

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

**DEPARTMENT:** Economic & International Development Department  
**AGENDA DATE:** CCA Work Session, December 17, 2018  
**CONTACT PERSON/PHONE:** Jessica Herrera, Director, (915) 212-1624  
**DISTRICT(S) AFFECTED:** District 6

**SUBJECT:**

That the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement by and between CITY OF EL PASO ("City") and FOSTER ELECTRIC (U.S.A), INC., ("Applicant") for the expansion of the Applicant's automatic speaker production operations company in El Paso, Texas. The project will include an investment of \$4,253,800.00 and the activation of a minimum of 40 new full-time jobs all paying at, or above, the current Median County Wage. The City shall provide economic incentives in the form of a property tax rebate in an aggregate amount of \$196,668.00 and a Building Permit Fee Rebate not to exceed \$10,000.00. (District 6) [Economic & International Development Department, Jessica Herrera, Director, (915) 212-1624]

**BACKGROUND/DISCUSSION:**

Foster Electric (U.S.A.), Inc. specializes in the production and sales of loudspeakers, audio equipment, and electronic equipment to companies across the planet. The firm has a current presence in El Paso, Texas with 32 non-contract, permanent employees and now plans to expand its workforce and production capacity. The company will create 40 new jobs and will invest a minimum of \$4,253,800. Upon satisfying all contract metrics, the Applicant will receive the following incentive:

- Incremental Property Tax Rebate: 75% of the City's portion of ad valorem incremental property taxes. 10-year grant period. Capped at \$196,668
- Building and Planning Permit Fee Rebate: A one-time rebate of project-related Building & Planning permit fees. Capped at \$10,000

The total proposed incentive is not to exceed \$206,668

**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\*\*\*\*\*

**DEPARTMENT HEAD:** \_\_\_\_\_



**RESOLUTION**

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

That the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement by and between CITY OF EL PASO ("City") and FOSTER ELECTRIC (U.S.A), INC., ("Applicant") for the expansion of the Applicant's automatic speaker production operations company in El Paso, Texas. The project will include an investment of \$4,253,800.00 and the activation of a minimum of 40 new full-time jobs all paying at, or above, the current Median County Wage. The City shall provide economic incentives in the form of a property tax rebate in an aggregate amount of \$196,668.00 and a Building Permit Fee Rebate not to exceed \$10,000.00.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

**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:**

  
Fo- Jessica Herrera, Director  
Economic & Int'l Development



- A. **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- B. **Applicant.** The word “Applicant” means Foster Electric (U.S.A.), Inc.
- C. **Real Property Base Year Value.** The words “Real Property Base Year Value” mean the value of the real property on the El Paso Central Appraisal District rolls as of January 1<sup>st</sup> of the year in which this Agreement is executed with respect to the Development. However, under no circumstances shall the Real Property 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 Four Million Two Hundred Sixty Seven Thousand One Hundred Ninety Dollars (\$4,267,190.00).
- D. **Personal Property Base Year Value.** The words “Personal Property Base Year Value” mean the value of the non-inventory, personal property on the El Paso Central Appraisal District rolls as of January 1<sup>st</sup> of the year in which this Agreement is executed with respect to the Development. However, under no circumstances shall the Personal Property 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 Two Million One Hundred Twenty Six Thousand Four Hundred Thirty Seven Dollars (\$2,126,437.00).
- E. **Building 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 Ten Thousand Dollars (\$10,000.00).
- F. **City.** The word “City” means the City of El Paso, Texas.
- G. **Development.** The word “Development” means the production and sales operation center 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. **Full-Time Employment.** The words “Full-Time Employment” mean a job requiring a minimum of two thousand and 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.

