

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

CITY CLERK DEPT.
2018 JAN 30 PM12:06

DEPARTMENT: Economic and International Development Department

AGENDA DATE: CCA Regular February 6, 2018

CONTACT PERSON/PH. No.: Jessica Herrera, Director 915-212-1624

DISTRICT(S) AFFECTED: 2

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.

That the City Manager be authorized to sign the Economic Development Program Agreement between the City of El Paso (the "City") and United Parcel Service, Inc., (the "Applicant"), regarding the Applicant's development of the property located at 28 Leigh Fisher Boulevard, El Paso, Texas, and the City financial incentives for economic development related thereto.

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?

The City of El Paso is entering into a Chapter 380 grant agreement with United Parcel Services, Inc. (UPS) for the purpose of achieving economic growth, expanding and diversifying the tax base and creating new quality jobs within the City of El Paso. UPS will be investing \$41,000,000 for the additional 42,000sq. ft. expansion of their current facilities located at 28 Leigh Fisher Blvd. This expansion will retain an average of 234 Full Time jobs with an average wage of \$35/hr and an addition of 10 new Full Time jobs starting at \$18.75/hr.

In consideration, the City is offering a maximum of \$1,845,198 in Grant Payments consisting of (i) Property Tax Rebate, (ii) Construction Materials Sales Tax Rebate, and (iii) Building Construction Fee Rebate. In order for applicant to qualify for the rebate, applicant must meet the required deliverables and metrics outlined in the agreement.

Economic Development Staff is recommending approval as this will encourage increased economic development in the City of El Paso.

PRIOR COUNCIL ACTION:

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

Yes, Executive Session 11/28/2017

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.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

DEPARTMENT HEAD:



RESOLUTION

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

That the City Manager be authorized to sign the Economic Development Program Agreement between the City of El Paso (the "City") and United Parcel Service, Inc., (the "Applicant"), regarding the Applicant's development of the property located at 28 Leigh Fisher Boulevard, El Paso, Texas, and the City financial incentives for economic development related thereto.

APPROVED this _____ day of _____, 2018.

CITY OF EL PASO

Dee Margo
Mayor

ATTEST:


Laura D. Prine
Interim City Clerk

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



Adj. Jessica Herrera, Director
Economic and International
Development Department

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

This Chapter 380 Economic Development Program Agreement (“Agreement”) is made and entered into by and between the **CITY OF EL PASO, TEXAS** (“City”), a Texas home rule municipal corporation, and **UNITED PARCEL SERVICE, INC.**, (“Applicant”), a corporation authorized to do business in Texas, for the purposes and considerations stated below:

WHEREAS, the Applicant desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”) and the Texas Constitution Article VIII, Section 52-a; and

WHEREAS, the City desires to provide, pursuant to Chapter 380, an incentive to Applicant to locate Applicant’s advanced logistics distribution system as more fully described below; and

WHEREAS, the City has the authority under Chapter 380 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 Applicant’s advanced logistics distribution services be located in the City of El Paso; and

WHEREAS, the Applicant’s advanced logistics distribution services being located in El Paso, Texas will likely encourage 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. **Affiliate.** The word “Affiliate” means with respect to any specified person or entity, any other person or entity that, directly or indirectly, controls, is under common

control with, or is controlled by such specified person or entity. 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.

- B. **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- C. **Applicant.** The word “Applicant” means United Parcel Service, Inc. (“UPS”), a limited Liability Company authorized to do business in Texas.
- D. **Base Year Value.** The words “Base Year Value” mean the value of the real and personal property on the rolls as of January 1st of the year in which this Agreement is executed with respect to the Development. However, under no circumstances shall the Base Year Value be interpreted to be equivalent or determinative for appraisal purposes or to be utilized in any way to determine market value. For the purposes of this Agreement, this amount is Eleven Million Eight Hundred Fifty-Two Thousand Seven Hundred and Seventy-Three Dollars (\$11,852,773).
- E. **Building Construction Fee Rebate.** The words “Building Construction Fee Rebate” means 100% of the certain building construction and planning fees will be rebated based on the fee schedule established in Ordinance 018581, but in no event will the total fee rebate amount exceed One Hundred Thousand Dollars (\$100,000).
- F. **City.** The word “City” means the City of El Paso, Texas.
- G. **Construction Materials Sales Tax Rebate.** The words “Construction Materials Sales Tax Rebate” means a 100% rebate of the CITY’s one percent (1%) Sales and Use Tax Receipts for materials and labor of Taxable Items used in the construction of the Development. For the Purposes of this Agreement, the maximum value of this rebate is \$410,000.
- H. **Development.** The word “Development” means Applicant’s advanced logistics distribution services being located in El Paso, Texas as more fully described on **EXHIBIT A**, which is attached hereto and incorporated herein for all purposes.
- I. **Effective Date.** The date upon which both parties have fully executed this Agreement as set forth on the signature page hereof.
- J. **Event of Default.** This phrase shall have the meaning set forth in Section 5 hereof.
- K. **Event of Nonappropriation.** The phrase 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.

