



City of Hutto

Agenda

**Special Called City Council Meeting
Thursday, August 27, 2020 at 6:00 PM
City Council Chambers**

In accordance with the Texas Open Meetings Act this meeting agenda is posted for public information, continuously, for at least 72 hours prior to the scheduled time of the meeting on the bulletin board located on the exterior wall of the City Hall building at 500 West Live Oak, Hutto, Texas. This meeting agenda is also accessible via the Internet at www.huttotx.gov

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1. CALL SESSION TO ORDER

2. ROLL CALL

3. CITY COUNCIL COMMENTS

3.1. General Comments from City Council

4. PUBLIC COMMENT

Any citizen wishing to speak during public comment may do so after completing the required registration form. The purpose of this item is to allow the residents of Hutto and other interested persons an opportunity to address the City Council on agenda issues and on non-agenda issues that are a matter of the jurisdiction of the City Council (i.e., City policy or legislative issues). Non-agenda issues regarding daily operational or administrative matters should be first dealt with at the administrative level by calling City Hall at (512) 759-4839 during business hours. Each person providing public comment will be limited to 3 minutes.

Any citizen wishing to speak during public comment may do so after completing the required registration form. Comments for this meeting may also be sent to comments@huttotx.gov PRIOR to 4:00 pm on August 27, 2020. The email must include name, address, phone # and email to be recognized properly.

Citizens wishing to comment by phone may call:

Toll Free Call In: 1-800-717-4201

Conference ID: 242-3288

Once you are in the conference call press *5 to signal that you are requesting to speak during public comment.

[Note: The Texas Open Meetings Act, Texas Government Code, Chapter 551, prohibits the City Council from fully discussing, debating, or considering subjects for which public notice has not been given on the agenda. Issues that cannot be referred to the City Staff for action may be placed on the agenda of a future City Council Session.]

5. ORDINANCES

5.1. Consideration and possible action on Ordinance No. O-2020-022 Public Information Act Policy. (Second Reading).

[Hutto PIA Policy 8720 \(1\)](#)

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[Ordinance No. 2020-022 Adopting PIA Policy](#)

- 5.2. Consideration and possible action on Ordinance No. O-2020-025 Amending City Code and Creating the Right of Setoff.(Second Reading)(City Attorney). 34 - 36

[Ordinance No. O-2020-025 Right of Setoff Ordinance](#)

- 5.3. Consideration and possible action on Ordinance No. O-2020-029 declaring severance or transition agreements void.(Second Reading)(City Attorney) 37 - 40

[Ordinance No. O-2020-029 Declaring Severance or Transition Agreement Void](#)

6. RESOLUTIONS

- 6.1. Consideration and possible action on Resolution No. R-2020-075 waiving the attorney-client privilege concerning McGinnis Lochridge law firm's attorney fee bills in response to R000706-073019. (City Attorney) 41

[Resolution No. R-2020-075 Waiving Attorney Client Privilege McGinnis Fee bills](#)

- 6.2. Consideration and possible action on a Resolution on Council pay. (Councilmember Snyder) 42

[Resolution No. R-2020-079 Council Compensation](#)

- 6.3. Consideration and Possible Action on a Resolution Authorizing the Interim City Manager to Execute A Chapter 380 Agreement Providing for Economic Incentives for The Benefit of Electronic Data Carriers, Inc. (Ad Valorem Reimbursement) (Jennifer Burrington). 43 - 58

[2020-08-20 Resolution re Economic Incentive Agreements Ad Valorem - Clean Tri-Party Ch. 380 Agreement - EDC \(Hutto 3\) 2020-08-20 Clean](#)

- 6.4. Consideration and Possible Action on a Resolution Authorizing the Interim City Manager to Execute A Chapter 380 Agreement Providing for Economic Incentives for The Benefit of Electronic Data Carriers, Inc. (Sales Tax Reimbursement) (Jennifer Burrington) 59 - 74

[2020-08-20 Resolution re Economic Incentive Agreements Sales Tax - Clean Two-Party Ch. 380 Agreement - EDC \(Hutto3\) 2020-08-20 Clean](#)

7. OTHER BUSINESS

- 7.1. Budget and Tax Rate Review and Discussion.
- 7.2. Discussion and possible action on Capital Improvement Plan and current projects including but not limited to:
- Lakeside Estates Lift Station
 - Timeline of taking over ditches in the Legends of Hutto Subdivision.
- 7.3. Consideration and Possible Appointments, Re-appointments and/or Removals to City Boards and Commissions.

8. EXECUTIVE SESSION

The City Council for the City of Hutto reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above as authorized by the Texas Government Code Sections 551.071 [Litigation/Consultation with Attorney], 551.072 [Deliberations regarding real property], 551.073 [Deliberations regarding gifts and donations], 551.074 [Deliberations regarding personnel matters] or 551.076 [Deliberations regarding deployment/implementation of security personnel or devices] and

551.087 [Deliberations regarding Economic Development negotiations].

8.1. Receive legal advice pursuant to Texas Government Code Sec. 551.071 related to Pending Legal Requests, Potential Claims and City Council Legal Requests.

8.2. Receive legal advice pursuant to Texas Government Code Section 551.071(1) and (2) relating to the Hutto Sports, Health and Entertainment District; and deliberations regarding Economic Development pursuant to Tex. Govt. Code § 551.087; and deliberate the purchase or sale of real property within the Hutto Sports, Health and Entertainment District pursuant to Texas Government Code Section 551.072.

9. ACTION RELATIVE TO EXECUTIVE SESSION

9.1. Discussion and possible action relating to legal advice pursuant to Texas Government Code Sec. 551.071 related to Pending Legal Requests, Potential Claims and City Council Legal Requests.

9.2. Discussion and possible action relating to legal advice pursuant to Texas Government Code Section 551.071(1) and (2) relating to the Hutto Sports, Health and Entertainment District; and deliberations regarding Economic Development pursuant to Tex. Govt. Code § 551.087; and deliberate the purchase or sale of real property within the Hutto Sports, Health and Entertainment District pursuant to Texas Government Code Section 551.072.

10. ADJOURNMENT

11. CERTIFICATION

I certify that this notice of the **August 27, 2020** Special City Council meeting was posted on the City of Hutto website and the City Hall bulletin board of the City of Hutto on **August 22, 2020** at **2:00 P.M.**



Holly Nagy

The City of Hutto is committed to comply with the Americans Disability Act. The Hutto City Council Chamber is wheelchair accessible. Request for reasonable special accommodations must be made 48 hours prior to the meeting. Please email the City Secretary's office at City.Secretary@huttox.gov or call (512) 759-4033 for assistance.

City of Hutto Public Information Policy

I. General

A. Purpose

Pursuant to Government Code section 552.230(a) the City of Hutto (the “City”) promulgates these reasonable rules of procedure under which public information may be inspected and copied efficiently, safely, and without delay. The purpose of this policy is to set out guidelines to ensure that all requests for public information are handled uniformly, fairly, timely, and within the statutes set out by the Texas Public Information Act (“the Act”). In the event of any conflict between the City’s Policy and the Act, the Act and other applicable state laws shall prevail.

B. The Public Information Act

The Texas Public Information Act gives the public the right to request access to government information through a written request to a governmental body. The request must ask for records or information already in existence. The Act does not require a governmental body to create new information, to do legal research, or to answer questions.

A governmental body has no duty to comply with standing requests for copies of records. If a requestor seeks documents that are not in existence at the time of the request, the governmental body may notify the requestor of this fact and ask the requestor to resubmit the request at a later time when such a record may be available. Also, the governmental body has no duty to notify the requestor in the future that the information has come into existence.

The Act requires that an officer for public information of a governmental body promptly produce public information for inspection, duplication, or both on application by any person to the officer. “Promptly” means as soon as possible under the circumstances, that is, within a reasonable time, without delay.

If an officer for public information cannot produce public information for inspection or duplication within ten (10) business days after the date the information is requested, the officer must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

C. Scope

Public information includes information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business. The Act applies to records regardless of their format. It includes information that is maintained in paper, tape, microfilm, video, electronic data held in a computer memory, as well as other mediums specified under law.

All City officials and employees shall ensure that any information they create, transmit, receive, or maintain in their official capacity, or while performing official business or a governmental function on behalf of the City, which pertains to official business of the City is preserved in

accordance with the City's records retention schedule and promptly produced in response to a request for public information.

II. Duties and Responsibilities

A. Public Information Officer

The City Manager serves as the City's officer for public information ("OPI") and is responsible for the effective disposition of public information requests submitted to the City of Hutto. An effective and efficient means of receiving, cataloging, retrieving, and dispensing of records is essential to comply with the laws of the State of Texas. It is the duty of the OPI to:

1. make public information available for public inspection and copying;
2. protect public information from deterioration, alteration, mutilation, loss, or unlawful removal;
3. repair, renovate, or rebind public information as necessary to maintain it properly; and
4. make reasonable efforts to obtain public information from a temporary custodian if:
 - (i) the information has been requested from the governmental body;
 - (ii) the officer for public information is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody, or control of the information;
 - (iii) the officer for public information is unable to comply with the duties imposed by the Act without obtaining the information from the temporary custodian; and
 - (iv) the temporary custodian has not provided the information to the officer for public information or the officer's agent.

B. Department Heads

Each department head is an agent of the officer for public information for the purposes of complying with this policy.

1. City Secretary. It is the responsibility of the City Secretary to take charge of, arrange, and maintain the records of the City. The City Secretary's office is primarily responsible for locating and compiling documents responsive to all requests. The City Secretary is responsible for operating and maintaining the City's online Public Records Center.

2. Police Chief. The Police Chief is the department head for the Hutto Police Department. It is the responsibility of the Police Chief to take charge of, arrange, and maintain the records of

the Hutto Police Department. The Police Chief's office is primarily responsible for locating and compiling documents responsive to requests for police department information.

3. Executive Director of Organizational Development and Human Resources. The Director is a department head responsible for taking charge of, arranging, and maintaining the records of the City's Human Resources Department.

4. Director of Budget and Finance. The Director is a department head responsible for taking charge of, arranging, and maintaining the records of the City's Finance Department.

5. Director of City Planning. The Director is a department head responsible for taking charge of, arranging, and maintaining the records of the City's Planning Department.

6. City Engineer. The City Engineer is a department head responsible for taking charge of, arranging, and maintaining the records of the City's Engineering Department.

C. Temporary Custodians

Any current or former officer or employee of the City who, in the transaction of official business, creates or receives public information that the officer or employee has not provided to the OPI or OPI's agent is considered a temporary custodian of that information. Temporary custodians have the following responsibilities:

1. A temporary custodian with possession, custody, or control of public information shall surrender or return the information to the City not later than the 10th day after the date the OPI or the OPI's agent requests the temporary custodian to surrender or return the information.

2. A temporary custodian's failure to surrender or return public information as required in/by this policy and the Act is grounds for disciplinary action by the City that employs the temporary custodian or any other applicable penalties provided by the Act or other law.

3. The City is considered to receive the request for information held by a temporary custodian on the date the information is surrendered or returned to the City by the temporary custodian.

4. Temporary custodians do not have, by virtue of the officer's or employee's position or former position, a personal or property right to public information the officer or employee created or received while acting in an official capacity.

III. Procedures

A. Signage Required

1. As required by the Act, the City's OPI shall prominently display the sign prescribed by the Attorney General that contains basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information at the following locations:

- i. The City's online Public Records Center.

- ii. The reception desk located at City Hall.
 - iii. The employee breakroom at City Hall.
 - iv. The reception desk at the Hutto Police Department.
 - v. The briefing room at the Hutto Police Department.
2. The physical sign must be displayed on paper at least 8-1/2" x 14".

B. Method of Making Written Request for Public Information

1. The City designates the following mailing address and electronic mail for receiving written requests for public information. The City shall provide the designated mailing address and electronic mailing address to any person on request. The City will only respond to a written request for public information that is delivered to the City's OPI by one of the following methods:

- i. United States mail addressed as follows:

The City of Hutto
Office of the City Secretary
500 W. Live Oak St.
Hutto, TX 78634

- ii. electronic mail sent to Openrecords@huttotx.gov

- iii. hand delivery to the City's OPI or designated representative; or

- iv. electronic submission through the Hutto Public Records Center located on the City's website at the following address URL:

https://www.huttotx.gov/government/city_secretary/public_information_request.php.

2. Only the four methods listed above are approved methods for submitting requests for public information to the City. The City's OPI shall include a statement, including the mailing address and electronic mail address designated by the City, that a request for public information may be made by those methods only on:

- i. the sign required to be displayed by section III. A. of this policy and section 552.205 of the Act; and
- ii. the City's website

B. Hutto Public Records Center

The City utilizes software to help track and manage Public Information Requests. This tool is accessible through the Hutto website and is publicly referred to as the "Hutto Public Records Center." Internally, this software is referred to as "GovQA." The GovQA software assists the City in managing and maintaining correspondence between the City and requestors through a "Records Center" and allows the City to easily and efficiently track requests and responsive information.

Specifically, the software can track the date the request was received, date of any correspondence with the requestor, estimated cost of producing information, amounts paid, and amounts owed.

