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STATE OF TEXAS §

COUNTY OF BELL §

380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This 380 Economic Development Agreement (this "**Agreement**") is entered into as of 9/27/2022 | 4:50 PM CDT (the "**Effective Date**") by and among **CITY OF TEMPLE**, a home rule municipality organized under the laws of the State of Texas ("**City**"), and **TEMPLE GREEN DATA, LLC**, a Delaware limited liability company ("**Company**"). The City and the Company are individually sometimes called a "**Party**" and are collectively called the "**Parties**."

RECITALS

A. Company represents and warrants that it owns 33 acres and has the right to acquire approximately 142 additional acres of Land (defined herein). Contingent upon receipt of the grants provided for herein, Company is considering the development of one or more data centers and/or other facilities used to house, and in which will be operated, maintained and replaced from time to time, computer systems and associated components, such as telecommunications and storage systems, cooling systems, power supplies and systems for managing property performance (including generators), and equipment used for the transformation, transmission, distribution and management of electricity (including substations), internet-related equipment, data communications connections, environmental controls and security devices, structures and site features, as well as certain accessory uses or buildings located on the Land and other related or associated uses, buildings or structures such as utility buildings, structures, improvements and appurtenants (collectively, the **"Project"**).

B. The Parties agree that the proposed Project is expected to benefit the City by developing currently vacant land into a commercial operation with significant opportunities for employment and tax base growth. The City represents and warrants that the City Council of the City (the **"City Council"**) has established an economic development program adopted by Ordinance No. 2020-5026 approved on April 2, 2020, as amended by Ordinance No. 2021-0074-O approved on December 16, 2021, pursuant to which the City may offer economic incentives authorized by Chapter 380 of the Texas Local Government Code that may include grants of public money to projects, businesses and entities that the City Council determines will promote state or local economic development and stimulate business and commercial activity in the City (the **"380 Program"**).

C. The City represents and warrants that the City Council has determined that by entering into this Agreement, the potential economic benefits that will accrue to the City under the terms and conditions of this Agreement are consistent with the City's economic

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development objectives and the 380 Program and that Company's plans for development and use of the Land will further the goals espoused by the 380 Program. In addition, the City Council has determined that the Project as described herein is eligible for the grants provided for in this Agreement pursuant to III.B of the 380 Program and the 380 Program is an appropriate means to facilitate the construction of the Project Improvements. The City Council has determined that the potential economic benefits that will accrue to the City pursuant the terms and conditions of this Agreement are consistent with the City's economic development objectives as outlined in the 380 Program. The City represents and warrants that this Agreement is authorized by Chapter 380 of the Texas Local Government Code.

D. The City represents and warrants that it owns and operates (i) a water system within its certificated service area that (a) uses the Leon River and Lake Belton for its water sources, (b) uses a conventional and membrane water treatment process at its water treatment plant located at 4820 Parkside Drive in the City, and (c) has an ultimate water treatment capacity of 61.5 MGD, current maximum transmission capacity of 44 MGD and current peak flow of 33.8 MGD (the foregoing, together with any repairs, improvements and additions thereto and updates and replacements thereof, are known as the **"Water System"**); (ii) two wastewater treatment plants known as the Temple-Belton Wastewater Treatment Plant located at 2405 East 6th Avenue, Belton, Texas, and the Doshier Farm Wastewater Treatment Plant located at 2515 East Avenue H, Temple, Texas, which plants are operated through a contract with the Brazos River Authority (the foregoing, together with any repairs, improvements and additions thereto and updates and replacements thereof, are known as the **"Wastewater Treatment Plants"**); and (iii) a municipal sanitary and industrial sewer system which (a) uses the Wastewater Treatment Plants, (b) has a loading capacity of 10 MGD annual average and a 20,834 GPM two-hour peak at the Temple-Belton Plant and a loading capacity of 7.5 MGD annual average and a 15,625 GPM two hour peak at the Doshier Farm Plant, (c) discharges into the Leon River at the Temple-Belton Plant and into Big Elm Creek at the Doshier Farm Plant, (d) has a current annual average of 7.2MGD at the Temple-Belton Plant and 2.7 MGD at the Doshier Farm Plant, and (e) has requirements of organic and inorganic loading, contained within City's current Industrial Pretreatment regulations, contained in Chapter 38, Article V of the City of Temple's Code of Ordinances, as may be amended in the future (the foregoing, together with any repairs, improvements and additions thereto and updates and replacements thereof, and together with the Wastewater Treatment Plants, are known as the **"Wastewater System"**, and together with the Water System, the **"Systems"**).

E. In addition to this Agreement, the Parties have entered into a Tax Abatement Agreement of even date herewith which the City grants the Company abatement on City ad valorem taxes for the Project Improvements, as further described and set forth in such agreement, which Tax Abatement Agreement is a public document on file in the City Secretary's Office and approved by Resolution No 2022-0119, approved by the City Council on May 5, 2022 (the **"Tax Abatement Agreement"**).

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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 is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

The City Council has found, and the City and Company hereby agree, that the recitals set forth above are true and correct and form the basis upon which the Parties have entered into this Agreement.

2. DEFINITIONS.

In addition to any terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

380 Program has the meaning ascribed to it in Recital B.

Affiliate means all persons or entities, incorporated or otherwise, under common control with, controlled by or controlling Company including, but not limited to, within the meaning of SEC Rule 405, 17. C.F.R. § 230.405.

Applicable City Rules means all of the rules, regulations, ordinances and official policies of the City.

Business Day shall mean a day that is not a Saturday, Sunday, or official holiday in the City of Temple. All other references to "days" hereunder shall mean calendar days.

City Council has the meaning ascribed to that term in Recital B.

City of Temple Synergy Well has the meaning ascribed to that term in Section 4.4.

Commencement of Construction means both of the following have occurred: (1) issuance of a notice to proceed with construction to the applicable construction contractor, and (2) commencement and diligent pursuit of mobilization and construction by the construction contractor on the applicable construction site.

Commencement of Construction Deadline means twelve (12) months from the Effective Date, subject to extension on account of Force Majeure, as provided in Section 24.

Completion Date means the date as of which Company has substantially completed or caused the substantial completion of the Phase 1 Development and has made a substantially complete application for a temporary or permanent certificate of occupancy or has passed final inspection, whichever is applicable, for the building or group of buildings that constitute the Phase 1 Development.

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Completion Deadline means thirty (30) months from the Commencement of Construction, subject to extension on account of Force Majeure, as provided in Section 24.

Comprehensive Plan means the City's Comprehensive Plan, adopted pursuant to Ordinance No. 2020-5061, adopted by the City Council on October 15, 2020, and as amended.

Contingent Potable Water Capacity has the meaning ascribed to that term in Section 6.1.1.

Development Costs means the aggregate of the following costs expended or caused to be expended by or on behalf of Company or an Affiliate relating to construction and installation of Project Improvements and related infrastructure, including costs such as land acquisition; site development and construction costs; general contractor and subcontractor fees; the costs of supplies, materials and construction labor; buildings (foundation, interior, and exterior improvements); structures; utilities; paving; grading; demolition; environmental remediation; lighting; signage; landscaping and other costs and fees for the construction and completion of the Project Improvements (or portion thereof) and specifically excludes attorney's fees, travel expenses, engineering and consultant fees, and other such soft costs.

Effective Date has the meaning ascribed to it in Section 3.

Employment Commitment has the meaning ascribed to it in Section 4.3.

Employment Report has the meaning ascribed to that term in Section 4.6.2.

Existing Zoning means the Light Industrial (LI) district of the City's Unified Development Code.

Expiration Date means the earlier of (i) the Commencement of Construction Deadline if Company has not caused the Commencement of Construction to occur by the Commencement of Construction Deadline; (ii) the Completion Deadline if (a) Company has not caused the Completion Date to occur by the Completion Deadline, and/or (b) Company has not achieved the Investment Commitment by the Completion Deadline; or (iii) March 31 of the calendar year following the ten (10) year anniversary of the Completion Date.

Force Majeure shall mean any contingency, act or cause beyond the reasonable control of the Party seeking relief, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omission of the Party), governmental shutdowns or inaction, fire or other casualty, shortage of materials, explosions, adverse weather conditions, or floods, and strikes; explosions, fires, breakages or accidents of machinery, lines, or equipment, or other conditions outside of the reasonable control of the Party; provided, however, in no event shall force majeure include financial hardship, bankruptcy, or economic recession.

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Full-Time Job means a permanent job, as distinguished from a job of a known, short-term duration with a definite end-date (such as a construction job or a contract job), and located at the Project provided by Company, its tenants or an affiliate of the Company to one individual for (i) forty (40) hours per week or (ii) less than forty (40) hours per week if such other measurement is used to define full-time employment by Company, its tenant or an affiliate of the Company in accordance with its then-current personnel policies and regulations. For example, if Company, its tenants or an affiliate of the Company has a company-wide policy that considers full-time employment to be thirty-five (35) hours per week, a job provided by Company, its tenants or an affiliate of the Company for at least thirty-five (35) hours per week shall be considered a Full-Time Job for purposes of this Agreement.

Infrastructure Design Reimbursement has the meaning ascribed to that term in Section 4.5.

Infrastructure Improvements has the meaning ascribed to that term in Section 4.4.

Infrastructure Improvement Completion Report has the meaning ascribed to that term in Section 4.6.3.

Infrastructure Reimbursement has the meaning ascribed to that term in Section 5.1.

Investment shall mean costs expended by or on behalf of Company or an Affiliate for (i) Development Costs, and/or (ii) Personal Property related to this Project.

Investment Commitment has the meaning ascribed to that term in Section 4.1.

Land means the real property described on **Exhibit "A"** which is attached hereto and incorporated herein by reference for all purposes under this Agreement.

Mortgage means a mortgage, deed of trust, sale and leaseback or other form of secured financing.

Mortgagee means the holder of a Mortgage on the Land.

Personal Property means any personal property that (i) is subject to ad valorem taxation and is rendered for that purpose to the Bell County Appraisal District or another appraisal district having jurisdiction over the Land; (ii) is located on the Land (or within improvements on the Land); and (iii) was not located on the Land (or within improvements on the Land) prior to the Effective Date of this Agreement.

Phase 1 Development means a building or group of buildings to be constructed and completed on the Land, which meets the Investment Commitment (including Personal Property that is a part of such Phase) and is completed on or before the Completion Deadline and is included in the Phase 1 Development Completion Report. The location of the Phase I Development shall occur on that specific portion of the Land more specifically

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identified on the attached **Exhibit "B"**, attached hereto and by this reference incorporated herein.

Phase 1 Development Completion Report has the meaning ascribed to that term in Section 4.6.1.

Potable Water means treated water produced by the Water System.

Potable Water Capacity Commitment has the meaning ascribed to that term in Section 6.1.1.

Process Cooling Water has the meaning ascribed to that term in Section 6.2.

Project has the meaning ascribed to that term in Recital A.

Project Improvements means improvements constructed or caused to be constructed on the Land by Company and/or an Affiliate.

Rates has the meaning ascribed to that term in Section 6.3.

Raw Water means untreated groundwater withdrawn from the City of Temple Synergy Well.

Raw Water Capacity Commitment has the meaning ascribed to that term in Section 6.1.2.

Raw Water Rate has the meaning ascribed to that term in Section 6.3.

Reinvestment Zone Number One has the meaning ascribed to that term in Section 5.1.

Reports means the Phase 1 Development Completion Report, the Employment Report(s), and the Infrastructure Improvement Completion Report.

Standard Cure Period has the meaning ascribed to that term in Section 7.5

Start Up Period has the meaning ascribed to that term in Section 6.1.3

State means the State of Texas.

Systems has the meaning ascribed to that term in Recital D.

Tax Abatement Agreement has the meaning ascribed to it in Recital E.

TEDC EDA means that certain Economic Development Agreement entered into September 27, 2021 by and among Temple Economic Development Corporation, Temple

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Green Data, LLC and any entities affiliated with Temple Green Data, LLC that will occupy or benefit from the operations on the real property affected by the TEDC EDA.

Term has the meaning ascribed to it in Section 3.

TPIA has the meaning ascribed to that term in Section 20.

Treated Wastewater Effluent means treated wastewater flowing or pumped out of the Wastewater Treatment Plants.

Unified Development Code means the Unified Development Code of the City approved by the City Council of the City pursuant to Ordinance No. 2010-4412 on December 16, 2010, and as amended.

