

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

**AGENDA DATE:** CCA Work Session: June 21, 2021

**PUBLIC HEARING DATE:** CCA Work Session: June 21, 2021

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Jessica L. Herrera-Director, 212-1624

**DISTRICT(S) AFFECTED:** 6 and 7

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

**SUBGOAL:** Subgoal 1.1 Stabilize and expand El Paso's tax base

**SUBJECT:**

That the City Manager be authorized to sign an Economic Development Program Agreement ("Agreement") between the City of El Paso (the "City") and Charter Communications, Inc. (the "Applicant"), regarding Applicant's improvements and expansion of its facilities at 11950 Don Haskins Drive and 8460 Gran Vista Dr., El Paso, Texas. Pursuant to the Agreement, Applicant will invest \$16,100,000; create 929 new full-time positions. In exchange, the City will provide incentives not to exceed \$309,168. [Economic and International Development, Jessica L. Herrera, Director, (915) 212-1624]

**BACKGROUND / DISCUSSION:**

Charter Communications, Inc is a well-known wired communications company planning on expanding their operations in El Paso, TX. The expansion will be implemented in two locations within the El Paso city limits and result in the expenditure of a minimum of \$16,100,000 and the activation and retention of 929 new full-time positions. Upon verified compliance with all Chapter 380 contract metrics, the company will be eligible to receive the set of incentives described below.

- Incremental Personal Property Tax Rebate: 50% of the City's portion of ad valorem incremental personal property tax. 7-Year grant period. Capped at \$145,168.
- Construction Materials Sales Tax Rebate: Capped at \$34,000.
- Building and Planning Permit Fee Rebate: A one-time rebate of project-related Building and Planning permit fees. Capped at \$30,000.
- Skills Training Grant: \$100,000 (\$50,000 annually for 2 years)
- The total proposed incentive is not to exceed \$309,168.

**PRIOR COUNCIL ACTION:**

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

No.

**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

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?  X  YES \_\_\_ NO**


**PRIMARY DEPARTMENT:** Economic and International Development  
**SECONDARY DEPARTMENT:** N/A

---

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

**DEPARTMENT HEAD:**

Eduardo Garcia

 Digitally signed by Eduardo Garcia  
Date: 2021.06.14 17:40:28 -06'00'

---

(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 sign an Economic Development Program Agreement (“Agreement”) between the City of El Paso (the “City”) and Charter Communications, Inc. (the “Applicant”), regarding Applicant’s improvements and expansion of its facilities at 11950 Don Haskins Drive and 8460 Gran Vista Dr., El Paso, Texas. Pursuant to the Agreement, Applicant will invest \$16,100,000; create 929 new full-time positions. In exchange, the City will provide incentives not to exceed \$309,168.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2021


### CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leoser  
Mayor

### ATTEST:

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

### APPROVED AS TO FORM:

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

### APPROVED AS TO CONTENT:

Eduardo Garcia Digitally signed by Eduardo Garcia  
Date: 2021.06.14 17:39:15 -06'00'  
\_\_\_\_\_  
for Jessica Herrera, Director  
Economic and 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 \_\_\_ day of \_\_\_, 2021 ("**Effective Date**") between the City of El Paso, Texas, a Texas home rule municipal corporation, (the "**City**"), and **Charter Communications, Inc.** (the "**Applicant**"). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

**RECITALS**

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

**WHEREAS**, the City desires to provide incentives to the Applicant, pursuant to Chapter 380, for the purpose of promoting local economic development and stimulating business and expanding commercial activity in the City through the expansion of Applicant's wired telecommunications company operations, and the Applicant wishes to receive the incentives in exchange for compliance with the obligations set forth herein; and

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

The parties agree as follows:

**SECTION 1. DEFINITIONS.**

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

- A. "**Agreement**" means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached and incorporated herein by reference.
- B. "**Applicant**" means Charter Communications, Inc., and affiliates identified in EXHIBIT E, authorized to do business in Texas.
- C. "**City**" means the City of El Paso, Texas.
- D. "**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 Rebate shall not exceed \$34,000.00.
- E. "**Development**" The word "Development" means Applicant's wired telecommunications operations company being located in El Paso, Texas as more fully described on EXHIBIT A, which is attached hereto and incorporated herein for all purposes.



