

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

AGENDA DATE: October 11, 2022
PUBLIC HEARING DATE: N/A
CONTACT PERSON(S) NAME AND PH. NUMBER: Elizabeth Triggs, Director 915-212-1619
Denisse Carter, Business Services Coordinator
915-212-1620
DISTRICT(S) AFFECTED: 1
STRATEGIC GOAL: 1. Cultivate an Environment Conducive to Strong,
Economic Development
SUBGOAL: 1.1 Stabilize and expand El Paso's tax base

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 a resolution that the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement by and between the **CITY OF EL PASO, TEXAS**, a home-rule municipality of El Paso County, Texas and **SCHNEIDER ELECTRIC USA, INC.**, a Delaware Corporation for the expansion of its operations within the city limits of the City of El Paso for the expansion of its existing facility located at 1601 and 1701 Northwestern Dr to include a minimum \$15,064,000 capital investment, the creation of 368 new full-time positions and the retention of its existing 1,130 full time positions.

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?

International company specializing in energy management, security and electrical distribution and automation. The company is proposing to expand current operations at their El Paso facilities located at 1601 & 1701 Northwestern Dr. and 7801 Northern Pass Dr. which currently employs about 1,130 people. The new expansion will allow the company to manufacture complex engineered-to-order products. The applicant will create 368 new full-time employment positions and retain its existing workforce.

Upon satisfying all contract metrics, the Applicant will be eligible to receive the following incentives:

- **Property Tax Rebate** (City's Portion): The City's portion of ad valorem incremental property taxes. 10-year grant period. Capped at \$715,000
- **Construction Materials Sales Tax Rebate:** A one-time rebate of the City's Portion (1%) of Sales Taxes levied on project-related construction materials. Capped at \$57,000
- **Development and Fee Rebate:** A one-time rebate of certain building construction fees and planning fees as identified in Ordinance No. 018581 paid for the project. Capped at \$30,000
- **Public improvement Reimbursement:** reimbursement to applicant for public improvements capped at \$600,000
- **Sustainability Grant:** For electric vehicle charging infrastructure capped at \$75,000

PRIOR COUNCIL ACTION:

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

Yes, a term sheet was approved on February 14, 2022.

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?

General Fund and TIRZ 10 Fund

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Economic and International Development

SECONDARY DEPARTMENT:

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

DEPARTMENT HEAD: 

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

RESOLUTION

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

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

PASSED AND APPROVED this _____ day of _____ 2022.

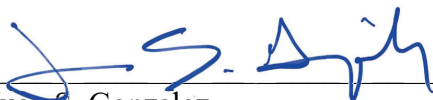
CITY OF EL PASO, TEXAS

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Elizabeth Triggs, Director
Economic & International Development

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

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

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

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

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

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

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

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

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

SECTION 1. DEFINITIONS.

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

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

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

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

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

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

SECTION 2. TERM AND GRANT PERIOD.

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

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

SECTION 3. OBLIGATIONS OF APPLICANT.

A. DEVELOPMENT

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

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

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

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

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

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

B. EMPLOYMENT POSITIONS

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

C. GRANT SUBMITTAL PACKAGE AND REIMBURSEMENT REQUESTS

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

SECTION 4. OBLIGATIONS OF CITY.

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

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

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

SECTION 5. EVENTS OF DEFAULT.

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

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

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

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

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

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

SECTION 6. RECAPTURE.

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

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

SECTION 7. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT.

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

SECTION 8. GENERAL PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

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

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

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

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

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

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

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

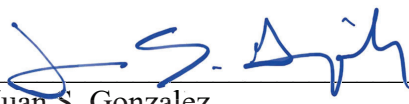
(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

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

CITY OF EL PASO, TEXAS:

Tomás González
City Manager

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

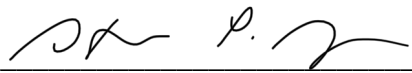


Elizabeth Triggs, Director
Economic and International Development

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

APPLICANT:

Schneider Electric USA, Inc., a Delaware Corporation

By: 

Name: Steven L. Sacco

Title: Vice President

EXHIBIT A

DEVELOPMENT

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

EXHIBIT A-1

DEVELOPMENT LOCATION METES & BOUNDS & SURVEY MAP

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

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

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

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

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

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

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

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

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

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

THENCE, 42.38 feet continuing along said right-of-way and along the arc of a curve to the right, having a radius of 30.00 feet, a central angle of $80^{\circ}56'36''$, and a chord which bears North $57^{\circ}30'45''$ West, a distance of 38.94 feet to the POINT OF BEGINNING of this description.

