

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AGREEMENT**  
(Downtown New Construction Incentives)

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** (this "Agreement") is made and entered into by and between the **CITY OF EL PASO, TEXAS** (hereinafter referred to as the "CITY"), a Texas home rule municipal corporation, and **South El Paso Street Properties, LLC** (hereinafter referred to as the "APPLICANT"), a Texas Corporation, for the purposes and considerations stated below:

**WHEREAS**, the APPLICANT desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as "Chapter 380"); and

**WHEREAS**, on September 1, 2012, the El Paso City Council adopted the Downtown New Construction Incentive Policy, , authorizing the City Manager to enter into Chapter 380 Grant Agreements for the purpose of promoting new development or redevelopment of commercial properties located in the CITY's downtown core.

**WHEREAS**, the CITY desires to provide, pursuant to Chapter 380, incentives to APPLICANT to renovate, restore and rehabilitate the commercial property located at 601 S. El Paso St., meeting the eligibility requirements of the Downtown New Construction Incentive Policy such project being more specifically described on Exhibit "A" attached hereto (the "Project") which is within the designated incentive area as more specifically depicted on the Map attached hereto as Exhibit B (the "Incentive Area"); and

**WHEREAS**, the CITY has the authority under Chapter 380 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso; and

**WHEREAS**, the CITY determines that a grant of funds to APPLICANT will serve the public purpose of enhancing the value of the local tax base and foster and support economic growth and opportunity and to ensure new investments will market the area as a thriving place to work, live and visit, within the City of El Paso's historic downtown core; and

**WHEREAS**, the CITY and APPLICANT desire the redevelopment of the Project and the CITY has further determined that the Project will advance the City's revitalization strategy for the future growth and development of the downtown area which is the economic heart of the City and directly and indirectly results in the creation of additional jobs in the City of El Paso and stimulate commercial activity in an underdeveloped area, the value of such benefits to the CITY outweighing the amount of Grant funds the CITY will provide to APPLICANT under this Agreement; and

**WHEREAS**, the Project in the manner more fully described in this Agreement will encourage increased economic development in the City of El Paso's historic downtown core, result in significant increases in the CITY'S property tax revenues, sales tax revenues, and

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improve the CITY'S ability to provide for the health, safety and welfare of the citizens of El Paso and creating an area with quality and thriving places to work, live and visit; and

**WHEREAS**, the CITY has concluded and hereby finds that this Agreement clearly promotes economic development in the City of El Paso and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the CITY and APPLICANT.

**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 are hereby acknowledged, the parties agree as follows:

#### **SECTION 1. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- A. **Agreement.** The word "Agreement" means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- B. **Applicant.** The word "APPLICANT" means **South El Paso Street Properties**, a Texas Corporation.
- C. **Base Year Value.** The words "Base Year Value" mean the value of the real and personal property on the rolls as of January 1<sup>st</sup> of the year in which this Agreement is executed.
- D. **City.** The word "CITY" means the City of El Paso, Texas.
- E. **Comprehensive Plan.** The words "Comprehensive Plan" means the City of El Paso's Comprehensive Plan entitled "Plan El Paso" adopted by the El Paso City Council on March 6, 2012.
- F. **Development.** The word "Development" means renovation, restoration and rehabilitation of commercial properties or multi-family use development within the Incentive Area that utilize the use of design guidelines described in the Comprehensive Plan and meet the eligibility criteria of the New Construction Downtown Incentive Policy incorporated herein for all purposes, such Development of the Project being more specifically described by **EXHIBIT A**, which is attached hereto and incorporated herein for all purposes.
- G. **Downtown Historic District.** The words "Downtown Historic District" means a special purpose district as defined in Title 20 of the City of El Paso municipal code (as depicted on the Map attached hereto as Exhibit B, within the "Incentive Area").
- H. **Downtown Plan.** The words "Downtown Plan" means the Downtown 2015 Plan adopted by El Paso City Council on October 31, 2006, and incorporated into the Comprehensive Plan pursuant to the provisions of Section 213.002 of the Texas Local Government Code (as depicted on the Map attached hereto as Exhibit B, within the "Incentive Area – Level 2").