- L. **Full-Time Employment.** The words “Full-Time Employment” mean a job requiring a minimum of one thousand eight hundred twenty (1,820) hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave, with full company benefits, including company paid contributions to health insurance (Employee must not be required to pay more than fifty percent (50%) of the premium) with such jobs being located at the Development, within the City of El Paso, Texas. These requirements are more completely described in **EXHIBIT B**, which is attached hereto and incorporated herein for all purposes.
- M. **Grant.** The word “Grant” means each annual payment to APPLICANT under the terms of this Agreement computed as (i) Property Tax Rebate, (ii) Construction Materials Sales Tax Rebate, (iii) Building Construction Fee Rebate. The maximum, aggregated amount of Grant payments under the terms of this Agreement shall not exceed One Million Eight Hundred Forty-Five Thousand One Hundred Ninety Eight Dollars (\$1,845,198).
- N. **Grant Submittal Package.** The words “Grant Submittal Package” mean the documentation required to be supplied to City on a yearly basis as a condition of receipt of any Grant, with such documentation more fully described in **EXHIBIT B** and **C**, which are attached hereto and incorporated herein for all purposes.
- O. **Minimum Appraisal Value.** The words “Minimum Appraisal Value” mean the value of the real and personal property and improvements of the Development after the construction of the Development below which Applicant and its Affiliate(s) cannot protest nor contest the appraised value of the Development with the El Paso Central Appraisal District during the term of this Agreement. The parties acknowledge that the El Paso County Appraisal District (the “District”) may adjust annually for normal depreciation for each applicable asset class according to the normal depreciation schedules published by the District. Should the District adjust for normal depreciation in any year (or years) during the term of this Agreement, the City shall allow for the District’s depreciation adjustment. Under no circumstances shall the Minimum Appraisal Value be interpreted to be equivalent or determinative for appraisal purposes or be utilized in any way to determine market value. For the purposes of this Agreement, the Minimum Appraisal Value shall be: (i) Thirty-Four Million Dollars (\$34,000,000) for tangible personal property; and (ii) Three Million Dollars (\$3,000,000) for real property and permanently affixed improvements. Notwithstanding any statement or implication in this Agreement to the contrary, in any year, if the District appraises the Improvements at a valuation less than the Minimum Appraisal Value determined pursuant to this paragraph, such event is not an event of default under this Agreement.
- P. **Minimum Investment.** The words “Minimum Investment” mean those costs incurred by APPLICANT or third parties in the construction, or furnishing of the improvements for the Project, to include cash and in-kind contributions. For the purposes of this Agreement, the Minimum Investment amount shall be Forty-One Million Dollars (\$41,000,000).

- Q. **Project.** The word “Project” means the project more particularly described in **EXHIBIT A** attached hereto and incorporated herein by reference.
- R. **Property.** The word “Property” means the 107,100 square feet of existing space at the real property located at 28 Leigh Fisher Boulevard, in El Paso, Texas, as well as the planned 42,000 square feet expansion that will be added to this existing space by Applicant, more specifically described on EXHIBIT A.
- S. **Property Tax Rebate.** The words “Property Tax Rebate” means 65% rebate of the CITY’s portion of the incremental ad valorem property tax revenue generated by the subject property above the Base Year Value for the Development and payable from the CITY’s general revenue fund. For the purposes of this agreement, the maximum, aggregated amount of property tax to be rebated is One Million Three Hundred Thirty-Five Thousand One Hundred Ninety-Eight (\$1,335,198).
- T. **Qualified Expenditures.** The words “Qualified Expenditures” means those costs incurred by Applicant in the acquisition, construction or furnishing of the Development including the fees related to design, engineering, title, survey, permitting, and legal. For the purposes of this Agreement, the Qualified Expenditures amount shall be Forty-One Million (\$41,000,000).