- F. **“Development Fee Rebate”** means a one-time 100% rebate of certain development fees based on the fee schedule described in the City of El Paso’s Ordinance 018581. The Development Fee Rebate shall not exceed \$30,000.00 and will be rebated upon the Applicant’s provision of the Grant Submittal Package demonstrating that the total construction cost for the Development is no less than the Qualified Expenditures amount described in this agreement.
- G. **“Effective Date”** means the date the El Paso City Council approves the Agreement.
- H. **“Event of Default”** shall have the meaning set forth in Section 5 hereof.
- I. **“Event of Nonappropriation”** means the failure of the City to appropriate for any Fiscal Year, sufficient funds to pay the Grant payment, or the reduction of any previously appropriated money below the amount necessary to permit the City to pay the Grant payments from lawfully available funds.
- J. **“Full-Time Employment”** means a job requiring a minimum of 1,820 hours of work averaged over a 12-month period, including allowance for vacation and sick leave and full company benefits. Such company benefits must include company paid contributions to health insurance wherein the employee does not pay more than 50% of the premium for those employees that choose to participate. Full-Time Employment position must be located at the Development. Requirements concerning Full-Time Employment are more completely described in Exhibit B, which is attached and incorporated herein for all purposes.
- K. **“Grant”** means each rebate payment made by the City to the Applicant pursuant to the terms of this Agreement. The aggregate amount that the City will provide in Grants shall not exceed **\$309,168.00**. This aggregate amount reflects the sum total of all applicable rebates.
- L. **“Grant Submittal Package”** means the documentation required to be supplied to City as a condition of receipt of any Grant, with such documentation more fully described in the Grant Submittal Package, which is attached as Exhibit C to this Agreement.
- M. **“Minimum Appraisal Value”** means the valuation of the Personal Property appraised by El Paso Central Appraisal District during and after the construction or renovation of the Development. For the purposes of this Agreement, the combined Minimum Appraisal Value is **\$8,000,000**. Under no circumstances shall the Minimum Appraisal Value be interpreted to be equivalent of or determinative for appraisal purposes or to be used in any way to determine market value.
- N. **“Minimum Investment”** means those costs incurred, self-performed or contracted to third parties by the Applicant over the course of the renovation or construction project or furnishing of the improvements for the Development. For purposes of this Agreement, the Minimum Investment is **\$16,100,000.00**.



- O. **"Property"** means the real and personal property located at 11950 Don Haskins Drive, El Paso, TX 79936 and 8460 Gran Vista Dr. El Paso, TX 79907 in El Paso County, Texas, and more specifically described in Exhibit A.
- P. **"Personal Property Tax Rebate"** means a rebate, according to the Incremental Property Tax Rebate Table found in Exhibit D of this Agreement, of the City's portion of the incremental ad valorem property tax revenue generated by the Applicant above the Base Year Value for the Grant Period (as defined herein). For the purposes of this Agreement, the total Property Tax Rebate amount shall not exceed **\$145,168.00**.
- Q. **"Qualified Expenditures"** means the monetary expenditures paid or caused to be paid by Applicant after the Effective Date for material used in constructing or renovating the Development; and labor required for the construction or renovation of the Development.
- R. **"Personal Property"** means the personal property owned or leased by Applicant located at the Development.
- S. **"Skills Training Grant"**. The words "Skills Training Grant" mean a reimbursement from the City in an aggregate amount of \$100,000.00 to be disbursed in payments of \$50,000.00 annually for two years after August 20, 2024 for costs associated with training materials, training equipment, monthly training classes and certifications. This Grant is payable from the City's Impact Fund, Texas Economic Development fund or any other account available to the City, via multiple allocations; at the City's discretion.

## **SECTION 2. TERM AND GRANT PERIOD.**

- A. This Agreement shall commence on the Effective Date and shall terminate on the first to occur of: (i) the date when the aggregate amount of Grants is paid; (ii) 10 years from the Effective Date; (iii) the proper termination of this Agreement in accordance with the applicable provisions contained herein; or (iv) termination by mutual consent of the parties in writing ("Term").
- B. Applicant's eligibility for Grant payments shall be limited to 7 consecutive years within the Term of this Agreement (the "Grant Period"). The first year of the Grant Period shall be the first tax year after the issuance of the certificate of occupancy for the Development. A temporary certificate of occupancy does not qualify as a certificate of occupancy.