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

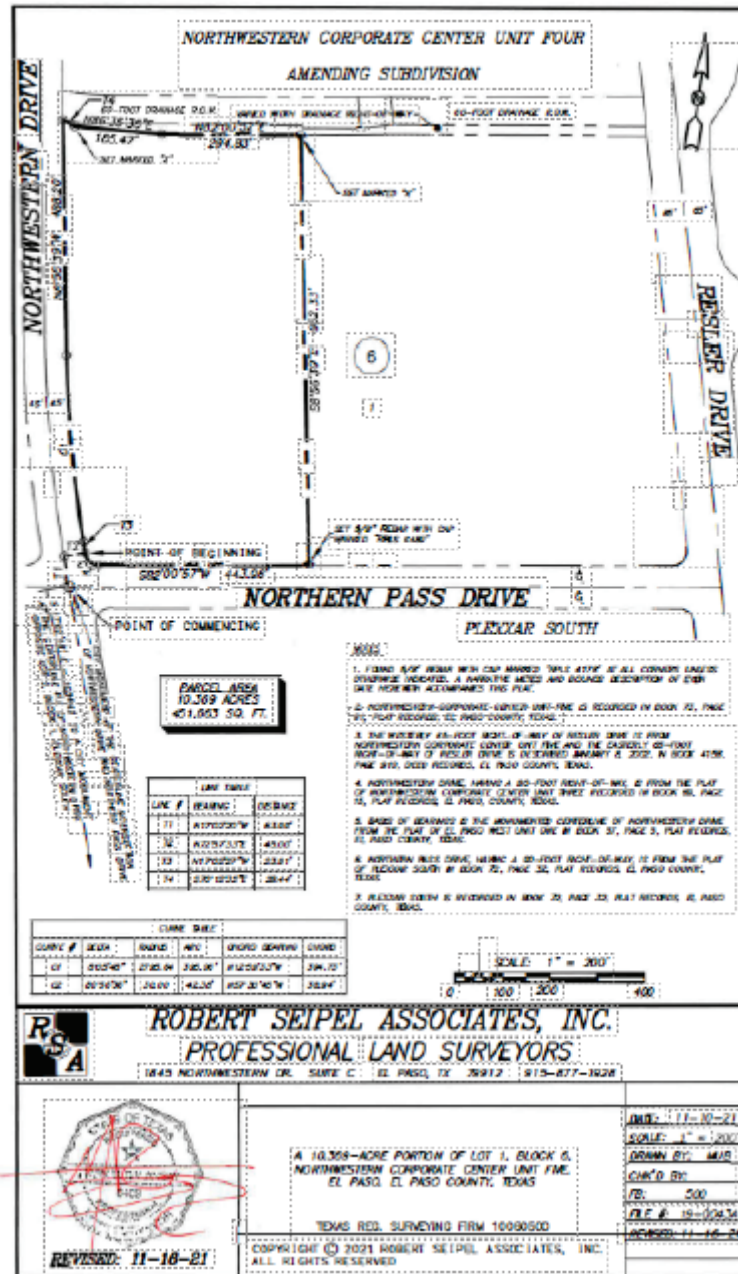


EXHIBIT B

Employment Requirements & Property Tax Rebate Eligibility

SECTION 1. MINIMUM JOB CREATION AND RETENTION REQUIREMENTS.

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

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

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

SECTION 3. ELIGIBILITY FOR PROPERTY TAX REBATE PAYMENTS.

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

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

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

SECTION 4. MEDIAN AREA WAGE.

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

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

EXHIBIT C

Grant Submittal Package Form

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

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

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

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

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

Schneider Electric USA, Inc., a Delaware Corporation

By: _____

Name: _____

Title: _____

Date of submission: _____

EXHIBIT D

Incremental Ad Valorem Property Tax Revenue Calculation

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

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

REAL property tax rebate calculation

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

PERSONAL property tax rebate calculation

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

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