



CITY ATTORNEY'S OFFICE
DOCUMENT REVIEW MEMO

Date Received: 2025.01.14

Department: Economic Development | City Manager

Document Subject/Description: City Council approved a Resolution on December 5, 2023 (attached) allocating TED funds in support of intersection improvements at Stan Roberts and US-53 in support of the 380 Agreement with Wurldwide LLC (Meta). Through said Resolution "the City Manager or designee is authorized to execute any budget transfers and associated agreements in order to effectuate in the intent of this Resolution".

The attached Development Agreement is contractual vehicle which will implement the intersection improvements which will be funded using the above-referenced TED funds.

Reviewed by: Juan S. Gonzalez
Senior Assistant City Attorney

Okay to sign: Yes, 

Attached for Signature: - Development Agreement for Second Segment Stan Roberts Road Improvements.

RESOLUTION

WHEREAS, the El Paso City Council ("City") approved the Texas Economic Development Incentive Program ("TED Program") – Policy and Guidelines on January 20, 2021; and

WHEREAS, the purpose of the TED Program is to make funds available for financial incentives in the form of economic development grants and/or loans to promote economic development within El Paso Electric’s Texas Service Area through various categories, including Infrastructure Development Assistance; and

WHEREAS, the contemplated intersection improvements to Stan Roberts and US-54 meet the criteria of the TED Program; and

WHEREAS, the City desires to allocate funds from the TED Program in an amount not to exceed \$5,000,000 to the intersection improvements to Stan Roberts and US-54 in connection with the development contemplated in the Chapter 380 Economic Development Program Agreement entered into between the City and WURLDWIDE LLC, a Delaware limited liability company.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the above recitals are accepted as true and correct;

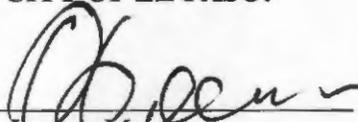
THAT the City approves the allocation of funds from the Texas Economic Development Incentive Program to fund the intersection improvements at Stan Roberts and US-54 to support and facilitate development of the approximate 1,039 acres of land on the north side of Stan Roberts Sr. Avenue, west of U.S. Highway 54 within the City of El Paso, Texas in connection with the development contemplated in the Chapter 380 Economic Development Program Agreement entered into between the City of El Paso and Wurldwide LLC, a Delaware limited liability company, in an amount not to exceed \$5,000,000; and

THAT the City Manager, or designee, be authorized to execute any budget transfers and associated agreements in order to effectuate the intent of this Resolution.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

PASSED AND APPROVED this 5 day of DECEMBER, 2023.

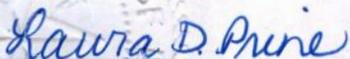
THE CITY OF EL PASO:



Oscar Leeser, Mayor

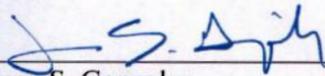


ATTEST:



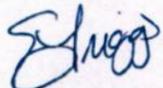
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Elizabeth K. Triggs, Director
Economic & International Development

STATE OF TEXAS §

COUNTY OF EL PASO §

DEVELOPMENT AGREEMENT FOR ROAD IMPROVEMENTS

This **DEVELOPMENT AGREEMENT FOR ROAD IMPROVEMENTS** (“**Agreement**”) is entered into by and between the **CITY OF EL PASO, TEXAS** (the “**City**”), a home rule municipality organized under the laws of the State of Texas, and **WORLDWIDE LLC**, a Delaware limited liability company, d/b/a Statue LLC (“**Company**”). The City and the Company are sometimes referred to herein collectively as the “**Parties**” and each individually as a “**Party**”.

RECITALS

The City and Company hereby agree that the following statements are true and correct and constitute the basis upon which the City and Company have entered into this Agreement:

A. The Company owns approximately 1,038.948 acres of land located on the northside of Stan Roberts Sr. Avenue, West of U.S. Highway 54 in the City (the “**Company’s Property**”). The Company is planning to reconstruct and widen approximately 7,500 linear feet of Stan Roberts Sr. Avenue adjacent to the Company’s Property in the location shown on **Exhibit “A”** attached hereto (the “**First Segment of Stan Roberts**”) pursuant to that certain 380 Economic Development Program Agreement entered into between the City and Company on December 7, 2023 (the “**380 Agreement**”). The City has requested that Company further extend the reconstruction of Stan Roberts Sr. Avenue with an additional segment of the road beyond the Company’s Property to tie-into its intersection with U.S. Highway 54, which improvements are more particularly described and defined herein as the Road Improvements. The Road Improvements are not required for Company’s proposed development on Company’s Property; however, in exchange for the reimbursement offered herein, the Company has agreed to design and construct the Road Improvements subject to the terms and conditions hereof.

B. The Road Improvements, will benefit the City by facilitating a continuous reconstructed roadway to serve the residents and businesses within the City. In recognition of the potential economic benefits that will accrue to the City as a result of the Road Improvements, the City desires to enter into this Agreement to provide economic incentives to Company in return for construction of the Road Improvements.