## **SECTION 3. OBLIGATIONS OF APPLICANT.**

### **A. DEVELOPMENT.**

- (1) Applicant shall renovate or construct, at its sole cost and expense, the Development and shall expend a minimum of **\$16,100,000.00** in Qualified Expenditures to construct the Development.



- (2) Applicant shall obtain all building permits for the Development within **12** months after the Effective Date.
- (3) Within **24** months after the Effective Date, Applicant shall submit documentation to the City to verify the following:
- (a) The expenditure of a minimum of **\$16,100,000.00** in Qualified Expenditures; and
  - (b) That Applicant has received a **Certificate of Occupancy** for the Development.
- (4) Applicant shall diligently and faithfully in a good and workmanlike manner pursue the completion of the Development and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations.
- (5) Applicant agrees that during the Term of this Agreement, the Property shall be limited to those uses consistent with the Development.
- (6) Applicant shall demonstrate, before the receipts of any Grant payments, that Applicant has incurred no delinquency taxes by providing certified city tax certificates for any parcel of property owned in the City of El Paso.
- (7) Applicant agrees that during the Term of this Agreement it shall not challenge or permit anyone else to take actions on its behalf to challenge any assessments by the El Paso Central Appraisal District of **\$8,000,000** or less. The parties to this Agreement agree that the taxable value of the Development, after completion of all construction and improvements, will have a Minimum Appraisal Value as defined in Section 1 (N) above and thereafter as adjusted annually for normal depreciation during the term of this Agreement. This property value should in no way be interpreted to affect the values set by the Central Appraisal District for tax purposes. Upon the termination of this Agreement, Applicant agrees that neither this Agreement, not the values contained within, will be utilized to contest appraisal values or in the determination of the market value of the Development.
- (8) Applicant, during normal business hours, at its principal place of business in El Paso, and with two weeks written notice, shall allow the City or its agents reasonable access to operating records, accounting books, and any other records related to the economic development considerations and incentives described herein, which are in Applicant's possession, custody, or control, for purposes of verifying the Qualified Expenditures and for audit, if so requested by the City. The confidentiality of such records will be maintained in accordance with all applicable laws.
- (9) Applicant shall provide all required invoices and other required documentation to City electronically at the following address: [EDcompliance@elpasotexas.gov](mailto:EDcompliance@elpasotexas.gov)



**B. EMPLOYMENT POSITIONS**

(1) Applicant agrees that it shall create, staff, and maintain the Full-Time Employment positions described in Exhibit B for the Development as of December 31 of the applicable year, and shall maintain the Full-Time Employment positions for the Development through the entire Grant Period of this Agreement. Applicant shall maintain the Full-Time Employment positions for each quarter of each fiscal year with the total per day hours worked averaged over each fiscal quarter. The transfer of an existing Full-Time Employment position from Applicant's existing business site to Applicant's new Development does not qualify as creating and staffing a Full-Time Employment position for purposes of this Agreement.

(2) Applicant shall provide the City with an annual report by **August 20th** of each year during the Term of this Agreement, certifying the status of compliance through the preceding year. Such annual report shall include the number of new jobs created and retained for the Development, information on any new investments in the Development, and any other information relevant to the Development and the City's economic development goals. Documentation for jobs may be in the form of quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports, or employee rosters that show the hours worked and the positions filled. Applicant shall also provide the City with such other reports as may reasonably be required.

**C. GRANT SUBMITTAL PACKAGE.**

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

- (1) The Applicant shall annually submit one Grant Submittal Package which shall be in the form provided in Exhibit C, together with the requisite documentation. The Applicant shall submit to the City the initial Grant Submittal Package on **August 20, 2024**, or within 30 business days after this date. Thereafter, the Applicant's annual Grant Submittal Package must be submitted on or within 30 business days after **August 20th** of each year. A failure by the Applicant to timely submit a Grant Submittal Package in accordance with this paragraph is a waiver by the Applicant to receive a Grant payment for that Grant year.
- (2) Concurrent with the submittal of a Grant Submittal Package, the Applicant will submit to the City documentation as may be reasonably necessary to verify the expenditure to date of the Minimum Investment, which has not otherwise been verified as part of a prior submittal. The City will provide to the Applicant a written explanation for any Minimum Investment that the City determines cannot be verified. The Applicant may submit additional documentation to the City in order to obtain verification.
- (3) The City's determination of the amount of the Grant payment due to the Applicant is final.



