessory uses on 1,039 acres of City-owned land.
- **Investment Magnitude:** The Company is committed to a minimum investment of \$800M in construction and personal equipment costs. Additional phases with similar investments may follow.
- **Economic Impact:** The City anticipates positive economic development resulting from the project, with the potential for substantial capital injection into the community.



# Project Proposal: Summary

## Incentive Proposal:

- To offset the cost associated with establishing and operating in El Paso and to **increase El Paso's competitiveness** as a future location for investment, the City proposes providing annual performance-based incentives to the Company.
- The incentives amount to **80 percent** of the City's portion of property tax revenue generated by the project **over a 25-year period** per phase, up to 5 phases, where each phase represents an \$800M investment.



# Project Proposal: Summary

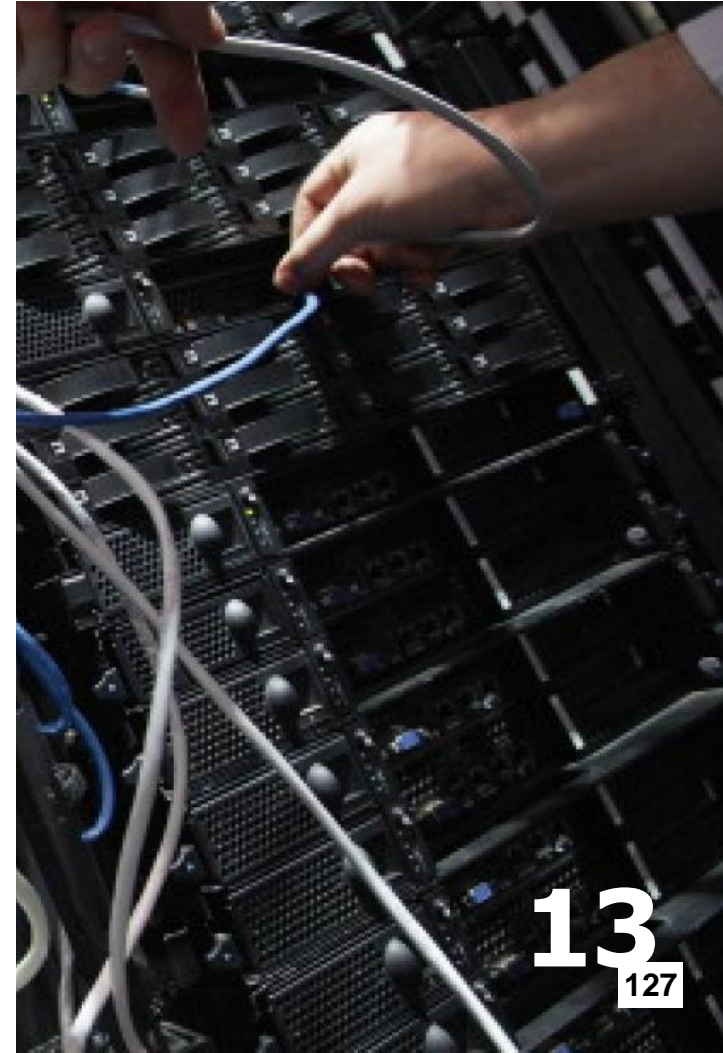
- **Tax Burden Impact:** The agreement aims to shift the tax burden away from residential taxpayers by encouraging commercial development and diversifying the tax base.
- **Phased Development:** The Company has the option to develop additional phases, each requiring a minimum \$800M expenditure. If so, the company may be eligible for separate 25-year property tax incentives for each phase, for up to five phases during the agreement's term.



# Project Proposal: Summary

## Job Creation Impact:

- The project will result in the creation of at least 50 quality full-time jobs, although existing data center campuses suggest approximately 200 full-time positions, including contractors.
- In addition, the project is expected to generate hundreds of temporary jobs during the construction phases(s), supporting the local construction industry and providing income for residents engaged in that construction.



# Project Proposal:

## Site Overview

- Approximately **1,039 acres**
- City Owned and managed
- Zoned M-2 with conditions
- Purchase price is appraised value of **~\$8.5 million** (or \$8,156.25 per acre)
- Access to existing electric utility infrastructure
- Offers opportunity to **scale + expand** operations over time





# Project Proposal:

## Initial Phase

### Minimum Investment

- Minimum **\$800M** capital investment\*
  - \$400M in construction
  - \$400M in equipment
- Approximately **800k** square foot building(s)

### Equipment Refresh

- Equipment refreshed every **3.5 to 5 years**
- Estimated value of each refresh is at least **\$400M**

### Job Creation

- Minimum **50 FTEs** on-site\*
- Expect **200+ FTEs** at full ramp-up
- Expect **1,000+** skilled trade workers at peak construction

**Over a 25-year period, each phase represents \$2.8 billion capital investment**

# Project Details: Party Obligations

## Company

- Minimum \$800 million in real and personal property investment
- Minimum of 50 FTEs following completion
- Purchase 1,039 acres at market value (~\$8.5 million)
- Within 5 years of closing, minimum \$5 million infrastructure improvements + Stan Roberts improvements
- City may repurchase the land if minimum infrastructure improvements are not made within 5 years of closing

## City

- Provide performance-based incentives as described on following slide for up to 5 phases, each phase representing a minimum \$800 million investment
- Incentives limited to a 35-year agreement term, encouraging Company to develop quickly to maximize incentive
- Cooperate in down-zoning to C-4, including condition release
- City to reimburse up to \$7.5M for its proportionate share of Stan Roberts (Texas Economic Development Fund is funding source)

# Project Details: Incentive Proposal

Over 25-Year Incentive Period per Phase (capped at 5 phases)

