RR
11/21/13
Item No. 39

AN ORDINANCE 2013-11-21-0817

AUTHORIZING A 15-YEAR CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT WITH MICROSOFT, INC. ("MICROSOFT") FOR THE REIMBURSEMENT OF A MINIMUM OF 40% OF MICROSOFT'S REAL AND PERSONAL PROPERTY TAXES ON NEW PROPERTY IMPROVEMENTS.

* * * * * *

WHEREAS, Microsoft is ranked 35th on the 2013 Fortune 500 list and is a worldwide leader in software development, services, and solutions; and

WHEREAS, On January 18, 2007, City Council approved a 10-year, 100% Tax Abatement Agreement with Microsoft to locate a data center in San Antonio resulting in Microsoft's initial investment of $550 million and the creation of 75 high-paying jobs; and

WHEREAS, Microsoft is currently considering San Antonio, and other sites in the Southwest for a new data center project consisting of an investment of $250M in real and personal property over five years and the creation 20 high wage jobs (the "Project"); and

WHEREAS, Microsoft is seeking a Chapter 380 Economic Development Agreement to assist in deferring costs associated with undertaking and completing the Project; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City is authorized to create a program to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, in accordance with City Ordinance No. 100684, the City created an Economic Development Program (the "Program") for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, the City finds that the goals of Chapter 380 will be met by assisting Microsoft in undertaking and completing the Project and has identified economic development funds for use in carrying out this purpose; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of an Economic Development Agreement (the "Agreement") with Microsoft are hereby approved. The City Manager, or her designee, is authorized to execute said Agreement in accordance with this Ordinance. A copy of the Agreement in substantially final form is attached as **"Attachment I"** and made a part of this ordinance. A final copy of the Agreement shall be attached when executed.

SECTION 2. Payment in the form of a reimbursement which will be broken out in annual payments up to 15 years is authorized to Microsoft Corporation with Cost Center and General Ledger to be determined by the Office of Budget and Management. Annual payments to Microsoft Corporation shall not be less than 40% of the previous year's ad valorem taxes remitted to the City and may be increased in accordance with the terms of the Agreement not to exceed 63% for a period not to exceed 15 years and at such time funds are authorized to be encumbered.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

PASSED AND APPROVED this 21st day of November, 2013.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Michael D. Bernard, City Attorney

Agenda Item:	**39**
Date:	11/21/2013
Time:	11:52:43 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the execution of a 15-year Chapter 380 Tax Reimbursement with Microsoft Corporation at a minimum of 40% of City property taxes on real and personal property investment of $250 million and the creation of 20 high paying jobs starting in 2016. [Carlos Contreras, Assistant City Manager, Rene Dominguez, Director, Economic Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2				x		
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4				x		
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Carlton Soules	District 10			x			

ATTACHMENT I

CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND MICROSOFT CORPORATION

This Economic Development Program Grant Agreement (hereinafter referred to as this "Agreement") is made and entered into by and among the City of San Antonio (the "GRANTOR"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee and Microsoft Corporation (hereinafter referred to as "GRANTEE"). Together, the GRANTOR and GRANTEE may be referred to herein as the "Parties."

WHEREAS, GRANTEE is a worldwide provider of information technology and services; and

WHEREAS, GRANTEE is engaged in an economic development project consisting of the expansion of its data center facility located in Westover Hills in City Council District 6, and more specifically, Lot 4, Block 48, New City Block 17642, San Antonio, TX 78251, as further described in Exhibit A (also referred to by GRANTEE as SN4) (the "Project Site") that will result in the creation of twenty (20) full-time jobs and the investment of $250 million in real and personal property improvements (the "Project"); and

WHEREAS, GRANTEE may choose to expand to other areas within the City of San Antonio city limits or extraterritorial jurisdiction (the "Future Project Site(s)"); and

WHEREAS, GRANTEE has requested economic development incentive funds to assist GRANTEE to defer costs associated with undertaking and completing the Project at the Project Site and investment in Future Project Site(s); and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality and pursuant to City Ordinance No. 100684 GRANTOR adopted an economic development program which meets the requirements of Chapter 380 of the Texas Local Government Code; and

WHEREAS, GRANTOR has identified funds to be made available to incentivize GRANTEE to undertake and complete the Project at the Project Site and investment in Future Project Site(s); and

WHEREAS, the City Council of GRANTOR has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No.2013-21-21_-_____, passed and approved on November 21, 2013 to grant said funds; **NOW THEREFORE**:

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

SECTION 1. AGREEMENT PURPOSE

The purpose of this Agreement is to provide certain economic development grants to GRANTEE as an incentive for GRANTEE to undertake the Project at the Project Site and to invest in Future Project Site(s). The GRANTOR anticipates that if the Project is undertaken at the Project Site and investment made in Future Project Site(s), the Project will promote local economic development and stimulate business and commercial activity in the City of San Antonio. As such, GRANTOR is willing to support the Project, if undertaken at the Project Site, and to support new investment in Future Project Site(s)

through the economic development grants provided in this Agreement to provide funds to be used to defer costs associated with undertaking and completing the Project at the Project Site or Future Project Site(s).