SECTION 2. TERM AND GRANT PERIOD.

The term of this Agreement shall be 12 years from the Effective Date of this Agreement, including any renewal agreed upon by the parties. The Effective Date of this Agreement shall be the date upon which both parties have fully executed this Agreement, as noted below.

The Grant Period shall begin when the applicant submits to the City the initial Grant Submittal Package on July 31, 2020. Failure of the Applicant or its Affiliate to (i) receive its Certificate of Occupancy within two (2) years of the Effective Date of this Agreement and (ii) meet its Full Time Employment job requirements pursuant to the timetable in Exhibit B, shall result in the immediate termination of this Agreement.

The Applicant’s eligibility for Grant payments shall be limited to 10 consecutive years (the “Grant Period”) within the term of this Agreement. The City shall review Applicant’s eligibility for Grant Payments on an annual basis in accordance with Exhibits B and C, during the Grant Period.

SECTION 3. OBLIGATIONS OF APPLICANT.

During the term of this Agreement, Applicant shall comply with the following terms and conditions:

- A. Applicant agrees that it and its Affiliate(s) (including without limitation BT OH, LLC, a Delaware limited liability company) will develop, construct, and operate the Development at its sole cost. Applicant and its Affiliate shall commence construction and / or improvements of the Development within 6 months of the Effective Date of this Agreement. Applicant and its Affiliate agree that it shall make, Qualified Expenditures of not less than Forty-One Million Dollars

(\$41,000,000) in the Development. The City shall be permitted to review Applicant's and its Affiliate's receipts of Qualified Expenditures to evidence the minimum investment of Forty-One Million

- B. Applicant agrees that it, and its Affiliate companies, 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 and its Affiliate 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.

Applicant shall provide the City with an annual report by December 31st 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.

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 Applicant's employment records and books, and other records that are related to Applicant's compliance with 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 Open Records Act.

- C. Unless otherwise agreed by the City and Applicant in writing, Applicant shall annually submit one Grant Submittal Package which shall be in the form provided in EXHIBIT C, together with the requisite documentation. Applicant shall submit to the City the initial Grant Submittal Package to commence the Grant Period on July 31, 2020 or within thirty (30) business days after July 31 of each year. A failure by 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. The City's determination of the amount of the Grant payment due to Applicant is final; provided, however, that the Applicant may appeal to the City Council within thirty (30) days of payment. The City Council shall hear the appeal within thirty (30) days of request for appeal and the City Council's determination of the amount of the Grant payment shall be final. Nothing herein shall limit (or be construed to limit) Applicant's rights and remedies as described in Section 5 of this Agreement.

- D. Applicant shall pay by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Development. The Applicant shall pay by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on any other property owned by the Applicant with the City of El Paso. 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 (O) above and thereafter as adjusted annually for normal depreciation during the term of this Agreement. Applicants shall have the right to contest the appraised value of the Development as provided by law. However, Applicant covenants and agrees that during the term of this Agreement it shall not challenge or permit anyone else to take action on its behalf to challenge any assessments by the Central Appraisal District equal to the Minimum Appraisal Value or lower. Any such action will be deemed an event of default that will result in the termination 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, nor the values contained within, will be utilized to contest appraisal values or in the determination of the market value of the Development. Notwithstanding any statement or implication in this Agreement to the contrary, in any year, if the District appraises the Improvements at a valuation less than the Minimum Appraisal Value determined pursuant to this paragraph, such event is not an event of default under this Agreement.

SECTION 4. OBLIGATIONS OF CITY.