**City Property Tax Abatement / Rebate**  
(80% over 25 Years)  
**\$73.0M**

**County Property Tax Abatement / Rebate**  
(80% over 25 years)  
**\$36.0M**

**Park Fee Waiver**  
(one-time at 100%)  
**\$1.0M**

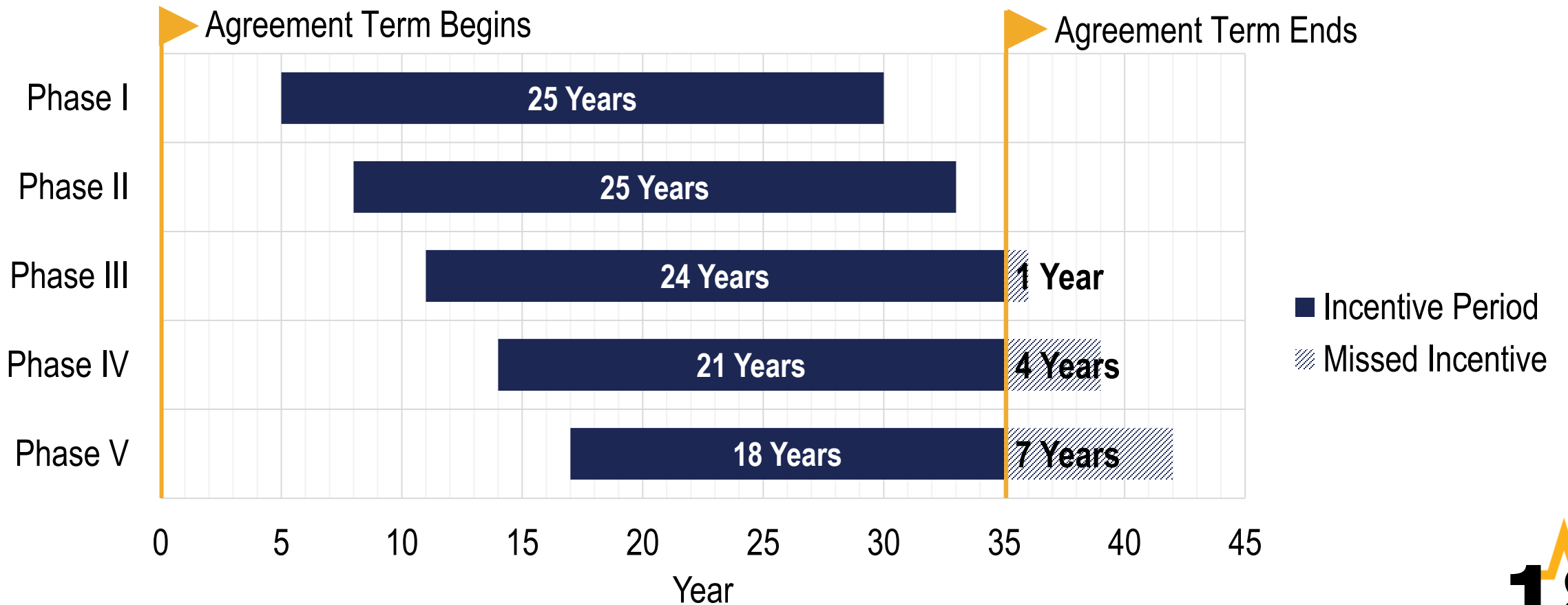
**Building Permit Fee Waiver**  
(100%)  
**\$350,000**

**Total Local Incentive = \$110M**

*(3.9% of total on an estimated \$2.8B investment including equipment refreshes)*

# Project Details:

## Illustration of “Shot Clock Approach”



# Project Details: **Contract of Sale**

- Company to purchase **1,039 acres** of City-owned land in Northeast El Paso
- Purchase price set at market value of \$8,156.25 per acre (or **~\$8.5M**)
- Closing to occur on or before **April 18, 2024, subject to contingencies** to closing being satisfied; company retains discretion to waive contingencies
- Following closing, within 5 years, Company is obligated to:
  - Make minimum investment of \$5M in infrastructure improvements
  - Improve full width of Stan Roberts located adjacent to property

# Project Details: Rezoning & Condition Release

- Two actions recommended:
  - **Downzone** from M-2 (Heavy Manufacturing) to C-4 (Commercial); and
  - **Release all conditions**
- **Less intense use** than what would be permitted in an M-2 zoning district, aligning with surrounding land uses and zoning classifications
- **City Plan Commission recommended unanimous approval** on November 16<sup>th</sup>
- Staff has not received communications in support or opposition of the request

# Project Details: **Intersection Improvements**

- Resolution allocating **funding for intersection improvements** at US-54 and Stan Roberts Sr. Ave. in an amount **capped at \$5M**
- Improvements provide for improved connection to the future data center site and surrounding 3,000+ acres of undeveloped City land to the north and south of Stan Roberts, further **improving shovel-readiness of surrounding sites**
- Funding source is the **Texas Economic Development Fund**, established by the City's franchise agreement with El Paso Electric

# Project Impact: *Initial Phase Economic Impact* (Operations + Construction)

## Summary of Initial Phase Economic Impact Over 25 Years

Impact	Direct	Indirect	Total
Jobs (FTEs On-Site)*	50.0	131.3	181.3
Annual Salaries/Wages	\$4.3M	\$5.2M	\$9.6M
Salaries/Wages over 25 Years	\$138.5M	\$167.9M	\$306.4M
Taxable Sales/Purchases over 25 Years**	\$2,060M	\$31.5M	\$2,091M

\*Direct jobs assume an average annual salary of **\$86,500**

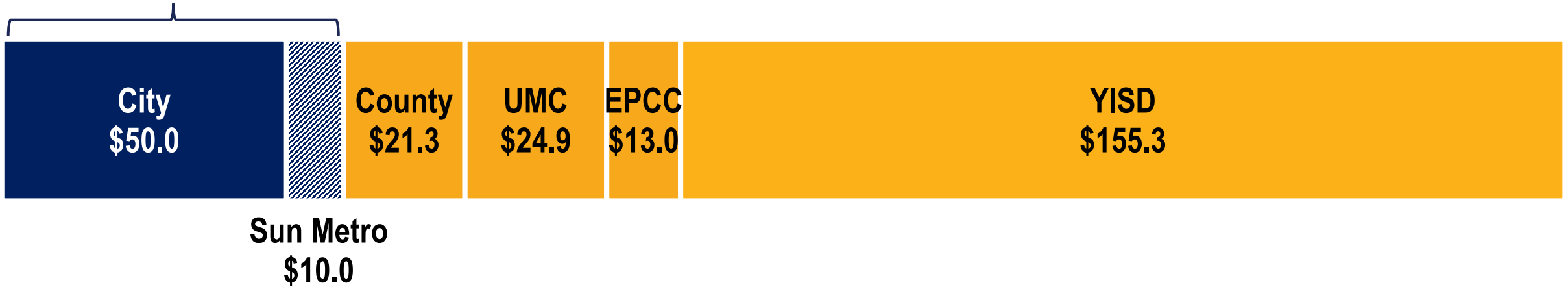
\*\*Taxable Sales/Purchases includes sales resulting from temporary construction jobs (~1,000 at peak construction)



# Project Impact:

## Initial Phase Community Tax Benefit

**\$60M new revenue to the City**  
 (including \$10M in EPE Franchise Fees)



**Tax Benefit after Incentives Over 25-Year Term = \$275M**

# Project Impact: Project Benefits

## Property Tax Contributions

Substantial annual property tax revenues

Increased tax base, reducing reliance on residential taxes

## Job Creation and Income Effects

Hundreds of jobs during construction

Steady roles for technicians and engineers

Income from jobs boosts local tax revenue

## Economic Ripple Effects

Boosts local businesses, leading to higher sales tax revenue

Fosters technological innovation and collaboration

## Infrastructure Improvements

Upgrades to roads and utilities enhance efficiency

Improved infrastructure accelerates future development

# Council Action Requested

**Six actions** are a **critical step** to facilitate the future construction and operation of a **hyperscale data center** in Northeast El Paso, fostering innovation, economic diversity and long-term prosperity for El Paso residents.

## Dec 4<sup>th</sup>

- Contract of Sale  
Public Hearing
- **Chapter 380 Agreement**

## Dec 5<sup>th</sup>

- Contract of Sale
- Chapter 312 Agreement
- Down Zoning
- Condition Release
- Funding Intersection Improvements

## MISSION



Deliver exceptional services to support a high quality of life and place for our community.

## VISION



Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government.