SECTION 2. PROJECT REQUIREMENTS

In consideration of GRANTOR providing the economic development grants provided in Section 3 of this Agreement, GRANTEE will comply with the following obligations:

A. Project Site & Future Project Site(s). GRANTEE will own, hold an interest in or otherwise control the Project Site for the Term of this Agreement, as further defined in Section 5 below. Notwithstanding the foregoing, should GRANTEE fail to own, hold an interest in or otherwise control the Project Site prior to December 31, 2014, this Agreement shall be terminated and neither Party shall be held to any of the terms or conditions herein.

1. Future Project Site(s). For the purposes of this Agreement, a "Future Project Site(s)" shall mean a facility or facilities owned or in the control of GRANTEE: 1) that is within the city limits or extraterritorial jurisdiction ("ETJ") of the City of San Antonio; 2) that is located in an area where no other municipality has jurisdiction; and 3) that is a place where GRANTEE conducts its Business Activities, as defined in Section 2(C) of this Agreement.

2. Should a Future Project Site(s) be in the ETJ of the City of San Antonio, GRANTEE must petition GRANTOR for annexation in order for the Future Project Site(s) to fall under the terms and receive the benefits of this Agreement.

3. Should GRANTEE seek to locate outside of the city limits of the City of San Antonio or its ETJ, GRANTEE and GRANTOR must first mutually agree that no suitable sites exist for Future Project Sites within the city limits of the City of San Antonio or its ETJ.

B. Investment. Between the Effective Date of this Agreement (as defined on the signature page) and the fifth (5^{th}) anniversary of the Effective Date, GRANTEE shall invest approximately TWO HUNDRED AND FIFTY MILLION AND NO/100 DOLLARS ($250,000,000.00) in real and personal property improvements at the Project Site or Future Project Sites. GRANTEE shall retain all pertinent records evidencing GRANTEE's real and personal property expenditures for the Term (as defined in Section 5) of this Agreement. For greater certainty, the economic development grant as specified in Section 3 below shall continue for the Term so long as the conditions are met and the Agreement has not been suspended or terminated in accordance with Sections 15 or 16 below.

1. The Parties acknowledge that under a previous agreement approved by City Ordinance No. 2007-01-18-0074 (the "Tax Abatement Agreement"), GRANTEE is entitled to a 100% tax abatement of ad valorem real and personal property taxes on 44 acres of land located at 5150 Rogers Road. This Agreement does not extend the term of the Tax Abatement Agreement nor does it apply to any real or personal property investments made on the property described in the Tax Abatement Agreement.

2. GRANTEE shall establish "Improvements Only" tax accounts with the Bexar County Appraisal District to be exclusively for the real property improvements and personal property improvements to the Project Site and each Future Project Site(s) and will provide the tax account number(s) to the GRANTOR.

C. Business Activities. GRANTEE shall conduct, at the Project Site or Future Project Site(s), certain business activities typically conducted by enterprise data centers (all of such activities hereinafter collectively referred to as the "Business Activities") prior to December 31, 2016, and thereafter operate same at the Project Site or Future Project Site(s) for the Term of this Agreement, except to the extent said Project Site or Future Project Site(s) may be rendered unsuitable for such use due to a Force Majeure Event (as defined in Section 17 of this Agreement). Except as provided herein, GRANTEE covenants and agrees that the Business Activities will not be changed without the written consent of GRANTOR, such consent not to be unreasonably withheld, conditioned or delayed. However, such consent shall not be necessary if a Related Organization (being defined as a parent, subsidiary or affiliate organization of GRANTEE or any entity which succeeds to or receives an assignment of GRANTEE's interest under this Agreement as a result of a merger, acquisition, or other corporate restructure or reorganization of GRANTEE, or any parent, subsidiary or affiliate of such entity) occupies the Project Site and Future Project Site(s) and continues to use the premises for the Business Activities consistent with the terms and conditions of this Agreement. To be eligible for the benefits of this Agreement, the Related Organization must agree in writing, to comply with all applicable terms herein from and after the date it succeeds to GRANTEE's interest in this Agreement, and if requested by GRANTOR, the Related Organization must enter into an amendment to this Agreement evidencing such agreement. In the event of any such transfer to a Related Organization, GRANTEE must notify CITY in writing of same no later than the sixtieth (60^{th}) calendar day following the effective date of such transfer. GRANTEE acknowledges that any change in the principal use of the Project Site or Future Project Sites from that contemplated herein without prior written approval of GRANTOR, to the extent same is required under this Agreement, may result in a loss of the economic development grants to be provided to GRANTEE under this Agreement and the recapture of grant funds disbursed under this Agreement in accordance with Section 16.

D. Full-Time Jobs. GRANTEE shall create a minimum of twenty (20) Full-Time Jobs, as defined below, at the Project Site or Future Project Site(s) over a five (5) year period commencing upon the issuance of the Certificate of Occupancy for the Project Site or Future Project Site(s). The Full Time Jobs will be added in accordance with the following schedule:

RESERVED

1. For the purposes of this Agreement, a Full-Time Job shall be:

(A) A new, full-time job created by a qualifying owner, qualifying operator, or qualifying occupant of a qualifying data center that:

(i) is a permanent job;

(ii) is located in the same county in Texas in which the associated qualifying data center is located;

(iii) will provide at least 1,820 hours of employment a year to a single employee;

(iv) pays at least 120% of the county average weekly wage, as defined by paragraph (2) of this subsection, for the county where the job is located;

(v) is not transferred from one county in Texas to another county in Texas;

(vi) is not created to replace a qualifying job that was previously held by another employee; and

(vii) has access to healthcare benefits.

