Filed 11/10/2025 4:09 PM
Cheryl Fulcher
District Clerk
Hopkins County, Texas
Rebecca Halter

CAUSE NO. CV45943

CITY OF SULPHUR SPRINGS, **PLAINTIFF** **v.** **LUMINANT MINING COMPANY, LLC, LUMINANT GENERATION COMPANY, LLC, VISTRA CORP., AND MATTHEW GOERING,** **DEFENDANTS**	§	**IN THE DISTRICT COURT**
LUMINANT MINING COMPANY, LLC, LUMINANT GENERATION COMPANY, LLC, AND VISTRA CORP., **COUNTER-PLAINTIFFS** **v.** **CITY OF SULPHUR SPRINGS, MSB GLOBAL SERVICES, LLC, AND SSDC1, LLC,** **COUNTER-DEFENDANTS**	§	**62ND JUDICIAL DISTRICT** **OF HOPKINS COUNTY, TEXAS**

DEFENDANTS/COUNTER-PLAINTIFFS LUMINANT MINING COMPANY, LLC, LUMINANT GENERATION COMPANY, LLC, AND VISTRA CORP.'S FIRST AMENDED ANSWER AND COUNTERCLAIMS FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

COME NOW Defendants/Counter-Plaintiffs Luminant Mining Company, LLC ("Luminant Mining"), Luminant Generation Company, LLC ("Luminant Generation" and together with Luminant Mining, "Luminant"), and Vistra Corp. ("Vistra" and, collectively with Luminant Mining and Luminant Generation, "the Vistra Parties") and file this First Amended Answer and Counterclaims for Temporary and Permanent Injunctive Relief, Declaratory Judgment, and Breach

of Contract to Plaintiff City of Sulphur Springs (the "City")'s Original Petition. In support thereof, the Vistra Parties respectfully show the Court and jury as follows:

I. INTRODUCTION

A deal is a deal. This case is nothing more than an attempt by the City to renege on a Special Warranty Deed (the "Deed") that the City ***indisputably and voluntarily agreed to as part of negotiations with*** the Vistra Parties in 2019—a deed that has been recorded as part of the public record since that time. And a deed that the City accepted and its manager, Marc Maxwell, signed. Contrary to the City's misleading allegations, this dispute is governed by the parties' recorded instruments—not by the City's after-the-fact dissatisfaction with a bargained-for, conspicuous, and recorded land-use covenant it accepted in 2019.

The Vistra Parties granted the City thousands of acres at virtually no cost, enabling the City to pursue redevelopment projects on the former Monticello-Thermo mine site (the "Property") that would serve and benefit the broader community. In doing so, the Vistra Parties favored fostering long-term community growth and opportunity over potentially significant financial gain it could realize in the future. In fact, the City's manager, Marc Maxwell, publicly acknowledged the significant value of the Property back in 2019, stating that he believed it could have "fetch[ed] as much as $25 million if the [Vistra Parties] [had] sold it." The Deed the City agreed to expressly includes a lawful and narrow restrictive covenant (the "Covenant") limiting only commercial energy generation, production, and storage and the siting of commercial power stations or energy storage facilities on the Property.

From the outset of discussions between the City and the Vistra Parties regarding the land transfer, the City consistently expressed its intention to redevelop the former mine site for multi-use, community-oriented purposes, including public parks, an amphitheater, and other civic or recreational amenities. Indeed, in 2019, Maxwell publicly articulated ambitious plans to

"transform[] the land into a multifaceted park with jogging trails, fishing lakes and maybe even space for hunting dog competitions." In other words, the City's vision was precisely what the Vistra Parties anticipated it would be—a resident-centric use designed to increase the quality of life for all in the community.

Now, years later, the City has breached, and intends to nullify, the Covenant it indisputably and voluntarily agreed to with the Vistra Parties by permitting the commercial generation of power on the Property. Specifically, the City has entered into agreements with a data center provider, MSB Global Services, LLC, and its wholly-owned subsidiary SSDC1, LLC (collectively, "the MSB Global Parties"), to develop a hyperscale data center campus premised on on-site power generation of extraordinary scale—over thousands of megawatts—on the Property. For context, Maxwell has previously estimated that the City's ***total*** power demand is approximately 33 MW. In stark contrast, the MSB Global Parties intend to develop a data center with a total power capacity of 3,000 MW on the Property alone—nearly one hundred times the City's own need. The City entered into agreements with the MSB Global Parties, which the Vistra Parties only recently discovered, that explicitly contemplate the development of an electrical generation and switching facility on the Property. These agreements confirm that the MSB Global Parties and the City intend to bypass the utility system through on-site generation, as they include a franchise-fee substitute for non-utility-delivered power. It is unmistakably clear that the planned on-site commercial generation, production, and storage of power is a critical component of the project. Accordingly, the data center's economic model depends on generating and selling power as its primary source of revenue. The Covenant expressly prohibits this activity.

The City cannot now nullify the Covenant simply because it has changed course and aligned with private developers whose business plans depend on industrial-scale electricity

generation and monetization on the Property. Indeed, until this lawsuit, the City has repeatedly acknowledged the existence of the Covenant and indicated its intent to comply. But only after the Vistra Parties declined the City's invitation to participate in the City's latest data center project did the City change course and suddenly claim foul. Contractual promises, however, do not disappear just because one party later regrets its bargain. That is especially true here, when the deal the City and the Vistra Parties struck was an exceedingly good one for the City's residents. The City must live with the bargain it struck and recorded—not merely its benefits. And the City should not be able to strip its residents of these benefits in order to benefit private interests.