#### SECTION 4. OBLIGATIONS OF THE CITY.

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

- A. The City agrees to provide a Construction Materials Sales Tax Rebate not to exceed **\$34,000.00** in accordance with the terms and provisions of this Agreement.
- B. The City agrees to provide a Development Fee Rebate not to exceed **\$30,000.00** in accordance with the terms and provisions of this Agreement.
- C. The City agrees to provide a Property Tax Rebate not to exceed **\$145,168.00** in accordance with the terms and provisions of this Agreement.
- D. The Skills Training Grant payments shall be made as follow:

Grant Period years 1 through 2 – \$50,000.00 per year for Grant years 1 through 2 from the Economic Development Impact Fund account derived from the franchise fee paid to the City pursuant to the Franchise Agreement adopted by Ordinance No. 017460 (amended by Ordinance 018772) for a total grant of \$100,000.00.

The City will process any eligible Grant payment within 90 days after receipt of the Applicant's annual Grant Submittal Package.

#### SECTION 5. EVENTS OF DEFAULT.

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

- A. **Failure to Operate and Maintain Development and Job Requirements.** Applicant's failure or refusal to operate the Development and maintain required Full Time Employment pursuant to this Agreement (expressly including, without limitation, the provisions of Section 1 and Section 2 of Exhibit B hereto) through the Grant Period, 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. If such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, but the Applicant has commenced such cure within such sixty (60) day period and continue to thereafter diligently prosecute the cure of such failure, such actions or omissions shall not be deemed an event of default, provided the cure is ultimately cured within 120 days of the original notice by City.
- B. **False Statements.** Any representation or statement made or furnished to the City by Applicant pursuant to this Agreement or any document(s) related hereto, that is/are false or misleading in any material respect; or if Applicant obtains actual knowledge that any such representation or statement has become false or misleading after the time that it was made, and Applicant fails to provide written notice to the City of the false or misleading nature of such representation or statement within 60 days after Applicant learns of its false or misleading nature.



- C. **Insolvency.** Applicant files a voluntary petition in bankruptcy, a proceeding in bankruptcy is instituted against the Applicant and the Applicant is thereafter adjudicated bankrupt, a receiver for the Applicant's assets is appointed, or any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant. 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 portion of the Property, 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 events 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.
- D. **Property Taxes.** In the event Applicant allows any personal or real property taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within 60 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.
- E. **Notice and Opportunity to Cure.** If an Event of Default occurs, the City will provide Applicant with written notice of the default and Applicant shall have 60 days from the receipt of said notice to cure the default (the "Cure Period"). If the default cannot be remedied within the Cure Period but the Applicant has made a diligent effort to effect a cure, the Cure Period may be extended at the City's sole discretion for a reasonable time. The City, in its sole discretion, shall determine what constitutes "a reasonable time" and what constitutes "a diligent effort" for purposes of this provision. If the City agrees to extend the Cure Period past the 60 days, the City shall notify the Applicant, in writing, of the expiration date of the extended cure period.
- F. **Failure to Cure.** If an Event of Default occurs and, after receipt of written notice and opportunity to cure as herein provided, the Applicant fails to cure the default in accordance with the provisions herein, then this Agreement may be terminated by the City by written notice to the Applicant at which time the City's obligations hereunder will end and the City may exercise any other right or remedy available at law or in equity.
- G. **Liability.** To the extent allowable by Texas Law; 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 issued 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 4 of this Agreement and provided that the cure period for such default has expired, all Grants previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant within 60 days from the date of such termination.