(B) A Full Time Job includes a new employment position staffed by a third-party employee or contractor if the employment position meets the requirements of subparagraph (A) of this paragraph and if there is a written contract between the contractor or third-party employer and a qualifying owner, qualifying operator, or qualifying occupant of the associated qualifying data center which:

(i) provides that the third-party employee is not temporarily assigned to the associated qualifying data center or another location operated by the qualifying owner, qualifying operator, or qualifying occupant within the county where the data center is located for the term of the written contract.

(C) The definitions of the terms qualifying owner, qualifying operator, qualifying occupant, and qualifying data center shall be as defined by Texas Tax Code Section 151.359 as of the Effective Date.

2. GRANTEE agrees that in addition to the requirements of Section 2(D)(1) above, to qualify as a Full Time Job under this Agreement, the minimum wage for the employee must be ELEVEN DOLLARS AND EIGHT CENTS ($11.35) per hour exclusive of the value of all benefits provided to such employees. GRANTEE shall submit Annual Wage Compliance Reports certifying their compliance with these wage requirements, in accordance with the terms of Section (2) (E). below. For purposes of calculating the "hourly wage" of any salaried employee the employee's annual salary will be divided by 1820 to calculate the hourly wage equivalent.

3. Additionally, to qualify as a "Full-Time Job employee" for purposes of this Agreement, each such employee will be offered an opportunity to participate in the employee benefits program of its respective employer which shall be substantially similar to employee benefits offered to similarly situated employees of such employer in other locations. In addition, in order to qualify as a "Full-Time Job employee", said employee shall be offered a health plan which provides coverage for their eligible dependents on terms substantially similar to the coverage provided to the eligible dependents generally of its respective employer's non-temporary full-time employees at other locations.

E. Certification. Within thirty (30) business days of the end of each calendar year during the Term of this Agreement, GRANTEE will provide GRANTOR's Director of Economic Development Department with an annual certification from an officer of GRANTEE attesting to the number of Full-Time Jobs created and maintained at the Project Site or Future Project Site(s) during the preceding year, as well as wages paid, the annual average salary for all such employees and GRANTEE's current investment in real and personal property.

F. Small Business Utilization. During the Term of this Agreement, GRANTEE agrees to subcontract at least twenty percent (20%) of its annual operating budget, excluding the cost of energy and payroll for regular employees, to certified small and/or minority and/or women-owned businesses that are either headquartered or have a "significant business presence" in the San Antonio Metropolitan Statistical Area (SAMSA). GRANTEE agrees that it shall submit semi-annual reports of its good faith effort (Exhibit __) to achieve the utilization levels established above. Such reports shall indicate GRANTEE's

semi-annual and year-to-date subcontracting utilization levels, along with documentation of subcontractor(s) certification status, are due to the City's Economic Development Department annually commencing upon the first anniversary of the Effective Date of this Agreement.

Failure to document good faith efforts when the subcontracting goal is not met or exceeded for two (2) consecutive semi-annual reports will result in the incentive being withheld until a documented good faith effort is received by the City's Economic Development Department or the GRANTEE is meeting or exceeding the subcontracting goal outlined above.

For the purposes of this Section 2(F) a "Significant Business Presence" shall mean an established place of business for at least one year within one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT

In exchange for GRANTEE undertaking and completing the Project at the Project Site and Future Project Site(s), GRANTOR will provide an economic development incentive grant to the GRANTEE as follows:

A. Economic Development Program Grant. GRANTOR will provide GRANTEE with an annual Economic Development Program Grant in an amount equivalent to FORTY-PERCENT (40%), except as provided in Section 3(A)(4) below, of GRANTEE's annual City tax payment for new real and personal property improvements to the Project Site and Future Project Site(s) for the Term of this Agreement (the "Annual Grant").

1. The Parties acknowledge that GRANTOR is required to commit a percentage of its ad valorem taxes to pay its debt service. The current percentage is THIRTY-SEVEN PERCENT (37%). The percentage is subject to increases or decreases in future years. Prior to payment of any grant funds to GRANTEE, GRANTOR shall first deduct the required percentage committed to Grantor's debt service.

2. The calculation of the amount of real and personal property taxes paid by GRANTEE on the Project Site and/or Future Project Site(s) for the purposes of this Agreement shall be the amount GRANTEE is assessed and pays in real and personal property taxes to GRANTOR in the year in which the Project Site or Future Project Site(s) meet the requirements of this Agreement, *less* the amount of real and personal property taxes paid by GRANTEE or the previous real property owner with respect to the Project Site or Future Project Site(s) in the preceding tax year, for which property value is assessed on January 1.

3. Following Grantor's deduction of its debt service percentage from Grantee's tax payment to GRANTOR; and the FORTY-PERCENT (40%) tax reimbursement paid to GRANTEE from Grantee's tax payment to GRANTOR; then the remaining portion shall be deposited into an economic development fund.