Wastewater Capacity Commitment has the meaning ascribed to that term in Section 6.1.3.

Wastewater Rate has the meaning ascribed to that term in Section 6.3.

Wastewater System has the meaning ascribed to that term in Recital D.

Wastewater Treatment Plants has the meaning ascribed to that term in Recital D.

Water Curtailment Notice has the meaning ascribed to that term in Section 6.1.1.

Water Demand means actual, realized need for water but no more than a total of 830,000 gallons per day of Potable Water or Raw Water, combined.

Water Rate has the meaning ascribed to that term in Section 6.3.

Water System has the meaning ascribed to that term in Recital D.

3. TERM.

This Agreement will take effect on the date of execution of this Agreement by both the City and Company (the **"Effective Date"**) and, unless terminated earlier in accordance with its terms and conditions, will expire on the Expiration Date (the **"Term"**).

4. COMPANY OBLIGATIONS AND COMMITMENTS.

4.1. Investment Commitment and Use.

As a condition to receipt of the Infrastructure Reimbursement, the Completion Date must occur on or before the Completion Deadline, and Company must expend or cause the expenditure by itself or its tenants, by the Completion Deadline of an Investment of not less than Two Hundred Twenty-Five Million Dollars ($225,000,000) (the **"Investment Commitment"**) for Phase 1 Development. For the avoidance of doubt, the same Investment counted and

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reported for purposes of measuring attainment of the Investment Commitment under this Agreement will also be counted for purposes of measuring attainment of the Investment Commitment under the Tax Abatement Agreement. After the Completion Deadline, the Project Improvements must be continuously used for a lawful use related to the support and/or operation of Company's or its tenant's commercial, business, retail, or industrial uses, subject to Force Majeure and temporary closures of not more than one hundred eighty (180) consecutive days or such longer period as may be necessary to construct capital improvements, remodels or repairs to the Project Improvements and/or reconstruct the Project Improvements following a casualty or condemnation event affecting the Project Improvements. For the avoidance of doubt, the Company's Investment Commitment as set forth in this Section 4.1 is redundant to and repetitive of the Company's Investment requirement under the TEDC EDA, and is not an independent, separate investment commitment in addition to the Company's Investment requirement under the TEDC EDA.

4.2 Future Phases

Although the Company may develop the Land in multiple phases extending over a period of years, this Agreement and all of the Parties' obligations and commitments under this Agreement shall only apply to the Phase 1 Development.

4.3 Employment Commitment.

From the Completion Date, the Company will provide or cause to be provided (through itself or third-parties, including tenants or subtenants) at least twenty (20) Full-Time Jobs on the Land, and, will directly or will cause its tenants to maintain at least twenty (20) Full-Time Jobs on the Land until the Expiration Date (the **"Employment Commitment"**), with the minimum average wage of such twenty (20) Full-Time Jobs of at least $50,000.00. In determining the average wage of such twenty (20) Full-Time Jobs, Company may include the amount reported in Box 5 of an employee's W-2 Wage and Tax Statement, which represents gross taxable compensation. The Company will have 60-days to begin remedying any deficiency in the Employment Commitment, where such deficiency is not caused by the Company's failure or breach of this Agreement and the Company will have up to eighteen (18) months to fully remedy such deficiency. Jobs as of December 31 of the year they were created may be included for reporting purposes if they otherwise meet the requirements of being a Full-Time Job. Full-Time Jobs counted for purposes of measuring attainment of the Employment Commitment under the Tax Abatement Agreement will also be counted for purposes of measuring attainment of the Employment Commitment under this Agreement. Nothing in this Agreement shall be construed to require the Company to achieve the Employment Commitment; however, the Employment Commitment is a condition precedent to receipt of the Infrastructure Reimbursement. For the avoidance of doubt, the Company's Employment Commitment as set forth in this Section 4.3 is redundant to and repetitive of the Company's full-time employment requirement under the TEDC EDA, and is not an independent, separate full-time employment requirement

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in addition to the Company's full-time employment requirement under the TEDC EDA.

4.4. Construction of Infrastructure Improvements.

The Company, during the construction of Project Improvements, agrees, at its expense, to complete all public infrastructure improvements reasonably required for the Project Improvements, including but not limited to the construction of approximately: 13,000 linear feet of 10" force main, 160 linear feet of 12" wastewater line and associated wastewater manholes, 6,100 linear feet of 12" waterline, lift station, mass grading, 42 linear feet of 5'x4' concrete box culvert and 92 linear feet of 2-6'x4' concrete box culvert as set forth on **Exhibit "C",** attached hereto and incorporated herein by reference and in accordance with the construction plans provided by the City (the "**Infrastructure Improvements"**). Company or its contractor must execute a performance bond with the City as beneficiary through a multiple obligee rider for the construction and completion of the Infrastructure Improvements. The bond shall also be executed by a corporate surety. The City agrees to provide the Company and its contractors all reasonable (i) access to City property and (ii) assistance in coordinating with utilities, in each case, necessary to construct and commission the Infrastructure Improvements by the Completion Deadline.

The Company may elect, but shall not be obligated, to construct a groundwater production well, including the construction of a well house, water tank (if needed), electrical supply, and piping from the pumps to the property line of the Land for the production of non-potable water in accordance with construction plans provided by the City and at a location determined by the City after consultation with Company (the "**City of Temple Synergy Well**"). Company or its contractor must execute a performance bond with the City as beneficiary or multiple obligee, as applicable, for the construction and completion of the City of Temple Synergy Well. The bond shall also be executed by a corporate surety.

After the earlier of the Expiration Date and acceptance of the Infrastructure Improvements and/or the City of Temple Synergy Well by the City, the City shall own the improvements and maintain those improvements at its own expense and subject to any warranties by the contractors or maintenance bonds on said improvements.

4.5. Infrastructure Design Reimbursement.

Subject to providing the below required documentation, the Company shall reimburse the City the out-of-pocket cost of designing the Infrastructure Improvements in the total amount of $434,000 (the **"Infrastructure Design Reimbursement**").

The Infrastructure Design Reimbursement shall be paid by Company within thirty (30) calendar days following the Effective Date of this Agreement.

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As a condition of receiving the Infrastructure Design Reimbursement, the City agrees to provide full documentation to Company of the actual amounts spent towards the cost of designing the Infrastructure Improvements.

4.6. Reports and Filings by Company.

4.6.1. Phase 1 Development Completion Report.

Provided that the Completion Date occurred on or before the Completion Deadline, on or before March 1 of the first full calendar year following the calendar year in which the Completion Date occurs, Company must provide or cause to be provided a written report to the City, substantially in the form attached hereto as **Exhibit "D"**, that confirms Company achieved the Investment Commitment for Phase 1 Development (the **"Phase 1 Development Completion Report")**. Provision of the Phase 1 Development Completion Report under the Tax Abatement Agreement will also constitute provision of the Completion Report under this Agreement.

4.6.2. Employment Report.

On or before March 1 of the first full calendar year following the year in which the Completion Date occurs and on or before March 1 thereafter for each year during the Term, Company must provide the City with a report, substantially in the form attached hereto as **Exhibit "E"** (the **"Employment Report"**), that sets forth the total number of individuals who held Full-Time Jobs on the Land as of December 31 of the previous year. Notwithstanding anything to the contrary herein, provision of the employment report under the Tax Abatement Agreement will also constitute provision of the Employment Report provided hereunder.

4.6.3. Infrastructure Improvement Completion Report.

Provided that the Completion Date occurred on or before the Completion Deadline, on or before March 1 of the first full calendar year following the calendar year in which the Completion Date occurs, Company must provide a written report to the City providing full documentation to the City, including, but not limited to invoices, showing the actual amounts expended towards the Infrastructure Improvements (the **"Infrastructure Completion Report")**.

4.6.4. Failure to Submit Reports.

If Company fails to submit the Phase 1 Development Completion Report in accordance with Section 4.6.1, and/or the Employment Report in accordance with Section 4.6.2 in any applicable year, and/or the

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Infrastructure Improvement Completion Report in accordance with Section 4.6.3, the City shall provide written notice to Company. If Company fails, subject to an extension for Force Majeure, to provide any such report within thirty (30) calendar days following receipt of such written notice, the City shall have the right to terminate this Agreement. The City will not be required to provide any additional notices under Section 7.5 before terminating this Agreement in accordance with the provisions of this Section.

4.7. Audits.

Provided at least ten (10) calendar days' notice is given by the City, the City will have the right to audit the business records of Company that relate solely to the information necessary to evaluate compliance with this Agreement. If any such documentation or records are contained in business records of Company that also contain unrelated matters, Company may redact any unrelated matters that are non-essential to the audit of any applicable information. All such business records provided by the Company to the City shall be treated as "confidential business information" as set forth in Section 20, and to the extent that such business records also qualify as trade secrets, such business records shall be so treated as trade secrets under the TPIA.

4.8. Inspections of Land and Project Improvements.

Provided at least ten (10) calendar days' notice is given by the City, the City will have the right to inspect and evaluate the Land and the Project Improvements with an Owner's representative present solely in order for the City to monitor or verify compliance with the terms and conditions of this Agreement.

For the avoidance of doubt, this Section 4.8 is not intended to and does not prohibit the City from performing other inspections or evaluations, including inspections of Infrastructure Improvements or the City of Temple Synergy Well, as may be required or allowed by Applicable City Rules or any other laws, rules, or regulations, in each case, legally adopted by a governmental entity.

4.9. Company to Remain Responsible for All Obligations.

The City understands that Company may not be the end user or operate the Project contemplated by this Agreement but instead may lease or otherwise provide or make available the facilities associated with the Project to another entity or entities to occupy such facilities and/or operate the Project. If this occurs, Company shall remain responsible for all obligations under this Agreement. At all times during the Term of this Agreement, Company will hold the water and wastewater accounts necessary to serve this Project, and will remain the sole entity to whom the City is obligated to provide water and/or wastewater services, both under this Agreement as well as under City's Certificate of Convenience and Necessity (CCN). Company will ensure that any lease agreements or other legal documents

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executed with any entity or entities that will occupy the facilities and/or operate the Project will acknowledge that the Potable Water Capacity Commitment provided to the Project under this Agreement is considered "continuous and adequate service" of potable water as required by the Texas Water Code for all purposes, and that such other entity or entities have no separate right to receive water and/or wastewater services from the City, but will only receive such water and/or wastewater services through Company. Notwithstanding the foregoing, any Full-Time Employees employed by a Tenant or investment on the Land will count toward the Company's satisfaction of the Employment Commitment and Investment Commitment, as applicable.

5. CITY OBLIGATIONS AND COMMITMENTS.

5.1. Infrastructure Reimbursement.

Subject to the terms and conditions of this Agreement, provided that Company achieves the Investment Commitment by the Completion Deadline, the City will reimburse the cost of designing and constructing the Infrastructure Improvements and the City of Temple Synergy Well at a total not to exceed amount of $4,807,265 or the actual cost of construction (including the design costs paid by the Company under Section 4.5 above), whichever is less (the **"Infrastructure Reimbursement**"),

Except where damage to the Infrastructure Improvements is caused by the City or its contractors, the City shall contribute no more than the Infrastructure Reimbursement and Company shall bear the cost, if any, of the construction of Infrastructure Improvements which exceeds the Infrastructure Reimbursement amount. Company agrees to provide full documentation to the City of the actual amounts spent towards eligible costs as described in Section 4.6.3.

The Infrastructure Reimbursement shall be paid by the City in three (3) equal installments beginning on or before December 1 of the first full calendar year following the calendar year in which the Company provides the City with the Phase 1 Development Completion Report and the Infrastructure Investment Completion Report, and on or before December 1 of each year thereafter until Company has received the total Infrastructure Reimbursement.

While the City is obligated to fund the Infrastructure Reimbursement as a general obligation of the City, the City intends for the Infrastructure Reimbursement to be paid from the tax increment fund for Reinvestment Zone Number One, City of Temple, Texas established pursuant to Ordinance No. 1457 adopted on September 16, 1982, and as amended ("**Reinvestment Zone Number One**"). The City represents and warrants that it is authorized to make the Infrastructure Reimbursement payments set forth in this Agreement from the tax increment fund of Reinvestment Zone Number One because such payments are considered "project costs" under Texas Tax Code Section 311.002.

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5.2. Appropriation Clause.