## **SECTION 7. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT.**

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

## **SECTION 8. GENERAL PROVISIONS**

- A. **AMENDMENTS.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by all parties.
- 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 proceeds without the City's prior written consent. Any such attempt to sell, transfer, assign or convey without the City's prior written consent is void and may result in the immediate termination of this Agreement, 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, Applicant shall notify the City in writing of such sale or transfer 30 business days before the effective date of such sale or transfer.
- D. **AUTHORITY TO BIND.** The individual executing this Agreement on Applicant's behalf represents and warrants that he or she has the power and authority to bind Applicant and the affiliates identified on Exhibit D to the terms and obligations of this Agreement.
- E. **BINDING OBLIGATION.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. The individual executing this Agreement on Applicant's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant to the same.
- F. **COMPLETION OF DEVELOPMENT.** As consideration for the agreements of the City as contained herein, Applicant agrees that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the Development in accordance with all applicable federal, state and local laws and regulations.



- G. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute the same document.
- H. EMPLOYMENT OF UNDOCUMENTED WORKERS. During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the Grant payments received by Applicant from the City as of the date of such violation not later than 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 its subsidiary, affiliate, or franchisee, or by a person which whom Applicant contracts.
- I. NO JOINT VENTURE. The parties acknowledge and agree that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture between the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the Development or the design, construction, or operation of the Development, or any portion thereof.
- J. NO WAIVER. Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- K. TIME IS OF THE ESSENCE. The times and dates specified in this contract are material to this Agreement. For the purpose of this agreement "business days" means Monday through Friday excluding City of El Paso holidays and "calendar days" means Monday through Sunday excluding City of El Paso holidays.
- L. EXECUTION OF AGREEMENT. The City Manager has received authority to execute this Agreement on behalf of the City from the City Council through approval of a resolution.
- M. NOTICES. The parties will send all notices required by this Agreement in writing, postmarked, and delivered by certified mail. All notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:



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

With a Copy to: The City of El Paso  
Attn:  
P. O. Box 1890  
El Paso, Texas 79950-1890

To the Applicant: Jessica M. Fischer,  
Executive Vice President, Finance  
Charter Communications, Inc.  
400 Washington Boulevard  
Stamford, CT 06901

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

- N. CONFIDENTIALITY. The Applicant acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act or TPIA). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act). The confidentiality of such records, employment records, and any other records related to the City's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. Specifically and in accordance with TPIA the City will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Public Information Act, it will notify Applicant if a request relating to such proprietary information is received. Applicant represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of Applicant as a basis for nondisclosure.
- O. GOVERNING LAW. This Agreement is governed by Texas law.
- P. VENUE. The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- Q. SEVERABILITY. A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement. 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.



- R. **HEADINGS.** The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- S. **GOVERNMENTAL FUNCTIONS.** The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- T. **COMPLIANCE WITH THE LAWS.** The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement. If applicable, then the Applicant will procure all licenses and pay all fees or other charges as required to complete the Work under this agreement.
- U. **AUDITING RECORDS FOR THE SPECIFIC PROJECT.** The Applicant will allow the City to inspect and copy all records pertaining to the Development of this Agreement.
- V. **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, 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. The party wishing to avail themselves of this provision must provide timely notice to the other party, with timely notice being within 180 days of the force majeure event.
- W. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the City and the Applicant, and the Applicant's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- X. **THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries for this Agreement.
- Y. **PROVISIONS SURVIVING THIS AGREEMENT.** Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- Z. **REPRESENTATIONS AND WARRANTIES.** The Applicant warrants to the City that the Applicant has all required licenses, permits, and expertise to perform the Work of this Agreement. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- AA. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties.



BB. ORDINANCE APPLICABILITY. The signatories hereto 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 the contractual obligations contained herein. This Agreement shall confer no vested rights on the Development unless specifically enumerated herein.

*[Signatures begin on the following page.]*


IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the Effective Date above.

