

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

DEPARTMENT: Economic & International Development Department
AGENDA DATE: CCA Regular, September 3, 2019
CONTACT PERSON/PHONE: Jessica Herrera, Director, (915) 212-1624
DISTRICT(S) AFFECTED: District 7

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 facility at 1359 Lomaland, El Paso, Texas. Pursuant to the Agreement, Applicant will invest \$2,300,000.00; create 350 new full-time positions; and retain 578 existing full-time positions. In exchange, the City will provide incentives not to exceed \$277,522.00. (District 7) [Economic & International Development Department, Jessica Herrera, Director, (915) 212-1624]

BACKGROUND/DISCUSSION:

Charter Communications, Inc. is a well-known wired telecommunications company. The firm has a current presence in El Paso, Texas with 578 full-time employees. The company now plans to expand its workforce and service capacity. The company will create 350 new jobs and will invest a minimum of \$2,300,000. Upon satisfying all contract metrics, the Applicant will receive the following incentive:

- Incremental Property Tax Rebate: 40% of the City's portion of ad valorem incremental property taxes. 7-year grant period. Capped at \$42,522
- Building and Planning Permit Fee Rebate: A one-time rebate of project-related Building & Planning permit fees. Capped at \$30,000
- Construction Materials Sales Tax Rebate: Capped at \$5,000
- Skills Training Grant: \$200,000 (\$50,000 annually for 4 years)

The total proposed incentive is not to exceed \$277,522

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?

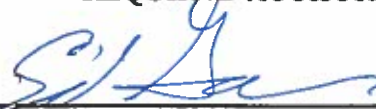
General fund

BOARD/COMMISSION ACTION:

Enter appropriate comments or N/A.

N/A

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

For 
DEPARTMENT HEAD: _____

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 facility at 1359 Lomaland, El Paso, Texas. Pursuant to the Agreement, Applicant will invest \$2,300,000.00; create 350 new full-time positions; and retain 578 existing full-time positions. In exchange, the City will provide incentives not to exceed \$277,522.00.

APPROVED this _____ day of _____, 2019.


CITY OF EL PASO

Dee Margo
Mayor

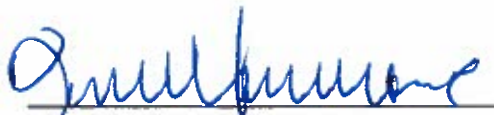
ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:


Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:


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 **CHARTER COMMUNICATIONS, INC.**, and subsidiaries identified in EXHIBIT D ("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 wired telecommunications company within the City of El Paso; 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 telecommunications company be located in the City of El Paso; and

WHEREAS, the Applicant's wired telecommunications company 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. **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program Agreement, together with all attached exhibits.
- B. **Applicant.** The word “Applicant” means Charter Communications, Inc., and subsidiaries identified in EXHIBIT D authorized to do business in Texas.
- C. **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.
- D. **Building Construction Permit Fee Rebate.** The words “Building Permit Fee Rebate” means 100% of certain building construction and planning fees to be rebated based on the fee schedule established in Ordinance 018581, but in no event will the total fee rebate amount exceed Thirty Thousand Dollars (\$30,000.00).
- E. **City.** The word “City” means the City of El Paso, Texas.
- F. **Construction Materials Sales Tax Rebate.** The words “Construction Materials Sales Tax Rebate” mean a one-time 100% rebate of the City’s one percent (1%) Sales and Use Tax from receipts generated by and attributable solely to materials and labor of Taxable Items consummated at the Property located in the Project in the immediately prior calendar year and remitted from the State Comptroller to the City and payable from the City’s general revenue fund. The Construction Materials Sales Tax Rebate shall not exceed Five Thousand Dollars (\$5,000.00) for qualifying expenses.
- G. **Development.** The word “Development” means Applicant’s wired telecommunications company being located in El Paso, Texas as more fully described on EXHIBIT A, which is attached hereto and incorporated herein for all purposes.
- H. **Effective Date.** The date upon which both parties have fully executed this Agreement as set forth on the signature pages hereof.
- I. **Event of Default.** This phrase shall have the meaning set forth in Section 5 hereof.
- J. **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.
- K. **Full-Time Employment.** The words “Full-Time Employment” mean a job requiring a minimum of two thousand eighty (2,080) 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, for those employees that participate in the health insurance program

(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.

