



EL PASO · DISTRICT 1

PLATFORM NO. 09 · AUGUST 2026

CITY OF EL PASO - ECONOMIC DEVELOPMENT POLICY PLAN

Fifty Jobs

Getting a Better Deal from Meta Without Breaching the Contract.

**Leadership that is not afraid
to fight for its people.**

PRINCIPLED. EXPERIENCED. PROVEN.

It's time to elect leadership that will make the city work for its people again.



MJK26
MATTHEW JAMES KOZIK · DISTRICT 1

Executive Summary

On June 9, 2026, City Council declined to even try to renegotiate the Meta 380 Agreement. What Council can still do is compel Meta to a negotiating table using the agreement's own dispute clause, enforce deadlines Meta has not yet met, win a transparency fight the Texas Attorney General decides rather than Meta, and build the leverage to buy a real jobs-and-wages amendment. The realistic prize is a negotiated amendment to the 380 Agreement itself under §26 — bought with citywide water and wastewater impact fees and reinforced by health-and-safety ordinances and favorable PUC orders — a package that changes what this project costs El Paso residents without ever putting the City in breach. The fastest and cheapest win available is still transparency: it is the one dispute where the City's legal position and its political position point the same direction, and where the outcome is decided by the Attorney General rather than by Meta's consent. This plan is built on a line-by-line reading of the executed agreement as posted by the City, and it is deliberately honest about what the text forecloses. §14.2 does not only bar targeting — it bars any change to Applicable City Rules made in a manner that adversely affects the Project, the Land or the data center industry, so general applicability is necessary but not sufficient. §14.5 grants Meta Chapter 245 vested rights, a statutory shield operating independently of §14.2 and §14.9. The Force Majeure catch-all substantially weakens any theory that Meta will eventually have to come asking for a deadline extension. §10.3 allowed the BlackRock transaction to close without ever reaching the §10.4 consent gate. And Senate Bill 14 created a mandatory impact fee credit for water reuse aimed at exactly this kind of facility.

The near-term agenda is six disputes served under §20, ranked by value: confidentiality overreach under §19, the Stan Roberts Sr. Avenue schedule and cost allocation under §4.6, the land boundary and acquisition notice under §2, the missing administrative dates and designations under §4.2, local and M/WBE contracting effort under §4.5, and a prophylactic interpretation of the ordinance, vesting and fee clauses. Alongside them: protect the City's own compliance so no Force Majeure accrues, publish an annual compliance scorecard, establish urgently whether impact fees were ever assessed on this site — because fees are assessed at platting and if this tract was platted before May 7, 2024 the 2009 schedule is locked in and no future increase reaches it — order a full legal review of the other three instruments, pre-draft the amendment package, and convert the Community Benefits Agreement track into an amendment track. On jobs the constraints must be stated plainly: the binding floor is 50 Full-Time Jobs at the Annual Area Median Wage, not the 300 Meta publicizes; the wage floats rather than freezing at \$16.43; the Full-Time Job definition is looser than it sounds; Council cannot raise the floor without Meta's signature; and enforcement is a decade out. The impact fee lever is the largest dollar lever requiring no consent from Meta, but it must be sized honestly — plausibly low single-digit millions on the current method, approaching a theoretical \$20 million only with a demand-based methodology at studied maximum rates against full Tier III buildout, and only assuming no conservation credit, no §5.3 city-wide challenge, and a plat date after May 2024. Against a roughly \$110 million Phase 1 incentive and up to roughly \$550 million across all phases, it is a real contribution and a genuine bargaining chip. It is not, on its own, a rebalancing of the deal, and it should never be presented as one.

The Short Version

THE SHORT VERSION

On June 9, 2026, City Council declined to even try to renegotiate this deal. What Council can still do is compel Meta to a negotiating table using the agreement's own dispute clause, enforce deadlines Meta has not yet met, win a transparency fight the Attorney General decides rather than Meta, and build the leverage to buy a real jobs-and-wages amendment.

The realistic prize is a negotiated amendment to the 380 Agreement itself under §26 — bought with citywide water and wastewater impact fees and reinforced by health-and-safety ordinances and favorable PUC orders. A package that changes what this project costs El Paso residents without ever putting the City in breach.

The fastest and cheapest win available is still transparency. It is the one dispute where the City's legal position and its political position point the same direction, and where the outcome is decided by the Texas Attorney General rather than by Meta's consent. Part III develops it in full.

TWO CONSTRAINTS THAT SHAPE EVERYTHING BELOW

This plan is built on a line-by-line reading of the executed 380 Agreement as posted by the City. Two clauses narrow what is possible, and both should be understood before anything else in this document is used.

§14.2 does not only bar targeting

The clause bars any change to Applicable City Rules made with intent to target the Project or the data center industry "or in a manner that adversely affects the Project, the Land or the data center industry." General applicability is necessary but not sufficient.

§14.5 grants Meta Chapter 245 vested rights

That is a statutory shield against later-adopted regulation, operating independently of §14.2 and §14.9.

Three further constraints are developed where they arise: the Force Majeure catch-all substantially weakens any theory that Meta will eventually have to come asking for a deadline extension (Part VII); §10.3 allowed the BlackRock transaction to close without ever reaching the §10.4 consent gate (Part I); and Senate Bill 14 created a mandatory impact fee credit for water reuse.

Part I — Where Things Stand

WHERE THINGS STAND

Recent months have moved this file. Some events closed doors a leverage strategy would naturally reach for; one opened the best public argument available.

DATE	EVENT	EFFECT ON THIS PLAN
June 9, 2026	Council voted 5-3 against a proposal that could have led to terminating the agreement, after roughly seven hours of public comment.	Renegotiation is still an option.
June 23, 2026	Council voted 8-0 to begin negotiating a Community Benefits Agreement, seeking a 300-job commitment in place of the 50 in the 380 Agreement.	Council chose a side agreement over a §26 amendment. See Part V.C — the goal now is conversion, not persuasion.
July 20, 2026	Council unanimously adopted a data center policy framework: minimum 300-foot separation from residential and ecological sites, noise requirements, and a special permit requiring Council approval.	Prospective for new projects. Raises a live §14.2 question for anything applied to this site. See Part VI.2.
Late July 2026	Meta and BlackRock formed a venture; BlackRock took an 80% ownership stake; Meta leases back the entire campus. The City Attorney's Office found no apparent breach.	§10.3 (sale/leaseback) requires no City consent. The §10.4 assignment chip is spent. See I.1.
August 2026	Meta agreed with the Governor to statewide data center guidelines, including paying for its own electric infrastructure and eliminating reliance on "outdated taxpayer-funded incentives." The announcement did not mention El Paso, and the City confirmed its agreement is unamended.	The strongest public argument this plan has. See Part V.C.
Pending	PUC Docket 59076 — El Paso Electric's CCN application for the 366 MW, \$551.8 million McCloud Generation Facility. PUC staff recommended denial for lack of competitive bidding and inadequate ratepayer impact analysis. A decision is expected later this year.	The City is an intervenor and has filed opposing testimony. Press to final order.
Jan. 1, 2026	Senate Bill 14 added Local Government Code §395.0231, requiring political subdivisions to grant credits against water and wastewater impact fees for facilities producing water reuse, conservation, or savings.	A mandatory statutory offset.