All requestors are encouraged to utilize the online Public Records Center. As detailed in the intake procedures below, any agent of the OPI that received a request via any other approved method shall immediately forward the request to the City Secretary's Office to be entered into the GovQA system.

C. Receiving Requests for Information

1. Written Requests

All requests for information must be submitted in writing via one of the approved methods detailed in this policy. If an officer or employee is approached and asked for information verbally, they shall direct the requestor to the City's website to make the request using the Public Records Center or provide them with the form prescribed the Attorney General's Office.

2. Date/Time Stamp

All requests submitted via the online Public Records Center are automatically date and time stamped at the time they are submitted. Any written requests for public information not submitted via the Public Records Center shall be immediately date and time stamped by the agent accepting the request with the date and time the request was submitted.

3. Receiving a Request

i. Requests submitted on an official city holiday, weekend or after 5PM on a regular business day will be considered received on the next business day. When calculating deadlines, the first business day is the day after the City officially *receives* the request. As noted above, weekends and holidays (including skeleton crew days) when the City's administrative office is closed do not count as business days, therefore, the day a request is submitted may differ from the day it is received.

ii. If the City receives a written request by United States mail and cannot adequately establish the actual date on which the City received the request, the written request is considered to have been received by the City on the third business day after the date of the postmark on a properly addressed request.

4. Intake

i. Requests not submitted via the Public Records Center shall be immediately, but no later than one (1) business day after the request was received, forwarded to the City Secretary or their designated agent.

ii. Upon receipt of a request not submitted via the Public Records Center, the City Secretary or their agent shall immediately, but no later than one (1) business day after the request was received, upload the request to GovQA.

ii. Within three (3) business days of receiving a request the City Secretary or their agent will review the request and either assign the request in GovQA to the appropriate department for compilation of the responsive documents or if the request is unclear or particularly voluminous the City Secretary will seek clarification from the requestor.

iv. Requests for clarification should be made as soon as possible, but no later than the 10th business day from the date the request was received. All correspondence with a requestor shall be made through the GovQA system so that proper records can be kept. If clarification is sought, the 10-day deadline to respond to the request is suspended and restarts upon receipt of the clarification from the requestor.

v. After a department head is assigned a request, they have three (3) business days to do one of the following:

a. upload the responsive documents to GovQA for further review prior to release;

b. notify the City Secretary's office that more time is needed to compile the responsive information; or

c. if the department head anticipates it will take longer than three (3) hours to compile the responsive information, provide the City Secretary's Office with an estimate of the personnel time required to respond to the request.

vi. After receiving responsive information from the appropriate department, the City Secretary will review the information to determine if it includes any information that must be redacted or withheld because it is confidential by law or subject to a discretionary exception to disclosure.

vii. The City Secretary shall promptly, but no later than ten (10) business days from when the request was received, respond to the requestor with one of the following:

a. the responsive information;

b. a letter providing the exact date and time when the information will be available;

c. a clarification or narrowing letter;

d. a cost estimate letter;

e. a letter notifying the requestor that the City is seeking an Attorney General ruling regarding the request.

5. Questions

i. As stated above, the Act does not require the City to answer questions. However, it is the primary duty of City officials and employees to serve the citizens of Hutto. Accordingly, when a written request is submitted through an approved method seeking answers to specific questions, but does not specify what, if any, documentation is being sought, the City Secretary or their designee will proceed as follows:

a. First, they will attempt to identify any documents in existence that might provide the requestor with the answers they are seeking.

b. If unable to identify any documentation, the City Secretary shall seek clarification notifying the requestor that the Act does not require the City to answer questions and asking them to clarify what documentation they are seeking.

c. If a requestor is unable to identify any documentation they are seeking, the City Secretary shall notify the requestor that the Act does not require the City to answer questions, but that their request is being processed as a “citizen inquiry” and has been forwarded to the Public Information Officer for a response.

ii. Citizen requests seeking the answers to questions not submitted in writing do not need to be considered requests submitted under the Act and processed in accordance with the procedures stated in this policy.

iii. However, any request for any kind of documentation (paper or electronic copies) should be considered a request submitted under the Act, reduced to writing and processed in accordance with these procedures and the Act.

D. Responding to Routine Requests for Information

1. Requests for the following documents are considered “routine” and may be immediately released to the requestor upon receipt of payment, if required, and do not have to be logged and processed in accordance with the procedures detailed in this policy:

- i. Agendas
- ii. Meeting Minutes
- iii. Meeting Recordings
- iv. City Ordinances

2. Much of this routine information is identifiable and readily available on the City’s website. Accordingly, rather than provide hard copies of this information, the City will be deemed to have complied with the Act by referring the requestor to the exact Internet location or uniform resource locator (URL) address on the City’s website. However, if a Requestor indicates they would prefer the information in a physical format the information should promptly be provided.

E. Responding to Requests for Non-Confidential Information

1. Release Requested Documents

If responding to the request would incur less than forty dollars \$40 in personnel charges and there are no concerns regarding the confidentiality of the requested information, the City Secretary shall promptly send responsive documents and an invoice of the costs to the requestor as soon as possible, but no later than ten (10) business days from the date of the request.

2. Request for Additional Time.

If there are no confidentiality concerns regarding the requested information, but the information requested cannot be promptly produced because of the number of documents sought or availability of records, the City Secretary shall notify the requestor, in writing, of an estimated date and time on which the responsive information will be available.

3. Cost Estimate

If there are no confidentiality concerns regarding the requested information, but it will incur charges of more than forty dollars (\$40) the City Secretary shall generate an itemized cost estimate letter and send it to the requestor as soon as possible, but no later than ten (10) business days from the date of the request.

4. Automatic Redactions

i. The Attorney General's Office and/or the Texas Legislature has held that a City may redact the information listed below without the necessity of requesting a decision from the Attorney General. Therefore, any documents requested that include any of the following information shall be immediately redacted and promptly produced to the requestor without seeking the Attorney General's permission.

- a. a direct deposit authorization form;
- b. a Form I-9 and attachments;
- c. W-2 and W-4 forms;
- d. a certified agenda and tape of a closed meeting;
- e. a fingerprint;
- f. L-2 and L-3 declarations;
- g. a Texas driver's license number, a copy of a Texas driver's license, a Texas license plate number, the portion of a photograph that reveals a Texas license plate number, and the portion of any video depicting a discernible Texas license plate number;**
- h. a credit card number, debit card number, charge card number, insurance policy number, bank account number, bank routing number; or access device number;**
- i. an e-mail address of a member of the public;
- j. a Form DD-214 or other military discharge record that is first recorded or first comes into the possession of a governmental body on or after September 1, 2003;
- k. a social security number of a living person;
- l. the home address, home telephone number, emergency contact information, or information that reveals whether the person has family members of an employee, official or peace officer who has elected in writing that they wish to keep this information private;**

m. Information maintained by a family violence shelter center or sexual assault program;**

ii. If the City is redacting or withholding information denoted above with a double asterisk (**) the City shall provide the following information to the requestor on a form prescribed by the Attorney General:

a. a description of the redacted or withheld information;

b. a citation to the section of the Act allowing the redaction; and

c. instructions regarding how the requestor may seek a decision from the Attorney General regarding whether the redacted or withheld information is excepted from required disclosure.

iii. The City has received a previous determination from the Attorney General, OR2018-29623, allowing the City to redact dates of birth of all living individuals without seeking permission from the Attorney General's Office.

F. Responding to Requests for Confidential or Excepted Information

1. Attorney General Rulings

i. If the City Secretary identifies information is confidential or excepted from public disclosure and there has not been a previous determination about whether the information falls within one of the exceptions, the City must ask for a ruling from the Attorney General about whether the information is excepted from disclosure.

ii. The City Secretary shall ask for a decision from the Attorney General by submitting a letter requesting a ruling to the Attorney General's Office - Open Records Division via certified mail or using the e-file portal on the Attorney General's website.

iii. The request for ruling letter must state the exceptions that apply to the requested documents and include all information required by the Act.

iv. The request for ruling letter must be submitted to the Attorney General's Office within a reasonable time but not later than the 10th business day after the date of receiving the written request. This letter is sometimes referred to as a "10-day letter."

v. If the City seeks a ruling from the Attorney General's Office, the City Secretary or City Attorney's Office must provide a copy of the 10-day letter, redacted, if necessary, and without attachments, to the requestor via the GovQA portal or by certified mail within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request.

vi. If a ruling from the Attorney General's Office has been requested, within fifteen (15) business days of receipt of the request the City Secretary or the City Attorney's Office must submit via certified mail or the e-file portal on the Attorney General's website written comments stating the reasons why the stated exceptions apply that would allow the information to be

withheld. This letter is sometimes referred to as a “15-day brief.” The following must be included with the brief:

- a. a copy of the written request for information;
 - b. a signed statement as to the date on which the written request for information was received by the City or evidence sufficient to establish that date; and
 - c. a copy of the specific information requested, or a representative sample of the information, if a voluminous amount of information was requested, labeled to indicate which exceptions apply to which parts of the copy.
- vii. Not later than the 15th business day after the date of receiving the written request, the City Secretary or the City Attorney’s Office must forward a copy of the 15-day brief, redacted if necessary, and without attachments, to the requestor via the GovQA portal or by certified mail.

2. Legal Consultation for Disclosure Exceptions

i. If the City Secretary has a question or concern regarding the confidentiality of responsive information, the City Secretary will immediately forward said question or concern along with the written request and responsive documents to the City Attorney’s Office for review.

ii. Any requests concerning the following individuals or subjects must be immediately forwarded to the City Attorney’s Office, for review:

- a. Juveniles
- b. Sexual assault/abuse/harassment
- c. Attempted Suicide
- d. Traffic accidents
- e. Medical conditions
- f. References to an individual’s mental or physical injuries or defects
- g. Personal financial information
- h. Law enforcement investigations
- i. Domestic violence
- j. Body Worn Camera footage
- k. Police officer personnel files
- l. Pending litigation

IV. Policies Regarding Confidential and Discretionary Exceptions

A. Police Department Records

1. Pending Investigation Previous Determination Letter (OR2018-28758)

i. It is the policy of the City to withhold information, as allowed by Texas Government Code section 552.108, that deals with the detection, investigation, or prosecution of crime the release of which would interfere with the detection, investigation, or prosecution of an

open or pending criminal matter. The City agrees with the Attorney General's findings that where an investigation or prosecution is still pending at the time of the request a presumption exists that release of the investigatory information would interfere with law enforcement or prosecution. Accordingly, it is the City's policy to exercise its discretion provided by the Act and withhold any information requested that relates to a pending criminal investigation or prosecution unless the Chief of Police or prosecutor for the State specifically approves the release.

ii. Generally, the City must seek permission from the Attorney General's Office to withhold a police report that relates to an incident that is pending investigation or prosecution, but the City has received a predetermination ruling from the Attorney General, OR2018-28758 allowing the City to withhold this information without first seeking a ruling if the following conditions are met:

a. The City Secretary makes a good-faith determination that the requested information deals with the detection, investigation, or prosecution of crime and the release of the records would interfere with the detection, investigation, or prosecution of an open or pending criminal matter.

b. The City Secretary confirms that the requestor has not previously requested the same information.

c. Within five (5) business days of receiving the request the City Secretary provides the requestor with the "basic information" as required by the Act and written notice as prescribed by the Attorney General's Office of the previous determination and the exception that applies.

2. Audio Files and Dash Camera Videos.

i. All audio files and dash camera video files are stored in an electronic format on the City's servers, therefore, making this information available to the public may require the manipulation of data and if so, should be processed in accordance with the manipulation of data policy. Do we have this policy?

ii. Prior to public release, all audio files and dash camera video files should be reviewed for confidential information such as driver's license numbers, license plate numbers and other information deemed confidential by law.

a. If it is determined that an audio or video file includes information confidential by law the City Secretary shall seek permission from the Attorney General in accordance with the Act and this policy to withhold the file in its entirety as the City does not have the technological capabilities to redact this information from the audio or video files and is prohibited by law from releasing this information.

3. Body Worn Camera ("BWC") Videos

Requesting BWC Videos

i. Access to information recorded by a body worn camera is governed not only by the Act, but also Chapter 1701 of the Texas Occupations Code. The City adopts this policy in accordance with section 1701.655(b)(4) of the Occupations Code.

ii. A peace officer or other employee of a law enforcement agency commits a Class A misdemeanor offense if the officer or employee releases a recording created with a body worn camera without permission of the Hutto Police Department. *See* Tex. Occ. Code § 1701.659. Only a release of a recording in compliance with this policy is considered a release with permission of the Department.

iii. Only information recorded by a BWC and held by the Department that is or could be used as evidence in a criminal prosecution is subject to public release under this policy and the Public Information Act.

iv. As required by the Texas Occupations Code, a requestor is required to provide all of the following information when submitting a written request for information recorded by a BWC:

- a. the date and approximate time of the recording;
- b. the specific location where the recording occurred; and
- c. the name of one or more persons known to be a subject of the recording.

v. If a requestor fails to provide this information the City Secretary shall respond in writing by making him or her aware of these requirements and requesting he or she provide the appropriate information.

vi. A failure to provide all of the information required to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.

