


# MEMO

DATE: March 25, 2024

TO: Mayor & City Council

FROM: Mercy L. Rushing, City Manager & Executive Director, Mineola Dev. Inc. 

SUBJECT: 380 Agreement for Economic Incentive between City of Mineola and Peoples Telephone Cooperative Inc.

City of Mineola to hear presentation by Peoples Telephone Cooperative Inc, (which is a local Wood County business) and consider approval of a 380 Agreement for Economic Incentive between City of Mineola and Peoples Telephone Inc. A Public Hearing will also be held at the meeting to consider the participation of the City of Mineola and Mineola EDC for this internet Fiber connectivity so that Mineola will be considered a Multi-Gig City!

## **Project Information:**

1. Peoples propose to install 185,000-foot mainline fiber optic cable network throughout the corporate limits of the City of Mineola and to spend \$3,157,648.00. People's is proposing to do the project in six (6) phases Starting with Phase 1 on Noth end of Mineola. See attached map project within the agreement document.

2. Timeline to completion will be approximately 18 months depending on issues or weather. No additional funds should be spent by the city.

3. The agreement document states the City's participation cost to do this project is \$115,000.00 for a 4-year commitment at no interest to be paid annually to People's Telephone Cooperative Inc. Payment will begin in the year 2024 as the entities decide on the month to begin this process. The city's last payment of \$115,000.00 for this project will be in the year 2027. Total contribution according to the agreement by the City will be a total of \$460,000.00 over 4 years.

## **Recommendation:**

It is my recommendation as the City Manager of Mineola that Mayor and City Council consider approval of this project which should benefit the citizens of Mineola for many years to come.

## **ECONOMIC INCENTIVE AGREEMENT**

### **STATE OF TEXAS, COUNTY OF WOOD**

This Economic Incentive Agreement ("Agreement") is entered into this **March 25, 2024** by and between the City of Mineola, Texas ("City"), a Type A General Law Municipality organized an existing pursuant to the laws of the State of Texas and located in Wood County, Texas, and Peoples Telephone Cooperative Inc., a Texas corporation ("Company"), effective as of the Effective Date. For the purpose and consideration set forth herein.

#### **RECITALS**

**WHEREAS**, the City of Mineola is authorized under Texas Local Government Code Chapter 380 to provide economic incentives to promote commercial and economic growth within its jurisdiction; and

**WHEREAS**, the City recognizes the importance of fostering business development for the overall well-being and prosperity of its community; and

**WHEREAS**, the City Council of the City of Mineola and Peoples Telephone Cooperative Inc. have engaged in discussions regarding the economic incentive package to support Peoples Telephone Cooperative Inc. investment in the City; and

**WHEREAS**, the Company has applied to the City for financial assistance with expenditures related to the installation of an approximately 185,000-foot mainline fiber optic cable network throughout the corporate limits of the City of Mineola, Texas, (hereinafter, the "City") as more particularly described in Exhibit "A", attached hereto and incorporated herein (hereinafter, the "Project"); and

**WHEREAS**, Company intends to make an investment of approximately Three Million, One Hundred and Fifty Seven Thousand, Six Hundred and Forty Eight Dollars (\$3,157,648.00) for the equipment, infrastructure, improvements, and other expenditures related to the Project; and

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Peoples Telephone Cooperative Inc. agree as follows:

**SECTION 1. Findings Incorporated.** The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

**SECTION 2. Definitions.** The following words shall have the following meanings when used in this Agreement.

(a) Act. The word “Act” means Chapter 380 of the Texas Local Government Code, as amended.

(b) Agreement. The word “Agreement” means this Economic Incentive Agreement, together with all exhibits attached hereto from time to time, if any.

(c) Bankruptcy. The word “Bankruptcy” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

(d) Company. The word “Company” means Peoples Telephone Cooperative Inc., a Texas corporation, whose business address is P.O. Box 228, Quitman, Texas 75783 and its successors, grantees, transferees (except where otherwise noted herein), and permitted assigns.

(e) City. The word “City” means the City of Mineola, Texas. For purposes of this Agreement, the City’s address is 300 Greenville Hwy, Mineola, Texas 75773.