## VALUES

Integrity, **R**espect, **E**xcellence,  
**A**ccountability, **P**eople



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**File #: 23-1573, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.  
No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Discussion and action on the appointment of two candidates to fill vacancies for Substitute Associate Municipal Court Judges per El Paso City Code 2.44.030 to serve four-year terms beginning January 1, 2024 through December 31, 2027. The candidates are:

Courtney Bowie  
Melissa Warrick

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

**DEPARTMENT:** Municipal Court  
**AGENDA DATE:** December 4, 2023  
**CONTACT PERSON NAME AND PHONE NUMBER:** Lilia Worrell, 212-5822  
**DISTRICT(S) AFFECTED:** All  
**STRATEGIC GOAL: NO. 2:** Set the Standard for Safe and Secure City

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

Discussion and action on the appointment of two candidates to fill vacancies for Substitute Associate Municipal Court Judges per El Paso City Code 2.44.030 to fill terms from January 1, 2024 through Dec 31, 2027.

The candidates are:

**Courtney Bowie**  
**Melissa Warrick**

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

There are currently four vacancies for Substitute Associate Municipal Court Judges. Four candidates submitted applications; 1 candidate withdrew his name from consideration. All candidates are qualified. One city representative submitted three names to the City Manager's office.

These positions serve as substitutes for the elected and appointed municipal court trial judges at trial and other court hearings; they preside over arraignments; they serve as magistrates on graveyard shifts; duties allowed by the City Code.

Council will appoint the candidates to serve as Substitute Associate Municipal Judges in accordance with the City Code Chapter 2.44. Although the City Code does not require the recommendation of the Presiding Judge, a recommendation was solicited from Presiding Judge Daniel Robledo. The Presiding Judge is more familiar with the legal community and since he will supervise the associates, his input is valuable. City Council is not bound by the Judge's recommendation. The Presiding Judge does not have any objection to the appointment of any of the candidates.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

Yes, it is City Council who appoints Substitute Associate Municipal Judges in accordance with City Code Chapter 2.44. City Council previously appointed Substitute Associate Municipal Judges on February 3, 2021.

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

The item has been budgeted in the **Judiciary budget** -  
General Fund. Dept # 111  
Fund 1000 Division 11060 Account 50100

---

**BOARD / COMMISSION ACTION:**

**Enter appropriate comments or N/A**

N/A

---

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

*Lilna Worrell*

**(If Department Head Summary Form is initiated by Purchasing, client department should sign also)**  
*Information copy to appropriate Deputy City Manager*

**RESOLUTION**

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

That the following Substitute Associate Municipal Judges be appointed in accordance with the El Paso City Code Section 2.44.030, to serve four-year terms beginning on January 1, 2024 and expiring on December 31, 2027.

Appointments:

Courtney Bowie  
Melissa Warrick

**APPROVED** this \_\_\_\_ day of December, 2023.

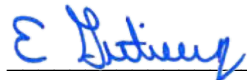
**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leeser, Mayor

**ATTEST:**

\_\_\_\_\_  
Laura D. Prine, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Eric Gutierrez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**



\_\_\_\_\_  
Lilia A. Worrell  
Director for Municipal Court



## EMPLOYMENT APPLICATION



CITY OF EL PASO  
300 N. Campbell  
El Paso, Texas 79901  
915-212-0045  
<http://www.elpasotexas.gov>  
Bowie, Courtney J  
A7718-0923 ASSOCIATE MUNICIPAL JUDGE

Received: 10/5/23 1:29 PM  
For Official Use Only:  
QUAL: \_\_\_\_\_  
DNO: \_\_\_\_\_  
 Experience  
 Training  
 Other: \_\_\_\_\_

## PERSONAL INFORMATION

POSITION TITLE: ASSOCIATE MUNICIPAL JUDGE		EXAM ID#: [REDACTED]
NAME: (Last, First, Middle) Bowie, Courtney J		SOCIAL SECURITY NUMBER: N/A
ADDRESS: (Street, City, State/Province, Zip/Postal Code) [REDACTED]		EMAIL ADDRESS: [REDACTED]
HOME PHONE: [REDACTED]		
DRIVER'S LICENSE: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DRIVER'S LICENSE: State: TX Number: [REDACTED]	
What is your highest level of education? Doctorate		

## PREFERENCES

ARE YOU WILLING TO RELOCATE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Maybe
WHAT TYPE OF JOB ARE YOU LOOKING FOR? Regular
TYPES OF WORK YOU WILL ACCEPT: Part Time
SHIFTS YOU WILL ACCEPT: Day, Evening, Night, Rotating, Weekends, On Call (as needed)
OBJECTIVE: Continue to grow within the legal profession while specifically taking on responsibilities that sharpen my skills as it pertains to leading both court proceedings as well as alternative dispute resolution such as arbitration.

## EDUCATION

DATES: From: 8/2016 To: 5/2019	SCHOOL NAME: Thurgood Marshall School of Law	
LOCATION: (City, State/Province) Houston, Texas	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Professional
MAJOR: Law	UNITS COMPLETED: 120 - Semester	
DATES: From: 8/2009 To: 5/2013	SCHOOL NAME: University of Phoenix	
LOCATION: (City, State/Province) Houston, Texas	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Bachelor's
MAJOR: Business and Management	UNITS COMPLETED: 120 - Semester	

## WORK EXPERIENCE

DATES: From: 1/2022 To: Present	EMPLOYER: Bowie Urbina Law, PLLC	POSITION TITLE: Attorney/Partner
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 8340 Gateway E Suite 201, El Paso, Texas, 79907		COMPANY URL: Bowieurbinlaw.com
PHONE NUMBER: 915-703-1393	SUPERVISOR: Self - Attorney/Partner	MAY WE CONTACT THIS EMPLOYER? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
HOURS PER WEEK: 65	SALARY: \$6,000.00/month	# OF EMPLOYEES SUPERVISED: 3
DUTIES: Manages JV operations with Wronged in Texas Law Firm for Personal Injury and Criminal Defense cases. Manages Business Law Clients both start ups and existing businesses. Meets with current and potential clients to advise on legal issues. Prepares pleadings and files lawsuits. Conducts discovery for cases in litigation. Prepares demands and participates in formal/informal settlement negotiations. Attends hearings and argues/defends motions. Conducts Arbitrations for Texas Comptroller. Supervises/trains staff.		
DATES: From: 8/2021 To: 1/2022	EMPLOYER: Garcia Bowie, PLLC	POSITION TITLE: Attorney/Partner
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 112 Texas Ave, El Paso, Texas, 79912		COMPANY URL: Garcibowelaw.com
PHONE NUMBER: 936-522-7085	SUPERVISOR: Self - Attorney/Partner	MAY WE CONTACT THIS EMPLOYER? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