All expenditures by the City to meet its obligations under this Agreement are subject to the City's appropriation of funds for such payments in the budget year in which they are to be made. Expenditures by the City under this Agreement shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution, under Chapter 380 of the Texas Local Government Code or some other economic development act of the State, and/or City Ordinance Number 2020-5026, as amended by Ordinance No. 2021-0074-O on December 16, 2021, subject to any applicable limitations or procedural requirements.

6. WATER AND WASTEWATER SERVICES.

6.1. Water and Wastewater Capacities.

6.1.1 Potable Water Capacities.

Subject to Section 6.1.2, the City agrees to provide up to 350,000 gallons per day of Potable Water to Company for the Project only when such volume is available in the Water System and when such provision will not affect the City's ability to maintain adequate fire protection, pressures, appropriate tank levels, or otherwise affect the safety and integrity of the Water System, in the City's sole and absolute discretion ("**Potable Water Capacity Commitment**"). City will not be arbitrary and capricious in determination of when such volume is available.

The Company acknowledges that the Potable Water Capacity Commitment for the Project shall be considered "continuous and adequate service" of potable water as required by the Texas Water Code for all purposes.

In the event that some or all of the Potable Water Capacity Commitment is not available or expected to be available, the City agrees to promptly provide Company notice of that fact (the **"Water Curtailment Notice")**. Such notice will include the amount of Potable Water usage that must be curtailed. Company shall designate a representative responsible for receiving notice under this paragraph by telephone. Such designation shall be made in accordance with the notice requirements of Section 10 of this Agreement. Company will be responsible for maintaining current designated representative information for the telephonic notice required herein. Changes to Company's representative designation shall not require amendment of this Agreement. Due to the critical nature of the operation of the Water System, Company shall ensure that the designated representative is available 24 hours per day, 7 days per week to receive

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notice under this paragraph. City shall provide Company's designated representative with telephonic notice of such curtailment in addition to subsequent written notice delivered electronically in accordance with Section 10 of this Agreement. For the avoidance of doubt, the City's failure to provide any Water Curtailment Notice under this Section 6.1.1, shall not constitute a default under this Agreement. Notwithstanding, City will endeavor, but shall have no obligation, to provide 48-hours' notice of pending curtailment whenever possible to Company. The Company acknowledges and agrees that the nature of the operation of the Water System will often preclude the City's reasonable ability to provide 48-hours' notice of pending curtailment.

Upon receiving a Water Curtailment Notice, Company will curtail or cause to be curtailed Potable Water usage as outlined in the Water Curtailment Notice. City staff may require the purchase and installation of mechanically limiting devices to ensure water usage is curtailed in accordance with this Section 6.1.1. The installation of any such mechanically limiting devices will be completed or caused to be completed, by Company, at the Company's sole expense. If Company does not operate the Project, but instead leases the facility to another entity to occupy the facilities or run the Project, Company agrees to include in any lease or other legal documents executed with such other entity agreeing to Company's installation of any required mechanically limiting devices. Design standards and specifications of mechanically limiting devices shall be approved by City. The City, in its sole and absolute discretion, may require routine inspections and/or calibrations of such devices and Company shall allow, or cause to be allowed, such inspections and/or calibrations. Notwithstanding the foregoing, at the request of the Company, the City agrees to meet and confer in good faith to discuss an amendment to this Agreement to provide necessary approvals to allow the Company to obtain a replacement source or supplemental source, as the case may be, of potable water in such amounts necessary for the Company's operations. For the avoidance of doubt, the City retains the authority to approve or disapprove the drilling of water wells in the City limits and retains exclusive right to provide retail water utility service within the City's Certificate of Convenience and Necessity.

Upon request of the Company, the City agrees to provide additional gallons per day of Potable Water to Company for the Project in excess of the Potable Water Capacity Commitment, when such provision is in the best interest of the City and will not affect the City's ability to maintain adequate fire protection, pressures, appropriate tank levels, otherwise affect the safety and integrity of the Water System, or affect the ability of the City to provide service for other Water System customers, in the City's sole and absolute discretion ("**Contingent Potable Water Capacity**"). City shall designate a representative responsible for receiving requests from Company for

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Contingent Potable Water Capacity under this paragraph electronically or by telephone. Such designation shall be made in accordance with the notice requirements of Section 10 of this Agreement. Changes to City's representative designation shall not require amendment of this Agreement. City will grant or deny such request. City will not be arbitrary and capricious in determination of when such capacity is available. For the avoidance of doubt, the Contingent Potable Water Capacity provided to Company for the Project, if any, will not be considered as part of the continuous and adequate potable water as required by the Texas Water Code and the provision of Contingent Potable Water Capacity shall not be a guaranteed capacity commitment by the City and may be discontinued at any time in the sole and absolute discretion of the City.

For the avoidance of doubt, City, in its sole and absolute discretion shall determine when some or all of the Potable Water Capacity Commitment is not available or expected to be available and will determine the amount of Potable Water usage that must be curtailed by the Company for the Project and will determine the Contingent Potable Water Capacity, if any, that is available.

The provisions of this Section 6.1.1 shall survive the termination of this Agreement.

6.1.2 Raw Water Capacities.

If the Company elects to construct the City of Temple Synergy Well, the City agrees to provide up to 830,000 gallons per day of Raw Water to Company for the Project or the total amount of Raw Water produced and available each day from the City of Temple Synergy Well, whichever is less ("**Raw Water Capacity Commitment**"). Company agrees to use Raw Water as the primary source of water for Process Cooling Water and only use Potable Water for Process Cooling Water in the event that the City's available Raw Water is below 830,000 gallons per day and only until such time that the City's available Raw Water is at or above 830,000 gallons per day. For the avoidance of doubt, Company will be responsible for any treatment of the Raw Water necessary to ensure the water quality is sufficient for its intended use. The provisions of this Section 6.1.2 shall survive the termination of this Agreement.

6.1.3 Wastewater Capacities.

After acceptance of the Infrastructure Improvements and until September 30, 2024 (the "**Start Up Period**"), the City agrees to accept up to 500,000 gallons per day of wastewater from the Company or its tenants and provide collection and treatment services to Company or its tenants for the Project (**"Wastewater Capacity Commitment"**). After September 30,

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2024, the Wastewater Capacity Commitment will be adjusted after consultation with Company to reflect the actual single day peak use during the Start Up Period or 500,000 gallons per day, whichever is less. The provisions of this Section 6.1.3 shall survive the termination of this Agreement.

6.1.4 Treated Wastewater Effluent.

In the event that Treated Wastewater Effluent is available in excess of contractual obligations, included but not limited to, obligations to Temple Generation SF, LLC, the City agrees to meet and confer in good faith to discuss an amendment to this Agreement to sell Treated Wastewater Effluent to the Company for the Project in addition to the Wastewater Capacity Commitment, Potable Water Capacity Commitment and Raw Water Capacity Commitment.

6.1.5 Sourcing Additional Water.

Nothing in this Agreement shall prohibit the Company from seeking additional sources to provide water, both potable and non-potable, as needed for the Company's or its tenant's commercial operations on the Land.

At the request of the Company, the City agrees to meet and confer in good faith to discuss an amendment to this Agreement to provide necessary approvals to allow the Company to obtain and use additional sources of potable and non-potable water in such amounts necessary for the Project. Without prejudice to the Company's right to drill the City of Temple Synergy Well, for the avoidance of doubt, the City retains the authority to approve or disapprove the drilling of water wells in the City limits and retains exclusive right to provide retail water and sewer utility service within the City of Temple's Certificate of Convenience and Necessity.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, if the Company elects to construct the City of Temple Synergy Well, and in the event that the Project's Water Demand exceeds the City's available Raw Water Capacity Commitment, Potable Water Capacity Commitment, and Contingent Potable Water Capacity, the City hereby consents to the Company sourcing and obtaining (i) only the additional water necessary for the Project's Water Demand directly from the East Bell Water Supply Corporation; (ii) only if the provision of this water is not from a new groundwater well that is not in existence as of the Effective Date of this Agreement; and (iii) only until such time that the City is again able to meet and provide for the Project's Water Demand. This provision shall survive termination of this Agreement and shall be effective and enforceable

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for a period of twenty years after the Effective Date and shall be effective each and every time that the City is unable to meet and supply the Project's Water Demand. For the avoidance of doubt, this Section 6.1.5 is not intended to and does not exempt East Bell Water Supply Corporation from complying with the requirements, rules, regulations, or guidance of the Public Utility Commission of Texas or complying with any other applicable laws, rules, or regulations relating to the provision of retail water service within the City of Temple's Certificate of Convenience and Necessity and does not provide consent or establish an agreement between the City and East Bell Water Supply Corporation.

6.2. Process Cooling Water.

Company shall design and construct Project Improvements in such a way that separates the discharge from the water processed through Project's cooling system (the **"Process Cooling Water"**) from the discharge from the Company's domestic wastewater and will allow the City to elect, but shall not obligate the City, to collect, at no charge to the City, the Process Cooling Water instead of Company discharging the Process Cooling Water into the Wastewater System.

The provisions of this Section 6.2 shall survive the termination of this Agreement.

6.3. Fees and Rates for Connections and Services.

The Parties acknowledge and agree that standard fees, rates or other charges for the connection to or use of the Water System (collectively, the **"Water Rate"**) and the standard fees, rates or other charges for the connection to or use of the Wastewater System (collectively, the **"Wastewater Rate"**, and collectively with the Water Rate, the **"Rates"**) are set forth in Resolution No. 2021-0293-R. The Rates are subject to periodic adjustment, but any increases or decreases to the Rates must be approved by the City Council of the City. For purposes of the Rates, the City classifies users as "Industrial Class – Large Volume User" or "All Other Classes". Company will be classified as "All Other Classes". The classes of retail customers and Company's applicable Rates pursuant to City Regulations as of the Effective Date are contained in Resolution No. 2021-0293-R, which is attached hereto as **Exhibit "F"**. The Parties acknowledge and agree that standard fees, rates or other charges for the use of Raw Water (collectively, the **"Raw Water Rate"**) will be set forth in a resolution adopted by the City Council of the City. The Raw Water Rate is subject to periodic adjustment, but any increases or decreases to the Raw Water Rate must be approved by the City Council of the City.

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7. DEFAULT, TERMINATION AND FAILURE BY COMPANY TO MEET VARIOUS DEADLINES AND COMMITMENTS.

7.1 Failure to Meet Investment Commitment.

If the Commencement of Construction does not occur before the Commencement of Construction Deadline, if the Completion Date does not occur on or before the Completion Deadline, or if the Investment Commitment is not met by the Completion Deadline, the City shall have the right to terminate this Agreement by providing written notice to Company without further obligation to Company hereunder.

7.2 Failure to Pay City Taxes.

A default shall occur under this Agreement if any ad valorem taxes owed on the Land, the Project Improvements, or on Personal Property owned by Company and/or an Affiliate or used to meet the Investment Commitment, become delinquent and Company does not pay such taxes, cause such taxes to be paid or properly follow the legal procedures for protest and/or contest of any such taxes within the cure period specified herein. If any ad valorem taxes owed on the Land, Project Improvements, or on the Personal Property owned by Company and/or an Affiliate or used to meet the Investment Commitment become delinquent, prior to the City terminating this Agreement (i.e., the City may not terminate the Agreement until it provides such notice and cure period), City shall notify Company in writing and Company shall have thirty (30) calendar days from receipt of such notice to cure such default. If the default has not been cured by such time, the City shall have the right to terminate this Agreement immediately by providing written notice to Company and shall have all other rights and remedies that may be available to it under the law or in equity necessary to collect such delinquent taxes.

7.3 Foreclosure.

Subject to any rights of a Mortgagee pursuant to Section 18, upon the occurrence of any of the following events, the City will have the right to terminate this Agreement, immediately upon provision of written notice to Company: (i) the completion of an action to foreclose or otherwise enforce a lien, Mortgage or deed of trust on the Land or improvements located on the Land; (ii) the involuntary conveyance to a third party of the Land or improvements located on the Land; or (iii) the appointment of a trustee or receiver for the Land or improvements located on the Land.

7.4 Knowing Employment of Undocumented Workers.

Company acknowledges that the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. Company hereby certifies that Company, and any branches, divisions, or departments

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of Company, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Company, or any branch, division, or department of Company, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens), subject to any appellate rights that may lawfully be available to and exercised by Company, Company shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the value of the Infrastructure Reimbursement received by Company hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum.