- I. **Grant.** The word “Grant” means each annual payment to APPLICANT under the terms of this Agreement computed as the sum of the applicable rebates: (i) Property Tax Rebate; (ii) Public Improvement Rebate; and (iii) Ground Floor Sales & Use Tax Rebate.
- J. **Grant Submittal Package.** The words “Grant Submittal Package” mean the documentation required to be supplied to CITY on a yearly basis as a condition of receipt of any Grant, with such documentation more fully described in **EXHIBIT C**, which is attached hereto and incorporated herein for all purposes.
- K. **Ground Floor Retail Sales & Use Tax Rebate.** The words “Ground Floor Retail Sales and Use Tax Rebate” means 50% rebate of the CITY’S one percent (1%) Sales and Use Tax Receipts generated by and attributable solely to Retailer sales of Taxable Items consummated at the Property located in the Project in the immediately prior calendar year and remitted from the State Comptroller to the City and payable from the CITY’s general revenue fund. For historic landmark buildings or contributing buildings within the historic districts, the Ground Floor Retail Sales and Use Tax Rebate means 100% of the CITY’S one percent (1%) Sales and Use Tax Receipts generated by and attributable solely to Retailer sales of Taxable Items consummated at the Property located in the Project in the immediately prior calendar year and remitted from the State Comptroller to the City and payable from the CITY’s general revenue fund.
- L. **Minimum Expenditures.** The words “Minimum Expenditures” mean those public improvements costs incurred by APPLICANT or third parties that exceed \$10 Million, associated with the Project within the Incentive Area in Level 1, to include cash and in-kind contributions.
- M. **Minimum Investment.** The words “Minimum Investment” mean those costs incurred by APPLICANT or third parties in the acquisition, construction or furnishing of the improvements for the Project, to include cash and in-kind contributions.
- N. **Parking Structure.** The words “Parking Structure” means as per Title 21 of the El Paso Municipal Code (21.70.010), parking structure means a building containing one or more stories of parking above grade.
- O. **Project.** The word “Project” means the project more particularly described in **Exhibit “A”** attached hereto and incorporated herein by reference.
- P. **Property.** The word “Property” means approximately 0.079744 acres of real property located at 601 S. El Paso Street in El Paso, Texas, more specifically described on Exhibits A and A-1, incorporated herein by reference for all purposes of this Agreement.
- Q. **Property Tax Rebate.** The words “Property Tax Rebate” means 100% rebate of the CITY’s portion of the incremental ad valorem property tax revenue, not to exceed the total cumulative value of the CITY’s portion of the incremental ad valorem property tax revenue generated by the subject property in the Project identified in Exhibit A above the Base Year Value for the Grant Period and payable from the CITY’s general revenue fund. Property Tax Rebate is only available on properties from which the City receives ad valorem taxes

(i.e. taxes cannot be diverted through Historic Tax Credits, Transportation Reinvestment Zone (TRZ), prior 380 agreements, Tax Increment Reinvestment Zones (TIRZ) or other means, except for properties within Tax Increment Reinvestment Zone No. 5). The base year used for the calculation of incentives will be the year of contract execution. **Properties located in a TRZ or TIRZ may be eligible for the Property Tax Rebate provided above subject to available funds in the Sustainable City Centers Fund.**

- R. **Public Improvements Rebate.** The words “Public Improvements Rebate” means an amount equal to 50% of the public improvements costs based on the following minimum investment level and maximum rebate amount:

<b>Level of Investment in Downtown Development Project</b>	<b>City’s Maximum Rebate of Public Improvements</b>
\$10,000,000	\$100,000
\$15,000,000	\$150,000
\$20,000,000	\$200,000
\$25,000,000	\$250,000
\$30,000,000	\$300,000
\$35,000,000	\$350,000
\$40,000,000	\$400,000
\$45,000,000	\$450,000
\$50,000,000	\$500,000

The payments to APPLICANT under the terms of this Agreement shall not to exceed the total cumulative value of the CITY’s portion of the incremental ad valorem property tax revenue generated by the subject property in the Project identified in Exhibit A above the Base Year Value for the Extended Grant Period and payable from the CITY’s general revenue fund.

- S. **Retailer(s).** The word “Retailer(s)” means tenants and lessees of the Property in the Development required by the State Comptroller to collect Sales and Use Tax on the sale of Taxable Items consummated in the City at the Property in the Development.
- T. **Sales and Use Tax.** The words “Sales and Use Tax” mean the CITY’S one percent (1%) sales and use tax imposed pursuant to Chapter 321 of the Texas Tax Code on the sale of Taxable Items by Retailers consummated at the Property located in the Development and remitted to the CITY by the State Comptroller, to be used only as a measurement for computation of the Grant to be paid through the use of general funds.
- U. **Sales Tax Receipts.** The words “Sales Tax Receipts” mean CITY’S receipt of Sales and Use Tax revenue remitted from the State Comptroller based upon the Retailers’ collection of Sales and Use Tax during the term of this Agreement, which are generated by and solely attributable to the Retailers’ sale of Taxable Items consummated at the Property located in the Development in El Paso, Texas.