During the term of this Agreement and so long as an event of default has not occurred and is not continuing as set forth herein (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), City shall comply with the following terms and conditions:

- A. The City agrees to approve or reject any Grant Submittal Package within ninety (90) days after its receipt. The City agrees to process any Grant Payments to Applicant within ninety (90) days after its approval of the Applicant's Grant Submittal Package.
- B. Pursuant to the City's "Incentives Policy – Guidelines and Criteria" and a cost/benefit calculation completed solely by and at the City's discretion, the City shall determine the total amount of Grant Payments due to the Applicant, if any, on an annual basis.
- C. The City shall determine the total amount of Grant payments due to the Applicant, if any, on an annual basis as provided in EXHIBITS B and C.
- D. Under no circumstances shall the total aggregate of Grant payments exceed the lesser of: (1) One Million Eight Hundred Forty-Five Thousand One Hundred Ninety Eight (\$1,845,198), or (2) the total value of the City's portion of the incremental ad valorem property tax revenue generated by the subject property in

the Development above the Base Year Value for the Grant Period and payable from the City's general revenue fund.

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- A. **Failure to Maintain Development and Job Requirements.** Applicant's or its Affiliate'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 2 and Section 3 of Exhibit B hereto) through the Grant Period, and Applicant's or its Affiliate'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 and its Affiliate have 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.
- B. **False Statements.** In the event the Applicant or its Affiliate provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, and Applicant or its Affiliate fails to cure same within thirty (30) days after written notice from the City 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, but the Applicant and its Affiliate commence 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 or its Affiliate 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 or its Affiliate 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 or its Affiliate learns of its false or misleading nature, such action or omission shall be deemed an event of default. In the event this Agreement is terminated pursuant to this Section 5B, all Grant Payments previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant or its Affiliate within sixty (60) days from the date of such termination.
- C. **Insolvency.** The dissolution or termination of Applicant's or its Affiliate's existence as a going business or concern, Applicant's or its Affiliate's insolvency, appointment of receiver for any part of Applicant's or its Affiliate's portion of the Property, any assignment of all or substantially all of the assets of Applicant or its Affiliate for the benefit of creditors of Applicant or its Affiliate, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Applicant or its Affiliate, 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. **Construction of Development.** Applicant's or its Affiliate's failure to comply with its construction obligations set forth in this Agreement and Applicant's or its Affiliate'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 and its Affiliate 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 events of default.
- E. **Property Taxes.** In the event Applicant or its Affiliate allows any 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 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 and its Affiliate shall have the right to contest the appraised value of the Development.
- F. **Other Defaults.** Failure of Applicant, its Affiliate, or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, and Applicant, its Affiliate or City fails to cure such failure within sixty (60) days after written notice from the other party 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, and Applicant, its Affiliate, or City commences such cure within such sixty (60) day period and continuously thereafter diligently prosecute the cure of such failure, such act or omission shall not be deemed an event of default.
- G. **Failure to Cure.** If any event of default by Applicant, its Affiliate, or City shall occur, and after Applicant, its Affiliate, or City fails to cure same in accordance herewith, then this Agreement may be terminated without any further action required of the Applicant, its Affiliate, or City and the Applicant's, its Affiliate's, or City's obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.
- H. **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 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. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT OF APPLICANT.

The City may terminate this Agreement for its convenience and without the requirement of an event of default by Applicant or its Affiliate, which shall become effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement void or illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt.

SECTION 7. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- 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. **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.
- C. **Assignment of Applicant's Rights.** Applicant understands and agrees that the City expressly prohibits Applicant or its Affiliate 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.
- D. **Applicant's or Affiliate's Sale or Transfer of the Development.** Prior to any sale or other transfer of ownership rights in the Development, Applicant and its Affiliate shall notify the City in writing of such sale or transfer within thirty (30) business days of the Applicant's or its Affiliate'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.
- 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 and its Affiliate's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant and Affiliate to the same.

- F. **Completion of Development.** As consideration for the agreements of the City as contained herein, Applicant and its Affiliate agrees that it will 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.
- G. **Confidentiality Obligations.** 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, 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.
- H. **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.
- I. **Employment of Undocumented Workers.** During the term of this Agreement, Applicant and its Affiliate agree 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 and its Affiliate shall repay the amount of the Grant payments received by Applicant or its Affiliate from the City as of the date of such violation not later than one hundred twenty (120) days after the date Applicant or its Affiliate is notified by City of a violation of this section, plus interest from the date the Grant payment(s) was paid to Applicant or its Affiliate, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to Applicant or its Affiliate 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.
- J. **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.
- K. **Filing.** The City shall promptly file this Agreement in the deed records of El Paso County, Texas.
- L. **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.