C. In accordance with a resolution adopted by the City Council of the City (the “**City Council**”) on January 20, 2021, the City has established the Texas Economic Development Incentive Program (“**TED Program**”) pursuant to which the City may offer economic incentives in the form of economic development grants and/or loans to promote economic development within El Paso Electric’s Texas Service Area through various categories, including Infrastructure Development Assistance.

D. On December 5, 2023 the City Council approved a resolution (the “**Resolution**”) for the allocation of funds from the TED Program to fund the intersection improvements at Stan Roberts Sr. Avenue and U.S. Hwy 54 and related road improvements in connection with the development contemplated in the 380 Agreement, in an amount not to exceed \$5,000,000.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

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

2. DEFINITIONS.

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

380 Agreement has the meaning ascribed to that term in Recital A.

Affiliate means all persons or entities, incorporated or otherwise, under common control with, controlled by or controlling Company.

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

Approvals Deadline means the date that the City issues a notice to proceed to Company to begin construction of the First Segment of Stan Roberts. The City shall issue a notice to proceed to Company to begin construction of the First Segment of Stan Roberts once plans have been approved by the City for construction of the First Segment of Stan Roberts (which approval shall not be unreasonably withheld or delayed). If the

City has not issued such a notice to proceed within ten (10) days of approval of the plans for construction of the First Segment of Stan Roberts, then such approval of the plans shall serve as the notice to proceed and the date of such approval of the plans shall be the Approvals Deadline for all purposes hereunder.

Business Day shall mean a day that is not a Saturday, Sunday or legal holiday in the State of Texas. All other references to “days” hereunder shall mean calendar days.

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

Company’s Property has the meaning ascribed to that term in Recital A.

Confidential Business Information has the meaning ascribed to that term in Section 18.

Contract of Sale means that certain Contract of Sale for Company’s Property entered into between the City as seller and Company as buyer, effective as of December 5, 2023, including any amendments thereto.

Development Costs means the aggregate of the following costs expended or caused to be expended by or on behalf of Company or an Affiliate relating to design, construction and installation of the Road Improvements and related infrastructure, including costs such as acquisition costs (including but not limited to the cost of obtaining any easements); site development and construction costs; general contractor and subcontractor fees; construction management fees; the costs of supplies, materials, equipment, traffic control and construction labor; structures; paving; clearing and grading; demolition; environmental remediation; lighting; signage; landscaping; engineering fees and costs; surveying costs; fees of consultants; architectural and design fees; legal fees; financing costs, fees and interest; the costs of any payment, performance or maintenance bonds, if any; material testing costs; staking costs; permit, inspection, re-inspection, development, and other City fees (if applicable); insurance and taxes directly related to the construction of the Road Improvements; and other costs and fees for the construction and completion of the Road Improvements (or portion thereof).

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

First Segment of Stan Roberts has the meaning ascribed to that term in Recital A.

Force Majeure shall mean any delay due to any of the following acts or events: (i) transportation disasters, whether by sea, rail, air or land; (ii) strikes, lockouts, work stoppage or slowdown or other labor disputes or material shortages; (iii) actions or failures to act of a governmental authority, including any changes to the plans and specifications required as a condition to issuance of any permits or any changes in laws or codes not reasonably foreseeable, and any delay in issuance of necessary permits by any governmental authority having jurisdiction, including unreasonable delays by the

City (based on the then-current workload of the City department(s) responsible for undertaking the activity in question) in issuing any permits, consents, or certificates of occupancy or conducting any inspections, but excluding delays due to work conditions that violate applicable codes and regulations; (iv) adverse weather conditions, including rain of unusual duration or volume, hurricanes, lightning, tornadoes, earthquakes, floods or the acts of God; (v) epidemics or pandemics (including the COVID-19 pandemic) or any governmental orders, actions, shut-downs, mandates, restrictions or quarantines, or any quasi-governmental orders, actions, shut-downs, mandates, restrictions or quarantines resulting from any epidemics or pandemics, and any public health emergencies, whether declared by local, state or federal governmental authorities or agencies; (vi) wars, terrorism, civil disturbances, riots, insurrections, civil unrest, vandalism and sabotage; (vii) labor shortages or moratoriums; (viii) fire or other material casualty; (ix) mechanical failure of equipment; (x) utility delays or interruptions; (xi) any emergency event that threatens imminent harm to property or injury to persons; (xii) any force majeure event or excusable delay under the general contractor's construction contract; (xiii) discovery or remediation of an environmental issue; (xiv) inability or delay in obtaining a permit or approval from TxDOT or another entity required for construction of any of the Road Improvements; (xv) inability or delay in obtaining any easements needed for construction of the Road Improvements; and (xvi) any other causes of any kind whatsoever, whether similar to those enumerated or not, which are beyond the control of such Party in the performance of its obligations hereunder.

Reimbursement has the meaning ascribed to that term in Section 4.2.1.