HOURS PER WEEK: 80	SALARY: \$0.00/month	# OF EMPLOYEES SUPERVISED: 0
DUTIES: Assisted with Criminal Defense Docket. Managed Business Law Clients both start ups and existing businesses. Met with current and potential clients to advise on legal issues. Prepared pleadings and filed lawsuits. Conducted discovery for cases in litigation. Prepared demands and participated in formal/informal settlement negotiations. Attended hearings and argued/defended motions. Conducted Arbitrations for Texas Comptroller. Supervised/trained staff.		
REASON FOR LEAVING: Breach of Contract and Professional differences		
DATES: From: 3/2020 To: 8/2021	EMPLOYER: Clarke Law, PLLC	POSITION TITLE: Associate
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 7322 Southwest Freeway, Houston, Texas, 77074		
PHONE NUMBER: 713-339-3988	SUPERVISOR: Peter Clarke - Managing Partner	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 60	SALARY: \$6,250.00/month	# OF EMPLOYEES SUPERVISED: 2
DUTIES: Met with current and potential clients to advise on legal issues. Prepared pleadings and filed lawsuits. Conducted discovery for cases in litigation. Prepared demands and participated in formal/informal settlement negotiations. Attended hearings and argued/defended motions. Provided analysis for all cases in litigation. Prepared weekly/monthly reports for managing partner. Attended and participated in AAA arbitrations. Conducted Arbitrations for Texas Comptroller. Supervised/trained staff.		
REASON FOR LEAVING: Relocating to El Paso		
DATES: From: 1/2020 To: 8/2020	EMPLOYER: The Law Office of Courtney Bowie, PLLC	POSITION TITLE: Attorney/Partner
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 15406 Hensen Creek Dr, Houston, Texas, 77086		
PHONE NUMBER: 9365227085	SUPERVISOR: Self - Attorney/Partner	MAY WE CONTACT THIS EMPLOYER? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
HOURS PER WEEK: 60	SALARY: \$4,000.00/month	# OF EMPLOYEES SUPERVISED: 0
DUTIES: Client acquisition for areas of practice, Criminal Defense, Personal Injury, and Business Law. Providing legal representation for clients, preparing and filing pleadings, discovery, motion practice, formal and informal settlement negotiations, preparing demands, and other litigation matters leading up to trial.		
REASON FOR LEAVING: Full-time Employment with a law firm		

#### CERTIFICATES AND LICENSES

TYPE: Law License	
LICENSE NUMBER: [REDACTED]	ISSUING AGENCY: Supreme Court of Texas

#### Skills

OFFICE SKILLS: Typing: 120 Data Entry: 0
OTHER SKILLS: Arbitrator - Intermediate - 2 years and 7 months
LANGUAGE(S): English - <input checked="" type="checkbox"/> Speak <input checked="" type="checkbox"/> Read <input checked="" type="checkbox"/> Write

#### ADDITIONAL INFORMATION

Nothing Entered For This Section

#### REFERENCES

Nothing Entered For This Section

The following terms were accepted by the applicant upon submitting the online application:

By clicking on the 'Accept' button, I hereby certify that every statement I have made in this application is true and complete to the best of my knowledge. I understand that any false or incomplete answer may be grounds for not employing me or for dismissing me after I begin work. I understand that I will have to produce documentation verifying identity and employment eligibility in the U.S. I understand that I may be required to verify any and all information given on this application. I understand that this completed application is the property of the City of El Paso and will not be returned. I understand that the City of El Paso may contact prior employers and other references.

I understand that completion of this Application for Employment does not guarantee that I will be employed by the City of El Paso.

I hereby affirm that my answers to these statements and questions are true and correct to the best of my knowledge. I have not knowingly

withheld any fact or circumstance that would, if disclosed, affect my application unfavorably.

I understand that any misrepresentation, deception, or false statement made in this Employment Application may result in my not being considered for employment, and if not discovered by the Company until after my becoming employed, is grounds for, and may result in, my immediate termination.

Application time limit: I understand that application forms are active for the length of the eligible list which is normally six months unless otherwise stated. All persons must reapply after that period.

Falsification: I understand that falsification of information listed on my application or presented to the City of El Paso can be grounds for serious reprimand or termination.

Employment testing: I understand that all required drug tests, pencil-and-paper tests, physical exams, or electronic or other tests will be used in the employment decision.

Condition of Employment: I understand that I must provide official proof of Education (transcripts, diplomas, certificates), driver's license (if required), within 3 days of being contacted with a job offer.

This application was submitted by Courtney J Bowie on 10/5/23 1:29 PM

## EMPLOYMENT APPLICATION



CITY OF EL PASO  
300 N. Campbell  
El Paso, Texas 79901  
915-212-0045

<http://www.elpasotexas.gov>

Warrick, Melissa  
A7718-0923 ASSOCIATE MUNICIPAL JUDGE

Received: 9/16/23 10:26 AM

For Official Use Only:

QUAL: \_\_\_\_\_

DNO: \_\_\_\_\_

Experience

Training

Other: \_\_\_\_\_

## PERSONAL INFORMATION

POSITION TITLE: ASSOCIATE MUNICIPAL JUDGE		EXAM ID#: [REDACTED]
NAME: (Last, First, Middle) Warrick, Melissa		SOCIAL SECURITY NUMBER: N/A
ADDRESS: (Street, City, State/Province, Zip/Postal Code) [REDACTED]		EMAIL ADDRESS: [REDACTED]
HOME PHONE: [REDACTED]		
DRIVER'S LICENSE: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DRIVER'S LICENSE: State: TX Number: [REDACTED]	
What is your highest level of education? Doctorate		

## PREFERENCES

ARE YOU WILLING TO RELOCATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
WHAT TYPE OF JOB ARE YOU LOOKING FOR? Regular
TYPES OF WORK YOU WILL ACCEPT: Full Time
SHIFTS YOU WILL ACCEPT: Day, Evening, Night, Rotating, Weekends

## EDUCATION

DATES: From: 8/2001 To: 5/2004	SCHOOL NAME: Tulane University Law School	
LOCATION: (City, State/Province) New Orleans, Louisiana	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Doctorate
MAJOR: Law		
DATES: From: 1/1998 To: 5/2001	SCHOOL NAME: Temple University	
LOCATION: (City, State/Province) Philadelphia, Pennsylvania	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Bachelor's
MAJOR: Criminal Justice		

## WORK EXPERIENCE

DATES: From: 10/2022 To: Present	EMPLOYER: Law Office of Romero & Warrick PLLC	POSITION TITLE: Partner
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 918 E. San Antonio Ave, El Paso, Texas, 79901		COMPANY URL: www.romerowarricklaw.com
PHONE NUMBER: 915-200-4200	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 40		
DUTIES: Represent indigent clients on misdemeanor and felony cases from pretrial through trial when appointed by the Court. Represent clients on misdemeanor and felony cases pretrial through trial when retained. Represent clients in family law cases, probate cases and personal injury cases from pretrial-trial. Assist in the day to day administration of the law firm.		
DATES: From: 6/2022 To: 9/2022	EMPLOYER: 34th Judicial District Attorney's Office	POSITION TITLE: Assistant District Attorney
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 500 E. San Antonio Ave Suite 200, El Paso, Texas, 79902		
PHONE NUMBER: 915-546-2059	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 80		