CITY  
CITY OF EL PASO:

\_\_\_\_\_  
Tomás González  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

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

Eduardo Garcia Digitally signed by Eduardo Garcia  
Date: 2021.06.14 17:38:14 -06'00'  
\_\_\_\_\_  
Jessica Herrera Director  
Economic & International Development

#### ACKNOWLEDGMENT

STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2021, by Tomás González as City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

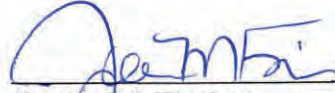
\_\_\_\_\_

*[Signatures continue on the following page]*



**APPLICANT:**

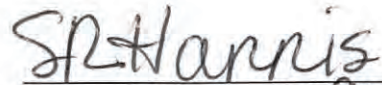
**Charter Communications, Inc.**

  
\_\_\_\_\_  
**Jessica M. Fischer**  
**Executive Vice President, Finance**

**ACKNOWLEDGMENT**

**STATE OF** Connecticut §  
**COUNTY OF** Fairfield §

This instrument was acknowledged before me on the 3rd day of June, 2021, by Jessica M. Fischer as Executive Vice President, Finance for Charter Communications, Inc.

  
\_\_\_\_\_  
Notary Public, State of Connecticut

My Commission Expires:

5/31/26

**Susan Harris**  
**NOTARY PUBLIC**  
**State of Connecticut**  
**My Commission Expires 5/31/2026**



## **EXHIBIT A**

### **Development**

Charter Communications, Inc. is a telecom/mass media company that operates in 41 states. As part of this expansion, the company will invest a minimum of \$16,100,000 with \$7.3 million scheduled for building improvements, \$3 million budgeted for computer purchases, \$5 million allotted for business-related furniture, fixtures and equipment acquisitions and the remaining \$800,000 for local employee training programs. The company will also activate and retain 929 full-time positions across the grant period, paying an average hourly salary of \$20.40, upon full employment activation.

### **Location and Legal Description**

#### **Considered Physical Addresses:**

##### **Location A:**

11950 Don Haskins Drive, El Paso, TX 79936

##### **Legal Description:**

449 VISTA DEL SOL #163 5 (EXC NWC) (312956.00 SQ FT)

##### **Location B:**

8460 Grand Vista Dr., El Paso, TX 79907

##### **Legal Description:**

54 YSLETA

8A3(0.8818AC)& 8A8(0.1164AC)&

9A3(0.9139AC)&9A4(0.5178AC)&

10A3(0.4128AC)&10A4(0.3133AC)



## EXHIBIT B

### [Employment Requirements & Grant Payment Eligibility]

#### SECTION 1. MINIMUM JOB CREATION AND RETENTION REQUIREMENTS.

In order for the Applicant to be eligible for any Grant Payments Applicant is required to create and retain the amount of Full-Time Employment positions shown in Table 1 for the respective year, at the wages shown in Table 2 for the respective position, by December 31 of each full tax year during the Grant Period.

**Table 1: Job Creation Schedule**

Item	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
<b>Existing Jobs</b>	0	449	929	929	929	929	929
<b>New Jobs</b>	449	480	0	0	0	0	0
<b>Total Jobs</b>	449	929	929	929	929	929	929

**Table 2: Employee Count and Wages**

Title or Occupation Number of Positions Average Wage per Employee Annual Salary	Count	Hourly Wage	Annual Wage	Total Annual Wages
BU A - Training Facilitator	1	\$28.28	\$58,822.40	\$58,822.40
BU A - Human Resources Generalist	1	\$33.57	\$69,825.60	\$69,825.60
BU A - Human Resources Coordinator	1	\$21.12	\$43,929.60	\$43,929.60
BU A - Human Resources Recruiter	1	\$25.90	\$53,872.00	\$53,872.00
BU A - Manager	2	\$41.48	\$86,278.40	\$172,556.80
BU A - Supervisor	15	\$28.69	\$59,675.20	\$895,128.00
BU A - Lead	20	\$21.71	\$45,156.80	\$903,136.00
BU A - Agent	385	\$20.00	\$41,600.00	\$16,016,000.00
BU A - Workforce Coordinator	1	\$26.02	\$54,121.60	\$54,121.60
BU A - Workforce Administrator	1	\$23.64	\$49,171.20	\$49,171.20
BU A - Reports Coordinator	1	\$22.54	\$46,883.20	\$46,883.20
BU B - Agent	478	\$20.00	\$41,600.00	\$19,884,800.00
BU B - Lead	7	\$21.73	\$45,198.40	\$316,388.80
BU B - Supervisor	7	\$25.77	\$53,601.60	\$375,211.20
BU B - Manager	2	\$34.33	\$71,406.40	\$142,812.80
BU B - Facilitator	2	\$26.01	\$54,100.80	\$108,201.60
BU B - Human Resources Generalist	1	\$31.15	\$64,792.00	\$64,792.00
BU B - Human Resources Coordinator	1	\$21.13	\$43,950.40	\$43,950.40
BU B - Recruiter	2	\$31.15	\$64,792.00	\$129,584.00
	<b>929</b>			<b>\$39,429,187.20</b>