Road Improvements means improvements to Stan Roberts Sr. Avenue to include the reconstruction and widening of approximately 1,150 linear feet of Stan Roberts Sr. Avenue, in the approximate location labeled as "approximate limits of Stan Roberts Sr. Ave. improvements extension (designed and installed by Developer)" on **Exhibit "B"** hereto, which will include: a four lane divided road (two lanes in each direction); two-way left turn lane; shared use path with landscaped parkways; and street illumination, as further illustrated on the street cross-section included with **Exhibit "C"** attached hereto or any equivalent cross-section included as part of the City's adopted Street Design Manual, and mutually agreed upon by Company and City. Otherwise stated, Company may elect, in its discretion, to comply with the street cross-section included with **Exhibit "C"** or the parties may mutually agree on another equivalent street cross-section included as part of the City's adopted Street Design Manual. The Road Improvements will include storm drainage improvements within the road right-of-way. The Road Improvements do not include any traffic control devices (except for those ordinarily included within the right-of-way such as lighting or High-Intensity Activated Crosswalk (HAWK) signals), intersection improvements, or traffic signals and the City agrees that it will not require Company to design or construct any such intersection improvements, traffic signals or traffic control devices. Further, the Road Improvements do not include water or sewer improvements.

Term has the meaning ascribed to it in Section 3.

TPIA has the meaning ascribed to that term in Section 18.

TxDOT has the meaning ascribed to that term in Section 4.1.

TxDOT Approval has the meaning ascribed to that term in Section 4.1.

3. **TERM.**

This Agreement will take effect on the last date of execution of this Agreement by all Parties (the “**Effective Date**”) and, unless terminated earlier in accordance with its terms and conditions, will expire on the date Company has received the full Reimbursement (the “**Term**”).

4. **ROAD IMPROVEMENTS.**

4.1. **City’s Obligations.**

The City agrees to (i) diligently coordinate with the Texas Department of Transportation (“**TxDOT**”) regarding construction of the Road Improvements; and (ii) obtain all required approvals, if any, from TxDOT for the construction of the Road Improvements, including without limitation TxDOT approval for the Road Improvements to tie-into the existing intersection of Stan Roberts Sr. Avenue with U.S. Highway 54 and provide Company with written confirmation of such approval(s) (“**TxDOT Approval**”) on or prior to the Approvals Deadline. Further, the City agrees to obtain any third-party rights-of-way, consents, or easements needed for the construction and/or use of the Road Improvements (if any are required for such construction and/or use) on or prior to the Approvals Deadline. Any costs paid or incurred in obtaining such third-party rights-of-way, consents, or easements shall be at the sole cost and expense of the City. Nothing in this subsection is intended to constitute a delegation of the police powers or governmental authority of the City. Further, the Parties agree to cooperate in any future amendments to this Agreement needed to enable Company to construct the Road Improvements.

4.2 **Company’s Commitments; Construction Terms and Process for Reimbursement.**

4.2.1 Subject to the City obtaining both (i) TxDOT Approval and (ii) any third-party rights-of-way, consents, or easements needed for the Road Improvements prior to the Approvals Deadline and subject to Force Majeure (and except under the circumstances provided in Section 4.2.4 herein), Company will design and construct or cause the design and construction of the Road Improvements. The Road Improvements may be constructed, completed and/or accepted in phases, in Company’s

discretion. The Company agrees to initially fund when due the cost of the Road Improvements. The City agrees to reimburse the Company for all Development Costs associated with the Road Improvements (the “**Reimbursement**”). For the avoidance of doubt, the Road Improvements are separate from any improvements under the Contract of Sale or the 380 Agreement and the Reimbursement shall not be subject to the Maximum Reimbursement Amount (as such term is defined in the 380 Agreement).

4.2.2 As a condition to receipt of the Reimbursement set forth in Section 4.2.1, Company agrees to provide a written disbursement request to the City accompanied by reasonable supporting documentation evidencing Development Costs paid or incurred for the Road Improvements, which such supporting documentation may include but not be limited to, invoices or affidavits of payment/affidavits as to debts and construction-related liens (“**Disbursement Request**”). Upon completion of the Road Improvements, the City will accept such improvements (which acceptance will not be unreasonably withheld, conditioned, or delayed) and from and after such acceptance, the City will own the Road Improvements and be responsible for all maintenance and operation related thereto. Otherwise stated, the City will accept the Road Improvements if the improvements are constructed to City standards set forth in applicable City ordinances, as confirmed by Company’s engineer. The City will disburse the Reimbursement to the Company within 30 calendar days following the City’s receipt of the Disbursement Request.

4.2.3 The City agrees that Company’s construction of the Road Improvements will not be subject to competitive or public bidding requirements under applicable law.

4.2.4 The Parties acknowledge and understand that TxDOT is not a party to this Agreement. As such, if the City has not obtained both (i) TxDOT Approval and (ii) any third-party rights-of-way, consents, or easements needed for the Road Improvements within thirty (30) days prior to the Approvals Deadline, then the Parties will cooperate to try to ascertain a mutually acceptable course of action to enable Company to construct the Road Improvements. Should (1) a mutually acceptable course of action not exist and (2) if the City still has not obtained both (i) TxDOT Approval and (ii) any third-party rights-of-way, consents, or easements needed for the Road Improvements by the Approvals Deadline; then, notwithstanding any statement to the contrary herein, Company shall have no obligation to design, construct or complete the Road Improvements, or any portion thereof; and Company shall have the option, in its sole discretion, to either (a) terminate this Agreement at any time by providing