(f) Effective Date. The phrase “Effective Date” means the date of the last signing by all Parties to the Agreement.

(g) Event of Default. The phrase “Event of Default” means and includes any of the Events of Default set forth below.

(h) Project. The word “Project” means Company’s installation of an approximately 185,000 foot mainline fiber optic cable network throughout the corporate limits of the City of Mineola, Texas, with a capital investment of approximately Three Million, One Hundred and Fifty Seven Thousand, Six Hundred and Forty Eight Dollars (\$3,157,648.00) as more particularly described in Exhibit “A”, attached hereto and incorporated herein.

(i) Project Grants. The words “Project Grants” means the direct economic grant payments paid by the City of Mineola to Company in accordance with this Agreement.

(j) Related Documents. The phrase “Related Documents” means without limitation any and all ancillary agreements and all other instruments and documents relating to the subject matter of this Agreement, whether now or hereafter existing, executed in connection with the Company’s obligations to the CITY OF MINEOLA under this Agreement.

**SECTION 3. Term.** This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date, hereinafter established, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

**SECTION 4. Obligations of the Parties.**

(a) **Obligations of CITY OF MINEOLA.**

i. **Project Grants.** CITY OF MINEOLA in conjunction with the Mineola Economic Development corporation shall each provide Project Grants to Company in a total amount of not greater than four hundred sixty thousand dollars (\$460,000.00) a total of Nine Hundred and Twenty Thousand dollars (\$920,000) combined, for use for expenditures related to the Project. CITY OF MINEOLA will pay said Project Grants to Company in the specific amounts and at the times described below:

<b><u>Payment Year</u></b>	<b><u>Amount of Payment</u></b>	<b><u>Payment Date</u></b>
Year 1	115,000	
Year 2	115,000	
Year 3	115,000	
Year 4	115,000	

ii. CITY OF MINEOLA shall ensure that the Project Grants are expended in strict compliance with Chapter 380 of the Texas Local Government Code, and shall take action to recover such funds if it is determined that Company is not meeting the performance requirements of this Agreement.

iii. The Project Grants distributed hereunder shall be paid solely from lawfully available funds of the CITY OF MINEOLA. Under no circumstances shall the obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

iv. In accordance with this Agreement, it is explicitly understood and agreed upon that the CITY OF MINEOLA does not and will not assert any ownership rights to any of the facilities or improvements constructed or developed as part of the Project under the terms of this Agreement. The ownership of the Project facilities and improvements shall solely and unequivocally rest with the Company, who shall have full rights, responsibilities, and control over the said facilities and improvements."

v. **City Council Approval:** This Agreement is subject to approval by the City Council of the City of Mineola. The City Council will consider and approve this Agreement through the reading of a resolution at two separate meetings.

(b) Obligations of Company.

i. Company covenants and agrees through the exercise of commercially reasonable efforts to complete the Project as set forth in Exhibit A herein by no later than eighteen (18) months from the Effective Date.

ii. Upon completion of the Project, Company agrees to notify CITY OF MINEOLA of said completion in writing.

(c) Company's Covenants and Warranties. Company makes the following covenants and warranties to the CITY OF MINEOLA, and agrees to timely and fully perform the obligations and duties contained in Section 4(b) this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an Event of Default by the Company.

i. Company is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.

ii. The execution of this Agreement has been duly authorized by Company's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Company's by-laws, or of any agreement or instrument to which Company is a party to, or by which it may be bound.

iii. Company is not a party to any Bankruptcy proceedings currently pending or contemplated, and Company has not been informed of any potential involuntary Bankruptcy proceedings.

iv. To its current, actual knowledge, Company has and/or will acquired and maintained all necessary rights, licenses, permits, and authority from the City, the Texas Department of Transportation, and any other applicable jurisdiction to complete the Project within the City and will continue to maintain all necessary rights, licenses, permits, and authority.

v. Company shall timely and fully comply with all terms and conditions of this Agreement.

vi. During the term of this Agreement, Company agrees to not knowingly employ any undocumented workers as part of the Project, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), Company shall constitute an Event of Default (subject to the obligations in Section 4(e) herein). Company is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts; provided, however, that identical federal law requirements provided for herein shall be included as part of any

agreement or contract which Company enters into with any subsidiary, assignee, affiliate, or franchisee for which funds provided herein will be used.