For the purposes of this Section 7.4, **"Simple Interest"** is defined as a rate of interest applied only to an original value, in this case the aggregate value of Infrastructure Reimbursement received by Company pursuant to this Agreement. This rate of interest can be applied each year, but will only apply to the amount of the Infrastructure Reimbursement received hereunder and is not applied to interest calculated. For example, if the value of the Infrastructure Reimbursement received by Company hereunder is $10,000 and it is required to be paid back with four percent (4%) interest five years later, the total amount would be $10,000 + [5 x ($10,000 x 0.04)], which is $12,000. This Section 7.4 does not apply to violations of any subsidiary or other Affiliate of Company, any franchisees of Company, or any person or entity with whom Company contracts.

7.5 General Default.

Unless and to the extent stated elsewhere in this Agreement, a Party will be in default under this Agreement if that Party breaches any material term or condition of this Agreement and such breach remains uncured after thirty (30) calendar days following receipt of written notice from the other Party referencing this Agreement and identifying the default and curative action required to cure the same (or, if the Party in breach has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than thirty (30) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure) (collectively, the "**Standard Cure Period**"), the non-defaulting Party, will have the right to terminate this Agreement immediately by providing written notice to the other Party as well as all other available rights and remedies under the law, except as limited pursuant to the terms of this Agreement.

7.6 Mutual Waiver of Consequential Damages.

Except in the case of gross negligence, bad faith or willful misconduct, for which claims for consequential damages are expressly reserved by the Parties, each Party hereby waives all claims against the other Party for any consequential or indirect damages that may arise out of or relate to this Agreement.

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8. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed that Company shall operate as an independent contractor in each and every respect hereunder and not as an agent, representative or employee of the City. Company shall have the exclusive right to control all details and day-to-day operations relative to the Land and any improvements thereon and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. Company acknowledges that the doctrine of *respondeat superior* will not apply as between the City and Company, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. The Parties agree that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and Company.

9. INDEMNIFICATION AND RELEASE.

COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS SERVANTS AND EMPLOYEES (EACH AN "INDEMNIFIED PARTY"), HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) COMPANY'S DEFAULT WITH RESPECT TO ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF COMPANY, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS OR LESSEES, RELATED TO THE LAND, IMPROVEMENTS ON THE LAND, INCLUDING THE PROJECT IMPROVEMENTS, AND ANY OPERATIONS AND ACTIVITIES THEREON, OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE COMPANY SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE CITY AGAINST CLAIMS CAUSED BY AN INDEMNIFIED PARTY'S NEGLIGENCE OR WILLFUL MISCONDUCT, AND IF THE CITY INCURS CLAIMS THAT ARE CAUSED BY THE CONCURRENT FAULT OR NEGLIGENCE OF COMPANY AND AN INDEMNIFIED PARTY, THE COMPANY'S INDEMNITY OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL CLAIMS EQUIVALENT TO THE COMPANY'S OWN PERCENTAGE OF RESPONSIBILITY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

THE CITY HEREBY RELEASES AND AGREES TO HOLD HARMLESS COMPANY, ITS OFFICERS, AGENTS, AFFILIATES AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) THE CITY'S DEFAULT WITH RESPECT TO ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR

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OMISSION OR INTENTIONAL MISCONDUCT OF THE CITY, ITS OFFICERS, SERVANTS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, RELATED TO THE LAND, IMPROVEMENTS ON THE LAND, INCLUDING THE PROJECT IMPROVEMENTS, INFRASTRUCTURE IMPROVEMENTS AND ANY OPERATIONS AND ACTIVITIES THEREON, OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE CITY SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE COMPANY AGAINST CLAIMS CAUSED BY THE COMPANY'S NEGLIGENCE OR WILLFUL MISCONDUCT, AND IF THE COMPANY INCURS CLAIMS THAT ARE CAUSED BY THE CONCURRENT FAULT OR NEGLIGENCE OF COMPANY AND THE CITY, THE CITY'S OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL CLAIMS EQUIVALENT TO THE CITY'S OWN PERCENTAGE OF RESPONSIBILITY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

10. NOTICES.

Whenever any notice is required or permitted under this Agreement, it shall be in writing and shall be delivered (i) electronically; (ii) personally, with acknowledgment of receipt being obtained by the delivering Party; (iii) by U.S. Certified Mail, return receipt requested; or (iv) by overnight delivery service by a reliable company, such as Federal Express or the United States Parcel Service. Until further notification by written notice in the manner required by this Section 10, notices to the Parties shall be delivered as follows:

City:

City of Temple

Attn: City Manager
2 N. Main Street, Suite 306
Temple, Texas 76501
Email: citymanagerweb@templetx.gov

With a copy to:

Legal Department
Attn: City Attorney
2 N. Main Street, Suite 308
Temple, Texas 76501
Email: legal@templetx.gov

Company:

Temple Green Data, LLC

c/o Rowan Management Co., LLC
160 East State Street, Suite 120
Traverse City, Michigan 49684
Attn: Legal
Email: Legal@RowanDigit.al

With a copy to:

Quinbrook Infrastructure Partners
1330 Post Oak Boulevard, Suite 1350
Houston, Texas 77056
Attn: Daniel Chavez, General Counsel
Email: DC@quinbrook.com

If notice is given by U.S. Certified Mail, then the notice shall be deemed to have been given on the third (3rd) Business Day after the date the envelope containing the notice is deposited in the U.S. Mail, properly addressed to the Party to whom it is directed, postage prepaid. Notice made by personal delivery or overnight delivery shall be deemed given

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when received. Notice given electronically shall be deemed given the next Business Day after it has been successfully sent.

11. ASSIGNMENT AND SUCCESSORS.

11.1 Affiliates.

Notwithstanding any provision in this Agreement to the contrary, the Company may assign its rights and obligations under this Agreement, in whole or in part, without the consent of the City, but upon written notice to the City, to an Affiliate. Upon such assignment the assigning entity shall be relieved of its covenants, commitments and obligations hereunder to the extent of the rights and obligations so assigned.

11.2 Collateral Assignment.

Company may assign its rights and obligations under this Agreement to a financial institution or other lender for purposes of granting a Mortgage in the Land and/or improvements thereon without the consent of the City, but upon not less than fourteen (14) days advance written notice to the City.

11.3 Other Assignment.

Except as otherwise provided herein, Company may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the consent of the City Council, which consent shall not be unreasonably withheld, conditioned or delayed; provided that the proposed assignee first executes a written agreement with the City under which the proposed assignee agrees to assume and be bound by all covenants and obligations of Company under this Agreement, to the extent of the rights and obligations assigned (and upon such assignment the assigning entity shall be relieved of its covenants, commitments and obligations hereunder to the extent of the rights and obligations so assigned). Any permitted assignee or successor in interest of Company under this Agreement shall be deemed "Company" for all purposes under this Agreement.

12. ESTOPPEL CERTIFICATE.

Upon written request by Company to the City, the City will provide Company with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Company is in default of this Agreement, the nature of the default and the curative action required to cure the same; (ii) a statement as to whether this Agreement has been amended and, if so, the identity of each amendment; and (iii) any other factual matters reasonably requested that relate to this Agreement. The City Manager or its authorized designee may execute, on behalf of the City, any estoppel certificate requested by the Company that is consistent with this Section 11. The City acknowledges that an estoppel certificate may be relied upon by transferees or successors in interest to the Company and by Mortgagees holding an interest in the Land.

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13. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations.

14. LIMITED WAIVER OF IMMUNITY.

The Parties are entering into this Agreement in reliance upon its enforceability. Consequently, the City unconditionally and irrevocably waives all claims of sovereign and governmental immunity which it may have (including, but not limited to, immunity from suit and immunity to liability), if any, to the extent, but only to the extent, that a waiver is necessary to enforce specific performance of this Agreement (including all of the remedies provided under this Agreement) and to give full effect to the intent of the Parties under this Agreement. Notwithstanding the foregoing, the waiver contained herein shall not waive any immunities that the City may have with respect to claims of injury to persons or property, which claims shall be subject to all of their respective immunities and to the provisions of the Texas Tort Claims Act. Further, the waiver of immunity herein is not enforceable by any party not a Party to this Agreement.

15. NOISE REGULATION.

The Company agrees to use, or cause to be used, commercially reasonable efforts in design, construction, and operation of the Project to minimize noise to adjacent properties to the greatest extent possible. Section 7.1.2 of the Unified Development Code contains decibel level requirements for development within the City and provides that "[a]t no point at the property line may a zoning district receive sound pressure levels that exceed the decibel levels specified in the groups designated" in the table provided in Section 7.1.2. Additionally, Chapter 24 of the City's Code of Ordinances contains the requirement that "[a]ny unreasonably loud, disturbing, unnecessary noise which causes material distress, discomfort or injury to persons of ordinary sensibilities in the immediate vicinity thereof is hereby declared to be a nuisance and is hereby prohibited." Company acknowledges and agrees that while Section 7.1.2 of the Unified Development Code sets the absolute ceiling for allowable decibel levels under any circumstance, it is not intended to and does not make the maximum decibel levels appropriate in all circumstances. Company acknowledges and agrees that compliance with Section 7.1.2 of the Unified Development Code does not preclude a valid noise complaint being pursued under Chapter 24 of the City's Code of Ordinances, or other Applicable City Rules, for factors including, but not limited to, duration or time of noise. Company anticipates the need to test and operate back-up generators to power the facilities and systems associated with the Project, which are expected to comply with the maximum decibel level requirements provided in Section 7.1.2 of the Unified Development Code. It is expected that the operation of the systems that could potentially emit sound at the maximum expected decibels would be only operated for short periods of time for testing or maintenance or would be in operation during a power outage or similar emergency.

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In the event a noise complaint is received by the City regarding the construction or operation of the Project, and the City, after a review of the complaint and in its sole and absolute discretion, finds that it is probable that a person of reasonable sensibility would have been disturbed in such a way that causes material distress, discomfort, or injury to persons of ordinary sensibilities in the immediate vicinity thereof, the Parties shall use their commercially reasonable best efforts to consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a reasonably just and equitable solution satisfactory to all Parties. Company agrees that the installation of noise shielding measures adjacent to residential, parkland, or agricultural properties, at the sole expense of the Company, may be required as part of a reasonably just and equitable solution to resolve a noise complaint. If Parties do not reach such a solution within a period of sixty (60) calendar days, then the City, in its sole and absolute discretion, and upon notice to Company may (i) issue a citation which shall be prosecuted in the municipal court; and/or (ii) submit the complaint to final and binding arbitration. The arbitration shall be conducted by a single arbitrator in Bell County, Texas and shall be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA in force at the time of the commencement of the arbitration. The written decision of the arbitrator shall be final and binding on both Parties and may not be appealed by either Party, except for any decision procured by fraud or collusion, or which exceeds the arbitrator's jurisdiction, or which is based on legal conclusions or interpretations which are clearly contrary to existing law. Each Party shall be responsible for its own expenses in preparing for and representing itself at arbitration, but the fees and expenses of the arbitrator shall be borne equally by the Parties.

The provisions of this Section 15 shall survive the termination of this Agreement.

16. <u>NO WAIVER</u>.

The failure of either Party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that Party's right to insist upon appropriate performance or to assert any such right on any future occasion.

17. <u>VENUE AND JURISDICTION; ATTORNEYS' FEES</u>.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in and be brought exclusively in the courts of Bell County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas. In the event any action is brought in a court of competent jurisdiction by either Party hereto against the other Party, relating to or arising out of this Agreement, the transaction described herein or the enforcement hereof, the prevailing Party shall be entitled to recover from the other Party the reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including, without limitation, the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section 17 shall survive the termination of this Agreement and the entry of any judgment, but shall not merge, or be deemed to have merged, into any judgment.

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18. MORTGAGES.

18.1 Mortgages.

This Agreement shall not prevent or limit the Company from encumbering the Land or any estate or interest therein, portion thereof, or any improvement thereon, in any manner whatsoever by one or more Mortgages with respect to the construction, development, use or operation of the Project or any portion thereof. The City acknowledges that the Company may request modifications of this Agreement required by a lender. The City will not unreasonably withhold its consent to any such requested modification that is consistent with the intent and purposes of this Agreement and does not alter, diminish or reduce any of the Company's financial obligations to the City.

18.2 Mortgagee Not Obligated.

A Mortgagee shall not have any obligation or duty to perform pursuant to the terms set forth in this Agreement unless it or any of its insiders or affiliates acquire all or any part of the Land or Project as a result of exercise of its foreclosure or other remedies.