written notice to the City; or (b) continue this Agreement, in which case the City shall still be obligated to provide the Reimbursement to Company and meet all City obligations in this Agreement. If Company elects (a) in the aforementioned sentence, and Company has incurred any Development Costs for the Road Improvements prior to such termination (by way of example and not limitation, if Company has already incurred costs for the design or preliminary construction, grading or other work), then Company shall still be eligible for and shall receive the Reimbursement for such Development Costs. For the avoidance of doubt, if Company has incurred any Development Costs for the Road Improvements (or any portion thereof), the City's obligation to provide the Reimbursement to Company for such Development Costs shall survive any termination of this Agreement. Additionally, if Company elects (a) in this subsection and Company has already received final design plans from its engineer or other design professional for the design of the Road Improvements ("**Design Plans**"), Company agrees to provide the City with a copy of such Design Plans. The City understands and agrees that in such an event neither Company nor any of Company's representatives makes and/or has made any representation or warranty to the City as to the accuracy or completeness of the Design Plans and that neither Company nor Company's representatives has made or will make any attempt to verify the data contained therein. City agrees that Company shall not have any liability to the City as a result of the City's use of the Design Plans. CITY HEREBY RELEASES AND HOLDS HARMLESS COMPANY FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE) AND OTHER LOSSES, DEMANDS, SUITS, JUDGMENTS, EXPENSES AND COSTS, INCLUDING BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES, ARISING OUT OF, RELATED TO OR RESULTING FROM, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, FROM ANY USE OF THE DESIGN PLANS. Said limitation of liability will not extend to design professionals or consultants retained by Company for the design and construction of the Road Improvements.

4.2.5 For the avoidance of doubt, the City agrees that completion of the Road Improvements (or any portion thereof) shall not be a condition to any plat approval or recordation of any plat for the Company's Property (or any portion thereof), approval of construction plans, building permits, certificates of occupancy, acceptance of on-site public improvements, or any other approval required for the Company to construct and complete improvements and/or infrastructure on Company's Property. Further, the Road Improvements are separate from and independent of any improvements or Company obligations under the 380 Agreement or the Contract of Sale and failure to complete the Road Improvements does not

affect any Company obligations or rights under the 380 Agreement or the Contract of Sale. Completion of the Road Improvements shall not be a condition to fulfillment of any Company obligations under the 380 Agreement or the Contract of Sale.

5. WAIVER OF FEES.

The City hereby waives, or shall cause to be waived, any and all impact fees and any and all other City fees, filing fees, development fees, application fees, review fees, inspection fees and permit fees, related to the design, installation, construction and completion of the Road Improvements (or portion thereof). Notwithstanding the foregoing, the City does not waive and Company agrees to pay: (a) reinspection fees (i.e., fee(s) for reinspection after failing an initial inspection).

6. DEFAULT AND TERMINATION.

6.1 General Breach.

Unless and to the extent stated elsewhere in this Agreement, a Party will be in default under this Agreement if such Party breaches any material term or condition of this Agreement and such breach remains uncured after ninety (90) calendar days following receipt of written notice from the other Party referencing this Agreement and identifying the default and curative action required to cure the same (or, if the Party in breach has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than ninety (90) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure), the non-breaching Party, will have the right to terminate this Agreement (with respect to the applicable Phase(s) in which an uncured breach occurred) immediately by providing written notice to the other Party. Notwithstanding the foregoing, the aforementioned cure period shall not be applicable to any monetary obligations of a Party hereunder or to the City's obligations in Section 4.1. For the avoidance of doubt, except for monetary obligations and Section 4.1 (for which there is no cure period), a Party shall not be considered in default unless and until such Party receives a notice of default and fails to cure such failure within the cure period stated herein. In the event of City's default that is not cured within any applicable cure period, Company may terminate this Agreement, pursue an action for specific performance, and/or seek any other remedy allowable at law or in equity, except as limited by Section 6.3 herein.

6.2 City's Sole Remedy in the Event of Breach.

The City's sole remedy in the event of Company's uncured breach of any condition or obligation under this Agreement will be the City's right to terminate this Agreement, after expiration of the applicable notice and cure period, upon

written notice to Company of such termination and a detailed explanation citing the City's right to such termination.

6.3 Mutual Waiver of Consequential Damages.

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

6.4 No Cross-Defaults.

All terms, conditions and obligations of this Agreement shall apply independent of all terms, conditions, and obligations under the 380 Agreement, the Contract of Sale or any other agreement between the Company and the City. By way of example, a default or termination under this Agreement does not constitute a default under the 380 Agreement, or vice versa. By way of second example, a default or termination under this Agreement does not constitute a default under the Contract of Sale or vice versa.

7. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed that Company shall operate as an independent contractor in each and every respect under this Agreement and not as an agent, representative or employee of the City. Company shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. Company acknowledges that the doctrine of *respondent superior* will not apply as between the City and Company, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. The Parties agree that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and Company.