THE BLACKROCK TRANSACTION, AND WHY \$10.4 NEVER TRIGGERED

It is tempting to treat **\$10.4 non-affiliate assignment consent** as a bargaining chip. Read **\$10** as a whole and it is clear why that chip was never available for this transaction.

\$10.1

Assignment to an **Affiliate**, a future owner of any portion of the Land, or a lessee of any portion of the Land or Project Improvements: **no consent, written notice only.**

\$10.2

Collateral assignment to a lender: **no consent, written notice only.**

\$10.3 — sale/leaseback

"So long as Company or an Affiliate to which this Agreement has been assigned **remains a lessee, or its substantial equivalent**, Company may **transfer fee simple title to the Land to a third party** and continue to exercise its rights and obligations under this Agreement." **No consent.**

\$10.4

Everything else: Council consent required, "which consent shall not be unreasonably withheld, conditioned or delayed."

Meta transferring majority ownership while leasing back the entire campus is the **\$10.3** fact pattern almost exactly. Council had no gate. What Council still has is a set of verification questions, and they should be asked on the record rather than left to a press statement.

- 1** Was written notice provided under **\$10.1** or **\$10.3**, on what date, and in what form?
- 2** Which subsection does the City Attorney conclude applies, and what is the basis? **\$10.3** conditions the no-consent treatment on **Company or an assigned Affiliate** remaining a lessee.
- 3** Has any obligation been assigned such that the assigning entity is "**relieved of its covenants, commitments and obligations**" under **\$10.1**? If so, **which obligations now sit with which entity** — particularly the **Employment Commitment** and the **Stan Roberts obligation**.
- 4** Has any estoppel certificate been requested under **\$11** in connection with the transaction, and what did the City certify?

Meta's public disclosure describes a four-year initial lease term with four extension options over a potential twenty-year term, and residual value guarantees. The 380 Agreement runs thirty-five years.

Part II — Disputes Available Right Now

DISPUTES AVAILABLE RIGHT NOW — THE MECHANISM

§20 (Mutual Assistance; Dispute Resolution) obligates both parties, on “any disputes arising under this Agreement,” to attempt resolution “through good faith negotiations between authorized representatives of both Parties,” and “If necessary, both Parties agree to submit a dispute to a non-binding mediation.”

This is the lawful, in-contract door to the table. It is not termination and not breach.

THREE HONEST LIMITS

“If necessary” is soft, and the clause specifies no mediator selection process, no timeline, and no venue. Meta can slow-walk without clearly breaching. Build the demand letter so that refusal is legible to the public even if it is not actionable.

§20 preserves litigation after mediation — “either Party may pursue any available legal remedies in any court of competent jurisdiction.” But §6.10 caps the City’s remedy at terminating the affected Phase, §16 imposes prevailing-party attorney’s fees, and §27 waives jury trial.

§20’s first sentence runs mostly against the City — the mutual assistance obligation is illustrated by “the City facilitating approval of City permits, documents, and other instruments.” Expect it quoted back.

Council action: direct the City Manager and City Attorney to serve formal written notice of the disputes below and invoke §20. The value is the record, not the remedy.

STRONGEST PRESENT DISPUTE

Confidentiality overreach — §19

THE CLAUSE

Meta may designate trade secrets or confidential business information in any report or other writing delivered to the City, “by any method intended to clearly set apart the specific material.” Once designated, the City must redact it, must notify Meta within two Business Days of any public records request, must wait at least ten Business Days before allowing inspection, and must submit a brief to the Texas Attorney General opposing release.

THE DISPUTE

The designation has to fit the definition — information that “if released, would give an advantage to competitors or result in unfair competitive injury to Company.” Water withdrawal volumes, contracted electrical load, employment counts, and emissions figures are not obviously trade secrets. If Meta has blanket-designated operational data, the City is being made to litigate against its own residents’ transparency on a claim that may not hold.

What to demand: an itemized audit of every designation Meta has made to date, with the specific competitive-injury basis for each. Dispute the ones that overreach.

Note the cost-shifting limit: §19 does not assign the cost of every proceeding to Meta. It assigns “the costs, damages, if any, and attorneys’ fees in any proceeding commenced by Company or at its request by City.” A proceeding the City initiates on its own may not be covered.

Stan Roberts Sr. Avenue — schedule and cost allocation — §4.6

THE CLAUSE

§4.6.1 requires Meta to design and construct the full reconstruction and widening of approximately 7,500 linear feet of Stan Roberts Sr. Avenue — four lanes divided, landscaped raised medians, sidewalks with landscaped parkways, street illumination, bicycle facilities — within five years of the Effective Date. The Effective Date is the last date of execution; the signature pages are dated early December 2023, which puts the deadline in roughly December 2028.

Two distinct disputes. (a) **Schedule** — is there a design and construction schedule. §6.8 gives the City a remedy for late completion (reduced Phase 1 grant years), but only if the City is tracking it. (b) **Cost allocation** — the City must reimburse all Construction Costs beyond “Company’s Proportionate Share,” defined as one-half of the right-of-way width and equal to half of total Construction Costs, up to \$7,500,000, increasable by up to 20% if actual costs exceed the City’s Effective Date estimates. “Construction Costs” is defined expansively — engineering, legal fees, consultants, financing costs, insurance, and impact fees.

TWO FEATURES WEAKEN THIS LEVER, AND ARGUE FOR RAISING IT NOW RATHER THAN IN 2029

Force Majeure covers exactly this. The definition in §2 enumerates, among others, (xiv) inability or delay in obtaining a permit or approval from TxDOT, (xv) inability or delay in obtaining easements needed for the Improvements, and (xvi) “any other causes of any kind whatsoever, whether similar to those enumerated or not, which are beyond the control of such Party.” §23 makes the extension automatic. Meta may never need to ask the City for anything.

Completion may be phased. §4.6.1 provides the Improvements “may be constructed, completed and/or accepted in phases, in Company’s discretion.” A single hard deadline is not what the clause actually creates.

What to demand: the delivery schedule, TxDOT status, the full cost model showing the proportionate-share calculation, and any Force Majeure notice Meta has given or intends to give. Do not wait for the Disbursement Request to learn the number.

THE SIX DISPUTES, RANKED (CONTINUED)

3

Land boundary and acquisition notice — \$2

THE CLAUSE

"Land" is the 1,038.948 acres described in Exhibit A plus any additional land within a half-mile radius acquired by Meta or an Affiliate after the Effective Date. On notice to the City, the Agreement "shall automatically apply with respect thereto," regardless of whether a legal description is ever attached.

WHY IT MATTERS

This determines the actual footprint of the incentive. Every acre inside that ring gets the 80% break automatically. Every acre outside it would require a brand-new agreement negotiated on today's terms. Ask what parcels have been acquired, whether notice was given, and what the current Land boundary is.

Related and unasked: \$4.2 also lets Meta adjust an Initial Project Improvements Boundary or a Subsequent Phase Boundary by notice, and provides that undesignated improvements roll into the final designated Phase. The boundary picture is entirely Meta-controlled and entirely notice-based. The City should be maintaining its own map.