18.3 Mortgagee Notice and Cure Rights.

If requested in writing by a Mortgagee, the City shall deliver to such Mortgagee any notice of default delivered to the Company hereunder. Notwithstanding any statement to the contrary herein, a Mortgagee shall have the right, but not the obligation, to cure such default within one hundred twenty (120) days after such Mortgagee receives such notice, during which period the City shall not exercise any remedies hereunder.

18.4 Disaffirmation.

If this Agreement is terminated with respect to a portion of the Land by reason of any default by the Company or as a result of a bankruptcy proceeding of the Company, or if this Agreement is disaffirmed by a receiver, liquidator or trustee for the Company or its property, then the City, if requested by a Mortgagee, shall negotiate in good faith, with the most senior requesting Mortgagee, a new development agreement for the Project as to such portion of the Land. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this Section 18.4.

19. SEVERABILITY; CONFLICTING LAW.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. If any law is enacted after the Effective Date that prohibits either Party from materially performing its duties and obligations under this Agreement or that affects the ability of Company to receive the Infrastructure Reimbursement (or any portion

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thereof) hereunder, the Parties agree to meet and confer in good faith for a period of no less than thirty (30) and no more than ninety (90) days to seek to effectuate an amendment to this Agreement that preserves, to the extent reasonably possible, the original intentions of the Parties under this Agreement, with the understanding that this Agreement cannot be amended without the approval of the City Council.

20. CONFIDENTIAL INFORMATION.

City and Company acknowledge and agree that this Agreement and any information provided by Company to the City may be subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code (the "**TPIA**"). If the City receives a request for information about Company or this Project that may be considered a trade secret or confidential business information, the City shall follow the standards set out in the TPIA and under the Texas Attorney General's procedures for such requests. Company shall be responsible for defending the confidentiality of such information at its sole cost and expense.

21. MUTUAL ASSISTANCE; DISPUTE RESOLUTION.

The Parties will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions, including without limitation, the City facilitating approval of City permits, documents, and other instruments as may be reasonably necessary in carrying out such objectives. In case of any disputes arising under this Agreement, the City and Company agree to attempt to resolve such disputes through good faith negotiations between authorized representatives of both Parties. If a dispute cannot be resolved through good faith negotiations (within a 30-day period from commencing such negotiations), either Party may pursue any available legal remedies in any court of competent jurisdiction that satisfies the requirements of Section 17, or, if both Parties mutually agree, the dispute may be submitted to binding arbitration in accordance with procedures to which both Parties agree.

22. CITY PROCEDURES AND ACTIONS.

The City represents and warrants that the City Council, after conducting a duly-noticed public meeting, adopted Resolution No. 2022-0092 on April 7, 2022, effective immediately upon adoption, which resolution (i) confirmed the City Council's approval of this Agreement and the City Council's finding that the provisions of this Agreement are consistent with the Comprehensive Plan and the Applicable City Rules and (ii) authorized the execution of this Agreement. The City represents and warrants to the Company that (a) the City has the full power and authority to enter into this Agreement and to perform its obligations hereunder, (b) this Agreement is a valid and binding obligation, enforceable against the City in accordance with the terms hereof and (c) the execution and delivery of

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this Agreement has been validly authorized by all necessary governmental or other action and does not conflict with any other agreements entered into by the City.

23. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the Parties, including any successor or permitted assign of Company, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

24. FORCE MAJEURE.

It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of Force Majeure, 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 design or construction requirement and the completion deadline shall be extended for a period of time equal to the period such Party was delayed; provided, however, in all cases, only to the extent that the Party claiming Force Majeure (1) did not cause such Force Majeure condition, and (2) throughout the pendency of such Force Majeure condition, utilizes commercially reasonable efforts to minimize the impact and delays caused by such Force Majeure condition.

25. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any Party, regardless of the actual drafter of this Agreement.

26. CAPTIONS.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

27. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Parties as to the matters contained herein. Any prior or contemporaneous oral or written agreement related to a Chapter 380 Economic Development Program, including the Infrastructure Reimbursement provided for herein, is hereby declared null and void to the extent in conflict with any provision of this Agreement, and superseded by this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both Parties and approved by the City Council.

28. WAIVER OF JURY TRIAL.

EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION

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OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO. EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT EITHER PARTY MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS EVIDENCE OF SUCH WAIVER.

29. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument. A scanned or photocopy signature on this Agreement, any amendment hereto or any notice delivered hereunder shall have the same legal effect as an original signature.

30. CONFLICTS OF INTEREST.

Neither the Land nor any improvements thereon are owned or leased by any member of the City Council or any member of the City Planning and Zoning Commission.

31. COMPLIANCE WITH TEXAS GOVERNMENT CODE.

For purposes of sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Company verifies that the Company and any parent company, wholly owned subsidiary, majority-owned subsidiary, and Affiliate (i) do not boycott energy companies and are authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in section 809.001 of the Texas Government Code; (ii) do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and are authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts (as used in this Section 31, "Discriminate against a firearm entity or firearm trade association" has the meaning provided in section 2274.001(3) of the Texas Government Code, and "Firearm entity" and "firearm trade association" have the meanings provided in section 2274.001(6) and (7) of the Texas Government Code); (iii) do not boycott Israel and are authorized to agree in such contracts not to boycott Israel during the term of such contracts (as used in this Section 31, "Boycott Israel" has the meaning provided in section 808.001 of the Texas Government Code); and (iv) unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, are not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under section 2252.153 or section 2270.0201 of the Texas Government Code.

32. BUILDING MATERIALS AND SCREENING DEVICES.

32.1 The Company agrees to construct all office and accessory buildings other than data halls with brick, stone, textured painted tilt wall, architecturally finished concrete, or other

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similar masonry materials. The buildings must be architecturally finished on the front and side façades with same materials, detailing and features. As long as the rear façade is not visible from a public street or residential property and is painted to match the rest of the building, it is exempt from these architectural requirements.

32.2 The Company agrees to install a screening device along the perimeter of the Land that fronts Lorraine Ave. and Bob White Road. The screening device may consist of: (a) a masonry wall or pre-cast concrete fence with a minimum height of 8 feet; or (b) landscaping and/or berming where the landscaping includes canopy trees and shrubs or a combination of canopy trees, shrubs and berms. Landscape screening must consist of a minimum of one canopy tree and six shrubs for every 40 linear feet of street frontage. Berms from 36 inches to 48 inches in height at no more than a four to one slope may be substituted for a maximum of 50% of the required perimeter landscaping.

[Signatures on the following page]

EXECUTED as of the last date indicated below:

CITY:

City of Temple, a municipal corporation of the State of Texas

DocuSigned by:

DocuSigned by:

By: Brynn Myers
E37CE5415DD84F8...
Name: Brynn Myers
Title: City Manager

Date: 9/27/2022 | 4:50 PM CDT

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:

By: Kathryn H. Davis
48CE0E5202E9848E...
Name: Kathryn H. Davis
City Attorney

TEMPLE GREEN DATA LLC
a Delaware limited liability company

DocuSigned by:

By: Valentin Angelkov
76A601AFF843489...
Name: Valentin Angelkov
Title: Chief Executive Officer

Date: 9/23/2022 | 12:39 PM PDT

DocuSign Envelope ID: A723AABE-3676-4E51-A99D-6F05EBC8C10C

EXHIBITS

"A" – Description of the Land

"B" – Site Plan for Phase 1 Development

"C" – Infrastructure Improvements

"D" – Form of Phase 1 Development Completion Report

"E" – Form of Employment Report

"F" – Classes of Retail Customers and Customer's Rates

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EXHIBIT "A"

Description of the Land

(See attached)

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EXHIBIT "A"

32.403 ACRES OR 1,411,491 SQUARE FEET

BEING A TRACT OF LAND LOCATED IN THE MAXIMO MORENO SURVEY, ABSTRACT NO. 14, AND BEING A PART OF A CALLED 158.22 ACRE TRACT OF LAND TO KATHLEEN E. COBURN AND DONALD COBURN DESCRIBED IN GENERAL WARRANTY DEED DATED FEBRUARY 10, 2010 OF RECORD IN DOCUMENT NO. 2011-00008340, OFFICIAL PUBLIC RECORDS, BELL COUNTY, TEXAS, BEING ALSO PART OF FIRST TRACT, SECOND TRACT AND THIRD TRACT DESCRIBED IN A DEED TO MAGGIE ETHEL MANLEY, MORRIS JAMES MANLEY AND DOROTHY MARIE MANLEY OF RECORD IN VOLUME 720, PAGE 184, DEED RECORDS, BELL COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8" IRON ROD WITH CAP STAMPED "RON CARROLL 2025" FOUND AT THE MOST NORTHERLY NORTHWEST CORNER OF SAID 158.22 ACRE TRACT, SAME BEING AN INTERIOR SOUTH CORNER OF A CALLED 50 ACRE TRACT OF LAND TO JOE R. MOORE AND KEITH ALLEN MOORE, DESCRIBED IN A DEED DATED OCTOBER 26, 2011 AND RECORDED IN DOCUMENT NO. 2011-00036961, OFFICIAL PUBLIC RECORDS, BELL COUNTY, TEXAS, SAID **POINT OF BEGINNING** HAVING GRID COORDINATES X:3,246,145.82', Y:10,362,573.18';

THENCE WITH THE NORTH LINE OF SAID 158.22 ACRE TRACT, SAME BEING THE SOUTH LINE OF SAID 50 ACRE TRACT, SOUTH 73°30'53" EAST, A DISTANCE OF 1105.67 FEET TO A 5/8" IRON ROD WITH CAP STAMPED "RON CARROLL 2025" FOUND AT THE NORTHEAST CORNER OF SAID 158.22 ACRE TRACT, SAME BEING ON THE SOUTH LINE OF SAID 50 ACRE TRACT AND THE WEST MARGIN OF BOB WHITE ROAD;

THENCE WITH THE EAST LINE OF SAID 158.22 ACRE TRACT, SAME BEING THE WEST MARGIN OF BOB WHITE ROAD, SOUTH 04°11'28" WEST, A DISTANCE OF 1457.44 FEET TO A 5/8" IRON ROD WITH CAP STAMPED "SAM" SET FOR THE SOUTHEAST CORNER OF THIS 32.403 ACRE TRACT DESCRIBED HEREIN, FROM WHICH A 5/8" IRON ROD WITH CAP STAMPED "RON CARROLL 2025" FOUND AT AN ANGLE POINT IN THE EAST LINE OF SAID 158.22 ACRE TRACT, SAME BEING THE WEST MARGIN OF BOB WHITE ROAD, BEARS SOUTH 04°11'28" WEST, A DISTANCE OF 755.46 FEET;

THENCE OVER AND ACROSS SAID 158.22 ACRE TRACT, NORTH 73°39'29" WEST, A DISTANCE OF 1032.96 FEET TO A 5/8" IRON ROD WITH CAP STAMPED "SAM" SET FOR THE SOUTHWEST CORNER OF THIS 32.403 ACRE TRACT DESCRIBED HEREIN;

THENCE NORTH 16°34'27" EAST, AT 62.75 FEET PASS A 5/8" IRON ROD WITH CAP STAMPED "ACS" FOUND AT AN ELL CORNER OF SAID 158.22 ACRE TRACT, SAME BEING THE SOUTHEAST CORNER OF A CALLED 45 ACRE TRACT OF LAND TO WILLIAM K. PAYNE, IN A DEED DATED JUNE 21, 1995 RECORDED IN VOLUME 3356, PAGE 104, AND DESCRIBED IN VOLUME 915, PAGE 572, DEED RECORDS, BELL COUNTY, TEXAS, AND CONTINUING WITH A WEST LINE OF SAID 158.22 ACRE TRACT, SAME BEING THE EAST LINE OF SAID 45 ACRE TRACT, FOR A TOTAL DISTANCE OF 999.70 FEET TO A 3/8" IRON ROD (NO CAP) FOUND AT AN INTERIOR CORNER OF SAID 158.22 ACRE TRACT, SAME BEING THE NORTHEAST CORNER OF SAID 45 ACRE TRACT;

THENCE WITH A SOUTH LINE OF SAID 158.22 ACRE TRACT, SAME BEING THE NORTH LINE OF SAID 45 ACRE TRACT, NORTH 72°21'04" WEST, A DISTANCE OF 381.44 FEET TO A 5/8" IRON ROD WITH CAP STAMPED "RON CARROLL 2025" FOUND AT A SOUTHWEST CORNER OF SAID 158.22 ACRE TRACT, SAME BEING A SOUTHEAST CORNER OF SAID 50 ACRE TRACT;

(INTENTIONALLY LEFT BLANK)

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EXHIBIT "A"

THENCE WITH A WEST LINE OF SAID 158.22 ACRE TRACT, SAME BEING AN EAST LINE OF SAID 50 ACRE TRACT, NORTH 16°02'32" EAST, A DISTANCE OF 419.17 FEET TO THE **POINT OF BEGINNING** OF THE TRACT DESCRIBED HEREIN, CONTAINING 32.403 ACRES OF LAND, MORE OR LESS.