8. INDEMNIFICATION AND RELEASE.

COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS SERVANTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) COMPANY'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF COMPANY, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, RELATED TO THE CONSTRUCTION OF THE ROAD IMPROVEMENTS AND ANY OPERATIONS AND ACTIVITIES

THEREON, OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE COMPANY SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE CITY AGAINST CLAIMS CAUSED BY THE CITY'S SOLE NEGLIGENCE OR WILLFUL MISCONDUCT, AND IF THE CITY INCURS CLAIMS THAT ARE CAUSED BY THE CONCURRENT FAULT OR NEGLIGENCE OF COMPANY AND THE CITY, THE COMPANY'S INDEMNITY OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL CLAIMS EQUIVALENT TO THE COMPANY'S OWN PERCENTAGE OF RESPONSIBILITY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

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

9. NOTICES.

Whenever any notice is required or permitted under this Agreement, it shall be in writing and shall be delivered (i) by electronic mail with a confirming copy being forwarded by a reliable overnight courier service within 24 hours thereafter to the recipient at the mailing address set forth below; (ii) personally, with acknowledgment of receipt being obtained by the delivering Party, (iii) by U.S. Certified Mail, return receipt requested; or (iv) by overnight delivery service by a reliable company, such as Federal

Express or United Parcel Service, with acknowledgement of receipt being obtained by the delivering Party; provided that, any notice delivered to Company in the manner described in items (ii), (iii), or (iv) shall also be sent by electronic mail addressed as provided herein. Notice shall be deemed given when received. Until further notification by written notice in the manner required by this Section 9, notices to the Parties shall be delivered as follows:

City:

City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890
EDCompliance@elpasotexas.gov

Company:

Worldwide LLC
c/o Winstead PC
Attn: Laura Hoffmann
2728 N. Harwood Street, Suite 500
Dallas, Texas 75201
lhoffmann@winstead.com

10. ASSIGNMENT AND SUCCESSORS.

10.1 Affiliates and Future Owners or Lessees.

Company may at any time assign, transfer or otherwise convey any of its rights or obligations under this Agreement, in whole or in part, to an Affiliate, without the consent of the City, but upon written notice to the City (and upon such assignment the assigning entity shall be relieved of its covenants, commitments and obligations hereunder to the extent of the rights and obligations so assigned).

10.2 Collateral Assignment.

Company may assign its rights and obligations under this Agreement, in whole or in part, to a financial institution or other lender for purposes of granting a mortgage in the Company's Property and/or improvements thereon without the consent of the City, but upon written notice to the City.

10.3 Other Assignment.

Except as otherwise provided by Sections 10.1 and 10.2 herein, Company may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the consent of the City Council, which consent shall not be unreasonably withheld, conditioned or delayed, but conditioned on: (i) the prior approval of the assignee or successor and finding by the City Council that the proposed assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with the City under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of Company under this Agreement. Any attempted assignment other than an assignment pursuant to Sections 10.1 or 10.2 without the City

Council's prior consent shall constitute grounds for termination of this Agreement following ten (10) calendar days after receipt of written notice from the City to Company (provided that the City shall only be entitled to send such termination notice after Company's failure to cure within the cure period set forth in Section 6.1 herein). Any permitted assignee or successor in interest of Company of rights and/or obligations under this Agreement shall be deemed "Company" for all purposes under this Agreement.

11. ESTOPPEL CERTIFICATE.

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

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

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations; provided that, in the event of any conflict between this Agreement and any other ordinance, rule, regulation, standard, policy, order, guideline or other City-adopted or City-enforced requirement, whether existing on the Effective Date or hereinafter adopted, this Agreement shall control.

13. LIMITED WAIVER OF IMMUNITY.

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

14. ADDITIONAL PROVISIONS.

14.1 Calculation of Dates.

If the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday in the State of Texas, then the date for performance thereof shall be extended to the next Business Day.

14.2 Ethical Business Practices; No Procurement Process.

In connection with the negotiation and performance of this Agreement, the City represents and warrants that it has complied and covenants that it shall comply with all Applicable City Rules and applicable laws, including without limitation anti-corruption legislation, and that it has used and shall use only legitimate and ethical business practices. The performance of any obligations under this Agreement does not require the Company to submit any bid or otherwise participate in any procurement process of the City or to undertake any other obligations required by procurement laws and regulations of the City or other applicable law.

In connection with the negotiation and performance of this Agreement, City, on behalf of itself and its agents and representatives, represents, warrants, and covenants that it has complied with and that it has not engaged in and will refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept Anything of Value, directly or indirectly to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Government Authority, or (iii) otherwise secure any improper advantage; or (b) any person or entity in any manner that would constitute bribery or an illegal kickback, or would otherwise violate any applicable anti-corruption law, rule, or regulation. “**Anything of Value**” includes, but is not limited to, money, cash or a cash equivalent (including “grease”, “expediting” or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, charitable contributions, sponsorships, use of materials, facilities or equipment, transportation, lodging, or promise of employment. “**Government Authority**” means any multinational, national, regional, or local government, governmental or public department, court, commission, board, bureau, agency, ministry, university, political party, or other governmental instrumentality, public international organization, or subdivision, agent, commission, board, or authority of any of the foregoing. “**Government Official**” means any official or employee (or relative or household member thereof), or agent of a Government Authority; members of royal families; or candidates for political office. If the City becomes aware of any violation or suspected violation of this Section 14.2, it must provide prompt written notice to the Company and setting forth the relevant facts and circumstances. City will, consistent with

applicable laws, cooperate with the Company in good faith to review any suspected violations of this Section 14.2, including by providing reasonable access to relevant documentation.