Exceptions to Releasing BWC Videos

vii. In addition to the exceptions to public disclosure included in the Act, the Occupations Code also prohibits release of BWC Videos in the following circumstances:

viii. BWC Videos Related to a Pending Investigation. A BWC video documenting an incident that involves the use of deadly force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer may not be released to the public until all criminal matters have been finally adjudicated and all related administrative investigations have concluded, unless the department determines that the release furthers a law enforcement purpose.

a. If the City receives a request for a BWC Video related to a pending investigation as described above, the City Secretary will assign the request to the Chief of Police and the Chief of Police shall notify the City Secretary, via the GovQA portal, no later than five (5) business days after receipt of the request whether release of the video would further a law enforcement purpose.

b. If the City Secretary receives no written response from the Chief or if the Chief does not believe release would further a law enforcement purpose, the City shall seek permission from the Attorney General, in accordance with this policy and applicable law, to withhold the video from public release.

ix. BWC Videos Recorded in a Private Space. To comply with state law, the City may not release any portion of a recording made in a private space without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative. Such permission should be procured by the requestor. If the City receives a request for this type of information without the proper written authorization the City Secretary shall first seek to clarify with the requestor whether they can provide written authorization and if they cannot provide written documentation of that permission, the City shall seek permission from the Attorney General, in accordance with this policy and applicable law, to withhold the video from release.

x. BWC Videos Involving Class C misdemeanor with No Arrest. To comply with state law, the City may not release any portion of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative. If the City receives a request for this type of information without the proper written authorization the City Secretary shall first seek to clarify with the requestor whether they can provide written authorization and if they cannot provide written documentation of that permission, the City shall seek permission from the Attorney General, in accordance with this policy and applicable law, to withhold the video from release.

xi. Accidental Recordings. The City shall not release a BWC recording if the recording was not required to be made under Subchapter N, Occupations Code, or another law or under a policy adopted by the Hutto Police Department and does not relate to a law enforcement purpose. If the City receives a request for this type of information, the City Secretary shall seek permission from the Attorney General, in accordance with this policy and applicable law, to withhold the video from release pursuant to section 1701.661(h) of the Texas Occupations Code.

Procedures for Responding to Requests for BWC Videos

- xii. Upon receiving a request for a BWC video the City Secretary shall:
- a. Confirm that the request includes all the necessary information.
 - b. If it does, assign the request to appropriate police department contact.
 - c. The police department shall locate the video, review it, provide a copy to the City Secretary's Office and notify the City Secretary's Office within five (5) business days if there are any exceptions or written authorizations required before the video can be released.
 - d. If the requested BWC video is subject to a discretionary exception or includes confidential information, the City Secretary shall submit the request to the Attorney General's office as required by the Act, the Occupations Code and this policy.

e. The City does not have the capability to redact confidential information from BWC videos. Accordingly, if any information in the video is deemed to be confidential by law the City Secretary must seek permission to withhold the video in its entirety.

f. If the City determines it is necessary to seek the Attorney General's permission to withhold a BWC video it shall submit the initial "10-day letter" to the Attorney General and submit a copy to the requestor, no later than twenty (20) business days from the date the request was received and submit the "15-day brief" to the Attorney General and requestor no later than twenty-five (25) business days from the date the request was received.

g. If the requested BWC video is not subject to an exception and all necessary written authorizations are received the City Secretary shall promptly, but no later than ten (10) business days from the date the request was received, make the video available to the requestor in accordance with the Act and these policies.

h. A request for BWC recordings is considered voluminous if it includes:

1. a request for body worn camera recordings from more than five separate incidents;

2. more than five separate requests for body worn camera recordings from the same person in a 24-hour period, regardless of the number of incidents included in each request; or

3. a request or multiple requests from the same person in a 24-hour period for body worn camera recordings that, taken together, constitute more than five total hours of video footage.

i. The City Secretary is considered to have promptly responded to a voluminous request for BWC recordings if he or she makes the requested videos available in accordance with the Act and these policies within twenty-one (21) business days of receiving the written request.

B. Request Affecting Critical Infrastructure

1. The Texas Homeland Security Act ("HSA").

i. Section 418.181 of the Texas Government Code makes documents or portions of documents confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

ii. The Attorney General's Office has held that the fact that information may relate to a governmental body's security concerns does not make the information per se confidential under the HSA. A City asserting confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provisions.

iii. The Attorney General's Office has held that information that identifies the physical locations and technical details of critical infrastructure, including the city's electrical

systems, water distribution system, sewer system, as well as the locations of gas lines, telephone lines, and fire hydrants is excepted from disclosure pursuant to the HSA.

iv. The City asserts, by adopting this policy, that the City's electrical, water and wastewater utilities are part of the City's critical infrastructure for purposes of section 418.181. Release of any information, including site plans or as-built surveys, that include information regarding the City's treatment plants, lift stations, or elevated storage tanks would expose this critical infrastructure to possible acts of terrorism and criminal activity by exposing potential vulnerabilities in the critical infrastructure.

v. Accordingly, it is the policy of the City to seek the Attorney General's permission to withhold any information that references or details the City's treatment plants, lift stations, or elevated storage tanks.

C. Requests for Agency Memoranda

1. Deliberative Process Privilege

i. Section 552.111 of the Government Code excepts from disclosure an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency. This exception encompasses the deliberative process privilege. This is a discretionary exception, the purpose of which is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process.

ii. Section 552.111 excepts from disclosure internal communications, including communications between the City and a third party with a privity of interest, that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body.

iii. Section 552.111 excepts from disclosure a preliminary draft of a document intended for public release in its final form as it necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document.

iv. It is the policy of the City to seek the Attorney General's permission to withhold any information that the City Secretary, in consultation with the City Attorney's Office, believes reflects the policymaking process of the City.

D. Requests for Information Related to Certain Legal Matters

1. Attorney Client Communications

i. Section 552.107 of the Government Code excepts from public disclosure information that the Attorney General or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct. The Texas Supreme Court has held the Texas Rules of Evidence and Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022.

ii. Texas Rule of Evidence 503 encompasses the attorney-client privilege which generally allows a client to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client.

iii. It is the policy of the City to seek the Attorney General's permission to withhold any information that the City Secretary, in consultation with the City Attorney's Office, believes to be a confidential attorney-client communication.

2. Attorney Work Product

i. Texas Rule of Civil Procedure 192.5 encompasses the attorney work product privilege. "Attorney work product" is confidential under rule 192.5 if it reveals an attorney's core work product. Core work product is the work product of an attorney or an attorney's representative, developed in anticipation of litigation or for trial, that contains the mental impressions, opinions, conclusions, or legal theories of the attorney or the attorney's representative.

ii. It is the policy of the City to seek the Attorney General's permission to withhold any information that the City Secretary, in consultation with the City Attorney's Office, believes to be confidential attorney work product.

E. Requests Regarding Real Estate and other Competitive Bidding

1. Location or Price of Property

i. Section 552.105 of the Government Code excepts from disclosure information relating to appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property. Section 552.105 is a discretionary exception designed to protect the City's planning and negotiating position with respect to particular transactions.

ii. It is the policy of the City to seek the Attorney General's permission to withhold any information that the City Secretary, in consultation with the City Attorney's Office, believes if released, would impair or tend to impair the City's planning and negotiating position in regard to particular transactions.

2. Competition or Bidding

i. Section 552.104(a) of the Government Code excepts from disclosure information that, if released, would give advantage to a competitor or bidder. Section 552.104 is a discretionary exception that allows the City to withhold information if knowing another bidder's or competitor's information would be an advantage.

ii. It is the policy of the City to seek the Attorney General's permission to withhold any information that the City Secretary, in consultation with the City Attorney's office, believes if released, would give advantage to a competitor or bidder.

F. Requests Regarding Litigation

1. Pending or Anticipated Litigation

i. Section 552.103 of the Government Code provides exception from disclosure information relating to pending or anticipated litigation of a civil or criminal nature to which the City is or may be a party or to which an officer or employee of the City, as a consequence of the person's office or employment, is or may be a party. Section 552.103 is a discretionary exception the purpose of which is to enable a City to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures.

ii. It is the policy of the City to seek the Attorney General's permission to withhold any information that the City Secretary, in consultation with the City Attorney's Office, believes to be related to pending or anticipated litigation.

V. Requests for Information Not Subject to the Act

A. Requests by City Officials in their Official Capacity

1. The purpose of the Act is to prescribe conditions under which members of the general public may obtain information from a governmental body. An official of the City who, in an official capacity, requests information held by the City does not act as a member of the public in doing so. Thus, the exceptions requiring public disclosure under the Act do not control the right of access of an official of the City to information maintained by the City.

2. Accordingly, information may be released to City officials requesting the information in their official capacity in compliance with the following policy:

i. Requests for information from a city official must be submitted to the City Secretary in writing.

ii. As soon as possible, but no later than 10 business days from the receipt of the request, the City Secretary will respond to the request from the city official with either copies of the requested information, notice that the information is available for inspection, or notice that the request will be added to the next council agenda for consideration and direction.

iii. Information provided in response to a request by a city official will be made available to all city officials.

iv. City officials will not be charged for information sought in their official capacity.

v. Information that is protected by confidentiality laws and/or common law privacy laws that has no relationship to the transaction of official business, such as individuals' dates of birth, social security numbers and personal financial information, will be redacted prior to release to city officials.

vi. The City Secretary will mark all information provided in response to a request from a city official as "Confidential – For Official Eyes Only."

3. Any employee or city official who has access to confidential information pursuant to this policy must maintain the confidentiality of the information. Misuse of confidential information, including disclosing the information to person who is not authorized to receive the information or allowing an unauthorized person to inspect the information is a criminal offense.

B. Intergovernmental Transfers

1. Information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality.

2. It is well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties.

3. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities.

4. When the City received a request from another governmental body, it is the policy of the City to exercise its discretion to voluntarily transfer unredacted copies of the requested information, if not statutorily prohibited. The City Secretary is instructed to notify any governmental body that receives information through an intergovernmental transfer that the information being sent is not a release to the general public and the receiving governmental body must keep said information confidential and immediately inform the City if said information is requested by the public so that the City may assert any applicable exceptions, if necessary.

C. Requests for Municipal Court Records

1. Judiciary Not Subject to the Act

i. Courts and judicial branch agencies are not subject to the Act nor to the federal Freedom of Information Act. However, to ensure efficient and consistent responses to requests for information held by the judiciary it is the City's policy that requests for information held by the Hutto Municipal Court be processed in accordance with these guidelines.

2. Court Case Records

i. Court case records are records of any nature created, produced, or filed in connection with any matter that is or has been before a court. Court case records are considered information held by the judiciary. Therefore, the Act neither authorizes this information to be withheld nor requires it to be disclosed. Access to court case records is governed by common law, other statutory law and court rules. The Clerk of the Court serves as the custodian of court case records.

ii. Requests from the public for court case records shall be immediately directed to the Court Clerk and processed in accordance with the following guidelines:

a. Generally, court case records filed with the Court are considered public and will be released to the public unless access is restricted by law or court order.

b. The following is a non-exhaustive list of court case records that are considered records of the judiciary and therefore not subject to the Act, but are considered public records under other law and may be released to the public unless a specific court order prohibits release in a particular case:

1. Summons and complaints;
2. Final judgments;
3. Final court orders, including orders of deferred disposition; and
4. Executed arrest warrants and supporting affidavits.

iii. The following is a non-exhaustive list of court case records that are considered records of the judiciary and therefore not subject to the Act, but which are subject to other law prohibiting their release to the public:

1. Records related to charges against or the conviction of a child, for a non-traffic related offense, *see* Article 45.0217 of the Code of Criminal Procedure.
2. Records related to the conviction of or deferral of disposition for a child, for a non-traffic related offense, *see* Article 45.0217 of the Code of Criminal Procedure.

vi. A request for a court case record from a defendant or attorney of record related to a pending municipal court case shall be forwarded to the City Prosecutor and processed in accordance with applicable discovery rules.

v. Prior to release the court clerk will redact any information that is confidential by law, such as dates of birth, driver's license numbers and license plate numbers, from any court case record.

vi. The Court Clerk should promptly respond to requests for court case records, but because the records are not subject to the Act the Act's deadlines do not apply. However, it is the policy of the City, to within fourteen (14) days of the request, provide the requestor with either a copy of the records, or written notice of a date and time when the records will be available for duplication or inspection.

3. Judicial Records.

i. Judicial records are records made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function. Judicial records are considered information held by the judiciary. Therefore, the Act neither authorizes this information to be withheld nor requires it to be disclosed. Access to judicial records is governed by Rule 12 of the Rules of Judicial Administration. The custodian of judicial records is the presiding judge of the Hutto Municipal Court.

ii. Any request to inspect or copy a judicial record received by the City and properly directed to the Municipal Court Judge should be immediately, but no later than two (2) business days after being received, forwarded to the Presiding Judge to be processed in accordance with Rule 12 of the Rules of Judicial Administration.

iii. All requests to inspect or copy a judicial record must be in writing, must include sufficient information to identify the record, and must be directed to the records custodian, the Presiding Judge and not to a court clerk or other agent for the records custodian.