NORTH, BEARINGS, DISTANCES AND COORDINATES SHOWN HEREON ARE SURFACE VALUES DERIVED FROM THE TEXAS COORDINATE SYSTEM OF 1983(2011), CENTRAL ZONE (4203).

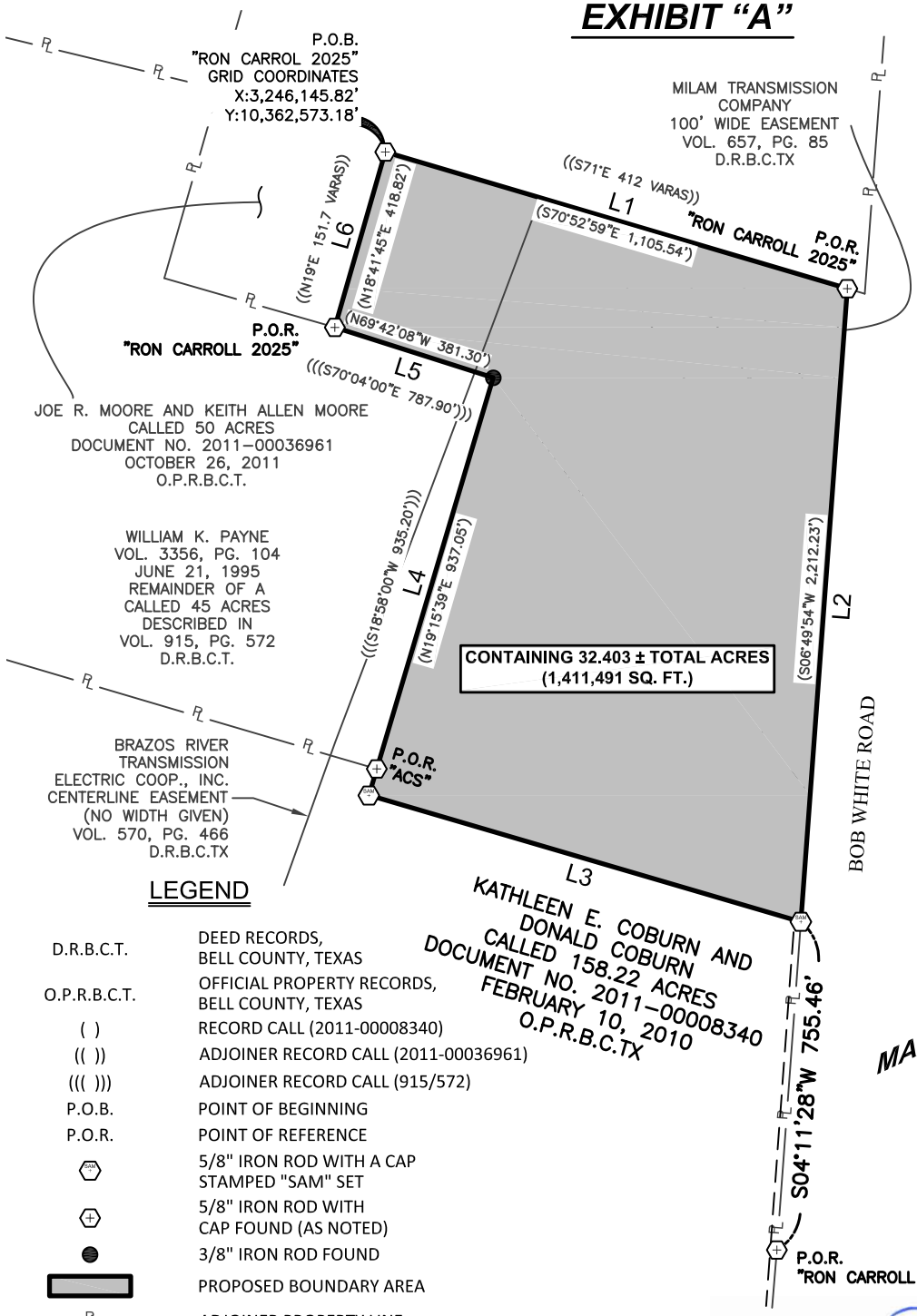
PLAT OF EVEN DATE ACCOMPANIES, AND IS CONSIDERD AN INTEGRAL PART OF, THIS DESCRIPTION.

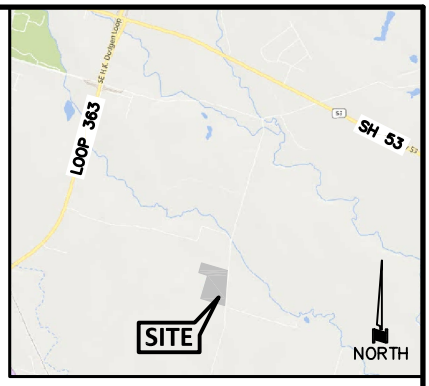
September 28, 2021

RIZK IKHRAIS
TEXAS PROFESSIONAL LAND SURVEYOR NUMBER 5381
SURVEYING AND MAPPING, LLC.
TEXAS FIRM REGISTRATION NO. 10064300

STATE OF TEXAS
REGISTERED
RIZK H. IKHRAIS
5381
PROFESSIONAL
LAND SURVEYOR

EXHIBIT "A"





VICINITY MAP
NOT TO SCALE

0 400' 800'

GRAPHIC SCALE
1" = 400'

LINE TABLE		
NUMBER	BEARING	DISTANCE
L1	S73°30'53"E	1105.67
L2	S04°11'28"W	1457.44
L3	N73°39'29"W	1032.96
L4	N16°34'27"E	999.70
L5	N72°21'04"W	381.44
L6	N16°02'32"E	419.17

LEGEND

D.R.B.C.T.	DEED RECORDS, BELL COUNTY, TEXAS
O.P.R.B.C.T.	OFFICIAL PROPERTY RECORDS, BELL COUNTY, TEXAS
( )	RECORD CALL (2011-00008340)
(( ))	ADJOINER RECORD CALL (2011-00036961)
((( )))	ADJOINER RECORD CALL (915/572)
P.O.B.	POINT OF BEGINNING
P.O.R.	POINT OF REFERENCE
	5/8" IRON ROD WITH A CAP STAMPED "SAM" SET
	5/8" IRON ROD WITH CAP FOUND (AS NOTED)
	3/8" IRON ROD FOUND
	PROPOSED BOUNDARY AREA
	ADJOINER PROPERTY LINE

NOTES:

1. THIS DRAWING WAS PREPARED FOR THE LIMITED USE OF BIRCH INFRASTRUCTURE, PBLLP.
2. LAND OWNERSHIP INFORMATION PROVIDED BY CLIENT. NO ADDITIONAL VERIFICATION HAS BEEN PERFORMED BY SURVEYING AND MAPPING, LLC.
3. BASIS OF BEARINGS DERIVED FROM THE U.S. STATE PLANE COORDINATE SYSTEM OF 1983, NAD83 (2011), TEXAS CENTRAL ZONE (4204). DISTANCES SHOWN ARE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 0.9998593633.
4. SAM, LLC ACCEPTS NO RESPONSIBILITY TO THE ACCURACY OF THE ABOVE INFORMATION PROVIDED BY OTHERS.
5. THIS EXHIBIT DOES NOT REFLECT ANY UNDERGROUND UTILITIES, EASEMENTS OF RECORD OR OTHER ENCUMBRANCES THAT MAY AFFECT THE SUBJECT TRACT OTHER THAN THE ONES SHOWN HEREON.

STATE OF TEXAS
REGISTERED
RIZK H. IKHRAIS
5381
PROFESSIONAL
LAND SURVEYOR

September 28, 2021

RIZK IKHRAIS DATE
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 5381, STATE OF TEXAS
TEXAS FIRM NO. 10064300

SAM
4801 SOUTHWEST PARKWAY
BUILDING TWO, SUITE 100, AUSTIN, TEXAS
Ph: (512) 447-0575 Fax: (512) 326-3029
EMAIL: SAM@SAM.BIZ
TX FIRM NO. 1064300

BIRCH INFRASTRUCTURE

TEMPLE DATA CENTER - PHASE I
CONTAINING 32.399 ± ACRES

MAXIMO MORENO SURVEY
ABSTRACT NO. 14, BELL COUNTY, TEXAS

SCALE: 1"=400'	DATE: 9/27/2021	DRAWN: ADC	SHEET: 3 OF 3

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EXHIBIT "B"

Site Plan for Phase 1 Development

(See Attached)

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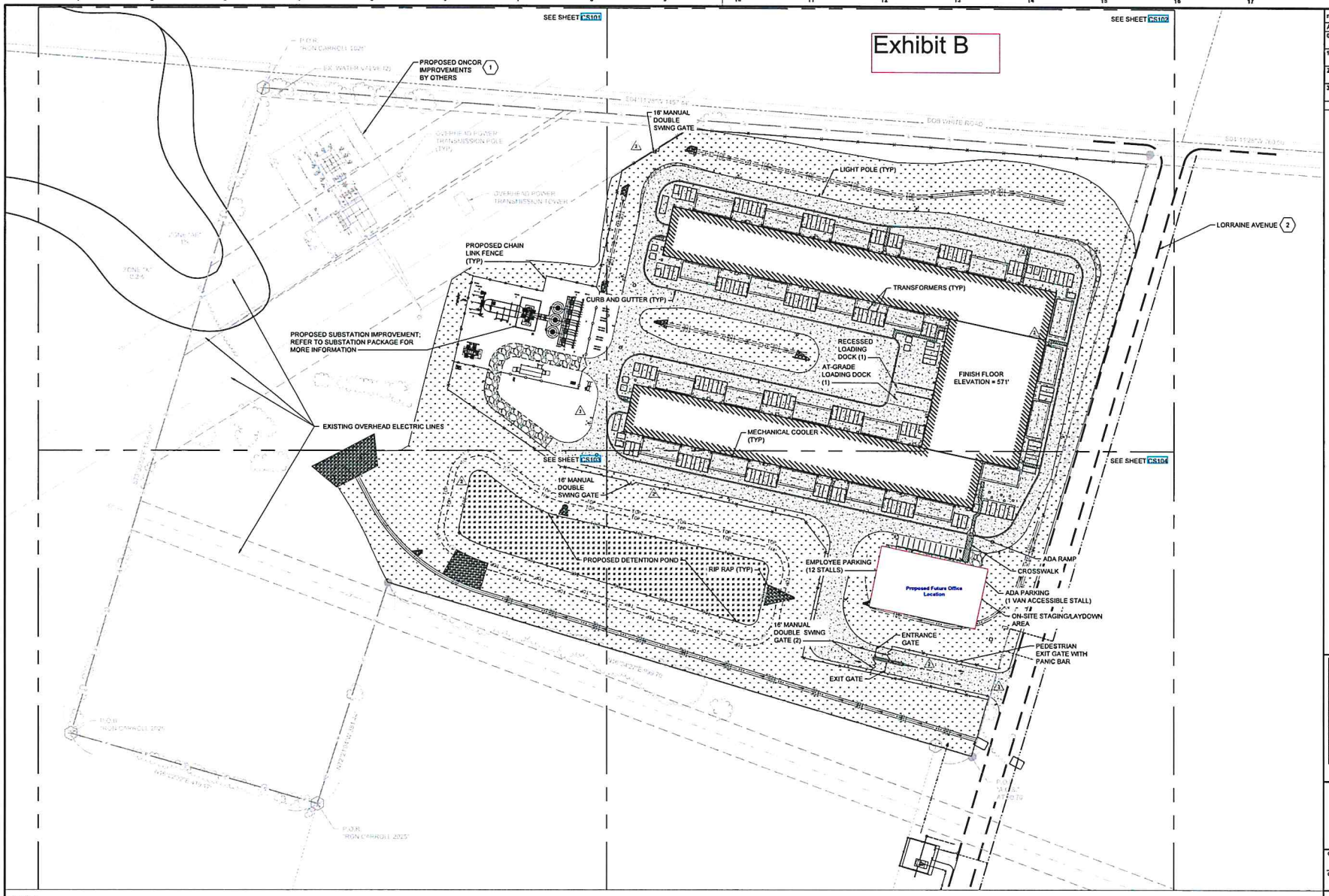
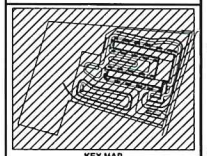
Exhibit B



no.	date	by	ckd	description
A	09/24/21	DLW	CAK	ISSUED FOR PERMIT
0	10/05/21	DLW	CAK	ISSUED FOR CONSTRUCTION
1	10/29/21	DLW	CAK	IFC - FOUNDATION & UNDERGROUND
2	11/4/21	DLW	CAK	IFC - FOUNDATION & UNDERGROUND
3	12/14/21	DLW	CAK	IFC - FOUNDATION & UNDERGROUND