- V. **San Jacinto Plaza.** The words “San Jacinto Plaza” means a three (3) block radius surrounding San Jacinto Plaza (as depicted on the Map attached hereto as Exhibit A, within the “Incentive Area – Level 1”).
- W. **Smart Code.** The words “Smart Code” mean a land development ordinance adopted by City Council as referenced in Title 21 of the City of El Paso municipal code. The ordinance is a set of development policies and principles designed to create compact, walkable and mixed-use neighborhoods with a variety of transportation options, conservation of green space and local character with diverse housing options.
- X. **State Comptroller.** The words “State Comptroller” mean the office of the Texas Comptroller of Public Accounts.
- Y. **Sustainable City Centers Fund.** The words “Sustainable City Centers Fund” means a funding source for economic development incentives for projects located in a Transportation Reinvestment Zone (TRZ) or Tax Increment Reinvestment Zone (TIRZ) whereby the tax increment has already been allocated to these specific zones.
- Z. **Taxable Items.** The words “Taxable Items” have the same meaning assigned in Chapter 151, Texas Tax Code.
- AA. **Union Plaza District.** The words “Union Plaza District” mean a special purpose district as defined in Title 20 of the City of El Paso municipal code (as depicted on the Map attached hereto as Exhibit B, within the “Incentive Area – Level 1”).

## **SECTION 2. TERM AND GRANT PERIOD.**

The term of this Agreement shall commence on the Effective Date (as hereinafter defined) and shall terminate on the first to occur: (i) the date when the Grant is fully paid; (ii) ten (10) years from the Effective Date, (iii) the proper termination of this Agreement in accordance with the applicable provisions contained herein or (iv) termination by mutual consent of the parties in writing. The Effective Date of this Agreement shall be the date upon which both parties have fully executed this Agreement. However, the term of this Agreement may be extended if the APPLICANT meets the Minimum Expenditures for the Public Improvements Rebate in accordance with the Downtown New Construction Incentive Policy (the “Extended Term”). However, APPLICANT’s eligibility for annual Grant payments shall be limited to ten (10) consecutive years for Development in a Level 1 Incentive Area or five (5) consecutive years for Development in a Level 2 Incentive Area (the “Grant Period”) within the term of this Agreement. The Grant Period may be extended until the applicable Public Improvements Rebate is fully paid (“Extended Grant Period”) if APPLICANT meets the Minimum Expenditures. The Grant Period shall begin with the first year being the first tax year that begins after the issuance of the Certificate of Occupancy for the Development. The CITY shall review APPLICANT’s eligibility for Grant Payments on an annual basis during the Grant Period.

## **SECTION 3. OBLIGATIONS OF APPLICANT.**

In consideration of CITY agreeing to pay the Grant in accordance with the terms, provisions and conditions of this Agreement, APPLICANT agrees to the following, which are not obligations of APPLICANT, but are terms and conditions that must be fulfilled in order to receive the Grant:



A. **PROJECT.**

(1) APPLICANT agrees that the renovation Project is a private commercial or multi-family use property that includes investment in adaptive reuse or rehabilitation of a property in a historic district or with a historic designation located in the Incentive Area depicted on Exhibit B attached hereto.

(2) APPLICANT agrees to redevelop, at its sole cost, the Project. APPLICANT must obtain the building permits for the Project within twenty four (24) months from the date of the adoption of the Downtown New Construction Incentive Policy.

(3) APPLICANT agrees that the Project shall not include the demolition of properties with a historic overlay that are deemed historic or contributing unless specifically approved by El Paso City Council.

(4) APPLICANT agrees that renovation shall be in accordance with the requirements and review provisions of Chapter 20.20 (Historic Landmark Preservation) of the City municipal code, where applicable.

(5) APPLICANT agrees that it shall make or cause to be made, at its sole cost and expense or the expense of third parties, Minimum Investment of Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000).

(6) APPLICANT agrees that all Parking Structures shall contain a ground floor retail or building liners in accordance with the Comprehensive Plan.

(7) Within Twenty four (24) months of the Effective Date of this Agreement, **APPLICANT** shall submit documentation to the **CITY** to verify the Minimum Expenditures for the public improvements and Minimum Investment associated with the completion of the Project.