4

Missing administrative dates and designations — \$4.2

ITEM	CLAUSE	WHY THE CITY NEEDS IT
Commencement of Vertical Construction date	\$2	Starts the 7-year Completion Deadline clock, which starts the 4-year Employment Commitment clock
Commencement of Construction date	\$4.1	Must occur within 5 years of the Effective Date; \$6.2 reduces Phase 1 grant years if it does not
Designation Notice / Initial Project Improvements Boundary	\$4.2	Defines what constitutes Phase 1
EPCAD Tax Account numbers	\$4.2	Meta must "work with EPCAD to establish one or more separate Tax Account(s)"; grant calculations depend on them

The dispute: the City cannot administer this agreement or calculate what it owes without these. Their absence is itself a legitimate \$20 matter.

5

Local and M/WBE contracting effort — \$4.5

THE CLAUSE

Meta "intends to use commercially reasonable efforts" to spend a portion of Construction Costs with El Paso Companies and El Paso Certified M/WBE Companies — but the clause expressly states that failure to do so "shall not be considered a default hereunder and such expenditures shall be within Company's sole discretion."

THE DISPUTE

Legally weak — close to unenforceable as written. But whether any commercially reasonable efforts are being made or documented is a fair question under a clause Meta agreed to, and a strong public one. Use the answer, or the refusal, as the basis for a binding replacement provision in the amendment package.

On the numbers: the City's own published materials state the project is expected to support approximately 1,800 construction jobs. Use that figure and attribute it. Larger numbers circulate locally and are not sourced.

6

Prophylactic interpretation of the ordinance, vesting and fee clauses — \$14.2, \$14.5, \$14.9, \$5.3

This is arguably the highest-value use of \$20, because Part VI depends on it entirely and because the obstacle is easy to understate.

Seek an agreed reading of four things:

- The full text of \$14.2 — not only "with the express or inferred intent to specifically or inequitably target," but the words that follow: "or in a manner that adversely affects the Project, the Land or the data center industry." On its face that reaches generally applicable, non-targeted ordinances that merely have adverse effect.
- The interaction of \$14.2 with \$14.9. \$14.9 provides that post-Effective-Date measures do not apply unless (i) "reasonably found by the City to be necessary to the public health and safety of the residents of the City" and (ii) "generally applicable on a City-wide basis." If \$14.9's carve-out is a genuine exception, it must override \$14.2's adverse-effect language for qualifying ordinances. That reading is defensible and it is the City's whole case. Get it agreed or get it decided.
- The scope of \$14.5's Chapter 245 vested rights and whether the City agrees that Chapter 245 vesting does not extend to health-and-safety regulation of operations as distinct from development permitting.
- Whether a Chapter 395 water and wastewater impact fee adopted in the City's three designated service areas qualifies as "generally applicable on a City-wide basis" under the \$5.3(b) carve-out Meta must pay.

Why do this first: Council is going to spend months and real political capital on impact fee studies and health-and-safety ordinances. Better to surface Meta's objections at a mediation table now than to discover them in litigation after adoption — or to adopt a framework and learn only later that it cannot be applied here.

Part III — The Transparency Campaign

THE TRANSPARENCY CAMPAIGN

THE HIGHEST-VALUE LINE OF EFFORT IN THE PLAN — AND IT SHOULD BE RESOURCED ACCORDINGLY

It is the strongest present dispute. Everything else in Part II is a demand for information or a deadline that has not run. **This one is a live legal disagreement the City can win.**

It is the input to every other track. The impact fee study, the PUC interventions, the compliance scorecard, and the jobs argument **all require data the City does not currently control.**

The City's legal position and its political position point the same direction. That is rare in this file.

The decision is not Meta's to make. Confidentiality under the Texas Public Information Act is decided by the Attorney General.

WHAT §19 ACTUALLY OBLIGATES THE CITY TO DO

On any request to inspect or obtain copies of public records relating to this Agreement or the Project, §19 requires the City to:

■ **Notify Meta within two Business Days**, including a copy of the request, with instructions and deadlines for Meta to make its confidentiality argument to the Attorney General.

■ **Wait not less than ten Business Days** before allowing inspection.

■ **Redact or delete designated Confidential Business Information.**

■ **Submit a brief to the Texas Attorney General's Office** opposing release and identifying the basis for any claimed exceptions.

■ **Withhold** "unless and until the Texas Attorney General renders a final decision indicating that all or part of the information must be disclosed."

Read the last one closely. §19 **concedes on its own terms that the Attorney General decides.** The City's obligation is to brief and wait — not to withhold indefinitely, and not to win. §19 also expressly preserves Meta's own right to "claim any exemption from disclosure it believes applicable directly to the Texas Attorney General." The City is not Meta's only advocate and was never meant to be.

THE TRANSPARENCY CAMPAIGN (CONTINUED)

THE HIGHEST-VALUE LINE OF EFFORT IN THE PLAN — AND IT SHOULD BE RESOURCED ACCORDINGLY

THE LEGAL ARGUMENT

A contract cannot create a Public Information Act exception

TPIA exceptions are statutory. §552.101 covers information made confidential by constitutional, statutory or judicial authority. A private agreement between the City and Meta is none of those. §19 can bind the City's conduct — what it files, when it notifies, how long it waits. It cannot change what the statute makes public. Say so plainly in the City's submissions rather than letting the contract be read as a substantive confidentiality grant.

Chapter 380 grants are the expenditure of public funds

§552.022(a)(3) makes "information in an account, voucher, or contract relating to the receipt or expenditure of public funds by a governmental body" expressly public. Under §5.2 of the Agreement, Property Tax Grants "come from currently available revenues of the City." The Reports Meta submits to justify those grants are records relating to that expenditure — and Exhibits B and D require them to be "accompanied by invoices and proof of payment." Documentation submitted to unlock public money is close to the statutory core of what must be public.

One precision point: §552.022 makes the listed categories public "unless made confidential under this chapter or other law," and Texas courts have treated trade secret protection as "other law" capable of overriding §552.022. This argument is strong but not self-executing. It defeats a bare confidentiality claim; it does not defeat a properly evidenced trade secret claim.

SB 943 is close to the point, and was enacted for this kind of situation

Texas Government Code §552.0222, added by Senate Bill 943 (2019) and effective January 1, 2020, provides that contracting information is public and must be released unless excepted, and that the exceptions in §552.110 (trade secrets and commercial or financial information) and §552.1101 (proprietary information) do not apply to enumerated categories of contracting information. The same act amended §552.104 to limit that exception expressly to governmental bodies, reversing the effect of Boeing Co. v. Paxton, and expanded the definition of "governmental body" to reach certain economic development entities addressed in Greater Houston Partnership v. Paxton.

Do not overstate this. It is tempting to assume the §4.4 Reports automatically receive §552.0222(b) treatment. They may not. Subsection (b)'s carve-out applies to enumerated categories — contract and offer terms, total price, items and services delivered, and similar. The Reports are contracting information, but a brief should argue category by category rather than asserting blanket coverage. Where a Report contains total investment figures claimed for grants, the price-and-value categories are the strongest hook.

