

OSCAR LEESER
MAYOR

CARY WESTIN
INTERIM CITY MANAGER



CITY COUNCIL
BRIAN KENNEDY, DISTRICT 1
ALEXSANDRA ANNELLO, 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

CITY COUNCIL WORK SESSION MINUTES
September 25, 2023
COUNCIL CHAMBERS, CITY HALL AND VIRTUALLY
9:10 A.M.

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The City Council of the City of El Paso met at the above place and date. Meeting was called to order at 9:28 a.m. Mayor Oscar Leeser was present and presiding and the following Council Members answered roll call: Joe Molinar, Art Fierro, Henry Rivera, and Chris Canales. Brian Kennedy joined the meeting via videoconference at 9:29 a.m. Aleksandra Annelo, Cassandra Hernandez, and Isabel Salcido requested to be excused.

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AGENDA
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1.

RESOLUTION

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

That the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement (“Agreement”) by and between **CITY OF EL PASO** (“City”) and **PROD Design & Analysis, Inc.**, a Texas Corporation, (“Applicant”) in support of a project located at **1255 Peter Cooper Dr. El Paso, Texas 79936**. The project includes **providing stability in operations by expanding into the aerospace and defense initiatives being targeted by the Build Back Better initiative, requiring additional resources and training for new venture**. The Agreement requires the Applicant to make a minimum investment of **\$4,400,000.00**. Over the term of the Agreement, the City shall provide economic incentives not to exceed **\$188,774.00** in the form of a Property Tax Rebate; a Development Fee Rebate; and a Construction Materials Sales Tax Rebate.

Mr. Bill Allen, Economic and International Development Assistant Director, presented a PowerPoint presentation (copy on file in the City Clerk’s Office).

Mayor Leeser commented

Motion made by Representative Rivera, seconded by Representative Molinar, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Kennedy, Molinar, Fierro, Rivera, and Canales

NAYS: None

ABSENT: Representatives Annelo, Hernandez, and Salcido

2.

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RESOLUTION

That the City Manager, or designee, is authorized to effectuate the purchase and closing of the property commonly known as 5625 Confetti Dr., El Paso, Texas and more

particularly described as Tract 4-E, A.F. Miller Survey 215 Abstract 3599, El Paso County, Texas, including any and all improvements located on the Property for \$3.8 million dollars.

Further, the City Manager or designee is authorized to: (1) execute a Contract of Sale with the Board of Trustees of the El Paso Independent School District, for the purchase of the property, to include the Lease appearing as Exhibit D, which shall have a term beginning on the Effective Date of the Contract of Sale to end on the Closing Date in the amount of \$23,534.00 per month, (2) sign any and all documents related and/or necessary to effectuate the purchase and closing of the property, (3) exercise all rights and obligations as provided in the Contract of Sale, (4) sign any documents necessary to effectuate any rights or obligations in relation to the purchase and closing of the property, (5) sign any contract amendments provided that such amendments do not increase the purchase price, and (6) use the American Rescue Plan Act- Coronavirus State and Local Fiscal Recovery Funds and effectuate any budget transfers necessary to ensure the funds are obligated and fully expended in accordance with the grant requirements.

Ms. Mary Lou Espinoza, Capital Assets Manager, presented a PowerPoint presentation (copy on file in the City Clerk's Office).

Mayor Leaser and Representatives Kennedy, Molinar, Fierro, Rivera, and Canales commented

The following City staff members commented:

- Mr. Mario D'Agostino, Deputy City Manager
- Mr. Cary Westin, Interim City Manager

Mr. Ron Comeau, citizen, commented.

Motion made by Representative Canales, seconded by Representative Rivera and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Kennedy, Molinar, Fierro, Rivera, and Canales

NAYS: None

ABSENT: Representatives Annello, Hernandez, and Salcido

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EXECUTIVE SESSION

Motion made by Representative Rivera, seconded by Representative Canales, and unanimously carried that the City Council **RETIRE** into **EXECUTIVE SESSION** at 10:07 a.m. pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Sections 551.071 - 551.089 to discuss the executive session items:

Section 551.071 CONSULTATION WITH ATTORNEY

Section 551.072 DELIBERATION REGARDING REAL PROPERTY

Section 551.087 DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS

AYES: Representatives Kennedy, Molinar, Fierro, Rivera, and Canales

NAYS: None

ABSENT: Representative Annello, Hernandez, and Salcido

Representative Kennedy did not participate in the Executive Session.