- J. **Grant.** The word “Grant” means each annual payment to APPLICANT under the terms of this Agreement computed as the sum of the following rebates as applicable (i) Property Tax Rebate and (ii) Building Permit Fee Rebate. For the purposes of this Agreement, the aggregate amount of the all grants provided by the City shall not exceed Two Hundred Six Thousand Six Hundred Sixty Eight Dollars (\$206,668.00).
- K. **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 Exhibits B and C, which are attached hereto and incorporated herein for all purposes.
- L. **Minimum Appraisal Value.** The words “Minimum Appraisal Value” mean the value of the real property as defined in Section 1.C of this agreement and the value of the personal property as defined in Section 1.D of this agreement 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 Ten Million Six Hundred Forty Seven Thousand Four Hundred Twenty Seven Dollars (\$10,647,427.00).
- M. **Minimum Investment:** The words “Minimum Investment” mean those costs incurred by Applicant in the improvement to the facility and the furnishing of machinery and equipment for the facility. For the purposes of this Agreement, this amount is Four Million Two Hundred Fifty-Three Thousand Eight Hundred Dollars (\$4,253,800.00).
- N. **Project.** The word “Project” means the project more particularly described in EXHIBIT A attached hereto and incorporated herein by reference.
- O. **Property.** The word “Property” means approximately 144,361 square feet of real property located at 1216 Don Haskins Drive, in El Paso, Texas, more specifically described on EXHIBIT A.
- P. **Property Tax Rebate.** The words “Property Tax Rebate” means seventy-five percent (75%) 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 ten (10) years beginning 2022. For the purposes of this Agreement, this amount is One Hundred Ninety-Six Thousand Six Hundred Sixty-Eight Dollars (\$196,668).
- Q. **Qualified Expenditures.** The words “Qualified Expenditures” means those costs incurred by Applicant in the acquisition, improvement or furnishing of the Development.

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

The term of this Agreement shall be thirteen (14) years from the Effective Date of this Agreement. 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 with the first tax year that begins after: (i) the Applicant has met all Full Time Employment job requirements noted in Exhibit B, which is attached hereto and incorporated herein for all purposes. Failure of the Applicant to meet its Full Time Employment job requirements as noted in Exhibit B within four (4) years of the Effective Date of this Agreement shall result in the immediate termination of this Agreement.

The Applicant's eligibility for Property Tax Rebate payments shall be limited to ten (10) consecutive years (the "Grant Period") within the term of this Agreement. The City shall review Applicant's eligibility for Property Tax Rebate 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 invest in the expansion and operation of the Development at its sole cost. Applicant shall commence construction and/or 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 Four Million Two Hundred Fifty-Three Thousand Eight Hundred Dollars (\$4,253,800.00). The City shall be permitted to review Applicant's receipts of Qualified Expenditures to evidence the minimum investment of Four Million Two Hundred Fifty-Three Thousand Eight Hundred Dollars (\$4,253,800.00).
- 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.

Applicant, during normal business hours, at its principal place of business in El Paso, shall allow the City or its agents reasonable access to Applicant's employment records and books, and other records that are related to the economic development considerations and incentives described herein, to verify employment records and any other records related to the City's economic development considerations and incentives provided herein. 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, each Grant Submittal Package shall be in the form provided in Exhibit "C". APPLICANT shall submit to the CITY the initial Grant Submittal Package to commence the Grant Period on December 5, 2022, or within thirty (30) business days after December 5, 2022. The initial Grant Submittal Package cannot be submitted any earlier than December 5, 2022. If Applicant fails to timely submit a Grant Submittal Package for a particular year, the City may, give Applicant written notice of its failure to timely submit such Grant Submittal Package, and Applicant shall have thirty (30) calendar days from the date on which such written notice is given in which to submit such Grant Submittal Package. 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 an initial Minimum Appraisal Value of Ten Million Six Hundred Forty Seven Thousand Four Hundred Twenty Seven Dollars (\$10,647,427.00) 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, not the values contained within, will be utilized to contest appraisal values or in the determination of the market value of the Development.