(d) **Event of Default.** The following shall constitute an Event of Default under this Agreement:

i. **Completion of Project.** Failure of the Company to complete the Project as required by Section 4(b)(i) herein.

ii. **False Statements.** Any warranty, representation, or statement made or furnished to one party by or on behalf of the other party under this Agreement or the Related Documents that is false or misleading in any material respect, either now or at the time made or furnished.

iii. **Insolvency.** Company's or CITY OF MINEOLA's insolvency, appointment of receiver for any part of the Company's property, any assignment for the benefit of creditors of the Company or CITY OF MINEOLA, any type of creditor workout for the Company or CITY OF MINEOLA, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Company or CITY OF MINEOLA.

iv. **Other Defaults.** Failure of the Company or CITY OF MINEOLA to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents (including the covenants or warranties in Section 4(c) herein), or failure of the Company or CITY OF MINEOLA to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between CITY OF MINEOLA and the Company.

(e) **Effect of an Event of Default.**

i. Following an Event of Default, the non-defaulting party shall give written notice to the other party of any Event of Default, and the defaulting party shall have thirty (30) days to cure said Event of Default. Should said Event of Default remain uncured as of the 31<sup>st</sup> day following the receipt of notice of default and the non-defaulting party is not otherwise in default, the defaulting party shall be in Default and the non-defaulting party shall have the right to exercise the rights and remedies set forth in this Section 4(e).

ii. In the event of Default by the Company, the CITY OF MINEOLA shall, as its sole and exclusive remedy for Default hereunder, have the right to terminate this Agreement and to recapture one hundred percent (100%) of the Project Grants paid to Company if the Default occurs on or prior to the termination date, which shall be due and payable to the CITY OF MINEOLA within thirty (30) days of Default. In the event of Company's Default hereunder and termination of this Agreement by the CITY OF MINEOLA, CITY OF MINEOLA shall have no

obligation to pay any prospective or future Project Grants to Company under this Agreement.

(f) **Termination of Agreement by CITY OF MINEOLA Without Default.**

i. CITY OF MINEOLA may terminate this Agreement without an Event of Default by Company and effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal.

ii. Termination of this Agreement by CITY OF MINEOLA under this Section 4(f) shall render this Agreement null and void from that point forward with each party having no further rights against each other under this Agreement or at law; provided, however, that CITY OF MINEOLA and Company agree to negotiate in good faith a remedy that preserves the intent of the parties hereunder as much as reasonably possible under applicable state law.

**SECTION 5. INDEMNIFICATION.** COMPANY SHALL INDEMNIFY, SAVE, AND HOLD HARMLESS CITY OF MINEOLA, ITS DIRECTORS, OFFICERS, AGENTS, ATTORNEYS, AND EMPLOYEES (COLLECTIVELY, THE "CITY OF MINEOLA INDEMNITEES") FROM AND AGAINST: (I) ANY AND ALL CLAIMS, DEMANDS, ACTIONS OR CAUSES OF ACTION THAT ARE ASSERTED AGAINST ANY CITY OF MINEOLA INDEMNITEE IF THE CLAIM, DEMAND, ACTION OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY RELATES TO TORTIOUS INTERFERENCE WITH CONTRACT OR BUSINESS INTERFERENCE, OR WRONGFUL OR NEGLIGENT USE OF CITY OF MINEOLA'S PROJECT GRANTS BY COMPANY OR ITS AGENTS AND EMPLOYEES; (II) ANY ADMINISTRATIVE OR INVESTIGATIVE PROCEEDING BY ANY GOVERNMENTAL AUTHORITY DIRECTLY OR INDIRECTLY RELATED, TO A CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IN WHICH CITY OF MINEOLA IS A DISINTERESTED PARTY; (III) ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION WHICH DIRECTLY OR INDIRECTLY CONTESTS OR CHALLENGES THE LEGAL AUTHORITY OF CITY OF MINEOLA OR COMPANY TO ENTER INTO THIS AGREEMENT; AND (IV) ANY AND ALL LIABILITIES, LOSSES, COSTS, OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS) THAT ANY CITY OF MINEOLA INDEMNITEE SUFFERS OR INCURS AS A RESULT OF ANY OF THE FOREGOING; PROVIDED, HOWEVER, THAT COMPANY SHALL HAVE NO OBLIGATION UNDER THIS PARAGRAPH TO CITY OF MINEOLA WITH RESPECT TO ANY OF THE FOREGOING ARISING OUT OF THE NEGLIGENCE OR MISCONDUCT OF CITY OF MINEOLA OR THE BREACH BY CITY OF MINEOLA OF THIS AGREEMENT. IF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS ASSERTED AGAINST ANY CITY OF MINEOLA INDEMNITEE, SUCH CITY OF MINEOLA INDEMNITEE SHALL PROMPTLY NOTIFY COMPANY, BUT THE FAILURE TO SO PROMPTLY NOTIFY COMPANY SHALL NOT AFFECT COMPANY'S OBLIGATIONS UNDER THIS PARAGRAPH UNLESS SUCH FAILURE MATERIALLY PREJUDICES COMPANY'S RIGHT TO PARTICIPATE IN THE CONTEST OF SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION, AS HEREINAFTER PROVIDED. IF REQUESTED BY COMPANY IN WRITING, AS LONG AS NO DEFAULT OR EVENT OF DEFAULT SHALL HAVE OCCURRED AND BE CONTINUING, SUCH CITY OF