The City's claims of a public-policy violation and a purported energy monopoly ring hollow and are nothing but an attempt to excuse the City from upholding its end of the bargain. Notably, the Property at issue comprises only approximately 4,900 acres of land—just under one percent of the roughly 490,880 total land acres in Hopkins County, Texas. The Covenant is narrow and affects only this small percentage of land, not any of the other City land. It does not give the Vistra Parties any countywide veto, nor does it restrict the City's ability to pursue any development across the other 99%+ of Hopkins County. Nor does the Covenant prevent the City from building a hospital or a fire station, or from utilizing alternative forms of energy, as the City falsely contends. The bargain simply prevents turning this Property into a platform for commercial power generation, commercial power storage, or power-station siting. The City acknowledges that "the data center could easily draw its power from off-site." Taking the City at its word, the Covenant does not foreclose the City's preferred development. If the City wishes to support the operation of a large AI data center, it can do so while honoring the Covenant—by sourcing electricity through the franchised utility or by arranging for generation and storage on adjoining or otherwise separate land and "draw[ing] . . . from off-site," exactly as the City has represented is 'easy.'"

The dispute before the Court is straightforward. The City and the MSB Global Parties' commercial power-supply plan for the site violates the Covenant's wholly legitimate core: preventing the Property's use as a platform for commercial energy generation, storage, and power stations. The project attempts to utilize the Property in precisely the manner that the Covenant prohibits. Accordingly, the Vistra Parties bring counterclaims and file this application for temporary injunction to put a stop to Counter-Defendants' unlawful conduct, and to obtain appropriate declaratory relief, damages, attorneys' fees, and all other relief to which they are justly entitled.

II. ANSWER

A. GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, the Vistra Parties generally deny each and every allegation and claim in Plaintiff's Original Petition and demand strict proof thereof.

B. AFFIRMATIVE DEFENSES

The Vistra Parties anticipate relying on the following defenses, if applicable, and if supported by facts to be determined by appropriate discovery. In asserting these defenses, the Vistra Parties neither expressly nor implicitly assume the burden of disproving any defense or any element of any claim for which the City bears the burden of proof as a matter of law.

1. The City's claims are baseless, and the Vistra Parties reserve the right to file a motion under Rule 91a or any other rule.

2. The City's claims are barred, in whole or in part, by the controlling written instruments, including the Development Agreement, the First Amendment to Development Agreement, and the recorded Deed accepted and recorded by the City.

3. The City's claims are barred, in whole or in part, by the merger doctrine.

4. The City's claims are barred, in whole or in part, by the doctrine of waiver.

5. The City's claims are barred, in whole or in part, by the doctrine of ratification.

6. The City's claims are barred, in whole or in part, by the doctrine of estoppel.

7. The City's claims are barred, in whole or in part, by the statute of limitations.

8. The City's claims are barred, in whole or in part, by the doctrine of laches.

9. The City fails to state a cause of action against the Vistra Parties upon which relief can be granted, and the City's claims fail as a matter of law.

10. The City's claims are barred, in whole or in part, to the extent any of the City's own acts or omissions caused or contributed to its alleged injuries.

11. Any alleged damages were caused, in whole or in part, by the City or third parties.

12. The City's claims are barred, in whole or in part, by the doctrine of unclean hands and related equitable doctrines.

13. The City's claims are barred, in whole or in part, by the statute of frauds and/or the parol evidence rule.

14. The City's request for exemplary damages is barred by Chapter 41 of the Texas Civil Practice and Remedies Code and otherwise fails as a matter of law.

15. The Vistra Parties reserve the right to assert any and all additional specific denials, counterclaims, and affirmative and other defenses that may be determined during the course of discovery.

III. COUNTERCLAIMS

IV. PARTIES

16. Defendant/Counter-Plaintiff Luminant Mining Company, LLC is a Texas limited liability company.

17. Defendant/Counter-Plaintiff Luminant Generation Company, LLC is a Texas limited liability company.

18. Defendant/Counter-Plaintiff Vistra Corp. is a Delaware for-profit corporation.

19. Plaintiff/Counter-Defendant City of Sulphur Springs is a municipality and home-rule Texas city. The City's address is 201 N. Davis St., Sulphur Springs, Texas 75482.

20. Counter-Defendant MSB Global Services, LLC is a Delaware limited liability company. It can be served with process by serving its registered agent, Registered Agents, Ltd., at 1013 Centre Rd., Ste. 403-A, Wilmington, New Castle, Delaware.

21. Counter-Defendant SSDC1, LLC is a Texas limited liability company and a wholly owned subsidiary of MSB Global Services, LLC. It can be served with process by serving its registered agent, MSB Global Services, LLC, at 10213 Shore Acres Lane, Conroe, Texas 77384.

22. Counter-Defendants MSB Global Services, LLC and SSDC1, LLC are properly joined as Counter-Defendants pursuant to Texas Rule of Civil Procedure 97(f) and Texas Rule of Civil Procedure 39. In the alternative, the joinder of Counter-Defendants MSB Global Services, LLC and SSDC1, LLC is proper pursuant to Texas Rule of Civil Procedure 40.

JURISDICTION AND VENUE

23. Venue is proper in Hopkins County, Texas under section 15.011 of the Texas Civil Practice and Remedies Code because this action involves an interest in real property, and Hopkins County, Texas is where all or part of the real property is located. Tex. Civ. Prac. & Rem. Code § 15.011. Venue is also proper in Hopkins County because a substantial part of the events or omissions giving rise to this lawsuit occurred within Hopkins County. *See* Tex. Civ. Prac. & Rem. Code § 15.002(a)(1).