D. Discovery Requests for Records

1. Subpoena Duces Tecum

i. Section 552.0055 of the Act clearly states that a subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under the Act.

ii. Accordingly, any subpoena or discovery request received by the City shall be immediately forwarded to the City Attorney's Office so that the City Attorney can prepare a response in compliance with all applicable laws.

2. Business Records Affidavit

i. Texas Rule of Evidence 902 allows certain documents to be self-authenticated and admitted into a court proceeding if they are accompanied by a business records affidavit.

ii. The Act does not require the City to create documents, including a business records affidavit. Accordingly, a request for a business records affidavit to be executed is not governed by the Act. Such a request should be considered a discovery request and should be forwarded to the City Attorney's Office to determine the necessary and appropriate response.

VI. Costs

A. Charges for Copies

1. Administrative Code Charges Apply

i. A requestor may ask to inspect information, get copies of the information, or both. If charges are approved by the Act, it is the policy of the City to charge the rates found in Rule §70.3 of the Texas Administrative Code.

ii. The City Secretary will be responsible for applying the charges in accordance with this policy, issuing cost estimates, invoicing, and collecting payment from requestors. The City Secretary will fully document the amounts, paid and unpaid, for every request in the GovQA system.

2. Charges for Paper and other Physical Copies of Information

i. The following are the most common fees associated with hard copies of information.

Copies and/or printouts, standard and legal size	\$.10/page
Oversize paper copy	\$.50/page

Specialty Paper (map)	\$1.50/page
Postage	Actual Cost
Diskettes/CD's	\$1.00
DVD	\$3.00
Body Worn Camera Recording	10 per recording + \$1 per full minute, if first time released
Labor charge for locating, compiling, manipulating data, reproducing, and if necessary, redacting confidential information	\$15/hour Does not apply to requests for 50 or fewer pages of paper records.
Overhead	20% of the charge made to cover any labor costs. Only applicable when labor charges are appropriate.

3. Charges for Electronic Copies.

i. In an effort to respond to requests as efficiently as possible, it is the policy of the City to respond to a request with electronic copies whenever possible.

ii. Per page charges will not apply to copies of information provided electronically, but the following charges will apply:

a. labor charges at the rate of \$15/hour for locating, compiling, manipulating data, and producing the information;

b. overhead at the rate of 20% of the charge made to cover any labor costs;

c. \$6 per flash drive, \$1 per CD and \$3 per DVD, if applicable.

4. Charges for Certified Copies

i. The Act does not require the City to create documents; therefore, the City is not required to create and produce certified copies of city records. However, it is the City's policy to issue standard or legal-size certified copies of city records upon request for \$2.00 per page.

B. Charges for Inspection of Information

1. Charges for Inspection of Physical Records

i. If the requestor does not request a copy of public information, no charge will be imposed for making the public information that exists in a paper record available for inspection unless:

a. the information being requested completely fills, or when assembled will completely fill, six (6) or more archival boxes and would take five (5) or more personnel hours to make available; or

b. the information being requested is more than five (5) years old and would take five (5) or more personnel hours to make available; or

c. a page being requested contains confidential information that must be edited from the record before the information can be made available for inspection.

ii. If the information completely fills, or when assembled will completely fill, six (6) or more archival boxes or is over five (5) years old as described above, the City will charge the requestor the labor charges associated with making the documents available for inspection.

iii. If a redaction from a page is required, the City will charge \$0.10 per page for the cost of making a photocopy of the page from which confidential information must be edited.

2. Charges for Inspection of Electronic Records

i. In response to a request to inspect information that exists only in an electronic medium and that is not available directly online to the requestor, the City will not charge to inspect this information unless complying with the request will require programming or manipulation of data.

ii. If programming or manipulation of data is required, the City Secretary shall notify the requestor before assembling the information and provide the requestor with an estimate of charges that will be imposed to make the information available.

iii. The time necessary to redact confidential information from electronic records meets the definition of manipulation of data.

iv. A charge under this section will be assessed in accordance with the Act and the section of this policy related to programming or manipulation of data.

C. Waiver of Costs

1. Waiver for the General Public

i. It is the policy of the City to waive the costs associated with producing physical or electronic copies of the information if the total is less than \$15.00 because the actual cost of processing and collecting a charge less than \$15.00 will exceed the amount of the charge.

2. Waiver for the Press

i. It is the policy of the City to reduce the costs associated with requests made by members of the media associated with local publications by \$10.00 because providing the public information to members of the media primarily benefits the general public.

3. Waiver by the Chief of Police

i. The City may provide a copy of a BWC recording without charge or at a reduced charge if it is determined by the Chief of Police that waiver or reduction of the charge is in the public interest.

D. Communicating Costs to Requestors

1. Written Itemized Estimate of Charges

i. If it is estimated by city staff that a request for a copy of public information will result in the imposition of a charge that exceeds forty dollars (\$40.00), or a request to inspect a paper record will result in the imposition of a charge that exceeds forty dollars (\$40.00), the City Secretary shall provide the requestor with a written itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs before compiling and redacting the responsive information. Said statement must comply with the requirements of section 552.2615 of the Texas Government Code. Said statement must also notify the requestor if a deposit will be required per the City's policy. The statement must advise the requestor they may contact the City if there is a less costly method of viewing the records.

2. Invoices

i. If it is estimated by city staff that a request for a copy of public information will result in the imposition of a charge that is forty dollars (\$40.00) or less, or a request to inspect a paper record will result in the imposition of a charge that is forty dollars (\$40.00) or less, the City Secretary shall compile the responsive information, redact as necessary and release it to the requestor with an invoice for the associated charges. Said invoice must include information on how to pay and the City's policy regarding overdue balances.

3. Deposits

i. A deposit of fifty percent (50%) of the entire estimated amount shall be imposed when the anticipated costs for the preparation of a copy of public information exceed one hundred dollars (\$100.00).

ii. If a requestor has accrued over one hundred dollars (\$100.00) of overdue and unpaid balances related to previous requests, a deposit in the amount of the unpaid amounts owing to the City must be received before the City Secretary will begin preparing a copy of public information in response to a new request.

iii. If a deposit is required as detailed above, the request for a copy of public information is considered to have been received on the date the City receives the deposit for payment of anticipated costs or unpaid amounts.

iv. If a requestor modifies the request in response to the requirement of a deposit, the modified request is considered a separate request and is considered received on the date the City receives the written modified request.

v. A requestor who fails to make a deposit before the 10th business day after the date the deposit is required is considered to have withdrawn the request for the copy of the public information that precipitated the requirement of the deposit or bond.

E. Requests Requiring Programming or Manipulation of Data

1. Definitions

i. “Manipulation” means the process of modifying, reordering, or decoding of information with human intervention.

ii. “Programming” means the process of producing a sequence of coded instructions that can be executed by a computer.

2. Circumstances when Required

i. The City shall provide to a requestor written “programming or manipulation of data” statement described below if it is determined that responding to a request will require programming or manipulation of data; and

a. compliance with the request is not feasible or will result in substantial interference with its ongoing operations; or

b. the information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

3. Contents of Written Statement

i. The written “programming or manipulation of data” statement must include:

a. a statement that the information is not available in the requested form;

b. a description of the form in which the information is available;

c. a description of any contract or services that would be required to provide the information in the requested form;

d. a statement of the estimated cost of providing the information in the requested form; and

e. a statement of the anticipated time required to provide the information in the requested form.

4. Timing of Written Statement

i. The City Secretary shall provide the written “programming or manipulation of data” statement to the requestor within twenty (20) days after the date of the receipt of the request.

ii. If the City Secretary needs additional time to provide the written statement they must provide written notice to the requestor, within twenty (20) days after the date of receipt of the request, that the additional time is needed.

iii. If written notice above is provided the City Secretary has an additional ten (10) days to provide the written “programming or manipulation of data” statement.

iv. After providing the requestor with the written statement, the City does not have any further obligation to provide the information in the requested form or in the form in which it is available unless within thirty (30) days the requestor states in writing to the City that the requestor:

- a. Wants the City to provide the information in the requested form according to the cost and time parameters set out in the statement or according to other terms to which the requestor and the City agree; or
- b. Wants the information in the form in which it is available.
- c. If a requestor does not make a timely written statement under the above provisions of this policy, the requestor is considered to have withdrawn the request for information.
- v. The City Secretary shall maintain a file containing all programming and manipulation of data written statements issued under this section in a readily accessible location.

F. Requests Requiring Excessive Personnel Time

1. Time Limit Established

- i. Section 552.275, Texas Government Code authorizes the City Council to establish a reasonable limit on the amount of time that City personnel are required to spend producing public information for inspection by a requestor or providing copies of public information to a requestor without recovering labor charges.
- ii. The City Council has determined that 36 hours is a reasonable limit for the 12-month period and 15 hours is a reasonable limit for a one-month period to be imposed under Section 552.275.
- iii. The City may charge for the time spent by City personnel producing, locating, compiling, manipulating data, and reproducing information for inspection or duplication, or otherwise providing copies of public information, in response to one or more requests for public information from a person, that exceeds 15 cumulative hours during a one-month period or exceeds 36 cumulative hours during a 12-month period, said period to correspond with the fiscal year of the city.
- iv. For the purposes of this section, “person” shall mean an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

2. Written Statements

The City Secretary or the City Secretary’s designee shall provide the requestor with a written statement of the amount of personnel time spent complying with each request and the cumulative amount of time spent complying with requests from that requestor during the applicable monthly and yearly period. The time spent preparing the written statement of total time spent may not be included.

3. Written Cost Estimate

- i. When in connection with a request for public information, the cumulative amount of personnel time spent complying with requests for public information from the same requestor equals or exceeds the limits established by the governmental body under this policy,

the City Secretary or the City Secretary's designee shall provide the requestor with a written estimate of the total cost, including materials, personnel time, and overhead expenses necessary to comply with the request. The estimate must be provided on or before the 10th day after the date on which the public information was requested. The amount of the cost shall be established by rules prescribed by the attorney general and this policy.

ii. If the City Secretary or the City Secretary's designee determines that additional time is required to prepare the written estimate of costs and provides the requestor with a written statement of that determination, the City Secretary or the City Secretary's designee must provide the written estimate of costs as soon as practicable, but on or before the 10th day after the date the City provides the written statement that additional time is required.

4. Requestor's Response to Cost Estimate

i. After the City Secretary or the City Secretary's designee has provided the requestor with the written estimate of costs, the City will not produce public information for inspection or duplication or provide copies of public information in response to the requestor's request unless on or before the 10th day after the date the City provided the written statement, the requestor submits payment of the amount stated in the written statement.

ii. If the requestor fails or refuses to submit payment, the requestor shall be considered to have withdrawn the requestor's pending request for public information.

5. Exceptions

i. This division does not apply if the requestor is:

a. An individual who, for a substantial portion of the individual's livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information for and is seeking the information for:

1. dissemination by a news medium or communication service provider, including:

(i) an individual who supervises or assists in gathering, preparing, and disseminating the news or information; or

(ii) an individual who is or was a journalist, scholar, or researcher employed by an institution of higher education at the time the person made the request for information; or

2. creation or maintenance of an abstract plant as described by Section 2501.004, Insurance Code.

3. "Communication service provider" has the meaning assigned by Section 22.021, Civil Practice and Remedies Code.

4. "News medium" means a newspaper, magazine or periodical, a book publisher, a news agency, a wire service, an FCC-licensed radio or television station or a network of such stations, a cable, satellite, or other transmission system or carrier or channel, or a channel or programming service for a station, network, system, or carrier, or an audio or audiovisual production company or Internet company or provider, or the parent, subsidiary, division, or affiliate of that entity, that disseminates news or information to the public by any means, including:

(i) print;

(ii) television;

(iii) radio;

(iv) photographic;

(v) mechanical;

(vi) electronic; and

(vii) other means, known or unknown, that are accessible to the public.

5. An elected official of the United States, this state, or a political subdivision of the state.

6. A representative of a publicly funded legal services organization that is exempt from federal income taxation under section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under section 501(c)(3) of that code.

ORDINANCE NO. O-2020-022

**AN ORDINANCE OF CITY OF HUTTO, TEXAS,
ADOPTING THE PUBLIC INFORMATION POLICY OF
THE CITY OF HUTTO; ESTABLISHING STANDARDS FOR
REQUESTING, PROCESSING, DISCLOSING, AND
WITHOLDING CITY RECORDS; PROVIDING FOR THE
FINDINGS OF FACT; ENACTMENT; REPEALER;
SEVERABILITY; EFFECTIVE DATE; AND PROPER
NOTICE & MEETING**

WHEREAS, the City Council of the City of Hutto (“City Council”) seeks to provide standards for requesting, processing, disclosing, and withholding records of the City of Hutto, Texas (“City”); and

WHEREAS, the City Council desires to adopt a public information policy as a guide for conducting city business in a professional and uniform manner; and

WHEREAS, the City Council finds that such policy will promote and increase efficiency, responsiveness to the public and economy in city government; and

WHEREAS, the City Council finds that such guidelines will also provide a fair and equal opportunity for obtaining access to information; and

WHEREAS, the City Council finds that reducing the duplication of efforts and increase the efficiency with which requests are handled is necessary; and

WHEREAS, the City Council finds that such guidelines will demonstrate the city’s commitment to an informed citizenry so as to further the public’s control over the instruments they have created; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace or order of the City to adopt an ordinance adopting a public information policy.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUTTO, TEXAS:

SECTION I Findings of Fact

That the findings set forth, above, are incorporated into the body of this Ordinance as if fully set forth, herein.