**MINEOLA INDEMNITEE SHALL IN GOOD FAITH CONTEST THE VALIDITY, APPLICABILITY AND AMOUNT OF SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION AND SHALL PERMIT COMPANY TO PARTICIPATE IN SUCH CONTEST. ANY CITY OF MINEOLA INDEMNITEE THAT PROPOSES TO SETTLE OR COMPROMISE ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION OR PROCEEDING FOR WHICH COMPANY MAY BE LIABLE FOR PAYMENT OF INDEMNITY HEREUNDER SHALL GIVE COMPANY WRITTEN NOTICE OF THE TERMS OF SUCH PROPOSED SETTLEMENT OR COMPROMISE REASONABLY IN ADVANCE OF SETTLING OR COMPROMISING SUCH CLAIM OR PROCEEDING AND SHALL OBTAIN COMPANY'S CONCURRENCE THERETO.**

**SECTION 6 Miscellaneous Provisions.** The following miscellaneous provisions are a part of this Agreement:

(a) Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

(b) Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Wood County, Texas. Exclusive venue for any action arising under this Agreement shall lie in the state district courts of Wood County, Texas.

(c) Assignment. The obligations of Company under this Agreement may not be assigned by Company without the express written consent of CITY OF MINEOLA, which consent shall not be unreasonably withheld, conditioned or delayed. Company shall have the right to retain or assign the right to receive all or a portion of the payments due to Company under this Agreement without the consent of CITY OF MINEOLA.

(d) Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Company warrants and represents that the individual or individuals executing this Agreement on behalf of Company have full authority to execute this Agreement and bind Company to the same. CITY OF MINEOLA warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind CITY OF MINEOLA to the same.

(e) Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(f) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(g) Notices. Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to



follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed to the addresses for the parties as provided for in this Agreement.

(h) Severability. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

(i) Survival. All warranties, representations, and covenants made by Company and the CITY OF MINEOLA in this Agreement or in any certificate or other instrument delivered by one party to the other party under this Agreement shall be considered to have been relied upon by the parties hereto and will survive the making of this Agreement, regardless of any investigation made by either party or on either party's behalf.

(j) Time is of the Essence. Time is of the essence in the performance of this Agreement.

(k) No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint any party as an agent of any other party for any purpose whatsoever. Except as otherwise specifically provided herein, no party shall in any way assume any of the liability of any other for acts of any other party or obligation of any other party.

(l) No Boycott of Israel. In accordance with Section 2270.002 of the Texas Government Code (as added by Tex. H.B. 89, 85<sup>th</sup> Leg., R.S. (2017)), Company verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.

(m) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S.B. 252, 85<sup>th</sup> Leg., R.S. (2017)), the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Gov't Code.