<b>DUTIES:</b> Prosecuted felony cases from pretrial to trial. Practiced in the 120th District Court and handled a high volume fast-paced docket. Screened new cases at DIMS and PFILE cases that came through on cases in the 120th. Worked extensively with law enforcement, victims and witnesses to prepare cases for contested hearings and trial.		
<b>REASON FOR LEAVING:</b> Started my own law firm		
<b>DATES:</b> From: 4/2021 To: 6/2022	<b>EMPLOYER:</b> 216th District Attorney's Office	<b>POSITION TITLE:</b> Assistant District Attorney
<b>ADDRESS: (Street, City, State/Province, Zip/Postal Code)</b> 402 Clearwater Paseo, Kerrville, Texas, 78028		
<b>PHONE NUMBER:</b> 8303439102	<b>SUPERVISOR:</b> Melissa Warrick	
<b>HOURS PER WEEK:</b> 40		
<b>DUTIES:</b> First-chair counsel in jury trials and contested hearings, successfully prosecuting cases from grand jury and pretrial discovery through punishment and appeal. Coordinate with others as part of a smaller office, effectively managing an extensive docket and handling new cases each month. Assist local law enforcement investigations and warrant execution.		
<b>REASON FOR LEAVING:</b> Want to change career paths and relocate to El Paso, TX.		
<b>DATES:</b> From: 12/2019 To: 3/2021	<b>EMPLOYER:</b> Spokane County Prosecuting Attorney's Office	<b>POSITION TITLE:</b> Deputy Prosecuting Attorney
<b>ADDRESS: (Street, City, State/Province, Zip/Postal Code)</b> 1100 W. Mallon, Spokane, Washington, 99260		
<b>PHONE NUMBER:</b> 5094773662	<b>SUPERVISOR:</b> Eugene Cruz - Supervisor, Special Assault Unit	<b>MAY WE CONTACT THIS EMPLOYER?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>HOURS PER WEEK:</b> 35		
<b>DUTIES:</b> Member of the elite Special Assault prosecution unit First-chair counsel in jury trials and contested hearings, successfully prosecuting cases from charging to negotiation and pretrial discovery through punishment and appeal Focus on sex crimes and child abuse prosecution, with additional experience in cases ranging from domestic violence to property crimes Coordinated with others as part of an office of over forty attorneys, effectively managing an extensive docket and handling hundreds of new cases each month Assisted in law enforcement investigations and training		
<b>REASON FOR LEAVING:</b> Relocated to Texas		
<b>DATES:</b> From: 9/2011 To: 11/2019	<b>EMPLOYER:</b> 34th Judicial District Attorney's Office	<b>POSITION TITLE:</b> Assistant District Attorney-Senior Trial Attorney
<b>ADDRESS: (Street, City, State/Province, Zip/Postal Code)</b> 500 E. San Antonio, El Paso, Texas, 79901		
<b>PHONE NUMBER:</b> (915) 546-2059	<b>SUPERVISOR:</b> Michelle Hill - Trial Team Chief-Drug Task Force	<b>MAY WE CONTACT THIS EMPLOYER?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>HOURS PER WEEK:</b> 40	<b># OF EMPLOYEES SUPERVISED:</b> 0	
<b>DUTIES:</b> Assigned to the DA Drug Task Force.  Prosecute misdemeanor and felony cases from pre-indictment through the trial and punishment.  Screen misdemeanor and felony cases for charging and presentation to the grand jury.  Assist local law enforcement with investigations and search warrants.		
<b>REASON FOR LEAVING:</b> Moved to Washington state.		
<b>DATES:</b> From: 7/2008 To: 5/2011	<b>EMPLOYER:</b> Glendale City Prosecutor's Office	<b>POSITION TITLE:</b> Assistant City Prosecutor
<b>ADDRESS: (Street, City, State/Province, Zip/Postal Code)</b> 6815 N. 57th Ave, Glendale, Arizona, 85301		
<b>PHONE NUMBER:</b> 217-720-1225	<b>SUPERVISOR:</b> Samantha Sycowski 217-720-1225	<b>MAY WE CONTACT THIS EMPLOYER?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>HOURS PER WEEK:</b> 40	<b># OF EMPLOYEES SUPERVISED:</b> 10	

<b>DUTIES:</b> Prosecuted misdemeanor cases from screening through the trial phase and sentencing.		
Supervised and trained new attorneys in the office.		
Supervised support staff and mediated staff conflicts.		
Screened misdemeanor cases for charging.		
<b>REASON FOR LEAVING:</b> Relocated to TX.		
<b>DATES:</b> From: 8/2004 To: 7/2008	<b>EMPLOYER:</b> Maricopa County Attorney's Office	<b>POSITION TITLE:</b> Deputy County Attorney
<b>ADDRESS:</b> (Street, City, State/Province, Zip/Postal Code) 301 W. Jefferson St., Phoenix, Arizona, 85003		
<b>PHONE NUMBER:</b> 602-506-3411	<b>SUPERVISOR:</b> Beth Beringhaus - Bureau Chief	<b>MAY WE CONTACT THIS EMPLOYER?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>HOURS PER WEEK:</b> 40	<b># OF EMPLOYEES SUPERVISED:</b> 20	
<b>DUTIES:</b> Prosecuted misdemeanor and felony cases at the pretrial and trial levels for both adults and juveniles.		
Assigned to the Drug Enforcement Bureau.		
Screened felony cases for charging and grand jury presentation.		
Supervised and trained new attorneys in the office.		
<b>REASON FOR LEAVING:</b> Started a new position at the Glendale City Prosecutor's Office.		

#### CERTIFICATES AND LICENSES

<b>TYPE:</b> Arizona State Bar license	
<b>LICENSE NUMBER:</b> [REDACTED]	<b>ISSUING AGENCY:</b> Arizona Supreme Court
<b>TYPE:</b> Texas State Bar License	
<b>LICENSE NUMBER:</b> [REDACTED]	<b>ISSUING AGENCY:</b> Texas Supreme Court
<b>TYPE:</b> Washington State Bar License	
<b>LICENSE NUMBER:</b> [REDACTED]	<b>ISSUING AGENCY:</b> Washington Supreme Court

#### Skills

Nothing Entered For This Section

#### ADDITIONAL INFORMATION

Nothing Entered For This Section

#### REFERENCES

<b>REFERENCE TYPE:</b> Professional	<b>NAME:</b> Patricia Baca	<b>POSITION:</b> Judge, 346th District Court
<b>ADDRESS:</b> (Street, City, State/Province, Zip/Postal Code) 500 E. San Antonio Suite 701, El Paso, Texas 79901		
<b>EMAIL ADDRESS:</b> yvwhitaker@epcounty.com		<b>PHONE NUMBER:</b> [REDACTED]
<b>REFERENCE TYPE:</b> Professional	<b>NAME:</b> Michelle Hill	<b>POSITION:</b> Trial Team Chief-DA Drug Task Force
<b>ADDRESS:</b> (Street, City, State/Province, Zip/Postal Code) 500 E. San Antonio Suite 200, El Paso, Texas 79901		
<b>EMAIL ADDRESS:</b> mhill@epcounty.com		<b>PHONE NUMBER:</b> [REDACTED]
<b>REFERENCE TYPE:</b> Professional	<b>NAME:</b> Kristin Romero	<b>POSITION:</b> Judge, Municipal Court # 2
<b>ADDRESS:</b> (Street, City, State/Province, Zip/Postal Code) El Paso, Texas 79901		
<b>EMAIL ADDRESS:</b>		<b>PHONE NUMBER:</b> [REDACTED]

The following terms were accepted by the applicant upon submitting the online application:

By clicking on the 'Accept' button, I hereby certify that every statement I have made in this application is true and complete to the best of my knowledge. I understand that any false or incomplete answer may be grounds for not employing me or for dismissing me after I begin work. I understand that I will have to produce documentation verifying identity and employment eligibility in the U.S. I understand that I may be required to verify any and all information given on this application. I understand that this completed application is the property of the City of El Paso and will not be returned. I understand that the City of El Paso may contact prior employers and other references.