24. This Court has jurisdiction because the claims and causes of action herein have resulted in damages to the Vistra Parties within the jurisdictional limits of this Court. Additionally, district courts have jurisdiction to hear applications for injunctions. *See* Tex. Civ. Prac. & Rem.

Code § 65.021(a). As required by Texas Rule of Civil Procedure 47, the Vistra Parties state that they seek monetary relief over $1,000,000.00

25. The Court has personal jurisdiction over the MSB Global Parties, including general and specific jurisdiction. SSDC1, LLC ("SSDC1") is a Texas limited liability company, it operates in Texas, and it executed agreements and special warranty deeds with the City concerning land in Hopkins County. Additionally, the Vistra Parties' claims arise directly from SSDC1's Texas-based conduct relating to the Covenant and the Property. MSB Global Services, LLC ("MSB Global") likewise has purposefully availed itself of the privileges and protections of Texas law by directing, orchestrating, and publicly promoting the Sulphur Springs data center campus and its on-site power plan in Hopkins County; by creating and using its wholly owned Texas subsidiary (SSDC1) to obtain Texas land, enter into agreements in Texas and to be performed in Texas, including Texas Chapter 380 agreements, and receive Texas deeds for the project; by negotiating, coordinating, and supervising project development activities in Texas; and by engaging in conduct that gives rise to the Vistra Parties' claims for enforcement of a Texas property deed. In addition, the MSB Parties' continuous and systematic Texas activities in furtherance of a multiyear, multibillion-dollar development—carried out through personnel, agents, and contractors in Texas and in Hopkins County—are sufficient to support the exercise of personal jurisdiction consistent with due process. In all events, the exercise of jurisdiction over MSB Global and SSDC1 comports with traditional notions of fair play and substantial justice given the Texas-centered nature of the Property, agreements, conduct, and relief sought.

FACTUAL BACKGROUND

A. The Vistra Parties Convey Thousands of Acres to the City at Virtually No Cost to Promote Community-Oriented Redevelopment of the Property.

26. For decades, Luminant operated the Monticello-Thermo mine on roughly 4,900 acres outside of Sulphur Springs, supplying fuel to its nearby generation facilities. The mine closed in 2016. In the immediate aftermath of closure, Luminant continued to own thousands of acres subject to overlapping Railroad Commission of Texas, Texas Commission on Environmental Quality, and U.S. Army Corps of Engineers obligations for environmental remediation and site restoration. Against this backdrop, in 2016, the City and Luminant began discussions regarding the possibility for Luminant to gift the former Monticello-Thermo mine site to the City. Following these discussions, both parties shared the view that municipal ownership would best facilitate the integration of the Property into the community, streamline regulatory coordination, and advance public-facing redevelopment efforts while Luminant—at its sole cost—fully reclaimed the property to its original (in fact better than original) condition.

27. The parties memorialized these discussions in an April 3, 2017 Letter of Intent and, later, a 2018 Development Agreement. Under the Development Agreement, Luminant committed to convey approximately 4,900 acres to the City for $100, with the City agreeing not to interfere with Luminant's ongoing reclamation efforts. The City also agreed to provide written notice of the Development Agreement to any prospective purchaser, grantee, or transferee before any future sale, conveyance, or transfer of any portion of the Property and to give Luminant at least ten (10) days' written notice before any such sale or conveyance. Finally, the Development Agreement also provided that title to the Property would transfer to the City at a subsequent closing, by special warranty deed, once all specified conditions precedent were satisfied. The parties expressly contemplated the Deed as part of the Development Agreement. Specifically, Luminant agreed to

deliver the Deed upon closing, conveying fee simple title to the Property, free and clear of any liens or other encumbrances, subject to certain exceptions, including any exception approved by the City in writing. The Covenant is one of those exceptions. The obligations under the Development Agreement remain ongoing.

28. In November 2019, at closing, Luminant conveyed title to the Property to the City by the Deed. In conveying the Property to the City, the Vistra Parties forwent significant financial gain that they could have realized through a future market sale of the Property. Indeed, City Manager Maxwell has publicly acknowledged that the conveyance constituted a "very significant and generous gift."

29. **The City accepted and signed the Deed**. The Deed was also properly filed and recorded in the real property records of Hopkins County, Texas four days after the City signed the Deed. The Deed expressly contains a conspicuous restrictive covenant, which prohibits the use of the Property for the commercial production, generation, or storage of electricity:

> **Purchaser covenants that the Property will not be used for the commercial production, commercial generation or commercial storage of electricity in any form, nor will it be used for the siting of a commercial power station or energy storage facility of any kind. This covenant** restricting any use of the Property to commercially generate, produce or store electricity or to otherwise site a power station or energy storage facility, in any form or of any kind, **shall be a covenant running with, touching, and encumbering the Property, binding upon the Grantee and all successors in interest or title, transferees, vendees, lessees, mortgagees, and assigns who are owners and/or users of the Property.**

30. The Covenant further requires that any subsequent contract, deed, or other instrument conveying all or any portion of the Property must expressly state that such conveyance is subject to the Covenant:

> **Each and every contract, deed, or other instrument hereafter executed conveying the Property or portion thereof (excluding instruments granting security interests) shall expressly provide that such conveyance is subject to this restrictive covenant**, provided, however, that the restrictive covenant shall

> survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to the restrictive covenant.