(8) APPLICANT shall pay by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Development and any other property within the City of El Paso. APPLICANT must demonstrate that it has incurred no delinquent taxes by providing certified city tax certificates for each parcel of property owned in the City of El Paso. APPLICANT shall have the right to contest the appraised value of the Development as provided by law. However, APPLICANT covenants and agrees that during the term of this Agreement it shall not challenge or permit anyone else to take actions on its behalf to challenge any assessments by the Central Appraisal District at Base Year Value or lower.

B. **RETAILERS REPORT.** During the term of this Agreement beginning with the Commencement Date, APPLICANT shall provide the CITY, and maintain during the term of this Agreement: a list of each Retailer that occupies or occupied the Development during the Grant Period including the taxpayer identification number, taxpayer outlet number (as shown on the Texas Sales Tax Permit), taxpayer name and taxpayer location as reported to the State Comptroller, and

any other information required by the State Comptroller to generate and provide the CITY with the Comptroller's Sales Tax Report for the Grant Period (the "Retailers Report").

C. **AMOUNT OF GRANT.** The total amount of the Grant payable by the CITY under this Agreement if any, shall not exceed the aggregate of all payments made by the CITY that results in a maximum aggregate amount of more than Two Million and 00/100 Dollars (\$2,000,000) per fiscal year in the aggregate for all existing Chapter 380 Agreements under adopted policies.

D. **DISBURSEMENT OF GRANT.**

(1) During the term of this Agreement and beginning as of the commencement of the Grant Period and ending twenty years thereafter, or at termination, whichever comes first, and subject to the conditions contained in this Agreement, APPLICANT shall be eligible to receive on a yearly basis the Grant payment.

(2) APPLICANT'S eligibility for any Grant payment is expressly contingent upon APPLICANT'S satisfaction of the requirements of Section 3 of this Agreement. Under no circumstance shall the CITY be required to disburse more than Twenty-seven thousand, one-hundred dollars. (\$27,100) as the total amount of the Grant nor shall APPLICANT be entitled to receive the Grant unless it satisfies all the requirements of this Agreement. APPLICANT agrees to provide the CITY with any documentation the CITY may reasonably require or request to substantiate the APPLICANT'S compliance with this Agreement.

(3) In order to receive the disbursement of the Grant, APPLICANT must submit a Grant Submittal Package, as specified in Section 3(E) below.

E. **GRANT SUBMITTAL PACKAGE.**

(1) Unless otherwise agreed by the CITY and APPLICANT in writing, APPLICANT shall annually submit one Grant Submittal Package which shall be in the form provided in Exhibit C, together with the requisite documentation. No later than July 31, 2014, APPLICANT shall submit to the CITY the initial Grant Submittal Package to commence the Grant Period. Thereafter, the APPLICANT'S annual Grant Submittal Package must be submitted no later than July 31 of each year.

(2) Concurrent with the submittal of a Grant Submittal Package APPLICANT will submit to the CITY documentation as may be reasonably necessary to verify the expenditure to date of the Minimum Expenditures, which have not otherwise been verified as part of a prior submittal. The CITY will provide to APPLICANT a written explanation for any Minimum Expenditures that the CITY determines cannot be verified. APPLICANT may submit additional documentation to the CITY in order to obtain verification.

(3) If APPLICANT shall fail to timely submit a Grant Submittal Package for a particular year, then the CITY may give APPLICANT written notice of its failure to timely submit such Grant Submittal Package, and APPLICANT shall have thirty (30)

calendar days calculated from the date on which such written notice is given in which to submit such Grant Submittal Package. The CITY'S determination of the amount of the Grant payment due to APPLICANT is final; provided, however APPLICANT may appeal to the City Council within thirty (30) days of payment, the City Council shall hear the appeal within thirty (30) days and the City Council's determination of the amount of the Grant payment shall be final; provided, however, nothing herein shall limit (or be construed to limit) APPLICANT'S rights and remedies under this Agreement.

F. **WAIVERS OF SALES TAX CONFIDENTIALITY.**

(1) Applicant shall cause the Retailers to provide the CITY and APPLICANT, and maintain during the term of this Agreement a Waiver of Sales Tax Confidentiality from each Retailer which authorizes the State Comptroller to release to the CITY and APPLICANT Sales and Use Tax information pertaining to the sale of Taxable Items by Retailers at the Property in the Development during the term of this Agreement substantially in the form attached hereto as Exhibit D. APPLICANT will be responsible for obtaining the Waivers of Sales Tax Confidentiality from Retailers and providing the Waivers of Sales Tax Confidentiality to the CITY. APPLICANT shall cause the Retailers to maintain an effective Waiver of Sales Tax Confidentiality during the term of this Agreement. The CITY will verify all such information, but the CITY shall not have an obligation to otherwise collect sales tax information and will have no obligation to make payments under this Agreement without such sales and use tax payment confirmation from the State Comptroller.