The Executive Session was **RECESSED** at 10:49 a.m. in order to attend a press conference.

The Executive Session was **RECONVENED** at 11:34 a.m.

Motion made by Representative Rivera, seconded by Representative Fierro, and unanimously carried to **ADJOURN** the Executive Session at 12:39 p.m. and **RECONVENE** the meeting of the City Council at which time motions were made:

AYES: Representatives Molinar, Fierro, Rivera, and Canales

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Kennedy

ABSENT: Representatives Annello, Hernandez, and Salcido

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EX1. Ruben A. Soto v. Officer Daniel Monge, Officer Sabrina Gonzalez, Chief Allen, and the City of El Paso. 3:23-CV-00256 (551.071)

Motion made by Alternate Mayor Pro Tempore Molinar, seconded by Representative Rivera, and unanimously carried that the City Attorney's Office be authorized to **DENY** the settlement demand of Ruben A. Soto, in Matter Number 3:23-CV-00256 and to take all steps necessary, including the execution of any required documents, in order to effectuate this authority.

AYES: Representatives Molinar, Fierro, Rivera, and Canales

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Kennedy

ABSENT: Representatives Annello, Hernandez, and Salcido

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EX2. Greg Abbott in his official capacity as Governor of the State of Texas v. City of El Paso. Cause No. 2021DCV2805; 8th Court of Appeals Cause No. 08-21-00159-C; HQ#23-0228 (551.071)

NO ACTION was taken on this item.

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EX3. Ysleta Del Sur Pueblo v. City of El Paso Cause No. 3:23-cv-00132 (551.071)

NO ACTION was taken on this item.

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EX4. Application of El Paso Electric Company to Revise its Energy Efficiency Cost Recovery Factor and Establish Revised Cost Caps. HQ# UTILITY-8 (551.071)

Motion made by Alternate Mayor Pro Tempore Molinar, seconded by Representative Fierro, and unanimously carried that the City Attorney in consultation with the City Manager be authorized to **APPROVE** the settlement in the *Application of El Paso Electric Company for Approval to Revise its Energy Efficiency Cost Recovery Factor*, under the Texas Public Utility Commission, Docket No. 54950, in Matter Number UTILITY-8, and to take all steps necessary, including the execution of any required documents, in order to effectuate this authority.

AYES: Representatives Molinar, Fierro, Rivera, and Canales

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Kennedy

ABSENT: Representatives Annello, Hernandez, and Salcido

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EX5. Campaign Contributions Regulations. HQ#23-1209 (551.071)

NO ACTION was taken on this item.

EX6. Purchase, exchange, lease, or value of real property located in El Paso for use as City open space. HQ# 23-1408 (551.072)

1. Motion made by Alternate Mayor Pro Tempore Molinar, seconded by Representative Fierro, and unanimously carried that City Council hereby **PRIORITIZES THE ACQUISITION** of the following properties for open space purposes, as such properties were identified in Executive Session, Item No. 23-1284, on September 25, 2023:

- Priority 1: Property identified as 2020C
- Priority 2: Property identified as 2023B
- Priority 3: Property identified as 2023A
- Priority 4: Property identified as 2020B

2. Further, City Council hereby directs City staff to proceed with negotiations to acquire the subject properties in the priority order shown above, subject to available funding.

AYES: Representatives Molinar, Fierro, Rivera, and Canales
 NAYS: None
 NOT PRESENT FOR THE VOTE: Representative Kennedy
 ABSENT: Representatives Annello, Hernandez, and Salcido

EX7. Discussion on potential economic development opportunities in Central El Paso HQ# 23-1344 (551.087)

Motion made by Alternate Mayor Pro Tempore Molinar, seconded by Representative Rivera, and unanimously carried, to **APPROVE** the term sheet, attached to this Motion, for a performance-based incentive of up to \$985,791 for the expansion of Wizards Nuts Holdings LLC, a private-label snack manufacturer for the expansion of a distribution and manufacturing facility located at 11 Leigh Fisher Blvd. in El Paso, Texas, to include a minimum capital investment of \$28,200,000, the retention of 446 full-time positions and the addition of 91 new full-time positions.