The evidentiary standard defeats blanket designation

Commercial or financial information is excepted only where it is demonstrated, based on specific factual evidence, that disclosure would cause substantial competitive harm. The §552.1101 proprietary-information exception likewise requires specific factual evidence and may be asserted only by the vendor or contractor itself, in the manner described by §552.305(b). §19 sets a comparable substantive test on its face. That is an item-by-item showing, not a category label.

Two drafting defects worth attacking

§19 purports to cover information "whether specifically designated by Company or not." The City cannot redact what has not been identified, and an undesignated-but-nonetheless-confidential category is unworkable against a statutory scheme built on specific claims.

Its scope reaches only material "included in any report or other writing delivered to City" under the Agreement. It does not reach the City's own staff analyses, inspection findings, or PUC filings — a limitation with large consequences.

WHERE THE LINE LIKELY FALLS

PROBABLY NOT PROTECTABLE	PROBABLY IS PROTECTABLE
Groundwater withdrawal volumes	Server and chip specifications
Contracted electrical load and ramp schedule	Proprietary cooling system engineering
Employment counts and wage compliance data	Network topology and architecture
Emissions figures	Physical and cyber security systems
Total investment figures claimed for grants	Unannounced business plans
Stan Roberts construction costs the City reimburses	Customer and internal workload data

The Employment Report form at Exhibit C is itself instructive: it is a table of employer, redacted employee number (last three digits), start date, full-time status, and wage-threshold compliance, running fifty rows. Meta may redact identification numbers and is never required to provide social security numbers or nonpublic personal information. The form was built to be disclosable with personal identifiers stripped. Aggregate job and wage compliance data is not a trade secret.

Part IV — The Rest of the Near-Term Agenda

THE REST OF THE NEAR-TERM AGENDA

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Protect the City's own compliance so no Force Majeure accrues

§4.6.6 obligates the City to obtain third-party rights-of-way, consents, and easements for Stan Roberts — by eminent domain if needed. The §2 Force Majeure definition then makes delay in obtaining those easements an enumerated event (xv) that extends Meta's deadlines automatically under §23, alongside (xiv) TxDOT permit delay and (iii) unreasonable City permitting delay. Direct staff to report quarterly on the City's own performance. Do not hand Meta the excuse.

Note the catch-all. Force Majeure item (xvi) covers "any other causes of any kind whatsoever, whether similar to those enumerated or not, which are beyond the control of such Party." Any strategy that assumes Meta must eventually come asking for a deadline extension is built on the assumption that this clause fails. Plan for the possibility that it does not.

8

Publish an annual compliance scorecard

Direct staff to publish a public scorecard against every deadline and commitment in §4 and §6, and to exercise the §4.7 inspection right every year it is available. Documented compliance findings are the raw material for every other move — including the estoppel certificates under §11 that Meta's lenders and, now, its joint venture partner rely on.

URGENT

Establish whether impact fees were ever assessed on this site

El Paso already has water and wastewater impact fees, administered by EPWater under Chapter 395. They were adopted in February 2009 and updated by Council on May 7, 2024. The Meta tract sits in the Northeast service area. Whether Meta has been assessed — and at which rate schedule — is unknown from the public record and may be time-sensitive.

Fees are assessed at platting, and the increased 2024 rates apply only to development platted after the May 2024 adoption. If this tract was platted before May 7, 2024 — plausible given the December 2023 agreements — the 2009 rates are locked in and a future increase will never reach it.

Direct staff to obtain, within 30 days:

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- The plat recording date for the tract. This single fact determines which schedule applies.
- EPWater impact fee assessment and collection records for the tract, by plat and account. EPWater is a Public Service Board, not the City, and its records are outside §19.
- Meter sizing in the EPWater service agreement — this sets the assessed amount under the current schedule.
- The December 2023 Water and Wastewater Agreement — does it address impact fees, and was anything waived or credited? Note that §30 of the 380 Agreement expressly preserves rights under that instrument.
- A CIAC report specific to this tract at the next Capital Improvements Advisory Committee meeting.
- Whether Meta has applied for, or is eligible for, a conservation and reuse credit under the new Local Government Code §395.0231. Meta has publicly described closed-loop liquid cooling for this facility.

None of this requires Meta's cooperation. See Part VI for what the fees are worth and why the assessment method and the new state credit are the real problems.

THE REST OF THE NEAR-TERM AGENDA (CONTINUED)

10

Order a full legal review of the other three agreements

The 380 Agreement is one of four instruments. Their separateness is usually attributed to §6.12 alone. That is only partly right, and the distinction matters.

INSTRUMENT	COUNTERPARTY	STATUS
380 Economic Development Program Agreement	City	Analyzed here
Tax Abatement Agreement	City	§6.12 expressly provides no cross-default with this Agreement. Separate. Never publicly scrutinized.
Contract of Sale for the Land (1,038.948 acres)	City	§6.8 preserves "other, separate remedies" for Stan Roberts failures. §30 preserves rights generally.
Water and Wastewater Agreement	EPWater Public Service Board	Different governance entirely. §30 provides this Agreement does not abrogate rights under it.

Note: §6.12 addresses independence among Phases and between this Agreement and the Tax Abatement Agreement. It is §30 (Effect on Other Vested Rights) that preserves rights under the Water and Wastewater Agreement and other contracts. Cite §30 for that proposition. The Contract of Sale remains the strongest unexploited instrument the City holds.

11

Pre-draft the amendment package

The obvious assumption is that the window opens when Meta needs a Stan Roberts deadline extension around 2028. Force Majeure makes that far less certain. Draft the package anyway, and identify more than one door:

- A §26 amendment Meta itself proposes for any reason.
- A §17.1 mortgagee-driven modification request — though note the limit in Part VI.4.
- A §10.4 assignment that does not fit §10.1–10.3.
- The impact fee trade — Chapter 395 credits and offsets are Council-controlled and require no Meta consent to create.
- A §18 meet-and-confer, if a qualifying law is enacted — see Part VI.3 for why this is narrower than it looks.

12

Convert the Community Benefits Agreement track into an amendment track

Council voted 8–0 on June 23 to begin negotiating a standalone Community Benefits Agreement. That is the right subject matter and the wrong instrument, and the City Attorney's own briefing supplies the argument: Meta has not previously entered standalone agreements of this type, and its community commitments have historically been negotiated inside Chapter 380 agreements.

Council should not abandon the CBA process. It should add a single directive to it: that any commitment Meta agrees to be incorporated by amendment into the 380 Agreement under §26, or, where that is refused, that the CBA state expressly which commitments Meta declined to make enforceable. A voluntary parallel agreement is only as good as Meta's continued willingness to honor it, and it offers Meta the option of signing something that reads well and binds little. If the answer is no, that refusal is itself the record.

THE CITY MUST OPPOSE RELEASE — WHAT THAT DOES AND DOESN'T MEAN

§19 is explicit: the City “shall submit a brief to the Texas Attorney General’s Office opposing the release of any Confidential Business Information.” That is a real contractual obligation. But it is narrower than it first reads, and there are legitimate routes around it.