I understand that completion of this Application for Employment does not guarantee that I will be employed by the City of El Paso.

I hereby affirm that my answers to these statements and questions are true and correct to the best of my knowledge. I have not knowingly withheld any fact or circumstance that would, if disclosed, affect my application unfavorably.

I understand that any misrepresentation, deception, or false statement made in this Employment Application may result in my not being considered for employment, and if not discovered by the Company until after my becoming employed, is grounds for, and may result in, my immediate termination.

Application time limit. I understand that application forms are active for the length of the eligible list which is normally six months unless otherwise stated. All persons must reapply after that period.

Falsification. I understand that falsification of information listed on my application or presented to the City of El Paso can be grounds for serious reprimand or termination.

Employment testing. I understand that all required drug tests, pencil-and-paper tests, physical exams, or electronic or other tests will be used in the employment decision.

Condition of Employment. I understand that I must provide official proof of Education (transcripts, diplomas, certificates), driver's license (if required), within 3 days of being contacted with a job offer.

This application was submitted by Melissa Warrick on 9/16/23 10:26 AM



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File #: 23-1574, Version: 1

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.  
No Title's, No emails. Please use ARIAL 10 Font.*

**All Districts**

Municipal Courts, Lilia Worrell, (915) 212-5822

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Discussion and action on the appointment of Lauren Ferris to fill the vacancy for Municipal Court Judge for Court # 4 resulting from the appointment of Judge Enrique Holguin to a federal magistrate position. The appointee will serve until the next general election, November 2024, pursuant to Municipal Code Section 2.44.030.



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

**DEPARTMENT:** Municipal Court  
**AGENDA DATE:** December 4, 2023  
**CONTACT PERSON NAME AND PHONE NUMBER:** Lilia Worrell, 212-5822  
**DISTRICT(S) AFFECTED:** All  
**STRATEGIC GOAL: NO. 2:** Set the Standard for Safe and Secure City

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

Discussion and action on the appointment of **Lauren Ferris** to fill the vacancy for Municipal Court Judge for Court # 4 resulting from the appointment of Judge Enrique Holguin to a federal magistrate position. The appointee will serve until the next general election, November 2024, pursuant to Municipal Code Section 2.44.030.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

Seven candidates submitted applications; all were qualified: **Enrique Garcia, Lauren Ferris, Elia Garcia, Cori Harbour-Valdez, Rolando Morales, Sara Elizabeth Priddy, and Roberto Antonio Ramos**

One City Representative nominated Ms. Lauren Ferris' for the position; there were no other nominations.

Municipal Court Judges hear Traffic, Class C Misdemeanor and City Ordinance Violation cases. The position will also require the Judge to be available on an on-call basis.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

Yes, it is City Council who appoints a Municipal Court Judge when an Elected Judge resigns in accordance with Municipal Code, section 2.44.020 to serve until the next general election. The last appointment made for this specific court was in February 2021.

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

The item has been budgeted in the  
**Judiciary budget** -  
General Fund. Dept # 111  
Fund 1000 Division 11060

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**BOARD / COMMISSION ACTION:**

Enter appropriate comments or N/A

N/A

---

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

*Lilia Worrell*

**(If Department Head Summary Form is initiated by Purchasing, client department should sign also)**  
*Information copy to appropriate Deputy City Manager*

**RESOLUTION**

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

That the following applicant be appointed to fill the vacancy for Municipal Court Judge Court # 4 resulting from the appointment of former Court #4 Judge Enrique Holguin to a federal magistrate position. The appointee will serve until the next general election, November 2024, pursuant to Municipal Code Section 2.44.030.

Appointment:

Lauren Ferris

**APPROVED** this \_\_\_\_ day of December, 2023.

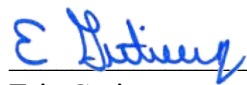
**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leeser, Mayor

**ATTEST:**

\_\_\_\_\_  
Laura D. Prine, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Eric Gutierrez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**



\_\_\_\_\_  
Lilia A. Worrell  
Director for Municipal Court

## EMPLOYMENT APPLICATION



CITY OF EL PASO  
300 N. Campbell  
El Paso, Texas 79901  
915-212-0045  
<http://www.elpasotexas.gov>

Ferris, Lauren K.  
EE7710-0923 MUNICIPAL COURT JUDGE, COURT 4

Received: 10/18/23  
12:49 PM  
For Official Use Only:  
QUAL: \_\_\_\_\_  
DNO: \_\_\_\_\_  
 Experience  
 Training  
 Other: \_\_\_\_\_

## PERSONAL INFORMATION

POSITION TITLE: MUNICIPAL COURT JUDGE, COURT 4		EXAM ID#: [REDACTED]
NAME: (Last, First, Middle) Ferris, Lauren K.		SOCIAL SECURITY NUMBER: N/A
ADDRESS: (Street, City, State/Province, Zip/Postal Code) [REDACTED]		EMAIL ADDRESS: [REDACTED]
HOME PHONE: [REDACTED]		
DRIVER'S LICENSE: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DRIVER'S LICENSE: State: TX Number: [REDACTED]	
What is your highest level of education? Doctorate		

## PREFERENCES

ARE YOU WILLING TO RELOCATE? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Maybe
WHAT TYPE OF JOB ARE YOU LOOKING FOR? Regular
TYPES OF WORK YOU WILL ACCEPT: Full Time
SHIFTS YOU WILL ACCEPT: Day
OBJECTIVE: My objective is to apply my knowledge, experience, and skills to serve again as Municipal Court Judge for Court # 4, making decisions based on the law and the best interests for the El Paso community. I will bring integrity, respect, and compassion to the bench while serving justice and running an efficient court.