KEY MAP
NOT TO SCALE

BURNS McDONNELL
9400 WARD PARKWAY
KANSAS CITY, MO 64114
TEXAS REGISTRATION F-845

date	detailed
09/09/2021	D.WILLIAMS
designed	checked
C. KINGSLAND	J. KOCHTANEK

LEGEND:

- PROPERTY LINE
- EXISTING UTILITY EASEMENT
- EXISTING VEGETATION
- EXISTING OVERHEAD POWER LINE
- PROPOSED TOE OF SLOPE
- PROPOSED TOP OF SLOPE
- PROPOSED WATER LEVEL
- PROPOSED CHAIN LINK FENCE (4 CS501)
- PROPOSED FLOWLINE
- FUTURE LORRAINE AVENUE
- LIGHT DUTY CONCRETE PAVEMENT (2 CS501)
- AGGREGATE SURFACING (4 CS501)
- ASPHALT PAVEMENT (3 CS501)
- SPECIAL SEEDED AREA

NORTH

OVERALL SITE PLAN
0 60' 120'
SCALE IN FEET

KEYED NOTES:

1. PROPOSED ONCOR IMPROVEMENTS ARE BY OTHERS, AND FOR REFERENCE ONLY, NOT IN CONTRACT
2. PROPOSED LORRAINE AVENUE IMPROVEMENTS ARE BY OTHERS, AND FOR REFERENCE ONLY, NOT IN CONTRACT.

STATE OF TEXAS
CHRISTY A. KINGSLAND
137153
LICENSED PROFESSIONAL ENGINEER
12/20/21

TEMPLE GREEN DATA LLC
2810 BOB WHITE ROAD
BELL COUNTY, 76501

PROJECT LONGHORN
OVERALL SITE PLAN

project	contract
134982	
drawing	rev.
CS100	3

sheet 3 of 60 sheets
file 134982_CS100_OVERALL_SITE_PLAN.dwg

COPYRIGHT © 2021 COMPANY CONTRACTING ENTITY

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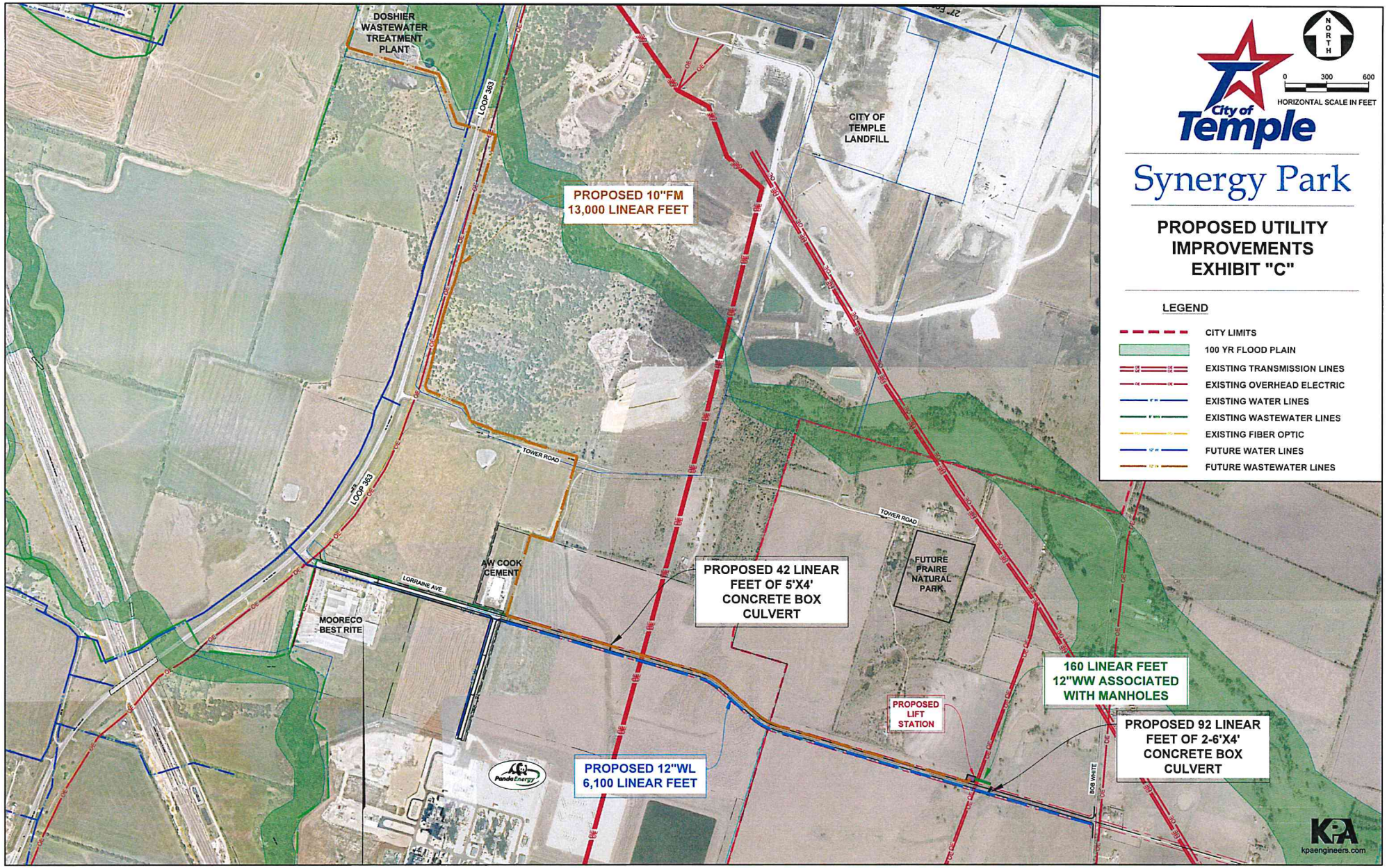
EXHIBIT "C"

Infrastructure Improvements

(See Attached)



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DocuSign Envelope ID: A723AABE-3676-4E51-A99D-6F05EBC8C10C

EXHIBIT "D"

Form of Phase 1 Development Completion Report

CITY OF TEMPLE – 380 ECONOMIC DEVELOPMENT AGREEMENT
PHASE 1 DEVELOPMENT COMPLETION REPORT

Date:
Company:
Effective Date of Agreement:

Calendar Year	Reported Investment in Development Costs for Phase 1	Reported Investment in Personal Property for Phase 1	Total Reported Investment for Phase 1
Total	**$**	**$**	**$**

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EXHIBIT "E"

Form of Employment Report

CITY OF TEMPLE – 380 ECONOMIC DEVELOPMENT AGREEMENT
EMPLOYMENT REPORT

Date:
Company:
Effective Date of Agreement:

Number	Employer	Redacted Employee Number (last 3 digits)	Start Date	Full-Time (Yes/No)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
	Average Wage of 20 Employees			**$**

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EXHIBIT "F"

Classes of Retail Customers and Customer's Rates

(See Attached)

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Exhibit F

RESOLUTION NO. 2021-0293-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AMENDING RESOLUTION 2019-9880-R RELATED TO UTILITY SYSTEM FEES; REPEALING RESOLUTION 2017-8899-R AND CONSOLIDATING THE PROVISIONS OF RESOLUTION 2017-8899-R INTO A SINGLE CONSOLIDATED AND UPDATED RESOLUTION; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the City engaged the services of NewGen Strategies & Solutions to develop a six-year Water/Wastewater system cost of service study (FY 2020 – FY 2025) and as part of the analysis and development of the six-year revenue requirement, NewGen reviewed and analyzed the following:

- Historical and projected trends with regards to operations and maintenance costs, debt service, capital improvements, water usage, and wastewater flows;
- Fixed versus variable cost of the system;
- Consumption and rainfall data in order to 'normalize' the revenue requirement for 'wet' and 'dry' years; and
- Inflation adjustments for labor, benefits, chemicals, electricity, and all other operating costs;

Whereas, one of the key elements of the study was to develop the revenue requirement for a multi-year capital improvement program to construct, replace, or rehab numerous components in the City of Temple distribution and collection systems and address additional staffing needs for the operations and maintenance of the system and other operations and maintenance cost of the system;

Whereas, the cost of service study is reviewed and updated by city staff annually. The updated cost of service study covers a seven-year period (FY 2022 – FY 2028);

Whereas, Article IV of Chapter 38 of the City's Code of Ordinances provides that the City is authorized to create classes of utility customers, including, but not limited to, commercial, industrial, and industrial classes, and authorizes the City Council to set utility service rates by resolution, which may vary based on class of customer;

Whereas, the City Council has passed and approved Ordinance No. 2021-0041-O, which amended Chapter 38, Water, Sewers, and Sewage Disposal, of the City's Code of Ordinances (Chapter 38) adding a new article to this Chapter, Article X, High-Strength Waste Treatment Cost Recovery (Article X);

Whereas, Subsection 38-166(a) of Article X, authorizes the City to develop charges and fees, in accordance with Sec. 38-31 of Chapter 38, to recover the costs of treating high-strength wastewater and sampling and analysis required to quantify pollutant concentrations;

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Whereas, Staff recommends that City Council set monthly permit fees for Categorical and Significant Industrial Users, as defined under Sec. 38-93 of Chapter 38;

Whereas, Staff recommends that City Council authorize the City to charge a $75 monthly permit fee to Categorical Industrial Users and a $50 monthly permit fee to Significant Industrial Users;

Whereas, Sec. 38-164 of Article X provides that the City will identify high-strength wastewater contributors through sampling and analysis and such sampling and analysis will be conducted by the City unless the City's Director of Public Works or his delegate approves or requires self-monitoring by the user, as defined under Sec. 38-93 of Chapter 38 (user);

Whereas, Staff recommends that City Council authorize the City to recover the City's costs associated with lab analysis conducted by the City under Sec. 38-164 of Article X by passing through these costs to the user;

Whereas, Sec. 38-166 of Article X provides how to calculate each user's quarterly surcharge fees;

Whereas, Staff recommends each user's quarterly surcharge fees calculated under Sec. 38-166 of Article X be charged to the user as provided by City policy;

Whereas, Subsection 38-166(f) of Article X, provides that any charges, fees, or cost recovery amounts established under Subsection 38-166(a) of Article X, will become effective on the dates provided under the associated resolution, as amended, which sets the fee schedule for such charges, fees, and cost recovery amounts;

Whereas, Staff recommends the effective date for such monthly permit fees and lab analysis cost recovery be October 1, 2021 and the effective date for such quarterly surcharges be October 1, 2022;

Whereas, with 11 industrial users in the City's wastewater system, revenues from Staff's proposed permitting fees are estimated at $7,500 per year, revenues from surcharge fees are estimated at $21,240 per year, and lab analysis pass through revenues are estimated at $1,000 – $2,000 per industrial user per year;

Whereas, City Council passed Resolution 2017-8899-R, which set the fees associated with a liquid waste transport truck discharge permit;

Whereas, in an effort to consolidate utility billing resolutions into a single billing resolution to reduce City Staff and public confusion, City Staff recommends repealing Resolution 2017-8899-R and amending Resolution 2019-9880-R to include Resolution 2017-8899-R's provisions;

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Whereas, this Resolution's rate structure includes the creation of Industrial Class – Large Volume Users, inclusion of Categorical Industrial Users and Significant Industrial Users, and the distinction between residential and non-residential customers;

Whereas, the term "Industrial Class – Large Volume User" as the term relates to water usage will be defined as a customer that maintains a use of 50 MG or greater of water per month;