ROUTE 1 Get the information where §19 doesn't reach

Strongest by far. §19 governs only what Meta delivers to the City. It has no application to records held by other agencies. Do not fight for a number through §19 if it can be obtained somewhere §19 does not apply.

SOURCE	WHAT IT HOLDS	CITY'S POSITION
PUC of Texas	Load, generation cost, interconnection, ramp schedule	Already an intervening party in Docket 59076 and the Economic Development Rate proceeding
TCEQ	Air permit applications, emissions inventories	Public permitting record
EPWater / PSB	Water and Wastewater Agreement terms, tiered allocations, usage, infrastructure cost allocation	Separate instrument, separate board, outside §19
EPCAD	Appraisal and Tax Account records	Independent appraisal district
City Planning / CIAC	Plat records, impact fee assessment and collection records, semiannual Chapter 395 reports	City-held and not delivered by Meta — §19 does not attach
TWDB / EPA / TWC	Water use, emissions, employment reporting streams	State and federal reporting streams

ROUTE 2 A brief that opposes is not a brief that persuades

§19 requires the City to **oppose** and identify “the basis for any claimed exceptions” — Meta’s claimed basis, not the City’s findings. A compliant brief can state what Meta designated, state the basis Meta asserts, note that under §552.305 the burden of specific factual evidence rests with Meta, and stop there. The City owes the Attorney General an independent duty of candor. No contract term can require it to misrepresent facts or manufacture evidence Meta has not supplied.

ROUTE 3 The obligation ends at the Attorney General’s decision

§19 requires withholding only “unless and until” the Attorney General orders disclosure. **The City is not required to appeal.** The suit-to-enjoin language is permissive — such an action “may be brought in the name of Company or City.” Note the **cost-shifting limit**: fees fall on Meta in proceedings commenced by Meta or at its request by the City, which is a reason to let Meta be the one to commence.

ROUTE 4 Attack the validity of the designation itself

§19 protects material Meta sets apart “by any method intended to clearly set apart the specific material.” Blanket or unmarked designations arguably fail that condition and never trigger the obligation in the first place.

ROUTE 5 Third-party requesters

The City’s duty runs to its own Attorney General submission. It has no duty to discourage requests. A resident, newsroom, or advocacy group requesting directly from EPWater, TCEQ, the PUC, or EPCAD never touches §19 at all.

Raise with the City Attorney, but do not lead with it

There is a genuine argument that a governmental body cannot contract away its Public Information Act duties, and that §19 is unenforceable to the extent it compels opposing release of plainly public information. That is a real argument. But the City asserting that its own contract term is void is aggressive, invites a bad-faith characterization, and should not be a first move.

HOW THIS DISPUTE ACTUALLY RESOLVES — AND COUNCIL ACTIONS

Not through mediation

\$20 mediation is non-binding. If Meta refuses to narrow its designations, mediation produces nothing enforceable.

Through the Attorney General

Any public records request triggers the machinery, and the requester need not be the City. The City must seek a decision within ten business days under §552.301. Meta must make its own case within ten business days of §552.305(d) notice, on specific factual evidence. The Attorney General rules. Neither party controls the outcome.

What mediation is worth here is narrower but real

Getting Meta to voluntarily release categories rather than litigate each one, agreeing a going-forward designation protocol, and — if Meta refuses — building a public record that the City asked and was turned down.

Do not sue Meta over this. Under §6.10 the City's sole remedy for Meta's breach is terminating the affected Phase. That is absurd overkill for a redaction dispute, and §16's prevailing-party fee provision makes it expensive to be wrong. The TPIA track reaches the same answer without either risk.

COUNCIL ACTIONS ON TRANSPARENCY

- 1 Audit every designation Meta has made to date; demand the specific competitive-injury basis for each, item by item, as a \$20 dispute.
- 2 Commission a public data inventory mapping every category of information the City wants — water, energy, jobs, emissions — to the agency that holds it and the route that obtains it. Route around §19 wherever possible.
- 3 Adopt a standing policy on §19 briefs: comply with the obligation, convey Meta's claimed basis accurately, assert nothing the City cannot support, do not appeal an adverse ruling.
- 4 Fund and staff the PUC interventions as an information channel, not only as a rate fight.
- 5 Put a standing §19 waiver in the amendment package — covering water, energy, jobs and wages, and emissions — so the question stops recurring.
- 6 Report annually in open session on what was requested, what was designated confidential, what the Attorney General ruled, and what it cost.

Part V — Jobs and Pay

JOBS AND PAY — THE HARD CONSTRAINTS, STATED PLAINLY

■ The floor is 50 Full-Time Jobs at the Annual Area Median Wage

By the Employment Commitment Date. That is the binding number — not the 300 permanent jobs Meta publicizes and not the 100 sometimes cited locally.

■ The wage floats — it is not frozen at \$16.43

“Annual Area Median Wage” means the BLS Occupational Employment and Wage Statistics median hourly wage for all occupations in the El Paso MSA, adjusted each January 1 and multiplied by 2,080 — provided it is never less than the 2022 El Paso MSA figure of \$16.43. So \$16.43 (about \$34,200 a year) is a floor, not the operative number. By the mid-2030s, when this becomes enforceable, the required wage will be the then-current El Paso median. That is still a low bar, but the argument must be made accurately.

■ The definition of a Full-Time Job is looser than it sounds

A job qualifies if filled for forty hours per week “or less than forty hours per week if such other measurement is used by Company or an Affiliate to define full-time employment in accordance with its then current personnel policies” — the Agreement’s own example is thirty-five hours. A job is “based out of” the Project if it is on the payroll at that location, and it may be filled by a remote employee so long as that employee is a Regional Resident, defined as residing in El Paso County or within fifty miles of the Land. Fifty jobs does not necessarily mean fifty people on that campus.

■ Council cannot raise the floor without Meta’s signature

§26 requires written execution by both Parties and Council approval.

■ Enforcement is a decade out

The Employment Commitment Date is four years after the Completion Deadline, which is seven years after Commencement of Vertical Construction. Mid-2030s.

■ Citywide wage mandates are preempted

Texas Labor Code §62.0515 blocks local minimum wages for private employers, and HB 2127 occupies the Labor Code field. Note the nuance: the Third Court of Appeals disposed of the cities’ challenge to HB 2127 on July 18, 2025 by holding they lacked standing, not by upholding the statute on the merits, and the constitutional question remains open. It does not matter here — §62.0515 independently closes this path.

■ WHAT §6.3 ENFORCES, WHEN IT FINALLY BITES

FULL-TIME JOBS	CONSEQUENCE
50 or more	Full 80% grant
41–49	Grant reduced 8% per job short (e.g. 45 jobs = 40% reduction, from 80% to 40%)
40 or fewer	No grant that year

Subject to a 180-day cure period running from written notice detailing the specific alleged failure. Meta recovers full grants in any later year it meets the commitment, and failure has no effect on grants already paid.