SECTION II Enactment

The City Council of the City of Hutto hereby adopts its policy regarding requests for public information under the Texas Public Information Act to read in accordance with *Attachment A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

SECTION III Severability Clause

If any subsection, sentence, clause, phrase, or word of this Ordinance or any application of it to any person, structure, gathering, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remaining portions or applications of this Ordinance and those provisions or applications shall remain in full force and effect.

SECTION IV Publication Clause

The City Secretary of the City of Hutto is hereby authorized and directed to publish the caption of this ordinance in the manner and for the length of time prescribed by law.

SECTION V Repealing Clause

All ordinances and resolutions and parts thereof in conflict herewith are hereby expressly repealed insofar as they conflict.

SECTION VI Open Meetings Clause

The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this ordinance and the subject hereof were discussed, considered, and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

SECTION VIII Effective Date

This Ordinance shall be effective immediately upon passage.

THE CITY OF HUTTO, TEXAS

Doug Gaul, Mayor

ATTEST:

Holly Nagy, City Secretary

(SEAL)

READ and **APPROVED** on first reading on the **6th** day of **August**, 2020, at a meeting of the City Council of the City of Hutto, Texas at which a quorum was present and for which due notice was given pursuant to Section 551.001, *et. seq.*, of the Texas Government Code.

READ and **APPROVED** on second reading on the **27th** day of **August**, 2020, at a meeting of the City Council of the City of Hutto, Texas at which a quorum was present and for which due notice was given pursuant to Section 551.001, *et. seq.*, of the Texas Government Code.

ORDINANCE NO. O-2020-025

**ORDINANCE OF CITY OF HUTTO, TEXAS, AMENDING
CITY CODE AND CREATING THE RIGHT OF SETOFF**

WHEREAS, the City has an inherent right to setoff against the amount of claims against the City the amount of claims that the City has against the claimant, thereby eliminating or reducing the amount of the claim against the City; and

WHEREAS, even if the City did not have an inherent right of setoff, under the City's home-rule powers it should, and hereby does, create that right; and

WHEREAS, it is in the public interest for the City to invoke its right of setoff to reduce public expenditures, collect obligations owed to the City, and vindicate City rights; and

WHEREAS, it is in the public interest to codify the City's right of setoff by incorporating the same in an ordinance and into the City Code;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUTTO, TEXAS, THAT:

Section 1. City Code Amended

Article 2 of the City Code of the City of Hutto is amended to add the following section 2.08:

2.08 SETOFF.

(a) The allowable amount of any claim for tort, contract, tax refund, or any other claim against the City is hereby reduced and setoff by the amount that the claimant for such claim owes the City relating to any transaction, event, or otherwise, including, without limitation, any obligation to the City arising from or constituting any contract, tort, condemnation, tax, fee, penalty, fine, or obligation arising under any statute, rule, regulation, or ordinance, and also including the fair value of any non-monetary obligation, plus any interest allowed by law. The City has and will exercise this right of setoff regardless of whether the claim against the City and the City's claim did or did not arise from the same transaction or the same set of operative facts. In exercising its right of setoff, the City may treat multiple claims against the City as a single claim and may treat multiple claims by the City as a single claim.

(b) Failure of the City fully to assert such setoff does not waive any City claim nor estop or otherwise prevent the City from pursuing and collecting upon such claim or remaining uncollected portion of such claim in any manner not prohibited by law, including, without limitation, future setoffs.

(c) The City's exercise of its right to setoff that does not realize the full value of any claim by the City including, without limitation, any interest allowed by law, does not extinguish any uncollected claim by the City, nor constitute any election of remedies by the City.

(d) The City Manager and any City officer or employee designated by the City Manager, and any consultant or other person with whom the City may contract for this purpose are authorized and directed to ascertain whether any claimant against the City owes money to the City, to quantify such obligation to the City, and to see that the amount so found is properly setoff against the claim against the City.

(e). As used in this section, the term “claimant” includes alter egos, partners, joint venturers, parents, guardians, trustees, and any other person who at law or equity is responsible for the obligations of the claimant against the City.

Section 2. Severability Clause

If any subsection, sentence, clause, phrase, or word of this Ordinance or any application of it to any person, structure, gathering, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remaining portions or applications of this Ordinance and those provisions or applications shall remain in full force and effect.

Section 3. Publication Clause

The City Secretary of the City of Hutto is hereby authorized and directed to publish the caption of this ordinance in the manner and for the length of time prescribed by law.

Section 4. Repealing Clause

All ordinances and resolutions and parts thereof in conflict herewith are hereby expressly repealed insofar as they conflict.

Section 5. Open Meetings Clause

The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this ordinance and the subject hereof were discussed, considered, and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

Section 6. Effective Date

This ordinance shall take effect and be in force from and after the date of the second publication of the ordinance in the official newspaper of the City of Hutto.

THE CITY OF HUTTO, TEXAS

Doug Gaul, Mayor

ATTEST:

Holly Nagy, City Secretary

(SEAL)

READ and **APPROVED** on first reading on the 11th day of August, 2020, at a meeting of the City Council of the City of Hutto, Texas at which a quorum was present and for which due notice was given pursuant to Section 551.00, et. seq., of the Texas Government Code.

READ and **APPROVED** on second reading on the 27th, day of August, 2020, at a meeting of the City Council of the City of Hutto, Texas at which a quorum was present and for which due notice was given pursuant to Section 551.00, et. seq., of the Texas Government Code.

ORDINANCE NO. O-2020-029

AN ORDINANCE OF THE CITY OF HUTTO DECLARING VOID CERTAIN EMPLOYEE TRANSITION, SEVERANCE, AND SEPARATION AGREEMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, approximately 15, more or less, separate purported agreements variously styled as transition agreements, severance agreements, or separation agreements, or terms of like import, were purportedly executed on behalf of the City during the time period from approximately 2017 through approximately 2019 between the City and several of its employees and former employees (the “Purported Agreements”); and

WHEREAS, each Purported Agreement was signed and purportedly executed on behalf of the City without valid authority; and

WHEREAS, each Purported Agreement contains and is permeated by numerous material unlawful provisions including, without limitation, those purporting to provide for:

1. Increased compensation and benefits as a City employee beyond the amounts authorized or budgeted by City Council and to authorize payments by the City without a properly designated, appropriated, reserved or budgeted source of funds for such payments;
2. Granting employee pension and other benefits not authorized by City Council or by law;
3. Limiting employee and former employee rights to begin employment with another employer after the termination of City employment contrary to law and public policy;
4. Promising or making unauthorized gifts of public funds and unlawful honoraria;
5. Preventing City employees, former City employees and the City from reporting any wrongdoing by the other, if either party were aware of any, to proper authorities, contrary to public policy and state and federal laws; and

WHEREAS, the City reserves the right to assert additional grounds of illegality and unenforceability, and the illegality or unenforceability of other provisions of some or all of the Purported Agreements, including, without limitation, their unlawfulness and unenforceability as applied, and to recover or setoff against indebtedness to the City any moneys paid under any Purported Agreement; and

WHEREAS, none of the Purported Agreements were supported by any valid consideration, particularly, without limitation, those Purported Agreements that were signed after termination of the subject employee’s employment with the City; and

WHEREAS, no efforts appear to have been made to monitor employment by other employers or other failures of conditions subsequent or breaches under any Purported Agreement that would have entitled the City to cease payments under a Purported Agreement even if the Purported Agreement had been valid and enforceable; and

WHEREAS, the aforesaid material defects go to the heart of each purported agreement, and render each purported agreement entirely invalid, making severance to preserve any supposedly valid portions impossible, impractical, and undesirable; and

WHEREAS, for the foregoing reasons each Purported Agreement is entirely void; and

WHEREAS, the City has governmental immunity from liability and suit upon the said unlawful and unauthorized Purported Agreements.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUTTO, TEXAS,

SECTION I

The findings set forth in the recitals of this Ordinance are hereby found to be true and correct and are hereby adopted as findings of the City Council and are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION II

The City Council hereby declares each Purported Agreement to be entirely void.

SECTION III

Each employee and former employee who was purportedly bound by any non-disclosure or non-disparagement provisions in any Purported Agreement is hereby released from any such provision.

SECTION IV

To the extent that any Purported Agreement provided for the termination of a person's employment with the City, the City Council hereby adopts the termination date recited or referenced in the Purported Agreement as the termination date for such person's employment with the City.

SECTION V

All officers and other appropriate employees of the City are hereby authorized and directed to do any and all things necessary and appropriate to carry out the terms of this Ordinance.

SECTION VI

This Ordinance does not apply to any valid or purported transition, separation, or severance agreement with any present or former City employee to the extent that any valid portions of any such agreement were prior to the effective date of this Ordinance expressly authorized or ratified by City Council.

SECTION VII

After considering relevant information from the City's forensic audit and such other information as they deem appropriate, the Interim City Manager and City Attorney will advise City Council as to what if any recoupment or other measures the City should pursue as to any payments made by the City under any Purported Agreement.

SECTION VIII

Severability Clause

If any subsection, sentence, clause, phrase, or word of this Ordinance or any application of it to any person, structure, gathering, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remaining portions or applications of this Ordinance and those provisions or applications shall remain in full force and effect.

SECTION IX

Publication Clause

The City Secretary of the City of Hutto is hereby authorized and directed to publish the caption of this ordinance in the manner and for the length of time prescribed by law.

SECTION X

Repealing Clause

All ordinances and resolutions and parts thereof in conflict herewith are hereby expressly repealed insofar as they conflict.

SECTION XI

Open Meetings Clause

The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this ordinance and the subject hereof were discussed, considered, and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

SECTION XII

Effective Date

This ordinance shall take effect and be in force from and after the date of its adoption by the City Council.

CONSIDERED and ADOPTED by the City Council of the City of Hutto on this the **27th** day of **August, 2020**.

THE CITY OF HUTTO, TEXAS

Doug Gaul, Mayor

ATTEST:

Holly Nagy, City Secretary

RESOLUTION NO. R-2020-075

**RESOLUTON WAIVING THE ATTORNEY-CLIENT
PRIVILEGE AND RELEASING ATTORNEY FEE BILL OF
THE MCGINNIS LOCHRIDGE LAW FIRM FROM
JANUARY 1, 2017 AND JULY 30, 2019; AND PROVIDING
AN EFFECTIVE DATE**

WHEREAS, the City of Hutto, Texas, (“City”), has received a Public Information Act request for McGinnis Lochridge Fee bills for the time period of January 1, 2017 and July 30, 2019; and

WHEREAS, the City Council holds the attorney-client privilege and only the City Council may decide to waive the attorney-client privilege concerning the McGinnis Lochridge Fee bills; and

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

Section 1. That the facts and recitations contained in the preamble of this Resolution are hereby found and declared to be true and correct.

Section 2. That the City Council hereby waive the attorney-client privilege concerning the McGinnis Lochridge Fee bills and releases the McGinnis Lochridge Fee bills from January 1, 2017 and July 30, 2019.

Section 3. That the City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

Section 4. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Hutto, and it is accordingly so resolved.

RESOLVED this 27th day of August, 2020.

CITY OF HUTTO, TEXAS

Doug Gaul, Mayor

ATTEST:

Holly Nagy, City Secretary

CITY OF HUTTO, TEXAS

RESOLUTION NO. R-2020-079

**A RESOLUTION OF THE CITY OF HUTTO, TEXAS
AUTHORIZING THE SUSPENSION OF COUNCILMEMBER
COMPENSATION FOR THE NEXT YEAR.**

WHEREAS, the City of Hutto Charter, Section 3.04, COMPENSATION, provides that the Mayor and Council members shall receive compensation as may be fixed by ordinance; provided, however, that they shall be entitled to all necessary expenses incurred in the performance of their official council duties upon approval by the City Council.

WHEREAS, the City Council wishes to forgo their compensation for the next year in efforts to help reduce any financial strain on the FY 2020-2021 budget.

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

It is hereby authorized that the Mayor and Councilmembers compensation will be suspended for one (1) year effective beginning _____, 2020.

CONSIDERED and **RESOLVED** on this the ____ of _____ 2020.