15. NO WAIVER.

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

16. VENUE AND JURISDICTION; ATTORNEYS' FEES.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in and be brought exclusively in either the federal courts of the Northern District of Texas, Dallas Division, or in the State District Courts of El Paso County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas. In the event any action is brought by either Party hereto against the other Party, relating to or arising out of this Agreement, the transaction described herein or the enforcement hereof, the prevailing Party shall be entitled to recover from the other Party the reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including, without limitation, the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section 16 shall survive the termination of this Agreement and the entry of any judgment, but shall not merge, or be deemed to have merged, into any judgment.

17. SEVERABILITY; CONFLICTING LAW.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. If any law is enacted after the Effective Date that prohibits either Party from materially performing its duties and obligations under this Agreement or that affects the ability of Company to receive the Reimbursement hereunder (or any portion thereof), the Parties agree to meet and confer in good faith for a period of no less than thirty (30) and no more than ninety (90) days to seek to effectuate an amendment to this Agreement that preserves, to the extent reasonably possible, the original intentions of the Parties under this Agreement, with the understanding that this Agreement cannot be amended without the approval of the City Council.

18. CONFIDENTIAL INFORMATION

Company may designate any trade secrets or confidential business information included in any report or other writing delivered to City pursuant to or in connection with this Agreement by any method intended to clearly set apart the specific material that

Company claims to be either its trade secrets or confidential business information that, if released, would give an advantage to competitors or result in unfair competitive injury to Company (such information, whether specifically designated by Company or not, collectively, “**Confidential Business Information**”). Unless or until the Texas Attorney General renders a final decision indicating that all or part of the information must be disclosed (after City opposes the release as described below), City shall redact or delete any Confidential Business Information from any records it makes available for inspection or of which it provides copies. Within two (2) Business Days following City’s receipt of any request to inspect or obtain copies of public records relating to this Agreement, City shall provide written notice of the same to Company, which notice shall include a copy of such request. Such notice shall also include instructions and deadline(s) for Company to make its argument of confidentiality to the Texas Attorney General. City shall not allow inspection or provide copies of any such requested records until Company shall have had not less than 10 Business Days (following and excluding the day on which Company receives such notice) to determine whether to contest the right of any party to inspect or receive copies of such records. Additionally, upon such a request for public records and within the time periods required pursuant to the Texas Public Information Act (“**TPIA**”), City shall submit a brief to the Texas Attorney General’s Office opposing the release of any Confidential Business Information and identifying the basis for any claimed exceptions under the TPIA; provided, however, nothing herein shall prevent or limit Company’s right to claim any exemption from disclosure it believes applicable directly to the Texas Attorney General. City shall not allow inspection or provide copies of any Confidential Business Information unless and until the Texas Attorney General renders a final decision indicating that all or part of the information must be disclosed (after opposing the release of such information as described above and pursuant to the processes outlined in the TPIA). Any such action to enjoin the release of Confidential Business Information may be brought in the name of Company or City. The costs, damages, if any, and attorneys’ fees in any proceeding commenced by Company or at its request by City to prevent or enjoin the release of Confidential Business Information in any public records relating to this Agreement shall be borne by Company.

19. MUTUAL ASSISTANCE; DISPUTE RESOLUTION.

The Parties will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions, including without limitation, the City facilitating approval of City permits, documents, and other instruments as may be reasonably necessary in carrying out such objectives. In the case of any disputes arising under this Agreement, the City and Company agree to attempt to resolve such disputes through good faith negotiations between authorized representatives of both Parties. If necessary, both Parties agree to submit a dispute to a non-binding mediation. If a dispute cannot be resolved through non-binding mediation, either Party may pursue any available legal remedies in any court of competent jurisdiction that satisfies the requirements of Section 16, or, if both Parties mutually agree, the dispute may be submitted to binding arbitration in accordance with procedures to which both Parties agree.

20. CITY PROCEDURES AND ACTIONS.

The City Council, after conducting a duly-noticed public meeting, adopted the Resolution on December 5, 2023, effective immediately upon adoption, which resolution (i) confirmed the City Council's approval of this Agreement and the City Council's finding that the provisions of this Agreement are consistent with Applicable City Rules and (ii) authorized the execution of this Agreement. The Parties represent and warrant to each other that (a) each Party has the full power and authority to enter into this Agreement and to perform its obligations hereunder, and (b) this Agreement is a valid and binding obligation, enforceable against each Party in accordance with the terms hereof. The City represents and warrants to the Company that the execution and delivery of this Agreement has been validly authorized by all necessary governmental or other action and does not conflict with any other agreements entered into by the City. Company represents and warrants that this Agreement does not conflict with any other agreements entered into by Company.

21. NO THIRD-PARTY RIGHTS.

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

22. FORCE MAJEURE.

It is expressly understood and agreed by the Parties to this Agreement that, except for payments of the Reimbursement rightfully due hereunder or the obligations set forth in Section 4.1, if the performance of any obligations hereunder is delayed by reason of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement and the completion deadline shall be extended for a period of time equal to the period such Party was delayed; provided, however, in all cases, only to the extent that the Party claiming Force Majeure (1) did not cause such Force Majeure condition, and (2) throughout the pendency of such Force Majeure condition, utilizes commercially reasonable efforts to minimize the impact and delays caused by such Force Majeure condition.

23. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any Party, regardless of the actual drafter of this Agreement. Each Party was represented by legal counsel in the negotiation of this Agreement.

24. CAPTIONS.

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

25. ENTIRETY OF AGREEMENT.

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

26. WAIVER OF JURY TRIAL.

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

27. COUNTERPARTS.

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

28. EFFECT ON OTHER VESTED RIGHTS.

This Agreement does not abrogate any rights established or preserved by any applicable law, or by any other agreement or contract executed by the City and the Company or an Affiliate, or that have vested or may vest pursuant to common law or otherwise.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)]

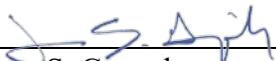
EXECUTED as of the last date indicated below:

CITY OF EL PASO, TEXAS:

Dionne Mack
City Manager

Date: _____

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Karina Brasgalla, Interim Director
Economic & International
Development

APPROVED AS TO CONTENT:



Yvette Hernandez, City Engineer
Capital Improvement

[Signatures continue on the following page]

WORLDWIDE LLC,
a Delaware limited liability company,
d/b/a Statue LLC

By: _____

Name: _____

Title: _____

Date: _____

EXHIBITS

“A” – First Segment of Stan Roberts

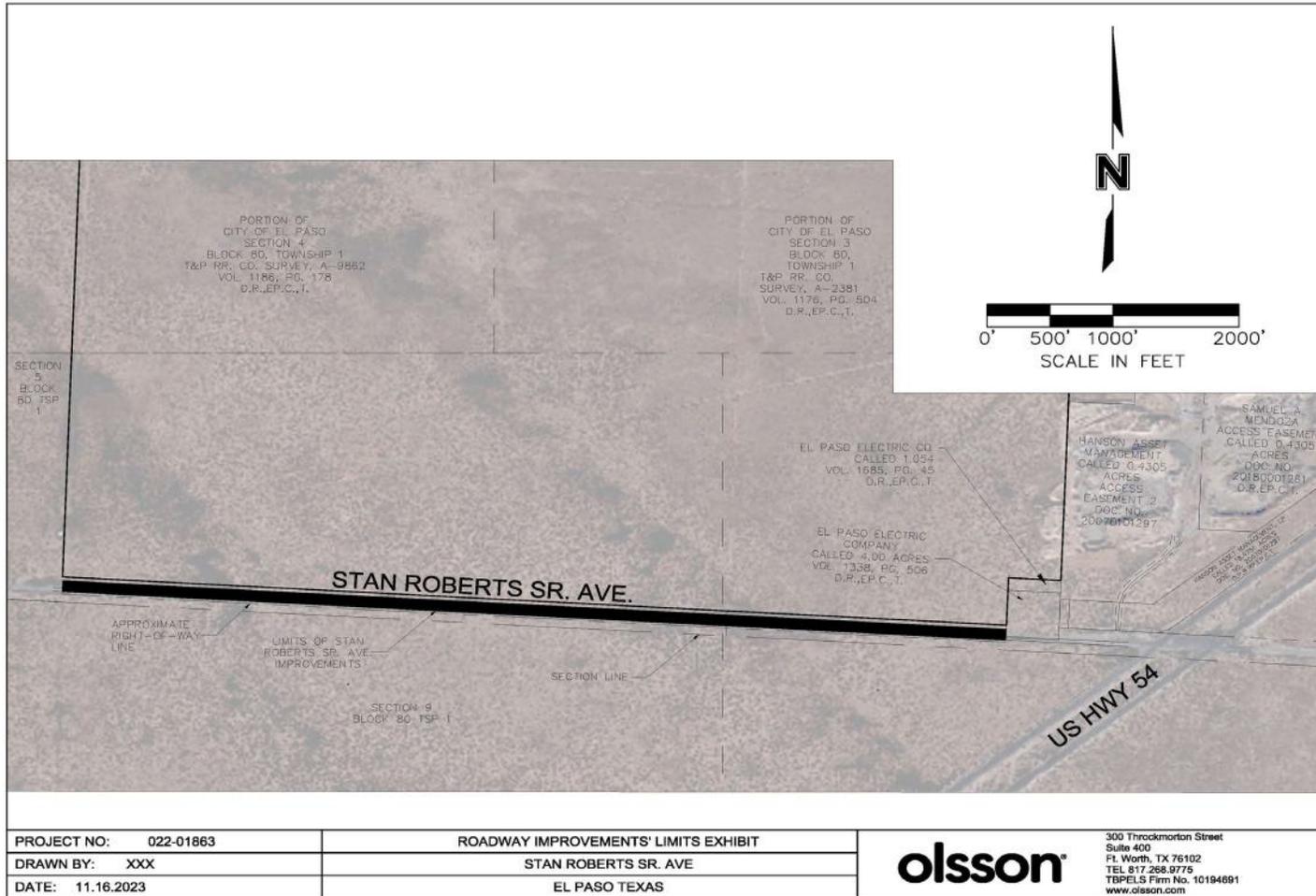
“B” – Location of the Road Improvements

“C” – Proposed Street Cross-Section for the Road Improvements

EXHIBIT "A"