Whereas, the term "Industrial Class – Large Volume User" as the term relates to wastewater production will be defined as a customer that produces 10 MG or greater of wastewater per month;

Whereas, City Staff recommends amending Resolution 2019-9880-R by consolidating the classes of customers: Tiers I and II Industrial Class customers, into the new class of customer: Industrial Class – Large Volume User;

Whereas¸ City Staff recommends amending Resolution 2019-9880-R by changing the class of the customer: Large Volume User, to the new class of customer: Industrial Class – Large Volume User;

Whereas, the City Council passed the City's Fiscal Year 2022 Budget on August 13, 2021;

Whereas, the City's Fiscal Year 2022 Budget workpapers and Water/Wastewater Revenue in the adopted FY 2022 Budget was calculated based on a rate of adjustment of 25 cents per 1,000 gallons for water volumetric rates, excluding Industrial Class – Large Volume Users, and a rate of adjustment of 25 cents per 1,000 gallons for wastewater volumetric rates for all classes of users;

Whereas, City recommends amending Resolution 2019-9880-R by changing the Minimum Bill / Minimum Service Charge for the First 2,000 Gallons of Water Consumed for a 10" meter size from $1,120 to $1,760.00;

Whereas, the proposed water and wastewater rate structure meets the estimated revenue requirement for Fiscal Year 2022 of $46,667,145;

Whereas, the rate model will be updated annually to determine if future rate adjustments will be required to support the revenue requirement;

Whereas, Staff recommends amending Resolution 2019-9880-R by correcting some minor numbering, spelling, and formatting errors;

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS:

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Part 1: Findings. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

Part 2: The following utility system fees and rates are hereby adopted by the City of Temple, Texas and replace any previously adopted resolution regulating the same:

WATER AND WASTEWATER (SEWER) TAP FEES

(a) **Rates.** The following charges shall be made and collected by the City for each water and wastewater tap connection furnished and made by it:

Tap Size	Current Rates		Plus Costs
	Full Short	Full Long	
Water			
¾″	$390.00	$1,150.00	
1″	410.00	1,170.00	
1½″	450.00	1,210.00	(a)
2″	490.00	1,240.00	(a)
3″	960.00	3,240.00	(b)
>3″	320.00 *	1,080.00 *	(b)
Wastewater			
4″	420.00	1,180.00	(c)
6″	500.00	1,260.00	(c)

* Per Inch

(a) plus the cost of meter;
(b) plus the cost of meter and materials required to complete the tap; and
(c) plus the cost of materials required to complete the tap.

(b) **Changeover fee.** A $50 changeover fee, but no tap fee, will be charged for replacing a smaller meter (3/4-inch x 5/8-inch) with a full ¾ inch meter.

(c) **Fire taps**. All connections for fire protection systems sprinklers shall be charged at the rate of two hundred dollars ($200.00) per inch of tap for short connections and three hundred dollars ($300.00) per inch of tap for long connections.

(d) **Stand-by charge.** A "stand-by" charge shall be assessed on each fire protection connection. This charge shall be two dollars ($2.00) per inch per month.

(e) **Taps made by utility contractors**. The charge for connecting a private water or service line to a short or long tap made by a utility contractor within a platted subdivision shall be

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one-half (1/2) the amount charged when the City makes a *short* tap of the same type and diameter.

(f) **Subsurface taps.**

(1) *Boring Accomplished by City Crews.* When a tap requires the City, acting through its own crews or its employees, to bore or go under an existing improved public street, right-of-way, railroad right-of-way, public utility easements, other improved public property, or private property in order to make a connection, charges for long connections requiring such boring will be the standard tap fee plus fifteen dollars ($15.00) per each foot of bore in dirt and twenty dollars ($20.00) per each foot of bore in rock.

(2) *Boring Accomplished by Contractors.* When the City hires a private party or private party contractor other than the City to bore or go under existing streets, rights-of-way, railroad rights-of-way, public utility easements, other improved public property, or private property in order to make a connection, the charge for a private party bore will be the standard tap fee plus the actual cost to the City of the bore.

RATES FOR WATER SERVICE

(a) **Rates.** The rates for utility services furnished by the City's waterworks system shall be as follows:

IN-CITY WATER SERVICE RATE SCHEDULE		
	Meter Size (inches)	**Effective Meter Rates**
Minimum Bill / Minimum Service Charge for the First 2,000 Gallons of Water Consumed*	**5/8" x 3/4"**	$ 10.00
	1"	16.00
	1 ½"	20.00
	2"	64.00
	3"	128.00
	4"	200.00
	6"	640.00
	8"	1,120.00
	10"	1,760.00

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IN-CITY STRAIGHT VOLUMETRIC RATE SCHEDULE FOR CONSUMPTION ABOVE 2,000 GALLONS	
Volumetric	**Effective Rates**
Industrial Class – Large Volume User	$ 3.20**
All Other Classes	3.95**

* The minimum service charge applies if no water is consumed.
** per 1,000 gallons

(b) **Customers outside the City.** City wholesale customers located outside of the City shall be billed for consumption at their contracted rate. All other customers residing outside the City limits shall be billed 1.25 times the in-City water service rates.

RATES FOR WASTEWATER (SEWER) SERVICE

(a) **Definitions.**

(1) *"Winter Billing Period"* means the period of service for which customers are billed in January, February, and March.

(2) *"Winter Quarter Average"* means the average of a customer's actual monthly water consumption reported on the bills sent to the customer in January, February, and March.

(b) **Rates.**

The rates for utility services furnished by the City's wastewater system shall be as follows:

IN-CITY WASTEWATER SERVICE RATE SCHEDULE	
Minimum Bill / Minimum Service Charge for the First 2,000 Gallons of Wastewater Produced*	**Effective Rates**
Industrial Class – Large Volume User	$ 16.00

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All Other Classes	16.00

IN-CITY STRAIGHT VOLUMETRIC RATE SCHEDULE FOR PRODUCTION ABOVE 2,000 GALLONS	
Volumetric	**Effective Rates**
Industrial Class – Large Volume User	$ 4.75**
All Other Classes	5.75**

* The minimum service charge applies if no wastewater is produced.
** per 1,000 gallons

(c) **Customers residing outside the City.** Customers residing outside of the City limits shall be billed at 1.25 times the in-City wastewater service rates.

(d) **Wastewater charges based on actual water consumption.**

(1) When a customer with residential utility service has a separate water meter for an irrigation system, charges for wastewater service will be based on the customer's actual monthly water consumption during the billing period, excluding separately metered water consumed solely for irrigation.

(2) Every customer with non-residential utility service shall be billed for wastewater service on the basis of actual monthly water consumption during the billing period, excluding any separately metered water consumed solely for irrigation.

(e) **Wastewater charges based on billing winter quarter average.**

(1) When a customer with residential wastewater service does not have a separate water meter for an irrigation system, charges for wastewater service shall be based on the customer's winter quarter average. At the conclusion of the Winter Billing Period, the City will calculate the customer's new winter quarter average and use the new winter quarter average to calculate wastewater charges billed from May of the current year through April of the following year.

(2) Customers who transfer water service to a different location will transfer their winter quarter average with their service.

(3) The Utility Business Office shall assume a winter quarter average of 6,000 gallons for any winter quarter average for which a billing history of water service from the City is not available.

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(4) It is the intent of this Resolution that charges for wastewater service bear a reasonable relation to the actual amount of wastewater discharged by the customer. In exceptional circumstances, when the procedures established in this Section for calculating monthly service charges do not produce a reasonable estimate of actual discharge, the City reserves the right to use an alternate method.

(5) The Utility Business Office may adjust a customer's winter quarter average to deduct extraordinary consumption resulting from a leak or other unusual circumstances. Requests for adjustments must be supported by documentation such as an invoice for plumbing repair or an affidavit explaining the reason for the unusual consumption.

RATES FOR START-UP OPERATIONS

Start-up operations. The City Manager is authorized to make temporary exceptions to the rate class thresholds established by this Resolution to account for start-up operations.

DEPOSITS

(a) **Deposits.** The deposits for City utility accounts shall be as follows:

Residential Service		Non-residential Service	
All meters	$75.00	5/8" Meter	$ 115.00
		1" Meter	170.00
		1 1/2" Meter	200.00
		2" Meter	450.00
		3" Meter	550.00
		4" Meter	650.00
		6" Meter	850.00
		8" Meter	1,200.00
		10" Meter	2,500.00
		Fire Hydrant Meter	600.00

(b) **Waiver.** The deposit for a 6" or larger meter may be waived in connection with an economic development agreement within an enterprise zone.

SERVICE CHARGES

(a) **Rates.** The rates *per occurrence* for various services furnished by the City's Utility Business Office shall be as follows:

Service	Charge
(1) ***Rereading water meter***	$ 25.00

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(2) ***Processing returned item***	30.00
(3) ***Ten (10) day cleanup service (flat fee, which includes up to 2,000 gallons of water)***	35.00
(4) ***New account fee or transfer fee***	
During business hours	25.00
After business hours	65.00
(5) ***Extra trip fee***	25.00
(6) ***Non-payment fee***	30.00
(7) ***After hours reconnect***	40.00
(8) ***Unauthorized use of water***	125.00
(9) ***Broken meter fee***	75.00
(10) ***Broken lock charge***	45.00
(11) ***Pulled meter fee***	75.00
(12) ***Remove service line***	500.00
(13) ***Testing water meters for accuracy***	
⅝" meter	30.00
1" meter	40.00
1½" meter	45.00
2" meter	50.00
3" meter & larger	actual cost

LIQUID WASTE TRANSPORT TRUCK DISCHARGE PERMIT FEES

(a) Resolution 2017-8899-R is hereby repealed and replaced with this Section, Liquid Waste Transport Truck Discharge Permit Fees.

(b) **Liquid Waste Transport Truck Discharge Fees.** The fees associated with a Liquid Waste Transport Truck Discharge Permit shall be as follows:

(1) $100 permit fee per liquid waste transport truck; and

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(2) $15 fee per pad of numerical manifest documents.

INDUSTRIAL PRETREATMENT PROGRAM USER FEES

(a) **Industrial Pretreatment Program User Fees.** The fees associated with Article X, High-Strength Waste Treatment Cost Recovery, (Article X) of Chapter 38, Water, Sewers, and Sewage Disposal, of the City's Code of Ordinances (Chapter 38) shall be as follows:

(1) **Monthly Permit Fees.**

(A) Monthly Permit Fee Amounts:

(i) $75 Categorical Industrial User monthly permit fee; and

(ii) $50 Significant Industrial User monthly permit fee.

(B) The terms "Categorial Industrial User" and "Significant Industrial User" are as defined under Sec. 38-93 of Chapter 38.

(C) Monthly permit fees will be charged on the user's monthly utility billing statements.

(D) The effective date for monthly permit fees will be October 1, 2021.

(2) **Quarterly Surcharges Fees.**

(A) Quarterly surcharge fees shall be calculated as provided under Sec. 38-166 of Article X.

(B) Quarterly surcharge fees will be divided into monthly charges and charged on the user's monthly utility billing statements as provided by City policy.

(C) The term "user" is as defined under Sec. 38-93 of Chapter 38.

(D) The effective date for quarterly surcharges will be October 1, 2022.

(3) **Pass Through Lab Analysis Cost Recovery.**

(A) The City is authorized to recover the City's costs associated with lab analysis conducted by the City under Sec. 38-164 of Article X by passing through these costs to the user.

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(B) The recovery costs will be passed on and charged to the user as provided by City policy.

(C) The effective date for lab analysis cost recovery will be October 1, 2021.

PENALTIES

Penalties. The penalty for delinquent payment of utility services invoices is a minimum fee of $5.00 or 5% of the current bill, whichever is greater.

Part 3: The water and wastewater rate changes will take effect on October 1, 2021. The Industrial Pretreatment Program User Fees will take effect as provided under such Section. All other provisions of this Resolution will take effect on September 16, 2021.

Part 4: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the **16th** day of **September, 2021.**

THE CITY OF TEMPLE, TEXAS

DocuSigned by:
Timothy A. Davis
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TIMOTHY A. DAVIS, MAYOR

DocuSigned by:

ATTEST:

DocuSigned by:
Jana Lewellen
BEC0FCD886A84BA...

Jana Lewellen
City Secretary

APPROVED AS TO FORM:

DocuSigned by:
Kathryn H. Davis
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Kathryn H. Davis
City Attorney