CITY OF HUTTO, TEXAS

Doug Gaul, Mayor

ATTEST:

Holly Nagy, City Secretary

RESOLUTION NO. R-_____

**A RESOLUTION AUTHORIZING THE INTERIM
CITY MANAGER TO EXECUTE A CHAPTER 380
AGREEMENT PROVIDING FOR ECONOMIC
INCENTIVES FOR THE BENEFIT OF ELECTRONIC
DATA CARRIERS, INC. (AD VALOREM
REIMBURSEMENT)**

WHEREAS, the City of Hutto (the “City”) promotes economic development within the City to benefit its citizens; and

WHEREAS, Local Government Code Chapter 380 authorizes the City to make grants of money in order to promote state and local economic development to stimulate growth, business and commercial activity within the City; and

WHEREAS, the City has an opportunity to promote the growth of the City’s tax base and increase the number of available jobs within the City; and

WHEREAS, Electronic Data Carriers, Inc. (the “Company”) intends to relocate its distribution of cabinets and other related goods and general office use business operations to Hutto, Texas, and make capital investments in the Desired Development Zone, and create new full-time jobs at the distribution facility;

WHEREAS, an economic incentive agreement would be beneficial to the City and its citizens;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hutto, Texas:

1. The Interim City Manager is authorized to execute on behalf of the City a Chapter 380 Economic Development Agreement, a copy of same being attached hereto as **Exhibit A** and incorporated herein for all purposes, benefiting Electronic Data Carriers, Inc. by providing certain payments to Titan Hutto III, LLC (the “Owner”) for the benefit of Electronic Data Carriers, Inc. generally upon the following terms and conditions:

a. Payment of a portion of City ad valorem taxes from the development occupied by Electronic Data Carriers, Inc. upon receipt of such payments by the City in an amount not to exceed 25% of tax payments received for a period of 10 years after the Company commences business.

b. The economic incentives shall be conditioned upon the Company relocating to Hutto and maintain operations for the term of the Agreement.

CONSIDERED AND RESOLVED this the ____ day of August, 2020.

CITY OF HUTTO, TEXAS

By: _____
Doug Gaul, Mayor

Attest:

By: _____
Holly Nagy, City Secretary

CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF HUTTO, TEXAS
TITAN HUTTO III, LLC AND
AND ELECTRONIC DATA CARRIERS, INC.

This Chapter 380 Economic Development Agreement (“**Agreement**”) is entered into as of this _____ day of _____, 2020 (the “**Effective Date**”), by and between the City of Hutto, Texas, a Texas home rule municipal corporation acting by and through its duly authorized City Manager or his designee (the “**City**”), Titan Hutto III, LLC, a Texas limited liability company (the “**Owner**”), and Electronic Data Carriers, Inc. a Texas corporation, qualified to do business in Texas (the “**Company**”), (individually “**Party**”, together the “**Parties**”).

WHEREAS, the City is authorized by Chapter 380 of the Texas Local Government Code to make grants of money in order to promote State and local economic development to stimulate growth, business, and commercial activity in the area;

WHEREAS, the City has authorized the City Manager to make a grant of money to Company to: (i) relocate its distribution of cabinets and other related goods and general office use business operations to Hutto, Texas and make capital investments in the Desired Development Zone; and (ii) create new full-time jobs at the distribution facility; (taken together, the “**Project**”);

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code;

WHEREAS, the City hereby establishes and authorizes the making of economic development grants to the Company in recognition of the positive economic benefits to the City;

WHEREAS, the Owner owns that real property containing approximately 7.228 acres within Titan Innovation Business Park more particularly described on Exhibit A-1 and depicted in Exhibit A-2, each attached hereto and made a part hereof (the “**Property**”);

WHEREAS, the Owner has constructed upon the Property a building containing approximately One Hundred Fifty-Two Thousand Two Hundred Thirty-Five (152,235) rentable square feet and located at 1150 New Technology Blvd., Suite 100, Hutto, TX 78634 (“**Building**”);

WHEREAS, the Owner and Company have entered into a 123-month lease for the occupancy and use of a portion of the Building containing approximately Ninety-Three Thousand Nine Hundred Seventy-Three (93,973) rentable square feet, and for which Company will agree to pay rent and other charges to the Owner;

WHEREAS, the City has agreed to reimburse the Company twenty-five percent (25%) of the yearly, City-imposed ad valorem property tax collected by the City on the Property, Building, and any other improvements thereon by method of paying Owner, for the benefit of the Company (the “**Incentive**”) not to exceed two hundred thousand dollars (\$200,000) for a period of ten (10) years (the “**Incentive Period**”); and

WHEREAS, the Parties intend for Owner to have limited obligations and liability under this Agreement, and that the incentives under this Agreement shall be provided solely for the benefit of the Company.

NOW, THEREFORE, and in consideration of the foregoing premises and mutual covenants hereinafter set forth, the Parties agree as follows:

1. **Authority.** The City's execution of this Agreement, as authorized by Chapter 380 of the Texas Local Government Code, constitutes a valid and binding obligation of the City upon compliance by Company of the obligations as described herein below.
2. **Term.** This Agreement shall become enforceable upon its Effective Date. This Agreement shall terminate upon the final payment of the Incentive, unless otherwise extended as provided for in this Agreement.
3. **Rights and Obligations of Company.**

In consideration of the City's compliance with this Agreement, Company agrees as follows:

- 3.1 Company Operations. Company shall use the Building for distribution of cabinets and other related goods and general office use. This Project represents the establishment of operations by Company in a friendly and cost-effective environment.
- 3.2 Compliance with Development Regulations and Other Ordinances. The Company anticipates that it will spend in excess of \$_____ on the total cost of and for the construction of tenant improvements within the Building ("**Tenant Improvements**"). Company shall comply with the City's development approval processes consistent with City ordinances, City-approved design plans, and other applicable City development requirements for the construction of the Tenant Improvements.
- 3.3 Permits and Permission. The Company will make timely application to the City for permits and approvals necessary for construction of the Tenant Improvements, as necessary.
- 3.4 Requests by the Company. The Company has requested assistance from the City for certain economic incentives to develop the Project, without which the Project would lack economic justification.
- 3.5 Company Employment. At the commencement of the Incentive Period, the Company shall have at least thirty-eight (38) full-time employees and shall grow to at least fifty (50) full-time employees within five (5) years of said Incentive Period. After the first five (5) years of the Incentive Period, the Company shall maintain at least fifty (50) full-time employees for the remainder of the Incentive Period.
- 3.6 Financial Statements. The Company will provide quarterly financial statements directly to the City commencing as of the first calendar quarter of the Incentive Period. The City will maintain the financial statements in a confidential manner

and will enter into a confidentiality agreement with the Company if requested by the Company.

- 3.7 Ceasing to Do Business. If the Company ceases to do business on the Property or at an alternative location within the City limits, within the Incentive Period, the Company, solely and exclusively, will repay to the City any economic incentive benefits received by the Company prior to the date of ceasing to operate within thirty (30) days after demand by the City.

4. Rights and Obligations of the City.

In consideration of the Company's compliance with this Agreement, the City hereby agrees as follows:

- 4.1 Incentive Period. The Incentive Period shall (a) commence on the first day of the second month following the start of operation which shall be established by the issuance of a Certificate of Occupancy by City to Owner, (b) extend for 120 consecutive months thereafter, and (c) terminate as of close of business on the last day of the 120th such month.
- 4.2 Incentive Payments. Conditioned upon the payment by the Owner of City-imposed ad valorem property taxes on the Property, Building, and other improvements on the Property, within thirty (30) days after receipt of the Property tax payment, commencing August 1, 2021, the City will reimburse the Company, in the form of a pass-through payment to the Owner for the benefit of the Company, twenty percent (25%) of ad valorem taxes paid by the Owner, not to exceed two hundred thousand (\$200,000) collected by the City on the Property during the Incentive Period. These pass-through payments shall be made by the City to the Owner under a Local Government Code Chapter 380 Agreement.
- 4.3 Condition to Receipt of Sales Tax Grant Payments. The Company shall provide the City verification of Ad Valorem tax payment to the Williamson County Tax Assessor on a yearly basis, as well as, an affidavit of number of jobs created, as well as, SOC, job title, description, wages and names of individuals, attached hereto as **Exhibit B.**

The information included in the affidavit shall be submitted to the City no later than March 1 of each year and shall reflect the information requested as of December 31 of the previous year.

No Incentive Payment shall be made until and unless all terms and conditions as stated in this Agreement have been materially complied with in full.

The performance metrics for jobs are as follows:

Year	Number of Jobs by Year
Year 1	38
Year 2	40
Year 3	42
Year 4	45
Year 5	50
Total	50

5. Miscellaneous.

- 5.1 Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions. Notwithstanding the foregoing, the City and Company understand and agree that Owner's sole obligation herein is to pay ad valorem taxes assessed on the Property, and upon delivery of an Incentive payment from City to Owner, to pass such Incentive payment to Company.
- 5.2 Representations and Warranties of Company.
- (a) Authorization. Company is a company duly organized, validly existing, and in good standing under the laws of the State of Texas with authority to perform its obligations under this Agreement.
 - (b) Performance. Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Company is a party or by which Company may be bound.
 - (c) Execution. The execution and delivery by Company of, and Company's performance under, this Agreement are within Company's powers and have been duly authorized by all requisite organizational action. The Person executing this Agreement on behalf of Company has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of Company enforceable in accordance with its terms.
 - (d) Litigation. Company has not received written notice and has no actual knowledge of any litigation pending or threatened against Company that might adversely affect the Project or Company's ability to perform its obligations under this Agreement.

5.3 Representations and Warranties of City.

- (a) Authorization. The City is a municipal corporation with full right and authority to enter into this Agreement and to consummate the transactions described in this Agreement.
- (b) Performance. Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which the City is a party or by which the City may be bound.
- (c) Execution. The execution and delivery of, and the City's performance under, this Agreement are within the City's powers and have been duly authorized by all requisite municipal action. Each of the Persons executing this Agreement on behalf of the City is duly authorized to do so. This Agreement constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms.

5.4 Representations of Owner.

- (a) Authorization. Owner is a company duly organized, validly existing, and in good standing under the laws of the State of Texas with authority to perform its limited obligations under this Agreement.
- (b) Performance. Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which the Owner is a party or by which the Owner may be bound.
- (c) Execution. The execution and delivery of, and the Owner's performance under, this Agreement are within the Owner's powers and have been duly authorized by all requisite organizational action. Each of the Persons executing this Agreement on behalf of the Owner is duly authorized to do so. This Agreement constitutes the legal, valid and binding limited obligations of the Owner enforceable in accordance with its terms.
- (d) Litigation. Owner has not received written notice and has no actual knowledge of any litigation pending or threatened against Owner that might adversely affect the Project or Owner's ability to perform its limited obligations under this Agreement.

5.5 Mutual Agreements.

- (a) Notwithstanding anything herein to the contrary, the City and Company each agree that this Agreement and the benefits conferred hereunder to Company shall not in any way affect or prohibit third party tenants who take possession of or lease other parts of the Building from seeking and obtaining similar incentives provided by this Agreement.
- (b) Notwithstanding anything herein to the contrary, the City and Company each agree that Owner shall not be responsible for any obligation whatsoever on the City's behalf or the Company's behalf, and any failure to perform or actions performing such obligations by City or Company, intentional or otherwise, shall not trigger non-compliance under this Agreement under any circumstance. Owner's sole obligations under this Agreement is to pay ad valorem taxes assessed against the Property and to pass through to the Company any Incentive

payments Owner receives from the City in accordance with the terms of this Agreement.

- (c) Notwithstanding anything herein to the contrary, the City and Company agree that Owner shall not be required to pay back or return any Incentive payments made to the Company pursuant to this Agreement under any circumstances, including due to Company's default under this Agreement or because Company ceases to do business as set forth in Section 3.7 herein. The City and Company further agree that Owner shall not be liable in any manner for any Incentive overpayment made by the City for the benefit of the Company.
 - (d) The City and Company agree that any and all inquiries, requests, demands and protests shall be made or done solely and directly by the Company to the City for any matters or disputes regarding reimbursements or payments under this Agreement.
- 5.6 Liability and Indemnity. Company shall indemnify and hold Owner harmless from and against all losses, expenses, damages, claims, liabilities, attorney's fees, or obligations of any nature whatsoever to the extent related to or arising from Company, or its officers', directors', employees' or agents' negligent or willful conduct or breach of the Agreement or obligations arising therefrom. To the extent, if at all, any indemnity or hold harmless provision of this Agreement is invalidated pursuant to the terms of any applicable law, the remaining indemnity and hold harmless provisions of this Agreement shall remain in full force and effect.
- 5.7 Default. If any Party should default in the performance of any obligations of this Agreement, the other Parties shall provide such defaulting Party written notice of the default, and a minimum period of thirty (30) days to cure such default, or such longer period as may be reasonably necessary to effectuate a cure, provided that a cure is commenced within such cure period and diligently prosecuted to resolution, prior to instituting an action for breach or pursuing any other remedy for default. If the City remains in default after notice and opportunity to cure, the Company shall have the right to pursue any remedy at law or in equity for the City's breach. If the Company remains in default after notice and opportunity to cure, the City's remedy shall be limited to a termination of any City obligation to reimburse property taxes as described above.
- 5.8 Attorney's Fees. In the event any legal action or proceeding is commenced between the City and the Company to enforce provisions of this Agreement and recover damages for breach, the prevailing Party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.
- 5.9 Entire Agreement. This Agreement contains the entire agreement between the Parties and may only be amended as set forth in Section 5.12 herein below.
- 5.10 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.
- 5.11 Assignment. Company may assign all or part of its rights and obligations to a

third party upon thirty (30) days written notice to the City and Owner. Owner may assign all or part of its rights and obligations to a third party.