THE FOUR THINGS THAT CAN ACTUALLY MOVE JOBS AND PAY

A

Manufacture a chip Meta wants — the impact fee trade

§5.3 waives nearly every City fee — “any and all impact fees and any and all other City fees” — but expressly does not waive, and Meta agrees to pay: (a) reinspection and penalty fees; and (b) water and wastewater impact fees to the extent they are (i) duly adopted by City Council in accordance with Chapter 395 and other applicable law and (ii) generally applicable on a City-wide basis.

Sizing, stated honestly. It is tempting to call this lever enormous. It is not — and it is smaller still once the Senate Bill 14 credit identified in Part VI is accounted for.

It remains the largest dollar lever that requires no consent from Meta, and Chapter 395's credit and offset framework gives Council something to trade: fee relief in exchange for a binding jobs-and-wages amendment. Read Part VI.1 in full before building any projection.

Other chips: §10.4 non-affiliate assignment consent (narrower than it appears — see Part I.1), §17.1 mortgagee modification meetings (narrower than it appears — see Part VI.4), and any deadline extension Meta needs and cannot obtain through Force Majeure.

B

Land beyond the half-mile radius is a clean slate

Expansion outside the auto-extension ring requires a brand-new agreement negotiated on today's terms — full jobs-per-dollar accountability, real wage floors, and clawbacks that do not collapse into termination-only. Council has complete freedom here, and the July 2026 data center policy framework now applies to it. This is where the framework does real work.

C

The amendment package — what Council trades for

Every ask below belongs in a §26 amendment to the 380 Agreement itself, not in a side document. An amendment is executed by both parties, approved by Council, and enforceable on its own terms. This point is now urgent rather than theoretical, because Council has opened a standalone Community Benefits Agreement track. See Part IV, item 12.

THE FOUR THINGS THAT CAN ACTUALLY MOVE JOBS AND PAY (CONTINUED)

JOBS AND WAGES

- Job floor raised toward the 300 permanent positions Meta publicizes — the same number Council is already seeking through the CBA. The 250-job gap between the contract and the press release is the entire argument, and it is on the public record.
- A fixed dollar wage floor indexed annually, not “area median.” El Paso’s area median is dragged down by low-wage occupations, which is exactly why the median is the number in the contract.
- Tighten the Full-Time Job definition: a stated minimum weekly hours figure, and a cap on the share of the commitment that may be satisfied by remote Regional Residents.
- Binding local hire and apprenticeship percentages replacing §4.5’s “sole discretion” language.
- A convened — not mandated — workforce agreement between Meta’s contractors and the building trades covering the construction workforce.
- Apprenticeship pipeline with EPCC and UTEP tied to specific hire counts.

WATER

- Binding annual groundwater withdrawal cap with public monthly reporting, tied to the tiered allocations in the Water and Wastewater Agreement.
- Closed-loop or reclaimed-water cooling commitment with a water-use-effectiveness target — and an express agreement that such measures are not claimed as a §395.0231 impact fee credit.
- Funding for aquifer recharge or reuse infrastructure at a stated figure.

ELECTRICITY

- Written commitment that Meta bears the full cost of generation, transmission, and interconnection built for its load — including after the McCloud bridge period ends. El Paso Electric has told the PUC it intends to roll McCloud into jurisdictional cost of service after the bridge period.
- Non-opposition to ratepayer protection conditions in the PUC dockets.
- Public disclosure of contracted load ramp.

NEIGHBORHOOD AND TRANSPARENCY

- Property-line noise monitoring with public data and remediation triggers.
- Air quality monitoring around the generation facility.
- Waiver or narrowing of §19 confidentiality over water, energy, jobs, and emissions data.
- Annual public reporting in a Council session.

MONEY AND STRUCTURE

- A direct payment or dedicated infrastructure fund, sized against the roughly \$110 million Phase 1 city-and-county incentive value and up to roughly \$550 million across all phases.
- A §14.9 clarification confirming that health-and-safety ordinances meeting both statutory conditions apply notwithstanding §14.2’s adverse-effect language.
- A transfer-notice and successor-obligation provision in §10 that survives sale/leaseback structures.

D

The one place City dollars touch construction labor

The City reimburses up to \$7.5 million plus 20% for Stan Roberts under §4.6.1. Whether Texas Government Code Chapter 2258 prevailing wage attaches to that City-funded portion is genuinely open.

Part VI — The Medium-Term Build

THE IMPACT FEE LEVER — WHAT IT IS ACTUALLY WORTH

Start from the fact that El Paso already has these fees. Water and wastewater impact fees were adopted in February 2009, administered by EPWater under Chapter 395, and updated by Council on May 7, 2024 by a 5–3 vote that raised them 28%. The Meta tract is in the Northeast service area. **This is not a program Council needs to create — it is one Council needs to fix and enforce.**

THE ADOPTED SCHEDULE

The 2009 rates are widely quoted as though they were current. **They are not.** The figures below apply the adopted 28% increase to the 2009 base; the one publicly reported adopted figure — Northeast, meter under one inch, \$1,880 — matches. **Confirm the remaining adopted amounts against EPWater’s published schedule before use.**

METER SIZE	2009 BASE	ADOPTED 2024 (+28%)	2024 STUDY CALCULATED
Less than 1"	\$1,469	\$1,880	\$5,684
2"	\$7,827	\$10,019	\$30,296
4"	\$24,480	\$31,334	\$94,752
6"	\$48,945	\$62,650	\$189,448
8"	\$78,315	\$100,243	\$303,128

A service unit is defined as 688 gallons per day of water and 341 gpd of wastewater. The maximum fee per service unit in the Northeast is \$10,023 for water plus \$1,345 for wastewater — \$11,368 before credits, \$5,684 after the 50% credit reflected in the study.

PROBLEM 1

Council adopted a fraction of what the study supported

On May 7, 2024, Council voted 5–3 to raise impact fees 28% in the Northeast, East and West service areas — the first update in fifteen years. The Raftelis study supported a calculated Northeast fee of \$5,684 per service unit, roughly 287% above the 2009 base and roughly 202% above the currently adopted rate.

One characterization to get right: advocates are often described as having demanded "a 100% increase." That is not what they sought. Advocates sought adoption of 100% of the calculated fees — a far larger step than a 100% increase. The 28% figure adopted was half of a 56% inflation-adjustment option. Getting this right matters, because the smaller number understates the case.

Closing that gap is a Council decision. It is already studied, generally applicable in the statutory sense, and requires nothing from Meta.

PROBLEM 2

The assessment method under-recovers badly for a data center

Fees are charged per connection on the AWWA meter ladder, which tops out at 8-inch equal to 53.33 service units. The Water and Wastewater Agreement allocates water in tiers: Tier I, 300,000 gallons per day maximum and 100,000 average; Tier II, 1 million maximum and 750,000 average; Tier III, 2.5 million maximum and 1.5 million average.

At 688 gpd per service unit, the Tier III maximum of 2.5 MGD is roughly 3,630 service units of demand at full buildout. The meter ladder would recover a few hundred thousand dollars against a demand equivalent worth more than \$20 million at calculated rates. But note: 2.5 MGD is the full-buildout ceiling, not current or near-term use. Any assessment applied today would be measured against a far smaller tier, and the plan should never quote the full-buildout figure without saying so.