(n) Reasonable Cost. In the event that the costs associated with construction for the project in a defined area exceed what is deemed reasonable by the company to effectively serve it, the company reserves the right to exclude said area from the project scope. Any exclusions will be assessed prior to the commencement of the construction phase of the project area. Any exceptions to this exclusion will be subject to discussion with the relevant city authorities.

***[Signature Page to follow]***

**PEOPLES TELEPHONE COOPERATIVE  
INC.**

By:

Scott Thompson  
Scott Thompson, General Manager

Date:

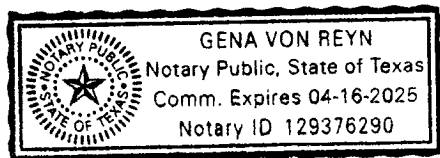
3-20-2024

STATE OF TEXAS

COUNTY OF WOOD

BEFORE ME, the undersigned authority, in and for said County, on this day personally appeared Scott Thompson, in his capacity as General Manager of Peoples Telephone Cooperative, Inc. known to me to be the person whose name is subscribed to the foregoing instrument, and averred that he executed the same on behalf of in his stated capacity.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 20<sup>th</sup> DAY OF March, 2024.



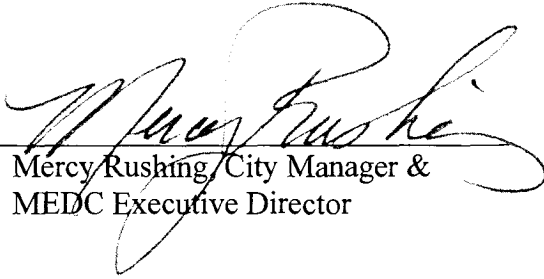
Gena von Reyn

Notary Public, State of Texas

My commission expires 04-16-2025

**MINEOLA ECONOMIC DEVELOPMENT  
CORPORATION**

By: \_\_\_\_\_



Mercy Rushing, City Manager &  
MEDC Executive Director

Date: \_\_\_\_\_

STATE OF TEXAS

COUNTY OF WOOD

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2024 by Mercy Rushing, Executive Director for the Mineola Economic Development Corporation,  
a Texas non-profit corporation, on behalf of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_ DAY OF  
\_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public, State of Texas

My commission expires \_\_\_\_\_

APPROVED BY THE CITY COUNCIL FOR THE CITY OF MINEOLA, TEXAS ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024 AFTER TWO READINGS OF A RESOLUTION APPROVING THE SAME, THE FIRST READING BEING ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024 AND THE SECOND READING BEING ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

**CITY OF MINEOLA, TEXAS**

By: \_\_\_\_\_  
Jayne Lankford, Mayor

Attest:

\_\_\_\_\_  
Cindy Karch, City Secretary

\_\_\_\_\_  
Notary Public, State of Texas  
My commission expires \_\_\_\_\_

## EXHIBIT A

### PROJECT DESCRIPTION

Peoples is seeking an initiative to enhance and extend fiber broadband connectivity throughout the City of Mineola, aiming to achieve impressive target speeds of up to 5 Gigabits per second for residential and up to 100 Gigabit for commercial customers. The deployment of this advanced infrastructure will revolutionize internet accessibility and reliability for both residential and commercial entities, presenting an innovative and competitive opportunity for the community. This initiative would serve as an additional catalyst for economic growth, empowering local businesses to thrive in a digitally interconnected world. Residents, too, will benefit from a seamless online experience, enabling them to engage in remote work, online education, and various entertainment options without any compromise in speed or reliability.

#### City of Mineola FTTH Project 1-2028

Area	Fiber Main Line Footage	Cost	Speed (Gbps)
Phase 1	32 521	\$552 857 00	411
Phase 2	26 948	\$458 116 00	227
Phase 3	40 467	\$687 939 00	436
Phase 4	36 739	\$624 563 00	498
Phase 5	18 792	\$319 464 00	161
Phase 6	30 277	\$514 709 00	192
Total	185 744	\$3 157 648 00	1925

External Funding Target

\$ 920,000.00

City and EDC Funding Years

4 years