4. Once the economic development fund reaches FIVE MILLION DOLLARS ($5,000,000.00) in accordance with Section 3(A)(3) above, GRANTEE's Annual Grant shall increase, subject to Section 3(A)(1) above, to an amount equivalent to SIXTY-THREE PERCENT (63%) of GRANTEE's annual City tax payment for the Project Site and Future Project Site(s) for the remaining Term of this Agreement.

5. Upon GRANTEE obtaining a cumulative ONE BILLION DOLLARS ($1,000,000,000.00) in combined assessed value of real and personal property for the Project Site and Future Project Site(s), the Annual Grant will be capped, subject to Section 3(A)(1) above, at the dollar amount paid in the year in which GRANTEE attains the $1,000,000,000.00 assessment; and no greater amount of taxes paid by GRANTEE shall be recognized for the Term of the Agreement.

B. Grant Disbursement. Following the execution of this Agreement by the Parties, the commencement of the Term of this Agreement, GRANTEE providing documentation showing it owns, holds an interest in or otherwise controls the Project Site and the commencement of Business Activities on the Project Site or Future Project Site(s), the Annual Grant will be disbursed over the Term of this Agreement as follows:

1. No sooner than one (1) month nor later than six (6) months following the date of GRANTEE having received a tax invoice from the Bexar County Tax Assessor's Office and GRANTEE paying all taxes owed on the Project Site(s) or Future Project Site(s), GRANTEE may submit an invoice to GRANTOR indicating its payment of assessed taxes and requesting payment of the Annual Grant.

2. GRANTEE's request for disbursement of the Annual Grant must be accompanied by a written certification from an officer of GRANTEE: 1) confirming that GRANTEE is conducting Business Activities on the Project Site or Future Project Site(s); 2) indicating that GRANTEE has met the investment requirement of this Agreement or in the alternative listing the amount of investment at the time of the disbursement request; and 3) indicating it has met the job creation requirement of this Agreement or in the alternative listing the number of full-time jobs it has created at the time of the disbursement request. Should GRANTEE submit a request for disbursement in accordance with this Section 3(B)(2), GRANTOR shall disburse the Annual Grant to GRANTEE within forty-five (45) calendar days of the date GRANTOR receives the request and supporting certification.

C. The Parties agree that if, on the fifth (5^{th}) anniversary of the Term of this Agreement, GRANTEE has never submitted an initial disbursement request to GRANTOR, then GRANTEE shall forfeit its right to thereafter submit for Annual Grant disbursements and GRANTOR shall have no obligation to make disbursements in the future for any then unrequested funds.

SECTION 4. ADDITIONAL OBLIGATIONS OF THE PARTIES

A. GRANTOR agrees to support GRANTEE in being designated for certain economic incentives, such as the E16 program, with CPS Energy based upon CPS Energy's criteria and GRANTEE meeting all applicable requirements.

B. GRANTEE agrees to enter into a research and development agreement ("R&D Agreement") with the University of Texas at San Antonio ("UTSA") prior to February 15, 2014 to collaborate on project(s)

in the area of distributed generation technology. In addition, GRANTEE shall also provide a unrestricted cash gift to UTSA in the amount of $1 million to be used for research & technology programs, research or related uses. Upon execution of the R&D Agreement, GRANTEE shall provide a copy to GRANTOR.

SECTION 5 TERM PERIOD

The Term referenced in this Agreement shall commence on January 1, 2016 and shall continue in effect for a period of fifteen (15) years (the "Term") unless terminated as otherwise provided herein.

SECTION 6. GRANTOR'S OBLIGATIONS

A. Payment. GRANTEE acknowledges that the payment of funds hereunder shall be subject to, and made solely from, annual appropriations of the GRANTOR in the budget year in which they are to be paid as may be legally set aside for the implementation of ARTICLE III, Section 52A of the Texas Constitution, Chapter 380 of the Texas Local Government Code, or any other economic development or financing program authorized by statute or home-rule powers of the GRANTOR under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that GRANTOR does not appropriate funds necessary to pay the Grants in any budget year (as reflected in the GRANTOR's adopted budget for such year), GRANTOR shall not be liable to GRANTEE for such payments or expenditures unless and until such appropriation of funds is made provided, however, that, in such event, GRANTEE may, in its sole discretion, terminate this Agreement, in which event GRANTEE and GRANTOR shall have no further obligations under this Agreement including, but not limited to any obligations for the year in respect to which said unappropriated funds relate. In the event GRANTOR does not appropriate funds necessary to pay GRANTEE in a particular budget year, GRANTOR shall appropriate funds the following budget year(s) to pay funds due to GRANTEE. Failure of GRANTOR to appropriate funds in a particular budget year in which they are due and owing to GRANTEE shall not relieve GRANTOR of obligation to pay GRANTEE these funds in the subsequent year(s).

B. No Liability for Costs. Except as set forth in this Agreement, GRANTOR will not be liable to GRANTEE or other entity for any costs incurred by GRANTEE in connection with this Agreement.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

A. Retention. GRANTEE shall maintain the records and supporting documentation (the "Records") relating to: 1) the amount of investment in real and personal property; 2) the creation and maintenance of Full-Time Jobs; and 3) salaries of full-time employees at the Project Site or Future Project Site(s)s used by GRANTEE for data center operations in GRANTOR's city limits. GRANTEE shall retain such records and any supporting documentation through the end of the Term of this Agreement.