## EDUCATION

DATES: From: 8/2009 To: 12/2011	SCHOOL NAME: University of Arkansas at Little Rock, William H. Bowen School of Law	
LOCATION: (City, State/Province) Little Rock, Arkansas	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Professional
MAJOR: Doctorate of Jurisprudence		
DATES: From: 8/2005 To: 12/2008	SCHOOL NAME: The University of Texas at El Paso (UTEP)	
LOCATION: (City, State/Province) El Paso, Texas	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Bachelor's
MAJOR: Political Science/ Criminal Justice		

## WORK EXPERIENCE

DATES: From: 6/2019 To: Present	EMPLOYER: Ferris Law Office	POSITION TITLE: Sole Proprietor
ADDRESS: (Street, City, State/Province, Zip/Postal Code) 1108 N. Campbell, El Paso, Texas, 79902		
PHONE NUMBER: 9152291790	SUPERVISOR: Lauren K. Ferris - Attorney	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
HOURS PER WEEK: 30		
DUTIES: I represent clients on various legal matters, with a focus on traffic tickets, criminal defense cases, and estate planning		
DATES: From: 1/2020 To: Present	EMPLOYER: El Paso County Dispute Resolution Center	POSITION TITLE: Mediator
ADDRESS: (Street, City, State/Province, Zip/Postal Code) El Paso, Texas		
PHONE NUMBER: 915-533-0998	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 4	SALARY: \$0.00/month	
COMPANY URL: <a href="http://elpasodrc.org/">http://elpasodrc.org/</a>		

<b>DUTIES:</b> I serve as a volunteer mediator to help resolve disputes amongst parties in an amicable and cost saving manner.		
<b>REASON FOR LEAVING:</b> Currently still volunteer		
<b>DATES:</b> From: 1/2020 To: 2/2021	<b>EMPLOYER:</b> City of El Paso	<b>POSITION TITLE:</b> Municipal Court Judge
<b>ADDRESS: (Street, City, State/Province, Zip/Postal Code)</b> 810 East Overland, El Paso, Texas, 79901		
<b>PHONE NUMBER:</b> 915-212-0215	<b>SUPERVISOR:</b> Lilia Worrell - Municipal Court Clerk	<b>MAY WE CONTACT THIS EMPLOYER?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>HOURS PER WEEK:</b> 20	<b># OF EMPLOYEES SUPERVISED:</b> 1	
<b>DUTIES:</b> I was the Judge of El Paso Municipal Court # 4. I presided over all Class C Misdemeanor cases that were issued in the City of El Paso to include traffic citations, animal violations, and code enforcement violations. I fairly, efficiently, and justly evaluated cases and enforced the applicable State laws or local ordinances. I presided over pre-trials, bench trials and jury trials, motions, civil bail bond hearings, warrants, and other relevant hearings and judicial matters.		
<b>REASON FOR LEAVING:</b> My term ended.		
<b>DATES:</b> From: 7/2012 To: 5/2019	<b>EMPLOYER:</b> City of El Paso	<b>POSITION TITLE:</b> Assistant City Attorney
<b>ADDRESS: (Street, City, State/Province, Zip/Postal Code)</b> El Paso, Texas, 79901		
<b>SUPERVISOR:</b> Teresa Cullen - Former Deputy City Attorney	<b>MAY WE CONTACT THIS EMPLOYER?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>HOURS PER WEEK:</b> 50	<b>SALARY:</b> \$3,600.00/month	<b># OF EMPLOYEES SUPERVISED:</b> 3
<b>DUTIES:</b> Worked on a variety of transactional matters, to include drafting of contracts, liens, loan documents, ordinances, and resolutions for various departments of the City: Community and Human Development, Museums and Cultural Affairs, Parks and Recreation, Libraries, Zoo, Streets and Maintenance Department, Sun Metro (Mass Transit Department), Economic Development, Planning and Inspections, and Environmental Services. Additionally, I provided legal advice, recommendations, and opinions on legal issues that came before the City and worked with various City boards and committees.  I also represented the City in the prosecution of thousands of violations of the City of El Paso ordinances and all Class C misdemeanors. As a City Prosecutor, I also handled civil bail bond forfeitures and right to possession hearings.  I compiled and presented trainings for the City of El Paso Environmental Department Code Officers, which was needed for their State certification.		
<b>REASON FOR LEAVING:</b> New opportunities presented themselves for advancement in my career		
<b>DATES:</b> From: 5/2012 To: 7/2012	<b>EMPLOYER:</b> Wayne Wright, LLP	<b>POSITION TITLE:</b> Social Security Disability Law Attorney
<b>ADDRESS: (Street, City, State/Province, Zip/Postal Code)</b> El Paso, Texas		
<b>MAY WE CONTACT THIS EMPLOYER?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<b>HOURS PER WEEK:</b> 60	<b># OF EMPLOYEES SUPERVISED:</b> 4	
<b>DUTIES:</b> Filed appeals for Social Security Disability benefits for clients, interviewed clients, drafted necessary pleadings, prepared for and attended administrative law hearings on the cases		
<b>REASON FOR LEAVING:</b> Received a better opportunity for growth with the City		
<b>DATES:</b> From: 5/2011 To: 12/2011	<b>EMPLOYER:</b> UALR William H. Bowen School of Law Litigation Clinic	<b>POSITION TITLE:</b> Rule XV Student Attorney
<b>ADDRESS: (Street, City, State/Province, Zip/Postal Code)</b> Little Rock, Arkansas		
<b>SUPERVISOR:</b> Beth Levi - Supervising Attorney	<b>MAY WE CONTACT THIS EMPLOYER?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>HOURS PER WEEK:</b> 15		
<b>DUTIES:</b> Worked on family law and civil cases in conjunction with the Center for Arkansas Legal Services, drafted all necessary pleadings, conducted fact investigation, prepared for trial, went to trial		
<b>REASON FOR LEAVING:</b> I graduated law school		
<b>DATES:</b> From: 6/2011 To: 7/2011	<b>EMPLOYER:</b> UALR William H. Bowen School of Law Mediation Clinic	<b>POSITION TITLE:</b> Student Attorney
<b>ADDRESS: (Street, City, State/Province, Zip/Postal Code)</b> Little Rock, Arkansas		

HOURS PER WEEK: 15		
DUTIES: Learned how to mediate civil cases, facilitate positive discussions among parties to reach an agreed resolution		
REASON FOR LEAVING: It was a part time, summer position		
DATES: From: 8/2010 To: 12/2010	EMPLOYER: Center for Arkansas Legal Services	POSITION TITLE: Extern
ADDRESS: (Street, City, State/Province, Zip/Postal Code) Little Rock, Arkansas		
SUPERVISOR: Dustin Duke - Managing Attorney	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 20		
DUTIES: Drafted a variety of legal documents, interacted with clients, researched issues, attended business meetings, represented indigent clients		
REASON FOR LEAVING: It was a seasonal externship.		
DATES: From: 4/2006 To: 7/2009	EMPLOYER: Como's Italian Restaurant	POSITION TITLE: Hostess and Waitress
ADDRESS: (Street, City, State/Province, Zip/Postal Code) El Paso, Texas		
SUPERVISOR: Nada Aziz - Owner	MAY WE CONTACT THIS EMPLOYER? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
HOURS PER WEEK: 25		
DUTIES: Provided customer service, took and fulfilled orders, answered phone calls, counted register money and tracked all transactions.		
REASON FOR LEAVING: I moved away to go to law school.		