#### **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 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.
- C. The CITY agrees to rebate 100% of certain Building and Planning fees associated with the Project, up to Ten Thousand Dollars (\$10,000.00). The City also agrees to expedite all development and building permit applications for the development.

**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 failure or refusal to operate the Development and maintain required Full Time Employment pursuant to this Agreement 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. 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 within sixty (60) days from the date of such termination.
- 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. **Construction of Development.** Applicant's failure to comply with its construction/improvement obligations set forth in this Agreement and Applicant's failure to cure same within ninety (90) days after written notice from the City shall be deemed an event of default. If such failure cannot be cured within such ninety (90) day period and Applicant fails or refuses to commence such cure within such ninety (90) day period, except to the extent such failure is caused by any act or failure to act on the part of the City, such actions or omissions shall be deemed events of default.
- E. **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.
- F. **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 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 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 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 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 which shall become 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 7. RECAPTURE.**

Should the Applicant default under the terms of this Agreement and provided that the cure period for such default has expired, all Grants and/or 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.

## **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.** 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 within thirty (30) business days of the Applicant's knowledge of effectiveness of such sale or transfer. This provision is a material term of this Agreement and the failure to notify the City of such sale or transfer within the applicable period shall constitute an event of default.
- 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 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 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.
- 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: Eugene Fraczkowski  
Assistant Secretary / CFO  
1000 E. State Parkway, Suite G  
Schaumburg, Illinois 60173

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.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 30<sup>th</sup> day of November, 2018.


[SIGNATURES ON FOLLOWING PAGES]

**CITY OF EL PASO, TEXAS**

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

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Roberta Brito  
Assistant City Attorney

  
\_\_\_\_\_  
For 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 \_\_\_\_\_, 2018,  
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 FOLLOWING PAGE]



## **EXHIBIT A**

### **[Development & Legal Description]**

#### Development

Foster Electric Company Limited was established in 1949 and is headquartered in Akishima City, Tokyo, Japan. They specialize in the production and sales of loudspeakers, audio equipment, and electronic equipment. The company's wholly-owned subsidiary, Foster Electric (U.S.A.), Inc., has a current presence in El Paso, Texas with 32 non-contract, permanent employees and now plans to expand its workforce and production capacity. The company will create 40 new jobs, as scheduled in "Exhibit B" of this document, and will invest a minimum of \$4,253,800.

#### Location and Legal Description

Physical Address: 1216 DON HASKINS DR EL PASO, TX

Legal Description: 539 VISTA DEL SOL #128 LOT 2 (9.1339 AC)

## EXHIBIT B

### [Employment Requirements & Grant Payment Eligibility]

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

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

| Year          | 2022 | 2023 | 2024 | 2025 |
|---------------|------|------|------|------|
| Existing Jobs | 32   | 72   | 72   | 72   |
| New Jobs      | 40   | 0    | 0    | 0    |
| Total         | 72   | 72   | 72   | 72   |

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

After 2025, the Applicant must retain the total amount of full-time employment (FTE) positions shown at year 2025 (72 FTE's) for the remainder of the grant period, to be eligible to receive the Grant Payments.

Applicant or its Affiliate remains eligible for Grant Payments so long as the Total Full Time Employees, as stated in this Exhibit B, are met on an annual basis.

Grant payment shall be contingent upon Applicant's certification that it has maintained at least ninety percent (90%) of the minimum job creation and retention requirements during the full tax year, as required herein.

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

*For illustrative purposes only:*

*During the first year, Applicant creates and retains 95% (68) of the expected 72 FTE positions. Grant Payments will be reduced by 50% (10% per 1% of job creation shortfall).*

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

#### SECTION 3. MEDIAN COUNTY WAGE.

For purposes of this Agreement. The Median County Wage is that wage established for the County of El Paso as adjusted on January 1 of each year. However, in no event shall the applicable Median County Wage used for determination of Grant Payment eligibility be less than the Median County Wage established for 2018, which is \$13.50 per hour.