B. Access. GRANTEE shall, following at least five (5) business days advance, written notice from GRANTOR, give GRANTOR, its designee, or any of their duly authorized representatives, access to the Records at the Project Site or Future Project Site(s) during normal business hours. GRANTOR's access to the Records will be limited to reviewing information needed to verify that GRANTEE is and has been complying with the terms of this Agreement. GRANTOR may not copy or otherwise take control of such Records. Any information that is not required by law to be made public shall be kept confidential by GRANTOR. GRANTEE shall not be required to disclose to GRANTOR any information that by law or by contract GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue through the Term

of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default.

SECTION 8. MONITORING

A. GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. If GRANTOR elects to monitor GRANTEE, GRANTOR shall create a monitoring report noting its findings related to GRANTEE'S compliance with the terms and conditions of this Agreement. GRANTOR will provide GRANTEE with a written report of the monitor's findings within ninety (90) calendar days following completion of the particular report. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 15 and 16 herein.

B. GRANTEE shall provide to GRANTOR an annual certification with reasonable supporting information evidencing the investment in real and personal property at the Project Site or Future Project Site(s), the creation of and filling of the number of jobs at the Project Site and Future Project Site(s); and compliance with the wage requirements as specified in this Agreement.

SECTION 9. CONFLICT OF INTEREST

If applicable, GRANTEE shall ensure that no employee, officer, or individual agent of GRANTOR shall participate on behalf of GRANTEE in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. To the extent GRANTEE hires any former or current employee or official of GRANTOR who would be subject to the GRANTOR's ethics policy, as same exists from time to time, GRANTEE shall take reasonable efforts to ensure that such person complies with all applicable requirements of the GRANTOR's ethics ordinance in dealings between GRANTOR and GRANTEE.

SECTION 10. SECTARIAN ACTIVITY

Sectarian Activity. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

SECTION 11. LEGAL AUTHORITY

A. Legal Authority. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. Signatories. Each party represents and warrants to the other that the person or persons signing and executing this Agreement on behalf of such party has been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

SECTION 12. GOVERNING LAW AND VENUE

A. Notice to City. GRANTEE shall give GRANTOR immediate notice in writing of any (i) OSHA complaint filed by an employee of GRANTEE or any of its subsidiaries concerning the Project Site or Future Project Site(s), or (ii) notice of any bankruptcy of GRANTEE, or (iii) any notice given by GRANTEE or any of its subsidiaries or affiliates to its employees at the Project Site or Future Project Site(s) required under any applicable laws pertaining to contemplated job reductions at such premises. GRANTEE shall submit a copy of each such notice required hereunder to GRANTOR within thirty (30) calendar days after receipt or issuance, as applicable.

B. Texas Torts Claims Act. GRANTEE acknowledges that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. Venue. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event GRANTEE or GRANTOR should default under any of the provisions of this Agreement and the other should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party so ordered by a court having jurisdiction over the Parties.

SECTION 14. CHANGES AND AMENDMENTS

A. Amendments in Writing. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by the Parties to this Agreement.

B. 380 Program. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

SECTION 15. SUSPENSION

A. Notice and Cure Period. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, if applicable, or anything else in this Agreement to the contrary, in the event GRANTEE fails to comply with the terms of this Agreement, GRANTOR shall provide GRANTEE with written notification as to the nature of the non-compliance and grant GRANTEE a sixty (60) day period

following the date of the GRANTEE's receipt of GRANTOR's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, or such longer period of time as may be reasonably necessary for GRANTEE to cure the default in question if same cannot reasonably be cured within such sixty (60) day period, the GRANTOR may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE Agreement until the default is cured. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. Lifting of Suspension. A suspension under this Section shall be lifted at the sole discretion of GRANTOR upon a showing by GRANTEE that the event of default has been cured or by a written waiver of GRANTOR of the term(s) in question.

C. No Liability. GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 16. DEFAULT, TERMINATION AND RECAPTURE, AND OTHER REMEDIES

A. Relocation Defined. For purposes of this section, "Relocation" "Relocated" or "Relocate" shall mean GRANTEE or a Related Organization, or any other permitted transferee of GRANTEE's rights under this Agreement, which has taken the place of GRANTEE, transferring the Business Activities from the Project Site or Future Project Site(s) to a location outside of GRANTOR's city limits for reasons other than the inability to conduct the Business Activities at the Project Site or Future Project Site(s) due to casualty, condemnation or other reasons beyond the reasonable control of GRANTEE or its subsidiaries or any such Related Organization or other permitted transferee of GRANTEE's rights under this Agreement (any of the foregoing being a "Force Majeure Event" as further defined in Section 17 below).

B. Default of GRANTEE. GRANTEE shall be in default under this Agreement:

1. Relocation. If during the Term of this Agreement, GRANTEE occupies and uses the Project Site or Future Project Site(s) for its Business Activities and subsequently Relocates (as defined in this Section 16(A) during the Term, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation occurred. Unless GRANTEE presents credible evidence to clearly indicate a date of Relocation, GRANTOR's determination shall be final and conclusive. Upon termination, GRANTOR shall have the right to recapture from GRANTEE all funds previously disbursed to the GRANTEE, and/or for the benefit of the GRANTEE, under this Agreement and not previously recaptured by GRANTOR in accordance with the recapture schedule set forth in Section 16(C) below and GRANTOR shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination and its election to recapture such amounts.