31. The Covenant reasonably prohibits commercial power uses on the Property. At its core, it prevents the Property from becoming, directly or indirectly, a platform for commercial electricity generation, commercial electricity storage, or power-station siting. The Covenant does not prohibit the City or any land user from purchasing electricity delivered by a franchised utility or from sourcing electricity from off-site.

B. The City Shifts Proposals While Continuing to Acknowledge the Covenant.

32. In the years immediately following execution of the Development Agreement, the City promoted community-oriented uses consistent with the Covenant and ongoing reclamation obligations. For example, in 2019, in an interview at City Hall, City Manager Maxwell "described grand visions of transforming the land into a multifaceted park with jogging trails, fishing lakes and maybe even space for hunting dog competitions."

33. Between 2021 and 2024, as the parties coordinated reclamation planning and permitting on the Property, the City raised a variety of potential uses for portions of the Property. For example, the City first proposed a steel mill with an associated rail spur, which sparked extensive discussions between the City and the Vistra Parties. At one point the City also introduced the idea of a housing development on the Property. And thereafter the City contemplated several other ideas for use of the Property. During its discussions of these various ideas with the Vistra Parties, the City always indicated that it planned to abide by the Covenant. Indeed, at every stage of discussions with the Vistra Parties, City officials openly acknowledged the existence and applicability of the Covenant—never suggesting it was hidden, unknown, unlawful, or inapplicable.

C. The City Begins to Explore the Development of a Hyperscale Data Center Campus with On-Site Large-Scale Power Generation, and Vistra Declines to Build Power Plants on the Property.

34. In late 2024 and early 2025, in a significant departure from its prior community-oriented redevelopment concepts, and for the first time, City leadership began advancing a "hyperscale" data center concept. A data center is a specialized facility that houses computer systems and related components, such as telecommunications and storage equipment, to store, process, and manage large volumes of digital information. Hyperscale data centers, in particular, are distinguished by their massive scale and capacity, often requiring hundreds of megawatts of electrical power to operate thousands of servers around the clock. The power demands of such centers are so significant that they frequently exceed those of small cities, necessitating dedicated on-site power generation to ensure reliability and meet operational needs. Data center operators typically price space and services by power: tenants contract for a fixed kilowatt allocation and pay capacity rent on a $/kW-per-month basis, plus volumetric energy charges on a $/kWh basis, This business model makes the availability and control of large-scale power generation a central consideration in the siting and development of these facilities.

35. By spring 2025, the City had identified MSB Global, a developer of hyperscale data centers, as its development partner. For the first time, power supply became a central topic between the City and the Vistra Parties. Indeed, around this time, the City and MSB Global inquired whether the Vistra Parties were interested in building 3,000 MW power plants on the Property to supply power to the data centers. During this period, City officials acknowledged and understood that the Covenant applied and needed to be followed, and they continued to treat the Covenant as binding. Despite the City's efforts, the Vistra Parties ultimately declined to build power plants on the Property.

D. The City Moves Forward with the Development of a Hyperscale Data Center Campus with On-Site Large-Scale Power Generation.

36. Although the Vistra Parties declined to construct facilities on the Property to source the data centers with power, the City and the MSB Global Parties pressed forward with their plans to develop one of the largest hyperscale data centers in the country with on-site commercial power generation. Indeed, the City and the MSB Global Parties held a ground-breaking ceremony on the Property, marking the official launch of the "Matrix Data Center Campus." During the event, they also installed prominent signage on the Property announcing the data center campus, all while the Covenant prohibiting use of the Property for power generation remained in effect.

E. The Vistra Parties Send a Cease-and-Desist Letter to the City.

37. After learning about the ground-breaking ceremony and reviewing a site plan publicly available on MSB Global's website depicting a "1.6 GW POWER PLANT (UNDER CONSTRUCTION)" on the Property, the Vistra Parties objected and attempted to resolve this dispute out of court. Specifically, on September 30, 2025, the Vistra Parties sent a cease-and-desist letter to the City identifying the Covenant's prohibitions. The City did not respond to the letter or withdraw or amend its plans. Instead, a mere one day later, the City filed this lawsuit seeking to evade the Covenant. In its Petition, the City has admitted that the data center "could easily draw its power from off-site," confirming that the Covenant does not preclude the project moving forward or its success—only on-site commercial power generation, commercial power storage, or power-station siting on the Property.

F. Newly Discovered Recorded Instruments and Recent Statements by the City and MSB Global Confirm the On-Site Commercial Power Plan.