TERM SHEET

Wizard Nuts Holdings LLC – Distribution and Manufacturing Facility Expansion

PARTIES	<p>City: City of El Paso, Texas, a political subdivision of the State of Texas (the “City”), 300 N. Campbell, El Paso, Texas 79901</p> <p>Applicant: Wizards Nuts Holdings LLC, a private-label snack manufacturer (the “Applicant”), 323 N. Washington Ave., Suite 400, Minneapolis, MN 55401.</p>
PROPOSED TRANSACTION	<p>Applicant has applied to receive economic development incentives associated with the plant expansion as more fully described in EXHIBIT A, which is attached hereto and incorporated herein for all purposes (the “Project”). The Applicant shall undertake the Project which is anticipated to promote local economic development and stimulate business and commercial activity in the City Of El Paso, Texas. The City agrees to support</p>

	<p>the Project through incentives to be used to defray costs associated with the Project in accordance with the terms enumerated in this Term Sheet.</p>
<p>PROJECT PROPERTY</p>	<p>Expansion of an existing distribution and processing facility located at 11 Leigh Fisher Blvd. El Paso, TX 79906, as more fully described by EXHIBIT B (the “Project Property”).</p>
<p>TRANSACTION TERMS</p>	<ol style="list-style-type: none"> 1. Effect of the Term Sheet. Upon approval by the City Council of this Term Sheet, this Term Sheet will be considered to have begun the incentivization process and allow the Applicant to obtain building permits and other permits, as applicable; and to otherwise, proceed with development of the Project. 2. Non-Binding. This Term Sheet is not a contract or a binding agreement but an expression of the proposed transaction between the City and the Applicant. No party will be bound for a transaction until and unless definitive agreement(s) are executed by the parties to this proposed transaction (the “Economic Development Agreement”). 3. Term. The Term of the Economic Development Agreement shall be the lesser of (a) 12 years from the Effective Date of the Economic Development Agreement; (b) the date at which full payment of the Grant by the City to the Applicant has been made, as limited by the Economic Development Agreement; or (c) termination of the Economic Development Agreement as otherwise provided by said agreement (the “Term”). 4. Effective Date. The Effective Date of the Economic Development Agreement shall be the date upon which both parties have fully executed the Economic Development Agreement (the “Effective Date”). 5. Grant Period. The Applicant’s eligibility for Grant payments shall be limited to 10 consecutive years within the Term of the Economic Development Agreement. The Grant Period shall begin with the first Grant year beginning January 1, 2024. 6. Project Location. Applicant agrees to establish the Project at the Project Property. 7. Operation Commencement. Applicant agrees it shall commence operation of the Project no later than April 1, 2024, as evidenced by receipt of a Certificate of Completion or Occupancy, as applicable. 8. Full-Time Employment. The Applicant agrees to create, staff, and maintain at least 91 Full-Time Employment positions; and agrees to hire those positions no later than

December 31, 2024. In addition, throughout the Economic Development Agreement Term, the Applicant shall maintain a minimum of **446** Full-Time Employment positions at the Project Property continuing through the expiration of said Term. For purposes of this Term Sheet and any subsequent Economic Development Agreement, the number of Full-Time Employment positions created, staffed, and maintained shall be measured once annually, as of September 30 of each applicable year, during the Term of the Economic Development Agreement.

9. **Definition of Full-Time Employment.** A “**Full-Time Employment**” position shall mean a position hired by the Applicant (either directly or indirectly through a temporary employment agency or professional employer organization (PEO)) to staff the Project at the Project Property that: (i) requires a minimum of 40 hours per week, including paid time off (or filled less than 40 hours per week if such other measurement is used by Applicant to define “Full-Time Employment” in accordance with its then current personnel policies and regulations, including paid time off); (ii) paid a minimum hourly wage that results in a minimum salary of at least **\$35,000** per year or the Median Area Annual Wage, when annualized, whichever is greater; and (iii) provides full benefits, inclusive of paid health insurance wherein Applicant directly or indirectly pays at least 50 percent of the premium.