2. Ceasing. If, after the conditions set forth in Section 2(B) of this Agreement are met, GRANTEE occupies and uses the Project Site or Future Project Site(s) for its Business Activities and subsequently ceases conducting Business Activities at the Project Site or Future Project Site(s) for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure Event, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the ceasing occurred. Unless GRANTEE

presents credible evidence to clearly indicate a date of cessation, GRANTOR's determination of a date of cessation shall be final and conclusive. Upon termination, GRANTOR shall have the right to recapture from GRANTEE all funds previously disbursed to the GRANTEE, and/or for the benefit of the GRANTEE, under this Agreement and not previously recaptured by GRANTOR in accordance with the recapture schedule set forth in Section 16(C) below and GRANTOR shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination and its election to recapture such amounts.

3. Number of Jobs. If GRANTEE, its affiliates and/or subsidiaries, any Related Organization, and/or other City-approved assignee permitted under this Agreement fails to, for any reason other than a Force Majeure Event, to create at the Project Site or Future Project Site(s) at least twenty (20) Full-Time Jobs on or before the ____ (—) anniversary of the Effective Date of this Agreement, or having done so thereafter fails to maintain at the Project Site or Future Project Site(s) at least twenty (20) Full-Time Jobs during the Term of this Agreement, GRANTOR may terminate this Agreement. Upon such termination, all funds previously disbursed to the GRANTEE, and/or for the benefit of the GRANTEE, under this Agreement which have not been previously recaptured by GRANTOR may be recaptured by GRANTOR according to the schedule set forth in Section 16(C) below.

C. In any circumstance where GRANTOR is entitled and elects, to recapture funds disbursed hereunder, the portion subject to recapture shall be as follows:

TERM YEAR IN WHICH RECAPTURE OCCURS	**TOTAL PERCENTAGE OF UNRECAPTURED FUNDS TO BE RECAPTURED**:
1-15	100%
16	90%
17	80%
18	70%
19	60%
20	50%

GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing.

D. Limitation on Recapture. Notwithstanding the foregoing, any such recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled at law or under this Agreement. The termination and/or recapture of grant funds provided in this Section 16 are not applicable to situations involving minor changes to the description of the Project Site or Future Project Site(s), or GRANTOR-approved changes in ownership or in management thereof, so long as GRANTEE, its parent, subsidiary, affiliate or any successor or assignee allowed under the terms of this Agreement, continues conducting Business Activities or other authorized activities thereon as provided hereinabove.

E. Limitation on Remedies. The foregoing termination and recapture rights shall be GRANTOR's sole and exclusive remedies in the event GRANTEE shall default under this Agreement.

SECTION 17. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)

In addition to relief expressly granted in this Agreement, GRANTEE shall be granted relief from performance of this Agreement to the extent GRANTEE is prevented and/or impaired from compliance and performance by any Force Majeure Event. In addition to the events mentioned in Section 16 above, a "Force Majeure Event" shall also include, but not be limited to, an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster, supply shortage, or other unavoidable cause not attributed to the fault or negligence of the GRANTEE. It also includes an explosion or other casualty or accident, which is not the result of negligence, intentional act or misconduct on the part of GRANTEE. The burden of proof for the need for such relief shall rest upon GRANTEE. To obtain relief based upon this Section 17, GRANTEE must file a written notice with the GRANTOR's Economic Development Department specifying the Force Majeure Event and the performance under this Agreement that such event is impairing.

SECTION 18. SPECIAL CONDITIONS AND TERMS

GRANTEE, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any worker during the Term of this Agreement who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("Undocumented Workers"). If GRANTEE is convicted of a violation under 8 U.S.C. Section 1324a (f), then GRANTEE shall repay GRANTOR the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within one-hundred twenty (120) business days after the date GRANTEE is notified by GRANTOR of such violation. GRANTOR, in its sole discretion, may extend the period for repayment herein. Additionally, GRANTEE shall pay interest on the amounts due to GRANTOR under this Section 18 at the rate of five percent (5%) per annum from the date of such violation notice until paid. GRANTEE shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate or franchisee or by a person with whom GRANTEE contracts.

SECTION 19. TIME IS OF THE ESSENCE & REASONABLENESS

The Parties acknowledge that time is of the essence with respect to their obligations under this Agreement. The Parties further agree to act reasonably and in good faith when acting under the terms of this Agreement.

SECTION 20. NO WAIVER

Failure by either party to exercise any right or remedy hereunder available to it shall not constitute a waiver of the right to exercise that or any other right or remedy at any time in the future, absent a written agreement to the contrary.