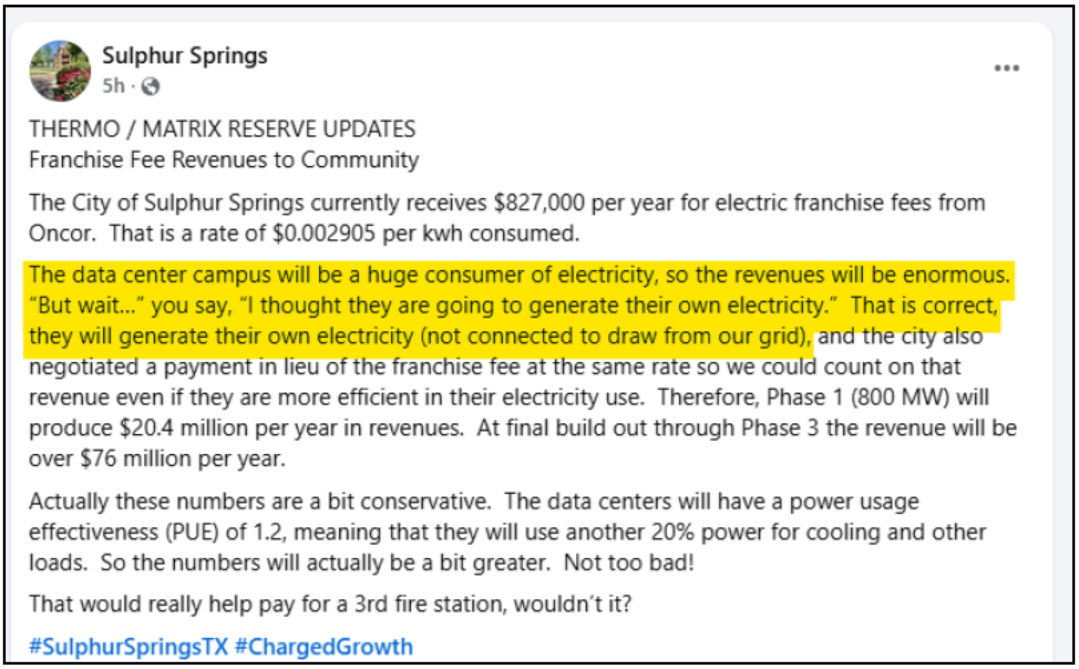
38. The Vistra Parties have recently uncovered compelling evidence, which includes recorded instruments and recent statements by both the City and MSB Global, that reveals a clear intent to pursue on-site electrical generation and related infrastructure in direct contravention of

the Covenant. For example, the Vistra Parties recently discovered that the City, without providing notice to the Vistra Parties as the Development Agreement requires, entered into Chapter 380 Economic Development Agreements and executed special warranty deeds with SSDC1 to acquire, hold, and develop tracts on the Property in connection with the data centers, conveying portions of the Property to SSDC1. These recorded instruments not only expressly contemplate MSB Global's development of multiple data centers on the Property, **but they also specifically provide for the installation and operation of an electrical generation and switching facility on the Property**, including electrical generation equipment with a capacity of approximately 800 MW and associated switching equipment and transformer infrastructure. *See* Exhibits 1 – 2 (Chapter 380 Economic Development Agreements between the City and SSDC1). Notably, the special warranty deeds between the City and SSDC1 omit any reference to the Covenant. *See* Exhibits 3 – 5 (Special Warranty Deeds between the City and SSDC1).

39. Further, these agreements expressly embed a franchise-fee substitute for non-utility-delivered electricity that applies when electricity is delivered to the project by means other than Oncor's transmission and distribution system. They require SSDC1 to make quarterly, per-kilowatt-hour payments to the City—at the same rate as the City's utility franchise fee (stated as $0.002905/kWh)—for all electricity consumed on the Property that bypasses Oncor, along with detailed usage certifications and audit rights, and they make that obligation run with the land in perpetuity. By creating a dedicated revenue mechanism for non-utility-delivered power, these agreements presuppose and facilitate on-site generation/microgrid supply for the data center campus, confirming that the City and the MSB Global Parties intend to locate commercial power facilities on the conveyed Property notwithstanding and in direct contravention to the Covenant.

40. SSDC1 and the City executed the agreements unbeknownst to the Vistra Parties and in knowing disregard of the Covenant previously recorded against the Property. Further, before conveying portions of the Property, the City did not notify the Luminant Defendants of the conveyance, as the Development Agreement requires.

41. Moreover, recent public-facing materials and statements from both the City and the MSB Global Parties unequivocally confirm that the data centers will commercially generate and produce power on-site. For instance, a November 5, 2025 City of Sulphur Springs Tourism Facebook post explicitly acknowledges that the data center campus will be "a huge consumer of electricity" and, critically, affirms the City's intent for the data center campus to generate its own electricity. The post also references the agreement for quarterly, per-kilowatt-hour payments to the City—at the utility franchise fee rate of $0.002905/kWh—for all electricity consumed on the Property that bypasses Oncor, underscoring the City's intentional effort to facilitate a self-generation model designed to bypass traditional utility delivery for the project.



Sulphur Springs
5h ·

THERMO / MATRIX RESERVE UPDATES
Franchise Fee Revenues to Community

The City of Sulphur Springs currently receives $827,000 per year for electric franchise fees from Oncor. That is a rate of $0.002905 per kwh consumed.

The data center campus will be a huge consumer of electricity, so the revenues will be enormous. "But wait..." you say, "I thought they are going to generate their own electricity." That is correct, they will generate their own electricity (not connected to draw from our grid), and the city also negotiated a payment in lieu of the franchise fee at the same rate so we could count on that revenue even if they are more efficient in their electricity use. Therefore, Phase 1 (800 MW) will produce $20.4 million per year in revenues. At final build out through Phase 3 the revenue will be over $76 million per year.

Actually these numbers are a bit conservative. The data centers will have a power usage effectiveness (PUE) of 1.2, meaning that they will use another 20% power for cooling and other loads. So the numbers will actually be a bit greater. Not too bad!

That would really help pay for a 3rd fire station, wouldn't it?

#SulphurSpringsTX #ChargedGrowth

42. Additional posts by MSB Global further confirm the intent of both the City and MSB Global. For example, in a recent October 1, 2025 post on MSB Global's website, MSB Global highlights that the data centers will have "on-site natural gas power for reliability." The website also emphasizes that the Sulphur Springs data center campus will feature "3GW [or 3,000 MW] of Onsite Energy Generation" and further details ways in which the data center will generate on-site power, including the development of "utility scale solar farms, geo-thermal plant and [an] onsite energy generating facility to support microgrid electrical infrastructure." This emphasis on powering the data center independently is not surprising, as MSB Global actively promotes energy independence as a defining feature that sets it apart from competitors. On its website, MSB Global states: "We don't wait for the grid—we secure and build energy independence, deploying microgrids and a diversified mix of renewables, from solar and wind to advanced fuel cells and geothermal."