The reason for the shortfall is structural: AWWA ratios assume residential-style peaking, while a data center runs at near-constant load. A demand-based service unit methodology for very large users — applied citywide, to any user above a stated threshold — remains the single highest-value technical fix available, and it sits squarely within Chapter 395’s “generally accepted engineering or planning standards” language.

PROBLEM 3

The timing may already have closed

Fees are assessed at platting, and the increased 2024 rates apply only to development platted after the May 2024 adoption. If this tract was platted before May 7, 2024, the 2009 schedule is locked in and no future increase reaches it.

This is why Part IV, item 9 is urgent. Establish the plat date before spending a dollar on anything else in this section.

THE IMPACT FEE LEVER — WHAT IT IS ACTUALLY WORTH (CONTINUED)

PROBLEM 4

A real \$5.3 vulnerability

The carve-out requires fees “generally applicable on a City-wide basis.” But the calculated fees are charged only in three designated service areas, and development outside those areas is not charged an impact fee. Meta has a colorable argument that a three-service-area fee is not city-wide. Chapter 395 itself requires service areas for water and wastewater, so the two provisions are in tension — but that tension is Meta’s argument to make, not the City’s.

This belongs squarely in the prophylactic \$20 interpretation dispute at Part II, dispute 6, and should be resolved before Council raises rates in reliance on collecting from this site.

PROBLEM 5

Senate Bill 14 created a mandatory credit aimed at exactly this facility

Effective January 1, 2026, Senate Bill 14 added Local Government Code §395.0231. A political subdivision shall provide a credit against water and wastewater impact fees to a builder or developer for the construction, contribution, or dedication of an eligible facility, system, or product that results in water reuse, conservation, or savings. Eligible measures include those that reduce per-service-unit water consumption or treatment and distribution requirements, decrease wastewater collection and treatment needs per service unit, or integrate practices or technologies achieving water efficiency, reuse, or conservation beyond standard compliance. The subdivision must establish procedures for calculating, reviewing and approving the credits.

PROBLEM 6

Procedure and calendar

Chapter 395 was also amended in 2025 with procedural requirements generally applying to updates and programs adopted after September 1, 2025 — including a requirement that documents be made publicly available at least sixty days before the first publication of a hearing notice on modifying fees, adopting or amending land use assumptions, or updating capital improvements plans. Separately, EPWater has told the CIAC that impact fees are not scheduled for reconsideration until at least 2028. Chapter 395 requires updates at least every five years, so 2029 is the outer limit. Council can move earlier, but it should budget the lead time and expect the added process.

HONEST SIZING

On the current method, and before any §395.0231 credit, the assessment on this site is plausibly low single-digit millions as a one-time charge. With a demand-based methodology and rates at the studied maximum, and measured against full Tier III buildout, the theoretical figure approaches \$20 million — but that number assumes no conservation credit, no city-wide challenge under §5.3, and a plat date after May 2024.

Against a roughly \$110 million Phase 1 incentive and up to roughly \$550 million across all phases, this is a real contribution and a genuine bargaining chip. It is not, on its own, a rebalancing of the deal, and it should never be presented as one.

CITYWIDE RULES THAT BIND META ANYWAY

Three clauses operate together here. Any analysis that reads only two of them will overpromise.

\$14.2 — Compliance With and Changes in Applicable City Rules

"The City shall not add or modify any Applicable City Rule, including any zoning, land use or building regulation, **with the express or inferred intent to specifically or inequitably target** the Project, the Land, the Company or the data center industry **or in a manner that adversely affects the Project, the Land or the data center industry.**"

\$14.9 — Moratoria or Interim Control Ordinances

No ordinance, resolution, policy or other measure enacted after the Effective Date "that relates directly or indirectly to the Project or to fees associated with or the timing, sequencing or phasing of the development or construction of the Project shall apply to the Property or this Agreement, **unless it is (i) reasonably found by the City to be necessary to the public health and safety of the residents of the City and (ii) generally applicable on a City-wide basis.**"

\$14.5 — Entitlement to Develop

"The Company has the **vested right to develop and operate the Project pursuant to Chapter 245 of the Texas Local Government Code,**" including the right to maintain, remodel, renovate, rehabilitate, rebuild, replenish or replace the Project or any portion of it throughout the Term.

READ TOGETHER — WHAT ACTUALLY SURVIVES

The intuitive conclusion is that a **citywide, health-and-safety-justified ordinance** simply applies to Meta. That conclusion is defensible, but it is contested, and **this plan will not pretend otherwise.**

The strongest reading for the City

\$14.9 is a specific provision governing post-Effective-Date measures and its two-part carve-out is a genuine exception. On that reading, an ordinance that is both **health-and-safety-necessary** and **city-wide** applies, and \$14.2's adverse-effect language cannot swallow the exception without rendering \$14.9 meaningless.

The strongest reading for Meta

\$14.2 is an independent covenant barring adoption in the first place, so the City breaches by enacting even a qualifying ordinance, whatever \$14.9 says about application. Meta would add that \$14.5's Chapter 245 vesting supplies a statutory shield that does not depend on either clause.

THE CHAPTER 245 LIMIT IS WHERE THE CITY'S ANSWER LIES

Chapter 245 vests the rules governing development permitting as of the application date. It is generally understood not to freeze a municipality's health-and-safety regulation of ongoing operations. An ordinance regulating noise at the property line, generator operating hours, or emissions monitoring is operational, not a development permitting standard. An ordinance changing setbacks, site design, or permitting sequence for this site is squarely in Chapter 245 territory and will lose.

CITYWIDE RULES THAT BIND META ANYWAY (CONTINUED)

THE DRAFTING DISCIPLINE

General applicability is necessary but no longer sufficient. Every candidate ordinance should satisfy four tests:

1

City-wide application with no data-center-specific trigger

2

An explicit, well-documented public health and safety finding in the ordinance record, made by the City and supported by evidence in that record

3

Regulation of operations rather than development permitting, to stay outside Chapter 245

4

An adverse-effect record showing the ordinance was not designed around this site — minutes, studies and staff analysis that would survive discovery

Candidate areas that pass all four

Noise standards, air quality and emissions monitoring, groundwater withdrawal and conservation rules, industrial water reuse requirements, backup generator operating limits, heat rejection standards, industrial stormwater controls.

Candidate areas that fail test three

Setbacks, separation distances, site design standards, permitting sequence.

The July 2026 data center policy framework

Council unanimously adopted a framework requiring minimum 300-foot separation from residential and ecological sites, noise requirements, and a special permit requiring Council approval. Applied prospectively to new projects, it is straightforward and this plan supports it. Applied to this site it faces every problem above at once: it names data centers, its separation and permitting provisions are development standards squarely within Chapter 245 and §14.5, and its adoption record follows a public controversy about this project. Council should obtain a written City Attorney opinion on its application to the Land before anyone asserts publicly that it reaches Meta.