## **SECTION 2. ELIGIBILITY FOR GRANT PAYMENTS.**

Applicant remains eligible for Grant Payments so long as required number of Total Full-Time Employees, as stated in this Exhibit B, is met on an annual basis.

An annual Grant payment is contingent upon the Applicant providing sufficient proof, as determined by the City, that it has created and retained at least ninety percent (90%) of the jobs required (see Exhibit B, Section 1, Table 1) during the full tax year. In calculating the percentage of required jobs maintained, numbers will be rounded to the nearest whole number, looking at the first digit after the decimal point. If the first digit after the decimal point is less than 5 (1, 2, 3, 4), the number is rounded down. If the first digit after the decimal point is 5 or greater (5, 6, 7, 8, 9), the number is rounded up. For example, 96.36 would be rounded down to 96; and 96.53 would be rounded up to 97.

*For illustrative purposes only:*

*If during the first year, Applicant creates and retains 431 new positions, or 96% of the required 449 jobs, Applicant would be eligible for a Grant payment for Year 1.*

Grant payments will be reduced by ten percent (10%) for every one percent (1%) drop in the Applicant's job creation numbers, noted in Section 1 of Exhibit B, from 100% to 90%.

*For illustrative purposes only:*

*During the first year, Applicant maintains 96% of the required 450 FTE positions; Grant Payments would be reduced by 40% (10% per 1% of job retention percentage).*

Should applicant fall below the 90% threshold, no Grant Payment will be owed to the Applicant for the Grant Period.

## **SECTION 3. TERMINATION**

In the event the Applicant fails to meet employment requirement during two consecutive years, this Agreement will automatically terminate.



## EXHIBIT C

### Grant Submittal Package Form

**Charter Communications, Inc.** believes that it has substantially met its obligations under the Chapter 380 Agreement dated the \_\_ day of \_\_\_\_\_, 20 \_\_. Pursuant to the Agreement, Applicant 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]** Copies of all applicable approvals and permits
2. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation to evidence the amount of development fees paid as a result of the Development;
3. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation evidencing the materials of Taxable Items used in the construction of the Development eligible for rebate to Applicant under the Construction Materials Sales Tax Rebate;
4. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation to evidence minimum expenditures to date and not previously verified,
5. **[INITIAL GRANT SUBMITTAL ONLY]** Certificate of Occupancy
6. **Property Tax** Payment Receipt(s) showing proof of payment for tax year \_\_\_\_;
7. **Job Certification** Annual report plus eligible attachments and documentation showing **proof of health insurance** coverage were company pays a minimum of 50% of employee premium.
8. Documentation to evidence **Skills Training Grant** expenditures that includes the following:
  - a. Training Materials
  - b. Training Equipment
  - c. Courses
  - d. Certifications (if applicable)

*[Signatures begin on the following page]*

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

**Charter Communications, Inc.**

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_,  
as \_\_\_\_\_ of **Charter Communications, Inc.**

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission Expires:  
\_\_\_\_\_



## **EXHIBIT D**

### **Property Tax Rebate Table**

<b>Year</b>	<b>Rebate Percentage</b>
Year 1	50%
Year 2	50%
Year 3	50%
Year 4	50%
Year 5	50%
Year 6	50%
Year 7	50%

Note: Final annual rebate percentages will be adjusted, if needed, in accordance with the requirements and formulas detailed in Section 2 of Exhibit B contained in this document.

## **EXHIBIT E**

### **Legal Entities to Chapter 380 Incentive Agreement**

#### Additional Participating Entities:

Charter Communications Operating, LLC

Charter Communications Holding Company, LLC

Charter Communications, LLC

Charter Communications VI, LLC

Charter Distribution, LLC

Marcus Cable Associates, LLC

Spectrum Gulf Coast, LLC