- L. **Grant.** “Grant” means each payment to Applicant under the terms of this Agreement computed as the sum of the Building Construction Permit Fee Rebate, Construction Materials Sales Tax Rebate, Property Tax Rebate and the Skills Training Grant. For the purposes of this Agreement, the aggregate Grant payments over the Term of this Agreement shall not exceed Two Hundred Seventy-Seven Thousand Five Hundred And Twenty-Two Dollars (\$277,522.00).
- M. **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 the Grant, with such documentation more fully described in **EXHIBIT C**, which are attached hereto and incorporated herein for all purposes.
- N. **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 cannot protest nor contest the appraised value of the Development with the El Paso Central Appraisal District during the term of this Agreement. 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, this amount is One Million Two Hundred Thousand And 00/100 Dollars (\$1,200,000), as adjusted annually for normal depreciation during the term of this Agreement.
- O. **Minimum Personal Property Investment.** The words “Minimum Personal Property Investment” mean those costs incurred by Applicant or third parties in the equipment, furnishing, and fixtures for the improvements for the Project. For the purposes of this Agreement, the Minimum Personal Property Investment amount shall be One Million Three Hundred Thousand Dollars (\$1,300,000.00).
- P. **Project.** The word “Project” means the project more particularly described in **EXHIBIT A** attached hereto and incorporated herein by reference.
- Q. **Property.** The word “Property” means real property located at 1359 Lomaland, El Paso, Texas, 79935, more specifically described on **EXHIBIT A**.
- R. **Property Tax Rebate.** The words “Property Tax Rebate” means forty percent (40%) 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 a period of seven (7) years. For the purposes of this Agreement, the aggregate amount of the Property Tax Rebate is Forty Two Thousand Five Hundred And Twenty Two Dollars (\$42,522.00).

S. Qualified Expenditures. The words “Qualified Expenditures” mean those costs incurred by Applicant in equipment, fixtures, furnishing and training for the Development. For the purposes of this Agreement, the total qualified expenditures shall be a minimum of Two Million Three Hundred Thousand Dollars (\$2,300,000.00).

T. Skills Training Grant. The words “Skills Training Grant” means a reimbursement from the City in an aggregate amount of Two Hundred Thousand Dollars (\$200,000.00) to be disbursed in payments of Fifty Thousand Dollars (\$50,000.00) annually for four years after August 20, 2022 for costs associated with training materials, training equipment, monthly training classes and certifications. This Grant is payable from the City’s 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).

SECTION 2. TERM AND GRANT PERIOD.

The term of this Agreement shall be ten (10) 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.

The Grant Period shall begin when the Applicant submits to the City the initial Grant Submittal Package. Failure of the Applicant to (i) receive its Certificate of Occupancy within twenty-four (24) months 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 seven (7) 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 will operate the Development at its sole cost. Applicant shall commence improvements of the Development within twelve (12) months of the Effective Date of this Agreement. Applicant agrees that it shall make Qualified Expenditures of not less than Two Million Three Hundred Thousand Dollars (\$2,300,000.00) in the Development. The City shall be permitted to review Applicant’s receipts of Qualified Expenditures to evidence the minimum investment of Two Million Three Hundred Thousand Dollars (\$2,300,000.00)
- B. 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. For purposes of this Agreement, the requirement that Applicant “create” new Full-Time Employment positions means that the Applicant will bring new jobs into existence. Newly created jobs shall not include jobs transferred from any of Applicant’s existing facilities within El Paso, Texas or elsewhere.

- C. Applicant agrees to retain all new and current positions through the duration of this agreement in accordance with the schedule provided in EXHIBIT B.
- D. 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. City and Applicant must mutually agree to employment records and books to be accessed prior to allowing the City or its agents access to Applicant data. If the City is unable to verify Full-Time Employment, the Applicant agrees to waive their Grant Payment for that year. 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.
- E. 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 August 20, 2022 or within thirty (30) business days after August 20 of each year thereafter during the Grant Period. The initial Grant Submittal Package cannot be submitted earlier than August 20, 2022. 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. Nothing herein shall limit (or be construed to limit) Applicant’s rights and remedies as described in Section 5 of this Agreement.
- F. 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 of One Million Two Hundred Thousand And 00/100 Dollars (\$1,200,000) This value represents the Company’s initial pro rata portion of the real property assessment for the site located at 1359 Lomaland, El Paso, Texas. Applicant and its landlord 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 actions on its behalf to challenge any assessments by the Central Appraisal District to the extent such challenge would reduce the Minimum Appraisal Value below One Million Two Hundred Thousand And 00/100 Dollars (\$1,200,000)

It is the intent of the parties that the assessed value of the Development on the tax rolls shall have a Minimum Appraisal Value of One Million Two Hundred Thousand And 00/100 Dollars (\$1,200,000) (Minimum Value) as adjusted annually for normal depreciation during the term of this Agreement. Applicant and its landlord 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 actions on its behalf to challenge any assessments by the Central Appraisal District to the extent such challenge would reduce the assessed value below the Minimum Value. Any such action will be deemed an event of default.