#### CERTIFICATES AND LICENSES

TYPE: Certified Mediator	
LICENSE NUMBER:	ISSUING AGENCY: El Paso County Dispute Resolution Center
TYPE: United States Western District of Texas	
LICENSE NUMBER:	ISSUING AGENCY:

#### Skills

Nothing Entered For This Section

#### ADDITIONAL INFORMATION

Volunteer Experience  
Candlelighters (CCF- Childhood Cancer Foundation)-- I was a camp counselor for young children that suffered from cancer and their siblings

Honors & Awards  
Student Bar Association, Elected Vice President 2011-2012

Honors & Awards  
Arkansas Association for Women Lawyers Student Division, Elected Vice President 2010-2011

Honors & Awards  
Delta Theta Phi Legal Fraternity, Elected Clerk of the Rolls 2010-2011

Honors & Awards  
Hispanic Law Students Association, Elected Treasurer 2010-2011

Honors & Awards  
Student Bar Association, Elected Full-Time Senator 2009-2011

Honors & Awards  
Awards/Scholarships: Distinguished Dean's Certificate (300+ hours of community service, 2009-2011), Dean's Certificate (2009-2011), Out of State Student Scholarship, Governor Sid McMath Scholarship, James Larrison Scholarship, Sandra Wilson Cherry Scholarship, Delta Theta Phi Legal Fraternity Scholarship

Honors & Awards  
Golden Key International Honor Society 2007-2008

Honors & Awards  
Freshmen Alpha Lambda Delta-National Academic Honor Society 2006-2007

Honors & Awards  
Nestle Tollhouse National "Bake Some Love" First Place Award

Honors & Awards  
Dean's List for the College of Liberal Arts; Phi Kappa Phi Honor Society; Alpha Chi National College Honor Society

Professional Associations  
Texas City Attorney's Association  
Professional Associations  
El Paso Bar Association

Professional Associations

Texas Criminal Defense Lawyers Association

Professional Memberships

El Paso Women's Bar Association Member

Professional Memberships

Texas Bar College Member- "The Texas Bar College is an honorary society of lawyers and paralegals who are leaders in the Texas legal community and champions of legal education." I completed an extraordinary higher amount of Continuing Legal Education courses than what is required to be accepted into the Texas Bar College. I am always striving to enhance my knowledge to better serve the community.

Volunteer Experience

Humanitarian Coordinator- St. George Antiochian Orthodox Church (locally)

Humanitarian Coordinator for the North American Board of Antiochian Women (all of North America)

I organize and coordinate multiple charitable events and community service projects to be done locally and nationally helping those in need.

Publications

I was on the Law Review Board and an Assistant Editor. I also had a Law Review article published.

Animal Law—Greed v. Humanity: The Need for Arkansas to Regulate Commercial Breeders and Ban the Retail Sale of Cats and Dogs in Pet Stores and Over the Internet

Interests & Activities

I am an animal lover with rescue cats and dogs. I love to hike and do any outdoor adventures. I love to bake. I love to volunteer and spend time helping the less fortunate.

Honors & Awards

Honored as the "Outstanding Ex" for Chapin High School- 2023-2024.

Professional Associations

I currently sit on the University of Texas at El Paso (UTEP) Alumni Association Board of Directors.

REFERENCES

Nothing Entered For This Section

Job Specific Supplemental Questions

1. Are you a licensed attorney in good standing?  
Yes
  2. Do you have two or more years of experience in the practice of law in Texas?  
Yes
  3. Are you a resident of Texas?  
Yes
  4. Have you lived in El Paso during the preceding 12 months?  
Yes
  5. Are you a citizen of the United States?  
Yes
  6. Please provide your attorney license number and expiration date in the area provided.  
[REDACTED] no expiration
- 

The following terms were accepted by the applicant upon submitting the online application:

By clicking on the 'Accept' button, I hereby certify that every statement I have made in this application is true and complete to the best of my knowledge. I understand that any false or incomplete answer may be grounds for not employing me or for dismissing me after I begin work. I understand that I will have to produce documentation verifying identity and employment eligibility in the U.S. I understand that I may be required to verify any and all information given on this application. I understand that this completed application is the property of the City of El Paso and will not be returned. I understand that the City of El Paso may contact prior employers and other references.

I understand that completion of this Application for Employment does not guarantee that I will be employed by the City of El Paso.

I hereby affirm that my answers to these statements and questions are true and correct to the best of my knowledge. I have not knowingly withheld any fact or circumstance that would, if disclosed, affect my application unfavorably.

I understand that any misrepresentation, deception, or false statement made in this Employment Application may result in my not being considered for employment, and if not discovered by the Company until after my becoming employed, is grounds for, and may result in, my immediate termination.

Application time limit: I understand that application forms are active for the length of the eligible list which is normally six months unless otherwise stated. All persons must reapply after that period.

Falsification: I understand that falsification of information listed on my application or presented to the City of El Paso can be grounds for serious reprimand or termination.

Employment testing: I understand that all required drug tests, pencil-and-paper tests, physical exams, or electronic or other tests will be used in the employment decision.

Condition of Employment: I understand that I must provide official proof of Education (transcripts, diplomas, certificates), driver's license (if required), within 3 days of being contacted with a job offer.

This application was submitted by Lauren K. Ferris on 10/18/23 12:49 PM





El Paso, TX

300 N. Campbell  
El Paso, TX

Legislation Text

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**File #: 23-1599, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

City Attorney's Office, Karla M. Nieman, (915) 212-0033

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

In re: Aqueous Film-Forming Foam Products Multi-District Litigation MDL NO. 2873 (551.071)



El Paso, TX

300 N. Campbell  
El Paso, TX

Legislation Text

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**File #: 23-1601, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

Outside Council, Frank Garza, (210) 349-6484

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Complaint regarding elected City Official - Matter No. HQ # 1453 (551.071) (551.074)



El Paso, TX

300 N. Campbell  
El Paso, TX

Legislation Text

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**File #: 23-1598, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

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*No Title's, No emails. Please use ARIAL 10 Font.*

City Attorney's Office, Matthew Marquez, (915) 212-0033

**AGENDA LANGUAGE:**

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Claim of Carlos Gonzalez; Claim-263; (551.071)



El Paso, TX

300 N. Campbell  
El Paso, TX

Legislation Text

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**File #: 23-1600, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

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*No Title's, No emails. Please use ARIAL 10 Font.*

City Attorney's Office, Evan D. Reed, (915) 212-0033

**AGENDA LANGUAGE:**

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United States of America v. City of El Paso, Texas; United Road Towing Inc d/b/a URT Vehicle Management Solutions and Rod Robertson Enterprise, Inc; 3:23-CV-00044 (551.071)



El Paso, TX

300 N. Campbell  
El Paso, TX

Legislation Text

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**File #: 23-1612, Version: 1**

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**CITY OF EL PASO, TEXAS  
LEGISTAR AGENDA ITEM SUMMARY FORM**

**DISTRICT, DEPARTMENT, CONTACT INFORMATION:**

*Please choose District and Department from drop down menu. Please post exactly as example below.*

*No Title's, No emails. Please use ARIAL 10 Font.*

Economic and International Development, Elizabeth Triggs, (915) 212-0065

City Attorney's Office, Juan Gonzalez, (915) 212-0033

**AGENDA LANGUAGE:**

*This is the language that will be posted to the agenda. Please use ARIAL 11 Font.*

Purchase, exchange, lease, or value of real property located in Downtown El Paso. HQ#23-1582 (551.071)  
(551.072)