A caution for the Stormwater Impact Fee Plan, confirmed against the text

The §5.3 carve-out names water and wastewater impact fees only. A drainage or stormwater impact fee, even if validly adopted under Chapter 395, falls inside the general waiver of “any and all impact fees.” Separately, the Stan Roberts Improvements are defined to exclude “water, sewer, or storm water improvements.” A stormwater fee does not reach this site. Do not let any revenue projection assume otherwise.

§14.4 — new Taxes

§14.4 bars City staff from recommending or supporting new Taxes applicable solely to the Project, the Company, the Land, operators of computer equipment, or the data center industry, or adopted with intent to target them. Note the limits: it constrains staff recommendations, not Council action, and targets discriminatory taxes, not generally applicable ones.

FORUMS WHERE THE 380 AGREEMENT DOESN'T REACH — AND THE CONSENT GATES, REASSESSED

PUC — McCloud Generation Facility (Docket 59076)

The City has filed testimony opposing El Paso Electric's 366 MW, \$551.8 million plant, arguing the utility has not demonstrated it is a prudent, cost-effective choice for existing customers. PUC staff have recommended denial, citing the absence of competitive bidding and inadequate ratepayer impact analysis. A decision is expected later this year. Press to final order.

The bridge period is the real issue. El Paso Electric has told the PUC that Meta bears the full cost during a bridge period of one to five years, after which the utility "will incorporate the cost of the facility into its total jurisdictional cost of service and retail rates." Any City position should target what happens after the bridge, not only whether the plant is built.

PUC — Economic Development Rate proceeding

Where the large-load rate class and cost-allocation rules actually get set.

Non-ERCOT parity

Extend statewide data center ratepayer protections to El Paso Electric's customers. The Governor's August 2026 guidelines are addressed to ERCOT and do not reach this utility — which is both the gap and the argument.

TCEQ air permitting

For on-site and backup generation.

Legislative agenda

On large-load cost causation.

The conversion play, and its limit. It is often suggested that a favorable PUC or legislative outcome may itself trigger §18's meet-and-confer. Read the clause: §18 is triggered "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 Property Tax Grants hereunder." A PUC order is not a law enacted, and a change in Meta's cost structure is not a change in its ability to receive the grants. Legislation might qualify; a regulatory order almost certainly will not. Regulatory wins are valuable on their own terms — they change what this project costs El Paso ratepayers — but do not sell them to Council as contract leverage.

THE CONSENT GATES, REASSESSED

§10.4 — Non-affiliate assignment

Affiliates, future owners, lessees and lenders need no consent under §10.1–10.3, and sale/leaseback is expressly permitted. As Part I.1 shows, this gate is narrower than it looked and did not capture the BlackRock transaction. Treat it as a residual, not a chip.

§17.1 — Mortgagee modifications

When lenders request modifications, the City "shall meet with the Company and such Mortgagees to negotiate in good faith." But the next sentence matters: "The City shall not withhold its consent to any such requested interpretation or modification that is consistent with the intent and purposes of this Agreement." This is closer to an obligation than an opening. It is still a meeting where other subjects can be raised; it is not a veto.

§11 — Estoppel certificates

Meta needs these for financing and transfers, and the City must state accurately whether Meta is in breach and whether the Agreement has been amended. The Agreement expressly contemplates reliance by transferees, successors and Mortgagees. With an 80% institutional owner now in place, well-documented compliance findings carry more weight than they did six months ago. This is the gate that grew.

§26 — Amendments

Council controls one of the two gates. Treat every Meta amendment request as an opening for full package negotiation.

Part VII — What the Contract Gives and Takes

WHAT THE CONTRACT GIVES AND TAKES — AND TRAPS TO AVOID

The asymmetries Council must plan around:

\$3 — Meta can walk; the City cannot

The Company “may at any time and for any reason terminate this Agreement automatically upon notice thereof to the City.” The City cannot. This is the single most important fact in the agreement.

\$6.10 — the City’s sole remedy

Termination as to the affected Phase. No damages. Meta never repays grants already received, outside the narrow \$6.7 undocumented-worker exception, which carries repayment plus 4% simple interest.

\$13 — no immunity shield

The City expressly waived governmental immunity to the extent needed to enforce specific performance against it. Combined with *City of League City v. Jimmy Chagas* (Tex. 2023), holding that a city entering a Chapter 380 agreement acts in a proprietary capacity and is not immune from a breach-of-contract claim, the City has no immunity shield here.

Force Majeure is close to unlimited

The \$2 definition runs to sixteen enumerated categories and closes with “any other causes of any kind whatsoever, whether similar to those enumerated or not, which are beyond the control of such Party.” \$23 extends deadlines automatically, subject only to the delayed party not having caused the condition and using commercially reasonable efforts to minimize it.

\$5.2 — non-appropriation backfires

It extends the Term by one year for every year skipped and leaves Meta free to “pursue all available rights and remedies under the law.”

Correction to a common assumption: subsequent phases are not a Council approval gate

Under \$4.2, Meta designates Phases by written notice “without the necessity of further approval or signature of the Parties.” Up to five Phases, each triggered by an \$800 million Subsequent Investment Report, with each Phase receiving fifteen consecutive annual grants. Undesignated improvements roll into the final designated Phase automatically. Any strategy built on “we’ll squeeze them at Phase 2” is built on sand.

Reports and inspection are narrow

\$4.7 permits inspection only after Reports are submitted, once per calendar year, two City employees, thirty days’ notice, escorted, under a confidentiality agreement Meta may require, with documents left on site, and scheduled at Meta’s reasonable discretion. \$6.6 makes failure to submit Reports expressly not a default — the only remedy is delaying payment until the report arrives, and only after two written notices with thirty-day windows.

What counts toward the \$800 million is broader than it sounds

“Construction Costs” includes land acquisition, general contractor and subcontractor fees, engineering, surveying, consultants, architectural and design fees, legal fees, financing costs and fees, zoning and permit fees, and even water, wastewater and thoroughfare impact fees. “Investment” adds Personal Property. The threshold is easier to reach than a construction-only reading implies.

Part VIII — Traps to Avoid

WHAT THE CONTRACT GIVES AND TAKES — AND TRAPS TO AVOID (CONTINUED)

TRAPS TO AVOID

Don't withhold appropriation.

§5.2 extends the Term and leaves Meta free to pursue all remedies. Worse than doing nothing.

Don't slow-walk permits.

§14.3 requires expedited review and a dedicated reviewer; §14.8 and §14.10 require final City action within ten Business Days. Delay is a City breach — and City delay is itself an enumerated Force Majeure event that extends Meta's own deadlines.

Don't assume general applicability is enough.

§14.2 also reaches rules adopted "in a manner that adversely affects" the Project or the industry, and §14.5 gives Meta Chapter 245 vested rights. Apply all four tests in Part VI.2.

Don't count on clawbacks.

§6.10 means grants already paid are gone.

Don't assume the impact fee lever is still open.

Fees are assessed at platting. If this tract was platted before May 7, 2024, raising rates now does nothing here. Confirm the plat date first.

Don't size the impact fee lever off full buildout.

The 2.5 MGD figure is the Tier III ceiling, not current demand, and \$395.0231 may credit part of it away.

Don't treat a consent gate as leverage until you have read §10.1–10.3.

The BlackRock transaction is the lesson.



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