

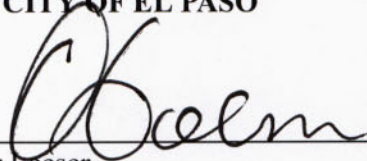
EXX

MOTION

Motion made, seconded, and 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.

APPROVED this 25th day of September, 2023.

THE CITY OF EL PASO



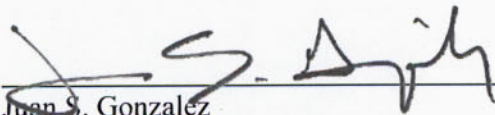
Oscar Leeser
Mayor

ATTEST:



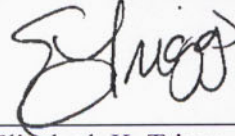
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Elizabeth K. Triggs, Director
Economic & International Development

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 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>
PROJECT PROPERTY	<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>
TRANSACTION TERMS	<ol style="list-style-type: none"> 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. 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”). 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”).

	<p>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”).</p> <p>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.</p> <p>6. Project Location. Applicant agrees to establish the Project at the Project Property.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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-</p>
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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**.

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.

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**”).

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**.

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.

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.

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 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