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. The Skills Training Grant Payments shall be made as follow:
Grant Period Years 1 through 4 – Fifty Thousand Dollars (\$50,000.00) per year for Grant Years 1 through 4.
- 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 Two Hundred Seventy-Seven Thousand Five Hundred And Twenty-Two Dollars (\$277,522.00).

SECTION 5. EVENTS OF DEFAULT.

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

- 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.

- B. **False Statements.** In the event the Applicant 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 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 commences such cure within such thirty (30) day period and continuously thereafter diligently prosecutes the cure of such violation, such actions or omissions shall not be deemed an event of default. Further, if Applicant obtains actual knowledge that any previously provided warranty, representation or statement has become materially false or misleading after the time that it was made, and Applicant fails to provide written notice to the City of the false or misleading nature of such warranty, representation or statement within thirty (30) days after Applicant learns of its false or misleading nature, such action or omission shall be deemed an event of default.
- C. **Insolvency.** The dissolution or termination of Applicant's existence as a going business or concern, Applicant's insolvency, appointment of receiver for any part of Applicant's 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 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 shall have the right to contest the appraised value of the Development.
- E. **Other Defaults.** Failure of Applicant 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's or City's failure 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 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.

- F. **Failure to Cure.** If any event of default by Applicant or City shall occur, and after Applicant or City fails to cure same in accordance herewith, then this Agreement may be terminated without any further action required of the Applicant or City and the Applicant's or City's obligations end at that time. If a default has not been cured within the time stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.
- G. **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. RECAPTURE OF GRANT PAYMENTS.

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 Grants 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.

SECTION 7. 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 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 8. 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 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 Sale or Transfer of the Development. Thirty days 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. 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. 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 subsidiaries identified on Exhibit D to the terms and obligations of this Agreement.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

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: Jessica Fischer, SVP, Finance and Corporate
Treasurer
Charter Communications, Inc.
400 Atlantic Street
Stamford, CT 06901

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. **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 _____, 2019.

CITY OF EL PASO, TEXAS

Tomás González City Manager

APPROVED AS TO FORM:

Roberta Brito
Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:

Jessica Herrera
FIR: 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 _____, 2019, by Tomás González, as City Manager 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. :

A corporation authorized to do business in Texas

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____,
2019, by _____, as _____ of Charter
Communications, Inc.

Notary Public, State of _____

My Commission Expires:

EXHIBIT A

[Development]

Charter Communications, Inc. is a well-known national wired telecommunications company seeking to expand their current business operations in El Paso, Texas. As part of this expansion, the company will invest a total of \$2,300,000 with \$1,000,000 programmed for tenant improvements and \$1,300,000 in Minimum Personal Property Investment. In addition, the company will create 350 new FTEs to be located exclusively at the Development; and the company will retain 578 existing FTEs that may be located at any of the company's facilities within the City of El Paso. The company will retain the 350 new FTEs within the City of El Paso in the event another location is later selected by the company after TWELVE (12) months of occupancy.

Location and Legal Description

Physical Address: 1359 Lomaland, El Paso, Texas, 79935

Legal Description:

13 VISTA DEL SOL #7 SELY PT OF 9 (IRREG ON ST- 587.61 FT ON WLY- 887.56 FT ON NLY- IRREG ON ELY) (11.5955 AC)

The Development will utilize approximately 35,000 square feet of an existing 505,099.98 square foot industrial building/facility.

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
Existing Jobs	578	928	928	928	928	928	928
New Jobs	350	0	0	0	0	0	0
Total Jobs	928	928	928	928	928	928	928

Table 2: Employee Count and Wages

Title or Occupation	Count	Hourly Wage
Administrator	1	\$17.79
Analyst	2	\$21.63
Assistant	1	\$16.83
Coordinator	1	\$14.90
Director	2	\$47.60
Facilitator	3	\$21.15
Human Resource Senior	3	\$28.37
Manager	11	\$35.10
Retention Representative	290	\$21.63
Supervisor	35	\$26.44
VP	1	\$74.52
TOTAL	350	

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 Applicant's providing to the City sufficient proof, as determined by the City, that it has maintained at least ninety percent (90%) of the 928 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 316 new positions and retains 578 existing jobs, then the total number of jobs maintained is 894 ($316 + 578 = 894$). Then, 894 jobs is 96% of the required 928 jobs. Therefore, the 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 928 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, the 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

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

[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