43. Further, in recent public statements, including in a news article published on September 30, 2025, City representatives have explicitly acknowledged that the "center will power itself using a natural gas process." City Manager Maxwell has reinforced this point in interviews, publicly stating that the data centers will be required to self-generate power, and further explaining that the City is bringing in 30-inch gas pipelines and generating electricity with fuel cells to do this.

44. Thus, it has become beyond clear that the data center plan—as the City and MSB Global have promoted—turns electricity into the product sold and measured on-site, with dedicated generation and switching infrastructure designed to bypass the franchised utility. Indeed, MSB Global's business model is built around selling this electricity to tenants: MSB Global advertises pre-leasing "at $105 per kW triple-net" and a $0.06/kWh long-term power rate,

demonstrating that tenants will pay MSB Global for electricity delivered on the Property. Thus, rent is tied to the energy MSB Global generates and sells to its tenants. Again, the City has reinforced these points in recent public statements, repeatedly emphasizing that the project will "power itself" and even suggesting that it may export surplus electricity in the future. These facts leave no doubt that the project will commercially generate and sell power on-site—precisely the commercial power use that the Covenant prohibits.

45. These ongoing actions underscore the harm to the Vistra Parties, warranting immediate judicial intervention to prevent further violation of the Covenant. Only the Court's immediate intervention can put a stop to the City and the MSB Global Parties' knowing and intentional disregard for the Vistra Parties' contractual rights.

V. CAUSES OF ACTION

COUNT 1

Declaratory Judgment (the City, MSB Global, and SSDC1)

46. The Vistra Parties reallege and incorporate by reference all previous allegations of this pleading as if fully set forth herein.

47. An action for a declaratory judgment is an appropriate method for seeking a determination of the validity, applicability, or enforceability of restrictive covenants. *See McGuire v. Davis*, 483 S.W.2d 553, 556 (Tex. Civ. App.—Waco 1972, writ ref'd n.r.e.); *Candlelight Hills Civic Ass'n v. Goodwin*, 763 S.W.2d 474, 481 (Tex. App.—Houston [14th Dist] 1988, writ denied); *see also* Tex. Civ. Prac. & Rem. Code § 37.004(a).

48. An actual controversy exists between the Vistra Parties, on the one hand, and the City and the MSB Global Parties, on the other hand, regarding the Covenant contained in the Deed.

49. The Vistra Parties request that the Court issue a declaratory judgment under the Texas Uniform Declaratory Judgment Act making findings that:

a. The Covenant recorded in 2019 is valid and enforceable, runs with the land, and binds the City and all successors, transferees, lessees, users, and assigns;

b. Any on-site commercial production, commercial generation, or commercial storage of electricity in any form, or siting of commercial power stations or energy storage facilities of any kind on the Property, violates the Covenant; and

c. SSDC1 took title to the Property subject to the Covenant.

COUNT 2

Breach of Covenant (against the City, MSB Global, and SSDC1)

50. The Vistra Parties reallege and incorporate by reference all previous allegations of this pleading as if fully set forth herein.

51. Land covenants are construed and enforced under ordinary contract principles. The Deed contains a clear, unambiguous restrictive covenant prohibiting any "commercial production, commercial generation or commercial storage of electricity in any form," and prohibiting "the siting of a commercial power station or energy storage facility of any kind," running with, touching, and encumbering the Property and binding "all successors in interest or title, transferees, vendees, lessees, mortgagees, and assigns who are owners and/or users of the Property."

52. The Covenant in the recorded Deed is a valid, enforceable covenant running with the land and is interpreted as a contract. The City accepted, executed, and signed the Deed with notice of the Covenant's terms. Additionally, the Deed was properly recorded in the real property records of Hopkins County, Texas four days after the City signed the Deed. Further, an instrument that is properly recorded in the proper county is notice to all persons of the existence of the instrument. *See* Tex. Prop. Code § 13.002. Thus, the MSB Global Parties also had notice of the Covenant.

53. The City and the MSB Global Parties have breached the Covenant by taking steps to develop and facilitate on-site commercial power generation, production, and storage on the Property, in direct contravention of the Covenant. Indeed, the City and the MSB Global Parties have entered into Chapter 380 Agreements and special warranty deeds that do not acknowledge the 2019 Covenant and that contemplate the installation and operation of an electrical generation and switching facility on the Property.

54. As a direct and proximate result of the City and the MSB Global Parties' breaches, the Vistra Parties have suffered, and will continue to suffer, irreparable harm and are entitled to equitable relief, including temporary and permanent injunctions enforcing the Covenant.

55. Because of the City and the MSB Global Parties' breaches, the Vistra Parties have been required to retain counsel at the law firm of Winston & Strawn LLP and Clay Harrison to prosecute their claims. The Vistra Parties have agreed with their counsel to the reasonable attorneys' fees and expenses incurred on the Vistra Parties' behalf in this lawsuit. Under Chapter 38 of the Texas Civil Practice and Remedies Code, the Vistra Parties have presented their claims and are entitled to the reasonable and/or necessary attorneys' fees and costs incurred in the prosecution of this lawsuit. Tex. Civ. Prac. & Rem. Code § 38.001(8).