- M. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when 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. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, 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.

CITY: City of El Paso
City Manager
P.O. Box 1850
El Paso, Texas 79950-1850

Copy To: City of El Paso
Economic Development Department Director
P.O. Box 1850
El Paso, Texas 79950-1850

APPLICANT: United Parcel Service, Inc.
55 Glenlake Parkway NE Atlanta, GA 30328
Attention: Don Lancaster, Asst. Treasurer

Copy To: Shane Simpson, UPS Region Tax Manager
United Parcel Service, Inc.
55 Glenlake Parkway NE Atlanta, GA 30328

- N. **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.
- O. **Recapture.** Should the Applicant default under Section 5 of this Agreement and provided that the cure period for such default has expired and Applicant failed to timely cure such default, all REBATES previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant within sixty (60) days from the date of such termination.
- P. **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.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on this ___ day of _____, 201__.

CITY OF EL PASO, TEXAS

Tomás González City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Roberta Brito
Assistant City Attorney



Jessica Herrera, Director
Economic and International Development

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the _____ day of _____, 201__, by **Tomás González**, as **City Manager** of the **City of El Paso, Texas (CITY)**.

Notary Public, State of Texas
My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

EXHIBIT A

[Development & Legal Description]

The proposed Development at 28 Leigh Fisher Boulevard located in El Paso, Texas consists of approximately 107,100 sq. ft. and an expansion of approximately 42,000 sq. ft.

The legal description is as follows: 13 BUTTERFIELD TRAIL IND PK #3 IMPS ONLY ON LOT 9 (OUT OF B853-999-0130-0105).

EXHIBIT B

[Employment Requirements & Grant Payment Eligibility]

SECTION 1. MINIMUM JOB CREATION AND RETENTION REQUIREMENTS.

In order for Applicant or its Affiliate to be eligible for any Grant Payments, Applicant is required to maintain a current workforce and create new Full-Time Employment positions by December 31 of each full tax year during the Grant Period as follows:

Schedule and Timing For Full Time Employment

	Year 1	Year 2	Year 3	Year 4	Year 5
Total Full Time Employees	+0 (Total 234	+2 (Total 236)	+2 (Total 238	+3 (Total 241)	+3 (Total 244)

SECTION 2. ELIGIBILITY FOR GRANT PAYMENTS.

The Applicant's or its Affiliate's eligibility to receive any Grant Payments from the City shall be determined pursuant to and in accordance with 90% of Applicant's Full Time employees earning at or above the Median County Wage of \$13.11 per hour.

Applicant or its Affiliate remains eligible for Grant Payments so long as Total Full Time Employees and Median County Wage (without benefits) requirements, as stated in this Exhibit B, are met on an annual basis.

Should applicant fall below the 90% threshold no Grant Payments will be owed to applicant for that grant period.

SECTION 3. TERMINATION

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



United Parcel Service Inc.

Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development

1.1 Stabilize and expand El Paso's tax base

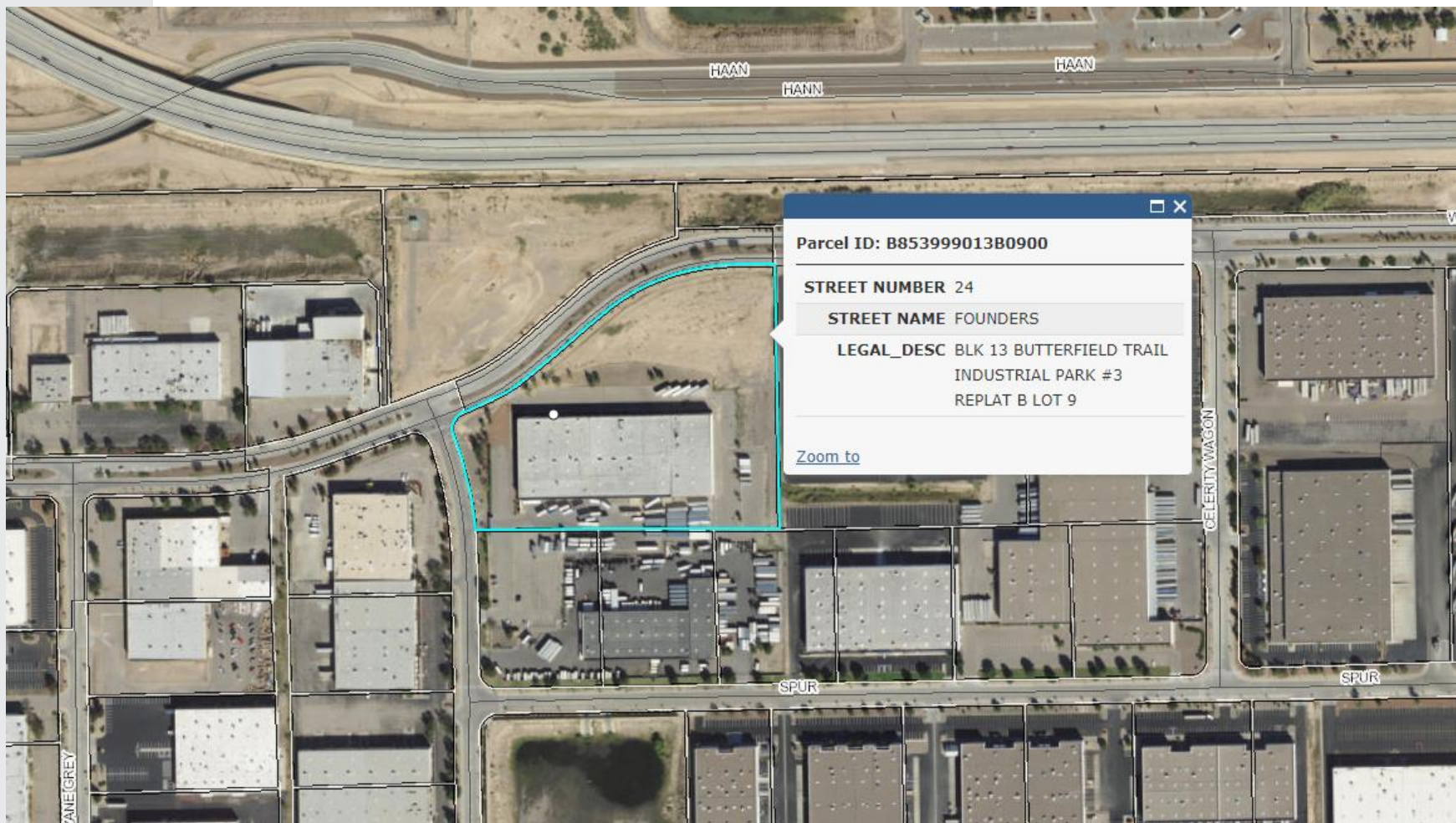


Company Background

- Transportation/Logistics Company
- Expand existing hub operation currently located 23 Spur Lane
 - 49,000 sq. ft.
- Proposing to expand into a site located at 28 Leigh Fisher Blvd. (just north of Spur Lane)
 - Add another 42,000 sq. ft.



Proposed Location





Project Summary

- **Investment -** **\$41,000,000**
 - Tenant Improvements: \$11,000,000
 - FF&E: \$30,000,000
- **District: 2**
- **Retain 234 full-time jobs**
 - Average hourly wage **\$35.00**
- **Create 10 new jobs**
 - Starting hourly wage **\$18.75**
- 100% of jobs are above MCW - \$13.11
- Investment will include state-of-the-art machinery and equipment, based on the maquila traffic
- Additionally, EPIA is working with company to add a Boeing 757, due to the increase in freight traffic



Proposed Incentive Summary

10-year 65% Incremental City Property Tax Rebate:	\$1,335,198
Construction Materials City Sales Tax Rebate (1%) capped at:	\$410,000
<u>Development and Building Permit Fee Rebates capped at:</u>	<u>\$100,000</u>
Total Potential Incentive Amount:	\$1,845,198



10-year Property Tax Inflows

City	County
\$2,054,152	\$1,157,411

School District	EPCC	UMC
\$3,349,301	\$362,128	\$644,147



Questions?