5.12 Amendment. This Agreement may be amended, altered or revoked only by written instrument signed by the Parties.

5.13 Notice. All notices and other communications hereunder shall be in writing and shall be delivered by hand delivery, expedited courier delivery or mailed (if mailed, by registered or certified mail, return receipt requested, postage prepaid) addressed as follows, and shall be effective upon actual delivery if delivered by hand or by expedited courier delivery or, if mailed, three (3) days after deposit in the United States mail:

If to the City, to:

City Manager
500 West Live Oak Street
Hutto, Texas 78634
Phone: (512) 759-4030

With a copy to:

Dorothy G. Palumbo
Bojorquez Law Firm, PC.
11675 Jollyville Road, Suite 300
Austin, Texas 78759
Phone: (512) 250-0411
Facsimile: (512) 250-0749

If to the Owner, to:

Titan Hutto III, LLC
Attn: Kevin L. Reid
9601 McAllister Fwy, Suite 1120
San Antonio, Texas 78216
With a copy to:

Titan Development
Attn: Christopher M. Pacheco, Esq.
6300 Riverside Plaza Ln, NW Suite 200
Albuquerque, New Mexico 87120

If to the Company, to:

Electronic Data Carriers, Inc.
Attn: George Gilbert
2228 Wirtcrest, Suite A
Houston, TX 77055

With a copy to:

Any Party may designate a different address at any time upon written notice to the other Parties.

- 5.14 Interpretation. Each Party has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. The Parties agree that this Agreement is to be constructed as being jointly drafted. Accordingly, this Agreement will be constructed according to the fair meaning of its language, and the rule of construction that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.
- 5.15 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.
- 5.16 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- 5.17 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- 5.18 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 5.19 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.
- 5.20 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.
- 5.21 Undocumented Workers. The Company certifies that it does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the

Texas Government Code, as amended. If during the term of this Agreement, the Company is convicted of a violation under 8 U.S.C. § 1324a(f), the Company shall repay the amount of the public subsidy provided under this Agreement as required by law. Pursuant to Section 2264.101, Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

EXECUTED to be effective as of the ____ day of _____, 2020.

ELECTRONIC DATA CARRIERS, INC.
A Texas corporation

By: _____
George Gilbert, President

TITAN HUTTO III, LLC
a Texas limited liability company

By: Titan Property Management, LLC
Its Manager

By: _____
Kevin L. Reid, Manager

CITY OF HUTTO, TEXAS
a TX home rule city and municipal corporation

By: _____
Printed Name: _____
Title: _____

Approved as to Form:

By: _____
Dorothy G. Palumbo,
Attorney for the City of Hutto

EXHIBIT “A-1”

PROPERTY LEGAL DESCRIPTION

Lot 7, of Titan Innovation Business Park – Lot 6 and 7, a subdivision in Williamson County, Texas, according to the map or plat thereof, recorded in Document No. 2020018527 Official Public Records of Williamson County, Texas.

EXHIBIT "A-2"

PROPERTY DEPICTION

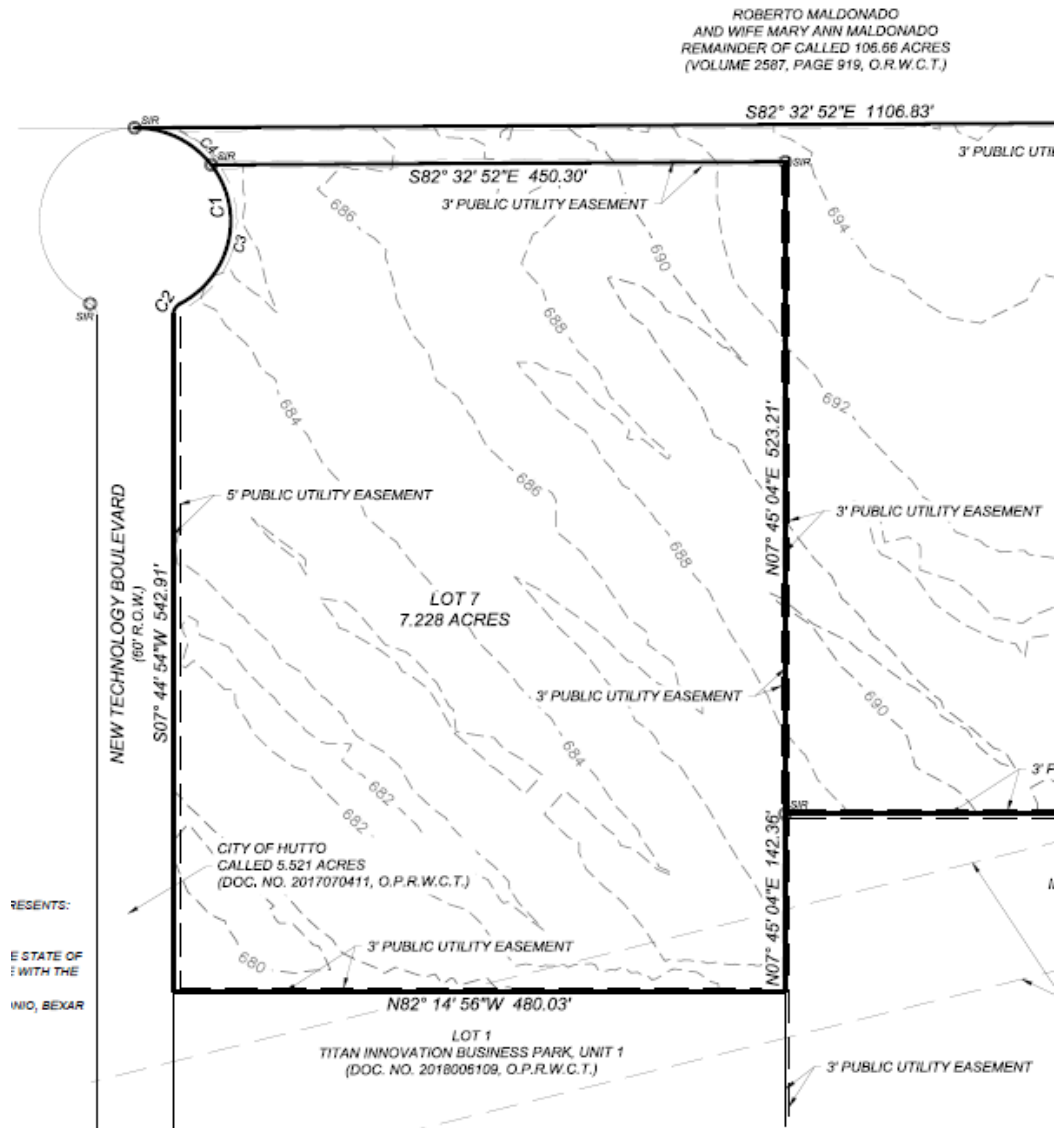


EXHIBIT "B"

JOB COMPLIANCE and annual payroll AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared _____
(name) _____, known to me to be the person whose name is subscribed below and
after having been duly sworn, on his/her oath stated as follows:

1. "My name is _____. I am over the age of 21 years and am capable
of making this affidavit. The facts stated in this affidavit are within my personal knowledge
and are true and correct.
2. "I am the _____ (title) _____ of Electronic Data Carriers, Inc. and I
am duly authorized to make this affidavit.
3. "As of December 31, 20____, Electronic Data Carriers, Inc. had the following job positions
and salaries:

Employee ID No.	Job Position or Title	Annual Salary
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

TOTAL JOBS _____
TOTAL ANNUAL SALARY \$ _____
TOTAL ANNUAL OVERTIME \$ _____
TOTAL ANNUAL BENEFITS \$ _____

TOTAL ANNUAL PAYROLL \$ _____

Dated this ____ day of _____, 20____.

(Printed name)

(Title)

SUBSCRIBED AND SWORN TO before me on this the ____ day of _____, 20__.

Notary Public, State of Texas

RESOLUTION NO. R-_____

**A RESOLUTION AUTHORIZING THE INTERIM
CITY MANAGER TO EXECUTE A CHAPTER 380
AGREEMENT PROVIDING FOR ECONOMIC
INCENTIVES FOR THE BENEFIT OF ELECTRONIC
DATA CARRIERS, INC.- (SALES TAX
REIMBURSEMENT)**

WHEREAS, the City of Hutto promotes economic development within the City to benefit its citizens; and

WHEREAS, Local Government Code Chapter 380 authorizes the City to make grants of money in order to promote state and local economic development to stimulate growth, business and commercial activity within the City; and

WHEREAS, the City has an opportunity to promote the growth of the City's tax base and increase the number of available jobs within the City; and

WHEREAS, Electronic Data Carriers, Inc. (the "Company") intends to relocate its distribution of cabinets and other related goods and general office use business operations to Hutto, Texas, and make capital investments in the Desired Development Zone, and create new full-time jobs at the distribution facility;

WHEREAS, an economic incentive agreement would be beneficial to the City and its citizens;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hutto, Texas:

1. The Interim City Manager is authorized execute on behalf of the City a Chapter 380 Economic Development Agreement, a copy of same being attached hereto as **Exhibit A** and incorporated herein for all purposes, by providing certain payments benefiting Electronic Data Carriers, Inc. generally upon the following terms and conditions:

a. Payment to the Company of 0.175% of the sales taxes received from the Company for a period of five years after commencement of business by the Company and upon receipt of such sales taxes by the City, conditioned upon the Company hiring and retaining a certain number of employees within the City.

b. The economic incentives shall be conditioned upon the Company relocating to Hutto and maintain operations for the term of the Agreement.

CONSIDERED AND RESOLVED this the ____ day of August, 2020.

CITY OF HUTTO, TEXAS

By: _____
Doug Gaul, Mayor

Attest:

By: _____
Holly Nagy, City Secretary

CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF HUTTO, TEXAS
AND ELECTRONIC DATA CARRIERS, INC.

This Chapter 380 Economic Development Agreement (“**Agreement**”) is entered into as of this _____ day of _____, 2020 (the “**Effective Date**”), by and between the City of Hutto, Texas, a Texas home rule municipal corporation acting by and through its duly authorized City Manager or his designee (the “**City**”), and Electronic Data Carriers, Inc. a Texas corporation, qualified to do business in Texas (the “**Company**”), (individually “**Party**”, together the “**Parties**”).

WHEREAS, the City is authorized by Chapter 380 of the Texas Local Government Code to make grants of money in order to promote State and local economic development to stimulate growth, business, and commercial activity in the area;

WHEREAS, the City has authorized the City Manager to make a grant of money to Company to: (i) relocate its distribution of cabinets and other related goods and general office use business operations to Hutto, Texas and make capital investments in the Desired Development Zone; and (ii) create new full-time jobs at the distribution facility; (taken together, the “**Project**”);

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code;

WHEREAS, the City hereby establishes and authorizes the making of economic development grants to the Company in recognition of the positive economic benefits to the City;

WHEREAS, the Titan Hutto III, LLC, owns that real property containing approximately 7.228 acres within Titan Innovation Business Park more particularly described on **Exhibit A-1** and depicted in **Exhibit A-2**, each attached hereto and made a part hereof (the “**Property**”);

WHEREAS, the Titan Hutto III, LLC, has constructed upon the Property a building containing approximately One Hundred Fifty-Two Thousand Two Hundred Thirty-Five (152,235) rentable square feet and located at 1150 New Technology Blvd., Suite 100, Hutto, TX 78634 (“**Building**”);

WHEREAS, the Company is leasing a building containing approximately One Hundred Fifty-Two Thousand Two Hundred Thirty-Five (152,235) rentable square feet and located at 1150 New Technology Blvd., Suite 100, Hutto, TX 78634 (“**Building**”);

WHEREAS, the Company has entered into a 123-month lease for the occupancy and use of a portion of the Building containing approximately Ninety-Three Thousand Nine Hundred Seventy-Three (93,973) rentable square feet, and for which Company will agree to pay rent and other charges to the Owner;

WHEREAS, the City has agreed to reimburse the Company twenty-five percent (25%) of the reimbursable sales tax generated by the Company received by the City yearly, for a period of five (5) years (the “**Incentive Period**”) beginning at year one; and

WHEREAS, the Parties intend for Owner to have limited obligations and liability under this Agreement, and that the incentives under this Agreement shall be provided solely for the benefit of the Company.

NOW, THEREFORE, and in consideration of the foregoing premises and mutual covenants hereinafter set forth, the Parties agree as follows:

1. **Authority.** The City's execution of this Agreement, as authorized by Chapter 380 of the Texas Local Government Code, constitutes a valid and binding obligation of the City upon compliance by Company of the obligations as described herein below.
2. **Term.** This Agreement shall become enforceable upon its Effective Date. This Agreement shall terminate upon the final payment of the Incentive, unless otherwise extended as provided for in this Agreement.
3. **Rights and Obligations of Company.**

In consideration of the City's compliance with this Agreement, Company agrees as follows:

- 3.1 Company Operations. Company shall use the Building for distribution of cabinets and other related goods and general office use. This Project represents the establishment of operations by Company in a friendly and cost-effective environment.
- 3.2 Compliance with Development Regulations and Other Ordinances. The Company anticipates that it will spend in excess of \$_____ on the total cost of and for the construction of tenant improvements within the Building ("**Tenant Improvements**"). Company shall comply with the City's development approval processes consistent with City ordinances, City-approved design plans, and other applicable City development requirements for the construction of the Tenant Improvements.
- 3.3 Permits and Permission. The Company will make timely application to the City for permits and approvals necessary for construction of the Tenant Improvements, as necessary.
- 3.4 Requests by the Company. The Company has requested assistance from the City for certain economic incentives to develop the Project, without which the Project would lack economic justification.
- 3.5 Company Employment. At the commencement of the Incentive Period, the Company shall have at least thirty-eight (38) full-time employees and shall grow to at least fifty (50) full-time employees within five (5) years of said Incentive Period.
- 3.6 Financial Statements. The Company will provide quarterly financial statements directly to the City commencing as of the first calendar quarter of the Incentive Period. The City will maintain the financial statements in a confidential manner

and will enter into a confidentiality agreement with the Company if requested by the Company.