COUNT 3

Breach of Contract – Development Agreement (against the City)

56. The Vistra Parties reallege and incorporate by reference all previous allegations of this pleading as if fully set forth herein.

57. The Development Agreement is a valid and enforceable agreement between Luminant and the City. Section 10 of the Development Agreement requires the City to provide

Luminant with written notice of at least ten (10) days prior to any sale, conveyance, or transfer of any portion of the Property.

58. The Vistra Parties recently discovered that the City conveyed multiple portions of the Property to SSDC1, a wholly owned subsidiary of MSB Global, without providing the required written notice to Luminant as mandated by the Development Agreement. This failure to notify constitutes a breach of the City's contractual obligations.

59. Luminant has performed its obligations under the Development Agreement.

60. The City's violation of the Development Agreement has caused, and will continue to cause, damages to the Vistra Parties.

61. Because of the City's wrongful acts, the Vistra Parties have been required to retain counsel at the law firm of Winston & Strawn LLP and Clay Harrison to prosecute their claims. The Vistra Parties have agreed with their counsel to the reasonable attorneys' fees and expenses incurred on the Vistra Parties' behalf in this lawsuit. Under Chapter 38 of the Texas Civil Practice and Remedies Code, the Vistra Parties have presented their claims and are entitled to the reasonable and/or necessary attorneys' fees and costs incurred in the prosecution of this lawsuit. Tex. Civ. Prac. & Rem. Code § 38.001(8).

COUNT 4

Breach of Contract – Special Warranty Deed (against the City)

62. The Vistra Parties reallege and incorporate by reference all previous allegations of this pleading as if fully set forth herein.

63. The Deed is a valid and enforceable agreement between Luminant and the City. The Deed states that "[e]ach and every contract, deed, or other instrument hereafter executed conveying

the Property or portion thereof (excluding instruments granting security interests) shall expressly provide that such conveyance is subject to this restrictive covenant."

64. Luminant recently discovered that the City conveyed portions of the Property to SSDC1, a wholly owned subsidiary of MSB Global, through a special warranty deed, but failed to include the Covenant as required. This failure constitutes a breach of the City's obligations under the Deed.

65. The City's violation of the Deed has caused, and will continue to cause, damages to the Vistra Parties. Additionally, the Vistra Parties request specific performance compelling the City to cure title by recording a corrective deed or restriction notice against the SSDC1 tracts expressly reciting the restriction.

66. Because of the City's wrongful acts, the Vistra Parties have been required to retain counsel at the law firm of Winston & Strawn LLP and Clay Harrison to prosecute their claims. The Vistra Parties have agreed with their counsel to the reasonable attorneys' fees and expenses incurred on the Vistra Parties' behalf in this lawsuit. Under Chapter 38 of the Texas Civil Practice and Remedies Code, the Vistra Parties have presented their claims and are entitled to the reasonable and/or necessary attorneys' fees and costs incurred in the prosecution of this lawsuit. Tex. Civ. Prac. & Rem. Code § 38.001(8).

VI. REQUEST FOR INJUNCTIVE RELIEF

Application for Temporary and Permanent Injunction

67. The Vistra Parties reallege and incorporate by reference all previous allegations of this pleading as if fully set forth herein.

68. The Vistra Parties seek injunctive relief under both equitable and statutory principles, Texas Rules of Civil Procedure 680–93 and Texas Civil Practice and Remedies Code § 65.011(5). A restrictive covenant may be enforced by either temporary or permanent injunctive

relief or both. *See Radney v. Clear Lake Forest Cmty. Ass'n*, 681 S.W.2d 191, 198 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.) (deed restrictions may be enforced by permanent mandatory injunction ordering removal of nonconforming structures); *Calvary Baptist Church at Tyler v. Adams*, 570 S.W.2d 469, 471 (Tex. Civ. App. —Tyler 1978, no writ) (temporary injunction prohibiting church from constructing driveway and parking lot on lots subject to residential-only covenants affirmed).

69. A temporary injunction is the proper method of maintaining the status quo while the applicability of a restrictive covenant is being finally determined. *See Gunnels v. No. Woodland Hills Cmty. Ass'n*, 563 S.W.2d 334, 338 (Tex. Civ. App. —Houston [1st Dist.] 1978, no writ); *Baton v. Key Prod. Co*., 315 S.W.2d 59, 62 (Tex. Civ. App. —Texarkana 1958, writ ref'd n.r.e.). In order to obtain a temporary injunction, the plaintiff must prove that it has a probable right and that it will sustain a probable injury to that right during the pendency of the trial on the merits if the temporary injunction is not ordered. *See Speedman Oil Co. v. Duval Cnty. Ranch Co.*, 504 S.W.2d 923, 928 (Tex. Civ. App. —San Antonio 1973, writ ref'd n.r.e.).