SECTION 21. NON-ASSIGNMENT

This Agreement is not assignable by any Party without the written consent of the non-assigning party. GRANTOR shall not unreasonably withhold, condition, or delay its consent to any such assignment by GRANTEE. Notwithstanding the foregoing, GRANTEE may assign this Agreement to a Related Organization, without the written consent of the GRANTOR. If GRANTEE so assigns this Agreement it will provide notice of such assignment to GRANTOR on or before the thirtieth (90^{th}) calendar day following the date of assignment. Any assignment of this Agreement in violation of this Section shall enable GRANTOR to terminate this Agreement and exercise its rights under this Agreement, subject to Section 15 herein. Any assignment of this Agreement by GRANTEE shall relieve GRANTEE of all

obligations and liabilities under this Agreement. Notwithstanding the foregoing, GRANTEE and/or any successor to GRANTEE's interest in the this Agreement may collaterally assign and/or grant a security interest in the payments to be received by GRANTEE hereunder without GRANTOR's consent if required by any lender providing financing to any such entity or any parent, subsidiary, or affiliated company of such entity.

SECTION 22. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 23. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO GRANTOR:

(Whether personally delivered or mailed):

City of San Antonio
Attn: Economic Development
P.O. Box 839966
San Antonio, Texas 78283-3966

- If by personal or overnight delivery:

Economic Development
Attn: Director
19th Floor
100 Houston St.
San Antonio, Texas 78205

TO GRANTEE:

Microsoft Corporation
One Microsoft Way
Red West E - 3051
Redmond, WA 98052

SECTION 24. INCORPORATION OF EXHIBITS

Each of the Exhibits and Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Exhibit A – Project Site
Exhibit B- GFEP Certificate

Future Project Site(s) shall be added to this Agreement and a description of each shall be included as an exhibit to this Agreement.

WITNESS OUR HANDS, EFFECTIVE as of _____ ____, 201_ (the "EFFECTIVE DATE"):

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to the attached Ordinance Number 201_-__-__-_____ and GRANTEE pursuant to its authority.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

_____
Sheryl L. Sculley
CITY MANAGER

ATTEST:

_____
Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

_____
Michael D. Bernard
CITY ATTORNEY

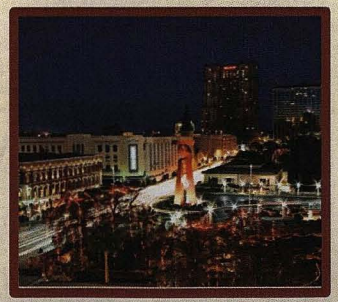
MICROSOFT CORP. (GRANTEE)
a _____ corporation

_____
Name:
Title:

CITY OF SAN ANTONIO
ECONOMIC DEVELOPMENT DEPARTMENT

Microsoft Data Center Expansion
Tax Reimbursement Agreement

November 21, 2013
City Council Item# 39



Rene Dominguez, Economic Development Department Director

Items for Consideration

- An ordinance authorizing the execution of a 15-year Chapter 380 Economic Development Agreement with Microsoft Corporation to reimburse a minimum of 40% and up to 63% of City of San Antonio ad valorem property taxes.

Background

- Microsoft Corporation was founded in 1975 by Bill Gates and Paul Allen and is headquartered in Redmond, Washington.
- Ranked 35 on the Fortune 500 list, Microsoft is a worldwide leader in software development, services, and solutions. Microsoft also employs over 90,000 people worldwide.
- On January 18, 2007 City Council approved a 10-year, 100% Tax Abatement of Microsoft's real and personal property improvements for Microsoft's initial data center project.

Microsoft Expansion Project

- Microsoft is proposing:
  - A capital investment of approximately $250 million in real and personal property starting in 2016.
  - The creation of 20 jobs with an minimum annual wage of $53,000.
  - Microsoft considered San Antonio and other sites in the Southwest for the Microsoft data center expansion project.