First Segment of Stan Roberts

(see attached)

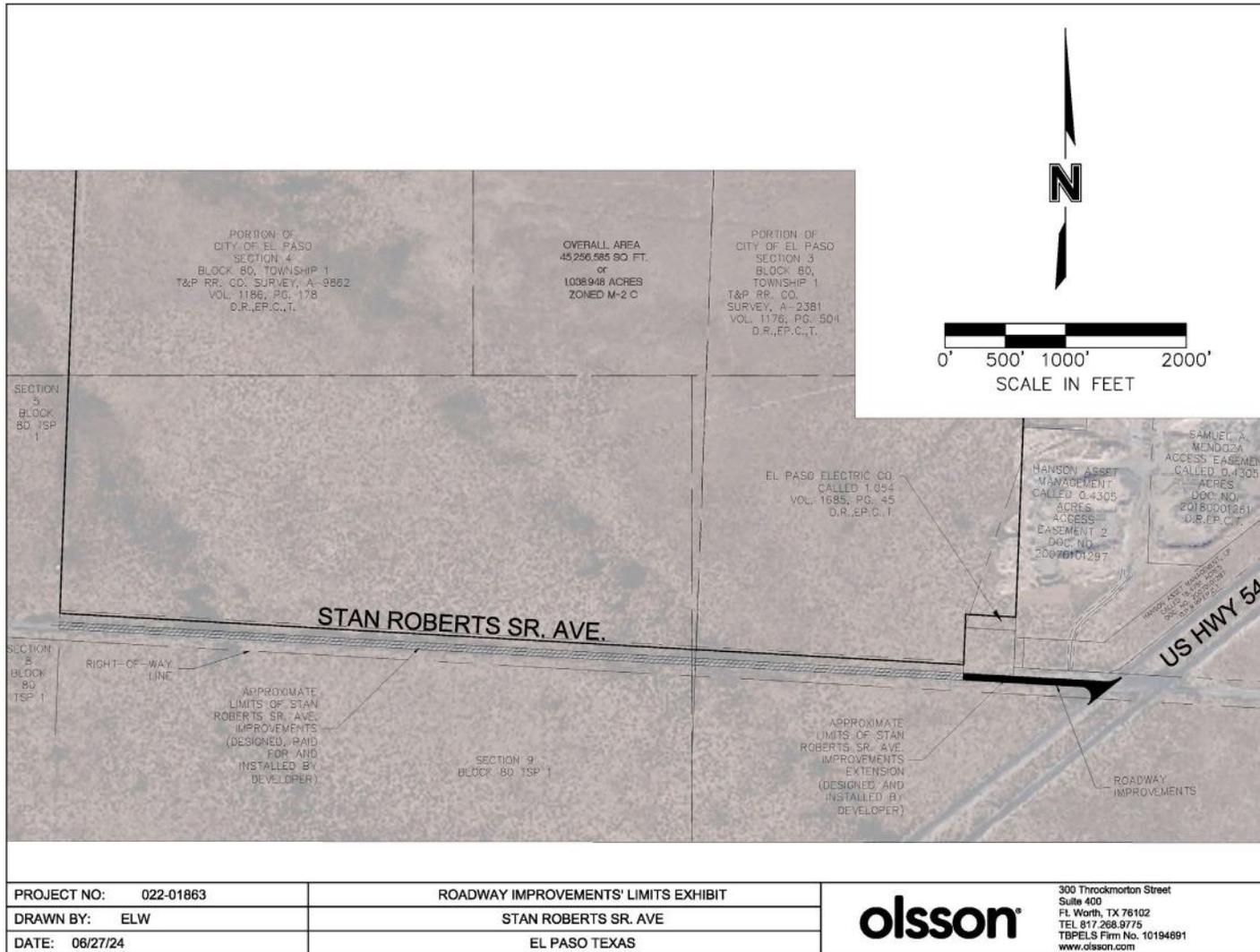


| | | |
|-----------------------|--------------------------------------|---|
| PROJECT NO: 022-01863 | ROADWAY IMPROVEMENTS' LIMITS EXHIBIT |  <p>300 Throckmorton Street Suite 400 Ft. Worth, TX 76102 TEL 817.288.9775 TBPELS Firm No. 10194691 www.olsson.com</p> |
| DRAWN BY: XXX | STAN ROBERTS SR. AVE | |
| DATE: 11.16.2023 | EL PASO TEXAS | |

EXHIBIT “B”

Location of the Road Improvements

(see attached)



| | | |
|-----------------------|--------------------------------------|---|
| PROJECT NO: 022-01863 | ROADWAY IMPROVEMENTS' LIMITS EXHIBIT |  <p>300 Throckmorton Street Suite 400 Ft. Worth, TX 76102 TEL 817.268.9775 TBPELS Firm No. 10194691 www.olsson.com</p> |
| DRAWN BY: ELW | STAN ROBERTS SR. AVE | |
| DATE: 06/27/24 | EL PASO TEXAS | |

EXHIBIT “C”

Proposed Street Cross-Section for the Road Improvements

(see attached)