70. It is well known that a movant seeking a temporary injunction to enforce a restrictive covenant is not required to show proof of irreparable injury or imminent harm to be entitled to injunctive relief. *See Bankler v. Vale*, 75 S.W.3d 29, 39 (Tex. App.—San Antonio 2001, no pet.) ("[T]hey were not required to show proof of irreparable injury or imminent harm to be entitled to injunctive relief."); *Patel v. Wofford*, 349 S.W.3d 50, 54 (Tex. App.—El Paso 2010, no pet.) ("[T]he movant need not establish the presence of imminent and irreparable injury, or the presence of actual damages arising from the breach."); *Letkeman v. Reyes*, 299 S.W.3d 482, 486 (Tex. App.—Amarillo 2009, no pet.) ("There, one need not establish the presence of imminent and irreparable injury."). Instead, the movant is required to prove only that the defendant intends to do

an act that would breach the covenant. *Bankler*, 75 S.W.3d at 39 ("Demonstrable intent to breach a restrictive covenant will support an injunction without any showing of irreparable injury or imminent harm."); *Southwyck, Section IV Homeowners' Ass'n, Inc. v. Southwyck Cmty. Ass'n, Inc*., No. 14-16-00139-CV, 2017 WL 4697884, at *6 (Tex. App.—Houston [14th Dist.] Oct. 19, 2017, no pet.) ("When an injunction is sought to enforce a covenant in a deed, the burden of proof is altered and the movant 'is only required to prove that the defendant intends to do an act that would breach the restrictive covenant.'").

71. The Vistra Parties have a probable right to relief based on the Covenant and abundant evidence that the City and the MSB Global Parties intend to construct on-site power generation and related facilities in violation of the Covenant. Even though the Vistra Parties are not required to prove irreparable and imminent harm and instead must show only that the City and the MSB Global Parties intend to do an act that would breach the Covenant, the City's conduct and the coordinated actions of MSB Global and SSDC1 have already inflicted, and will continue to inflict, irreparable harm on the Vistra Parties absent immediate relief. The City and MSB Global have not only recorded deeds and Chapter 380 Agreements that contemplate the development, installation, and operation of an electrical generation and switching facility on the Property, but they have begun site activity. Moreover, MSB Global touts on its website: "Our 3D concrete printing technology allows us to construct large-scale data centers in record time—delivering full 278,000 sq. ft. buildings in as little as 30 days—while simultaneously eliminating the need for temporary batch plants or air permits." The extraordinary speed with which MSB Global can construct these facilities—completing entire data centers in as little as 30 days—means that the risk of irreversible harm is not merely theoretical, but imminent and rapidly approaching. Only the

Court's immediate intervention can put a stop to the City and the MSB Global Parties' knowing and intentional disregard for the Vistra Parties' contractual rights.

72. Unless enjoined, the City and the MSB Global Parties will persist, to the Vistra Parties' continuing harm, in the above-described unlawful behavior, leaving the Vistra Parties with no adequate remedy at law. The harm that the Vistra Parties will suffer if the City and the MSB Global Parties are not enjoined outweighs any harm the City and the MSB Global Parties would suffer from the issuance of injunctive relief.

73. The Vistra Parties request the Court to set a hearing on their application for temporary injunction. After a hearing, the Vistra Parties respectfully request that temporary and permanent injunctions be granted enjoining and restraining the City and the MSB Global Parties, and, as applicable, their collective and respective agents, servants, employees, attorneys, and those persons in active concert or participation with them, from temporarily and permanently acting as follows:

a. Developing, constructing, or operating on the Property any facility for the commercial production, commercial generation, or commercial storage of electricity, or siting any commercial power station or energy storage facility of any kind, including any power plant, generation, or energy storage facility.

b. Installing or activating any on-site generation, microgrid, fuel-cell, turbine, switching, or storage assets intended to supply electricity on a commercial basis to any data center or other user on the Property; and

c. Taking steps to grade, trench, pour foundations, or place major equipment dedicated to the foregoing power uses.

VII. CONDITIONS PRECEDENT

74. All conditions precedent to the Vistra Parties' claims for relief have been performed or excused.

VIII. ATTORNEYS' FEES AND COSTS

75. As a result of the City and MSB Global's failure to comply with the Development Agreement and the 2019 Covenant, the Vistra Parties hired attorneys to bring this action.

76. The Vistra Parties are entitled to recover their reasonable attorneys' fees pursuant to section 5.006 of the Texas Property Code, which mandates an award of attorneys' fees to the prevailing party who asserted the action based on a breach of restrictive covenant associated with real property.

77. The Vistra Parties also seek their reasonable and necessary attorneys' fees under Texas Civil Practice and Remedies Code §§ 37.009 and 38.001(8).

IX. PRAYER FOR RELIEF

WHEREFORE, the Vistra Parties respectfully pray that the Court enter a judgment dismissing the City's claims with prejudice. Additionally, the Vistra Parties respectfully request that they be awarded a judgment against the City and the MSB Global Parties as follows:

1. That the Court issue a temporary injunction at the conclusion of the hearing, restraining the City and the MSB Global Parties as requested herein;

2. That the Court order a permanent injunction upon final trial of this cause enjoining the City and the MSB Global Parties as requested herein;

3. That the Court award the Vistra Parties all damages to which they are entitled;

4. That the Court render judgment against the City and the MSB Global Parties for pre-judgment and post-judgment interest, reasonable attorneys' fees and expenses, costs of suit, and all other relief that the Court deems appropriate; and

5. That the Court order that the City take nothing by way of its claims and that all relief requested by the City, including its request for declaratory judgment, be denied in its entirety.

Dated: November 10, 2025

Respectfully submitted,

/s/ Thomas M. Melsheimer

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on counsel of record who are deemed to have consented to electronic service on November 10, 2025, via electronic filing using the Court's CM/ECF system.

/s/ Thomas M. Melsheimer

Automated Certificate of eService

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Filing Code Description: Counter Claim/Cross Action/Interpleader/Intervention/Third Party
Filing Description: DEFENDANTS/COUNTER-PLTFS FIRST AMENDED ANSWER AND COUNTERCLAIMS FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF
Status as of 11/10/2025 4:22 PM CST

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