- 3.7 Ceasing to Do Business. If the Company ceases to do business on the Property or at an alternative location within the City limits, within the Incentive Period, the Company, solely and exclusively, will repay to the City any economic incentive benefits received by the Company prior to the date of ceasing to operate within thirty (30) days after demand by the City.

4. Rights and Obligations of the City.

In consideration of the Company's compliance with this Agreement, the City hereby agrees as follows:

- 4.1 Reimbursable City Sales Tax. The City and Williamson County Emergency Services District No. 3 (“**WCESD 3**”) entered into an Interlocal Agreement dated April, 20, 2017 whereby, the WCESD 3 agrees to allocate to the City on a monthly basis sixty percent (60%) of WCESD 3's local sales and use tax revenue actually received in hand by WCESD 3 from the Texas Comptroller for the Titan Development, excluding any deductions or re-allocations by the Texas Comptroller, attributable to the sixty percent (60%) and derived from Annexed Property only. This allocation to the City equals a total of 1.2% sales tax, of which, 0.5% of the total is allocated to Property Tax Reduction, thereby leaving 0.7% of the total amount to be considered “Reimbursable City Sales Tax”. **Exhibit A-3** demonstrates this in chart format.
- 4.2 Incentive Period. The Incentive Period shall (a) commence on the first day of the second month following the start of operation which shall be established by the issuance of a Certificate of Occupancy by City to Owner, (b) extend for 60 consecutive months thereafter, and (c) terminate as of close of business on the last day of the 60th such month.

Incentive Payments. The City hereby agrees to rebate 25% of the Reimbursable City Sales Tax revenue, received in hand for the Property back to the Company on a yearly basis under Local Government Code Chapter 380. The 25% rebate of the Reimbursable City Sales Tax equates to 0.175% in total.

The City shall have up to six (6) months from the time the Company's payment to the Comptroller is verified to reimburse the Company the Incentive Payment.

The Incentive Payment is conditioned upon the Company creating new jobs each year for the Incentive Period.

- 4.3 Condition to Receipt of Sales Tax Grant Payments. The Company shall provide the City verification of sales and use tax payment to the Comptroller on a yearly basis, as well as, an affidavit of number of jobs created, as well as, SOC, job title, description, wages and names of individuals, attached hereto as **Exhibit A-4**.

The information included in the affidavit shall be submitted to the City no later

than March 1 of each year and shall reflect the information requested as of December 31 of the previous year.

No Incentive Payment shall be made until and unless all terms and conditions as stated in this Agreement have been materially complied with in full.

The performance metrics for jobs are as follows:

Year	Number of Jobs by Year
Year 1	38
Year 2	40
Year 3	42
Year 4	45
Year 5	50
Total	50

5. Miscellaneous.

- 5.1 Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions
- 5.2 Representations and Warranties of Company.
- (a) Authorization. Company is a company duly organized, validly existing, and in good standing under the laws of the State of Texas with authority to perform its obligations under this Agreement.
 - (b) Performance. Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Company is a party or by which Company may be bound.
 - (c) Execution. The execution and delivery by Company of, and Company's performance under, this Agreement are within Company's powers and have been duly authorized by all requisite organizational action. The Person executing this Agreement on behalf of Company has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of Company enforceable in accordance with its terms.

- (d) Litigation. Company has not received written notice and has no actual knowledge of any litigation pending or threatened against Company that might adversely affect the Project or Company's ability to perform its obligations under this Agreement.

5.3 Representations and Warranties of City.

- (a) Authorization. The City is a municipal corporation with full right and authority to enter into this Agreement and to consummate the transactions described in this Agreement.
- (b) Performance. Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which the City is a party or by which the City may be bound.
- (c) Execution. The execution and delivery of, and the City's performance under, this Agreement are within the City's powers and have been duly authorized by all requisite municipal action. Each of the Persons executing this Agreement on behalf of the City is duly authorized to do so. This Agreement constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms.

5.4 Mutual Agreements.

- (a) Notwithstanding anything herein to the contrary, the City and Company each agree that this Agreement and the benefits conferred hereunder to Company shall not in any way affect or prohibit third party tenants who take possession of or lease other parts of the Building from seeking and obtaining similar incentives provided by this Agreement.
- (b) The City and Company agree that any and all inquiries, requests, demands and protests shall be made or done solely and directly by the Company to the City for any matters or disputes regarding reimbursements or payments under this Agreement.

- 5.5 Default. If any Party should default in the performance of any obligations of this Agreement, the other Parties shall provide such defaulting Party written notice of the default, and a minimum period of thirty (30) days to cure such default, or such longer period as may be reasonably necessary to effectuate a cure, provided that a cure is commenced within such cure period and diligently prosecuted to resolution, prior to instituting an action for breach or pursuing any other remedy for default. If the City remains in default after notice and opportunity to cure, the Company shall have the right to pursue any remedy at law or in equity for the City's breach. If the Company remains in default after notice and opportunity to cure, the City's remedy shall be limited to a termination of any City obligation to reimburse property taxes as described above.

- 5.6 Attorney's Fees. In the event any legal action or proceeding is commenced between the City and the Company to enforce provisions of this Agreement and recover damages for breach, the prevailing Party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

- 5.7 Entire Agreement. This Agreement contains the entire agreement between the Parties and may only be amended as set forth in Section 5.10 herein below.
- 5.8 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.
- 5.9 Assignment. Company may not assign all or part of its rights and obligations to a third party.
- 5.10 Amendment. This Agreement may be amended, altered or revoked only by written instrument signed by the Parties.
- 5.11 Notice. All notices and other communications hereunder shall be in writing and shall be delivered by hand delivery, expedited courier delivery or mailed (if mailed, by registered or certified mail, return receipt requested, postage prepaid) addressed as follows, and shall be effective upon actual delivery if delivered by hand or by expedited courier delivery or, if mailed, three (3) days after deposit in the United States mail:

If to the City, to:

City Manager
500 West Live Oak Street
Hutto, Texas 78634
Phone: (512) 759-4030

With a copy to:

Dorothy G. Palumbo
Bojorquez Law Firm, P.C.
11675 Jollyville Road, Suite 300
Austin, Texas 78759
Phone: (512) 250-0411
Facsimile: 512-250-0749

If to the Company, to:

Electronic Data Carriers, Inc.
Attn: George Gilbert
2228 Wirtcrest, Suite A
Houston, TX 77055

With a copy to:

Any Party may designate a different address at any time upon written notice to the other Parties.

- 5.12 Interpretation. Each Party has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. The Parties agree that this Agreement is to be constructed as being jointly drafted. Accordingly, this Agreement will be constructed according to the fair meaning of its language, and the rule of construction that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.
- 5.13 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.
- 5.14 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- 5.15 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- 5.16 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 5.17 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.
- 5.18 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.
- 5.19 Undocumented Workers. The Company certifies that it does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the

Texas Government Code, as amended. If during the term of this Agreement, the Company is convicted of a violation under 8 U.S.C. § 1324a(f), the Company shall repay the amount of the public subsidy provided under this Agreement as required by law. Pursuant to Section 2264.101, Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

EXECUTED to be effective as of the ____ day of _____, 2020.

ELECTRONIC DATA CARRIERS, INC.
A Texas corporation

By: _____
George Gilbert, President

CITY OF HUTTO, TEXAS
a TX home rule city and municipal corporation

By: _____
Printed Name: _____
Title: _____

Approved as to Form:

By: _____
Dottie Palumbo,
Attorney for the City of Hutto

EXHIBIT “A-1”

PROPERTY LEGAL DESCRIPTION

Lot 7, of Titan Innovation Business Park – Lot 6 and 7, a subdivision in Williamson County, Texas, according to the map or plat thereof recorded in Document No. 2020018527_____ Official Public Records of Williamson County, Texas.

PROPERTY DEPICTION

The map shows two adjacent lots, Lot 7 and Lot 1, with various easements and boundary measurements.

Lot 7: 7.228 ACRES. The northern boundary is defined by a bearing of $S82^{\circ} 32' 52"E$ and a distance of 450.30'. The eastern boundary is defined by a bearing of $N07^{\circ} 45' 04"E$ and a distance of 523.21'. The southern boundary is defined by a bearing of $N82^{\circ} 14' 56"W$ and a distance of 480.03'. The western boundary is defined by a bearing of $S07^{\circ} 44' 54"W$ and a distance of 542.91'. The lot is surrounded by several 3' PUBLIC UTILITY EASEMENTS and a 5' PUBLIC UTILITY EASEMENT. The lot is also adjacent to the CITY OF HUTTO, CALLED 5.521 ACRES (DOC. NO. 2017070411, O.P.R.W.C.T.).

Lot 1: TITAN INNOVATION BUSINESS PARK, UNIT 1 (DOC. NO. 2018006109, O.P.R.W.C.T.). The lot is located to the south of Lot 7 and is also surrounded by 3' PUBLIC UTILITY EASEMENTS.

Other Features: The map includes a curved boundary on the left side, labeled C1, C2, C3, C4, and C5. The map also shows a curved boundary on the right side, labeled C1, C2, C3, C4, and C5. The map includes a curved boundary on the left side, labeled C1, C2, C3, C4, and C5. The map also shows a curved boundary on the right side, labeled C1, C2, C3, C4, and C5.

EXHIBIT "A-3"

Reimbursable City Sales Tax

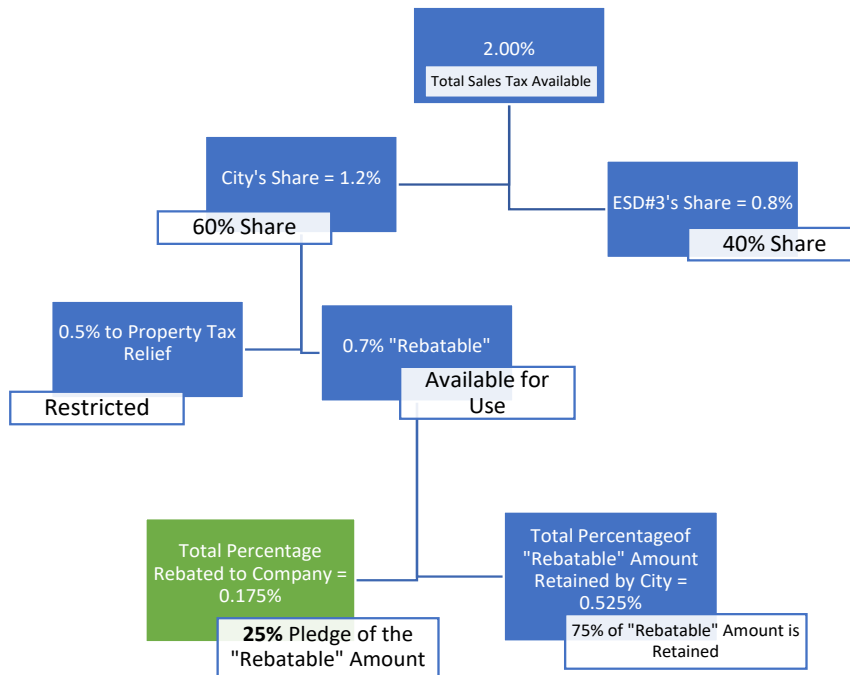


EXHIBIT "A-4"

JOB COMPLIANCE and annual payroll AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared _____
(name) _____, known to me to be the person whose name is subscribed below and
after having been duly sworn, on his/her oath stated as follows:

1. "My name is _____. I am over the age of 21 years and am capable
of making this affidavit. The facts stated in this affidavit are within my personal knowledge
and are true and correct.
2. "I am the _____ (title) _____ of Electronic Data Carriers, Inc. and I
am duly authorized to make this affidavit.
3. "As of December 31, 20____, Electronic Data Carriers, Inc. had the following job positions
and salaries:

Employee ID No.	Job Position or Title	Annual Salary
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

TOTAL JOBS _____
TOTAL ANNUAL SALARY \$ _____
TOTAL ANNUAL OVERTIME \$ _____
TOTAL ANNUAL BENEFITS \$ _____

TOTAL ANNUAL PAYROLL \$ _____

Dated this ____ day of _____, 20____.

(Printed name)

(Title)

SUBSCRIBED AND SWORN TO before me on this the ____ day of _____, 20__.

Notary Public, State of Texas