For example, if Applicant has a company-wide policy that considers “Full-Time Employment” to be 35 hours per week, a position provided by Applicant is considered a Full-Time Employment position if the position: (i) requires 35 hours per week, including paid time off; (ii) is paid at least \$55.00 per hour (which when multiplied by fifty-two 35- hour work weeks results in an annual salary of approximately \$100,000.00); and (iii) meets all other requirements enumerated in the paragraph above.

10. **Definition of Median Area Annual Wage.** The “**Median Area Annual Wage**” shall mean the median hourly wages as determined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics Program for all occupations within the El Paso Metropolitan Statistical Area, as adjusted on January 1st of each applicable calendar when annualized over fifty-two 40-hour work weeks; provided, however that in no event shall the applicable median hourly wage used to calculate the Median Area Annual Wage be less than the 2022 median hourly wage established for the El Paso Metropolitan Statistical Area which is **\$16.43**.

	<p>11. Minimum Investment. Applicant agrees that it shall make, or cause its landlord to make, Qualified Expenditures of not less than \$28,200,000 in the Project, where “Qualified Expenditures” means those costs, self performed or contracted to third parties, incurred by the Applicant in the renovation or construction, acquisition of machinery and equipment, or furnishing of the Project.</p> <p>12. Property Tax Rebate. City shall provide an annual grant equivalent to 60 percent the total value of the City’s portion of the incremental ad valorem real and personal property tax revenue generated by the Project above the Real and Personal Property Base Year Values for the Project for the given tax year during the Grant Period over 10 consecutive years or a total maximum rebate on the City’s portion of the real and personal property tax of \$957,416, whichever comes first (the “Property Tax Rebate”).</p> <p>Applicant has the opportunity to increase the annual Property Tax Rebate grant to 70 percent of the total value of the City’s portion of the incremental ad valorem property tax revenue generated by the Project above the Real and Personal Property Base Year Values for the Project during the Grant Period if Workforce Solutions Borderplex is used to hire new employees every year. In such an event, the total maximum Property Tax Rebate over the Term shall increase to \$1,116,985.</p> <p>13. Real and Personal Property Base Year Values. For the purposes of the Economic Development Agreement, the Real Property Base Year Value for the project shall be \$2,871,890, being the 2023 taxable value for Property ID 145987; and the Personal Property Base Year Value shall be \$27,365,020, being the 2023 taxable value for Property ID 672409.</p> <p>14. Development and Building Fee Rebate. The City agrees to rebate up to \$10,000.00 in development and building fees in connection with the development and construction of the Project following the submittal of Applicant’s first Grant Submittal Package (the “Development and Building Fee Rebate Cap”). The Development and Building Fee Rebate shall be limited to the lesser of: (i) the development and building fee costs associated with the construction of the Project or (ii) the Development and Building Fee Rebate Cap. Under no circumstances shall the City rebate reinspection and other building and inspection penalty fees associated with the development and construction of the Project.</p> <p>15. Construction Materials Sales and Use Tax Rebate. The City shall provide a one-time 100 percent rebate on the City’s portion of the sales and use tax on Project</p>
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construction materials, not to exceed **\$18,375.00** and due to the Applicant following submittal of the first Grant Submittal Package.

16. **Grants.** Annual grants in the form of subsidies or reimbursements shall be provided to the Applicant on a yearly basis under the terms of the Economic Development Agreement. The total grant is computed as the sum of the applicable rebates: (i) Construction Materials Sales Tax Rebate; (ii) Development Fee Rebate; and (iii) Property Tax Rebate. The aggregate Grant payments will not exceed **\$985,791**.

This amount may increase to **\$1,145,360** if Applicant uses Workforce Solutions Borderplex in the hiring process to source new employees, as further described in **Paragraph 12** of this Term Sheet.

17. **Eligibility for Grants.** To be eligible for annual Grants provided by the **City** to Applicant, Applicant shall submit the following documentation:

(a) **Certificate of Occupancy or Completion.** Applicant shall submit to the City documentation providing evidence that Applicant has begun Project operations in accordance with Paragraph 7 of this Term Sheet with its first Grant Submittal Package.