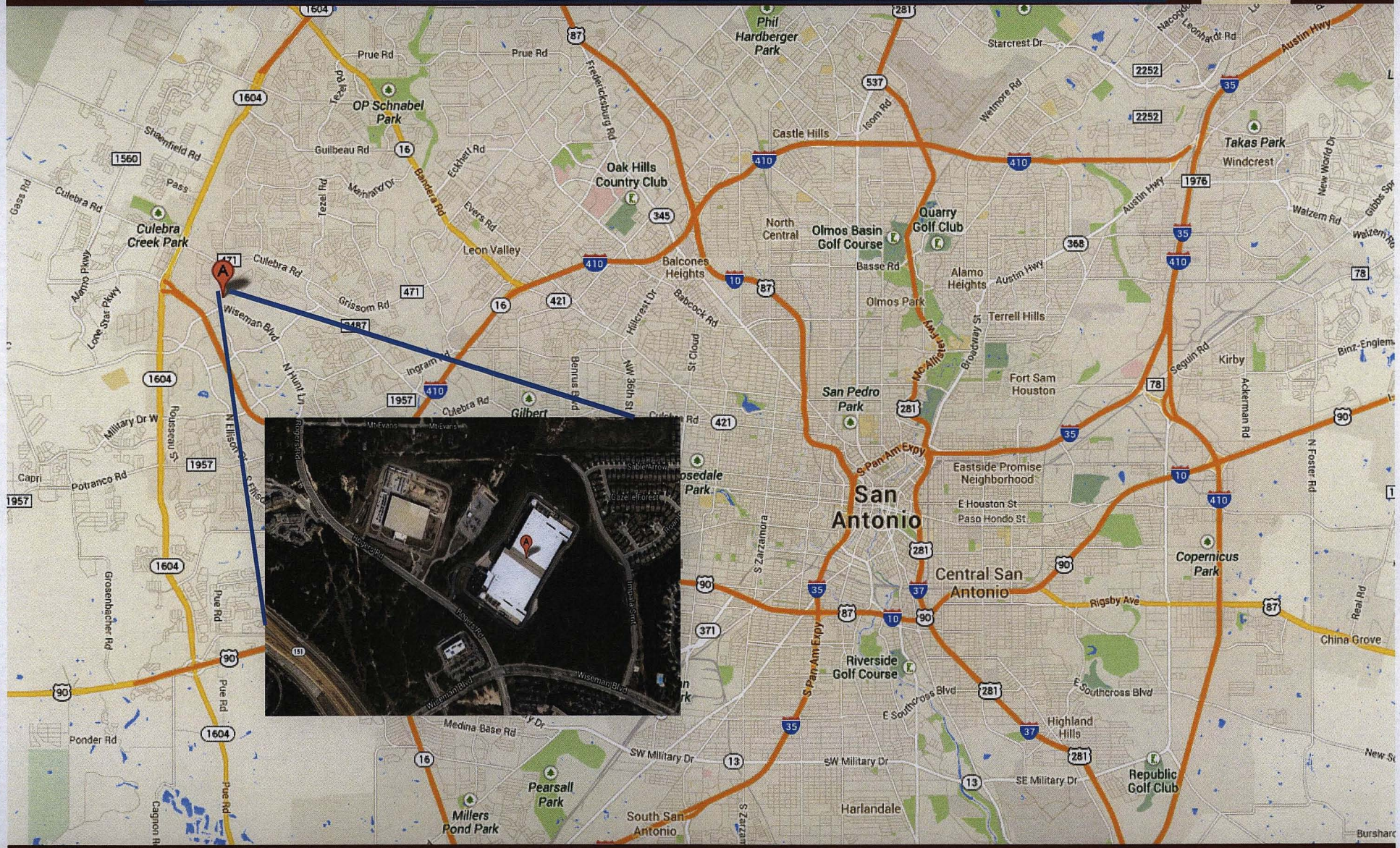
Proposed Incentive

To secure the new Microsoft data center expansion project and attract future investment, staff recommends:

- A 15-year Chapter 380 Tax Reimbursement equating to 40 percent and up to 63 percent of the City's portion of ad valorem property taxes provided a Net Property Tax Revenue Milestone of $5M is reached.

- The Net Property Tax Revenue Milestone of $5M could be generated as a result of additional Microsoft investment during the 15-year term.

Current Microsoft Data Center Location
5150 Rogers Road –
Westover Hills in District 6



Project Benefits

- As a result of the incentive offered, Microsoft will:

(1)Invest $250 Million over 5 years;

(2)Create 20 competitive jobs with a minimum annual salary of $53,000;

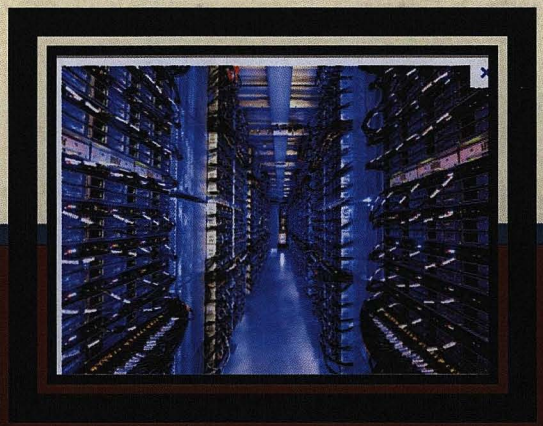
(3)Contribute $1 million to the University of Texas at San Antonio (UTSA) for a collaborative Research and Development (R&D) agreement pursuing material improvements in efficiency and reliability in distributed generation technology; and

(4)Commit to utilize local certified small/minority/women-owned businesses based in the San Antonio Metropolitan Statistical Area for the life of the agreement. Utilization of these local small business categories will account for no less than 20 percent of Microsoft's annual operating budget.

Fiscal Impact

- Staff conducted a cost-benefit analysis evaluating the City's estimated costs from the tax rebate and the City's estimated revenues from incremental property taxes, sales tax as well as COSA's portion of CPS Energy revenues over a term of 15 years.

- Staff estimates this project will have a net fiscal benefit to the City of $56,319,724.



CITY FISCAL IMPACT
Data Center Expansion Project

Years	Estimated Total Revenue (Property Tax, Sales Tax, CPS Revenue)	Estimated Incentive Value (15-Year, 40%)	Estimated Net Fiscal Impact
1-5	$17,658,454	$1,268,451	$16,390,003
6-10	$21,725,087	$940,175	$20,784,913
11-15	$20,023,285	$878,476	$19,144,808
Total	**$59,406,826**	**$3,087,102**	**$56,319,724**

Recommendation

- Staff recommends approval of:

  An ordinance authorizing the execution of a 15-year Chapter 380 Tax Reimbursement Agreement at a minimum of 40% and up to 63% of City property taxes on real and personal property investment provided a Net Tax Revenue Milestone of $5M is reached.