(b) **Local Sourcing.** During term of the Agreement, the Applicant agrees that to the extent that the Developer determines that (i) goods and materials available for timely delivery to the Property and (ii) in the Developer’s sole judgment, there are qualified and competent services providers, contractors, and suppliers available to meet the Applicant’s business needs without added expense, substantial inconvenience, or delay in critical path performance, then 65% of the total number of manufacturers, suppliers, contractors and labor used in the manufacturing process will be sourced locally.

(c) **Grant Submittal Package and Grant Payments.** Beginning April 1, 2025 and continuing every April 1st every year thereafter for a total of ten years, Applicant shall deliver to the City a compliance verification report signed by a duly authorized representative of the Applicant (“Grant Submittal Package”). Each Grant Submittal Package will cover the preceding year’s activities, beginning on January 1st and ending the following December 31st.

The Grant Submittal Package shall certify the number of and generally describe the Full-Time Employment positions at the Project Property as of the preceding **December 31st** and provide information needed to verify compliance with the job creation commitments identified in **Paragraph 8** and **Paragraph 10** of this Term Sheet, including but not limited wage information; and shall also include with the first Grant Submittal Package appropriate back-up and documentation to substantiate its Qualified Expenditures, including Local Sourcing commitments, and Commencement Date.

Unless terminated sooner as detailed in **Paragraph 3** of this Term Sheet, there will be a total of **10** Grant Submittal Packages due during the Economic Development Agreement Term. All Grant Submittal Packages shall be submitted in a form reasonably satisfactory to the City and shall provide appropriate back-up for the City to verify compliance with the terms of the Economic Development Agreement. Upon verification of the Applicant's compliance with the terms of the Economic Development Agreement, the City shall issue the grants, rebates and reimbursements identified in **Paragraph 12**, **Paragraph 14**, and **Paragraph 15** of this Term Sheet.

18. **Termination.** The Economic Development Agreement may be terminated as follows:

- (a) **Termination by City.** The City may terminate the Economic Development Agreement if Chapter 380 of the Texas Local Government Code is declared unconstitutional. Moreover, the City may terminate the Economic Development Agreement upon any of the following events (each, an "Event of Default") after, in each case, notice and a reasonable opportunity to cure: (i) Applicant's failure to comply with the material terms of the Economic Development Agreement, (ii) Applicant's making of a materially false statement in the Economic Development Agreement or a Grant Submittal Package, (iii) Applicant's insolvency, or (iv) Applicant's failure to timely pay property taxes owned to the City.
- (b) **Termination by Applicant.** Applicant, after notice and a reasonable opportunity to cure, may terminate the Economic Development Agreement upon the City's failure to comply with the material terms of the Economic Development Agreement.

19. **Recapture.** If the City terminates the Economic Development Agreement because of an uncured Event of

Default, then the City shall have the right to recapture previously paid grant payments under the Economic Development Agreement pursuant to the following schedule:

Grant Year of Uncured Event of Default	Percent of Grant Payment Subject to Recapture
1-3	100%
4	70%
5	60%
6	50%
7	40%
8	30%
9	20%
10	10%

20. **Indemnification.** The indemnity terms and provisions in the current lease agreement between the City and Applicant covering the property located at 11 Leigh Fisher Blvd. El Paso, TX 79906 are hereby incorporated into this Term Sheet and the Economic Development Agreement as though fully set forth herein.

21. **Successors and Assigns.** The Agreement shall be binding on the City and the Applicant, their successors, and assigns. Neither party may assign, sublet, or transfer its interest in this Term Sheet without the written consent of the other.

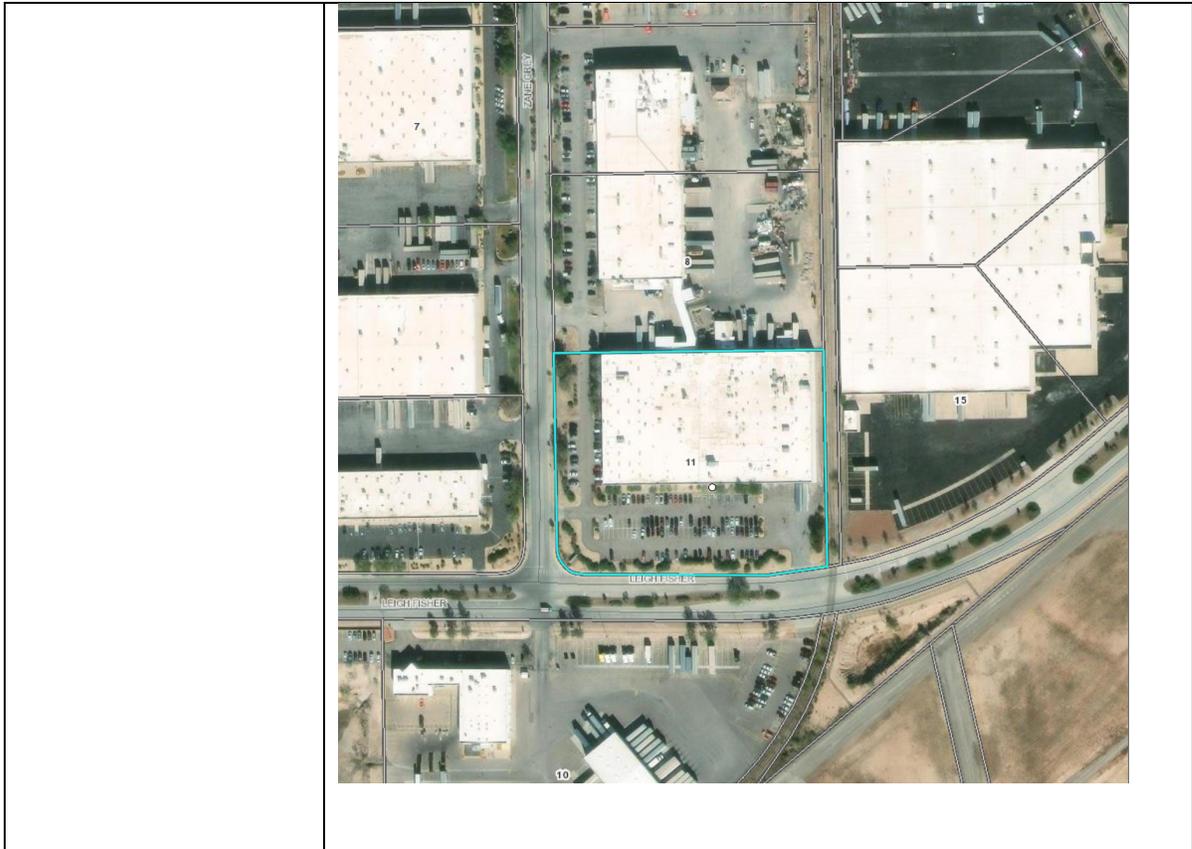
**EXHIBIT A
Description of the Project**

Manufacturing client in the private label snack food industry on an expansion in North America.

The company serves big-box retailers with private labels along with company-owned brands supplying high-quality nuts, dried fruit, and produce snacks with a North American presence and has been in business for over 100 years. This new operation will include four manufacturing lines. The company plans to engage in manufacturing, logistics, and research and development (R&D), with a special focus on food process innovation.

**EXHIBIT B
Project Property**

Address: 11 LEIGH FISHER BLVD., EL PASO, TX, 79906
Property ID: 365687
Geographic ID: B85399900800600
Legal Description: 8 BUTTERFIELD TRL IND PK 1 RPL B LOT 6 210035.68 SQ FT



AYES: Representatives Molinar, Fierro, Rivera, and Canales
NAYS: None
NOT PRESENT FOR THE VOTE: Representative Kennedy
ABSENT: Representatives Anello, Hernandez, and Salcido

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ADJOURN

Motion made by Representative Rivera, seconded by Representative Fierro, and unanimously carried to **ADJOURN** the meeting at 12:46 p.m.

AYES: Representatives Molinar, Fierro, Rivera, and Canales
NAYS: None
NOT PRESENT FOR THE VOTE: Representative Kennedy
ABSENT: Representatives Anello, Hernandez, and Salcido

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APPROVED AS TO CONTENT:

Laura D. Prine, City Clerk