(2) The confidential sales tax information provided or reported by the State Comptroller to the CITY shall be used to determine in the amount of the Grant payment that APPLICANT is eligible to receive. For any particular Grant Submittal Package and Grant amount determination, the CITY shall only consider the Sales and Use Tax Receipts attributable to Retailers that appear on the Retailers Report and that have a valid and effective Waiver of Sales Tax Confidentiality on file with the CITY.

(3) While agreement is in effect, APPLICANT shall, upon request of CITY, provide such additional documentation as may be reasonably requested by the CITY to evidence, support and establish the Sales and Use Tax Receipts.

**SECTION 4. OBLIGATIONS OF CITY.**

During the term of this Agreement and so long as an event of default has not occurred and is continuing as set forth herein (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), CITY shall comply with the following terms and conditions:

- A. The CITY agrees to process any Grant Payments to APPLICANT within ninety (90) days after its approval of the APPLICANT's Grant Submittal Package.
- B. The CITY shall determine the total amount of Grant payments due to the APPLICANT, if any, on an annual basis. Provided the APPLICANT satisfies all the requirements of this Agreement, APPLICANT shall be eligible for the annual Grant payment.



Property Tax Rebate is only available on properties from which the City receives ad valorem taxes (i.e. taxes cannot be diverted through Historic Tax Credits, Transportation Reinvestment Zone (TRZ), prior 380 agreements, Tax Increment Reinvestment Zones (TIRZ) or other means, except for properties within Tax Increment Reinvestment Zone No. 5). The base year used for the calculation of incentives will be the year of contract execution.

**Properties located in a TRZ or TIRZ may be eligible for the Property Tax Rebate provided above subject to available funds in the Sustainable City Centers Fund.**

Under no circumstances shall the total aggregate of Grant payments exceed the total value of the City's portion of the incremental ad valorem property tax revenue generated by the subject property in the Project above the Base Year Value for the Grant Period and payable from the CITY's general revenue fund or Twenty-seven thousand, one-hundred and 00/100 Dollars (\$27,100).

#### **SECTION 5. EVENTS OF DEFAULT.**

Each of the following shall constitute an Event of Default under this Agreement:

- A. **False Statements.** In the event the APPLICANT provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, and APPLICANT fails to cure same within thirty (30) days after written notice from the CITY describing the violation shall be deemed an event of default. If such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, and APPLICANT fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, such actions or omissions shall also be deemed an event of default. Further, if APPLICANT obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and APPLICANT fails to provide written notice to the CITY of the false or misleading nature of such warranty, representation or statement within ten (10) days after APPLICANT learns of its false or misleading nature, such action or omission shall be deemed an event of default. In the event this Agreement is terminated pursuant to this Section, all Grant Payments previously provided by the CITY pursuant to this Agreement shall be recaptured and repaid by APPLICANT within sixty (60) days from the date of such termination.
- B. **Insolvency.** The dissolution or termination of APPLICANT's existence as a going business or concern, APPLICANT'S insolvency, appointment of receiver for any part of APPLICANT'S portion of the Property, any assignment of all or substantially all of the assets of APPLICANT for the benefit of creditors of APPLICANT, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against APPLICANT shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.

C. **Construction of Development.** APPLICANT's failure to comply with its construction obligations set forth in this Agreement and APPLICANT's failure to cure same within thirty (30) days after written notice from the CITY shall be deemed an event of default. If such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence but APPLICANT fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute such cure, except to the extent such failure is caused by any act or failure to act on the part of the CITY, such actions or omissions shall be deemed events of default.

D. **Property Taxes.** Prior to the receipt of any reimbursement grant payments under this incentive program, the Applicant must demonstrate that it has incurred no delinquency taxes by providing certified city tax certificates for each parcel of property owned in the City of El Paso. Applicants who are exempt from payment of ad valorem property taxes on the subject property are deemed ineligible to participate in this incentive program

In the event APPLICANT allows any property taxes owed to the CITY to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) days after written notice thereof from the CITY and/or El Paso Central Appraisal District, such actions or omissions shall be deemed an event of default. Subject to the restrictions noted herein, APPLICANT shall have the right to contest the appraised value of the Development provided however, the APPLICANT agrees that it will not contest or allow any party to contest on its behalf a value of less than Base Year Value which the parties have agreed is the minimum value for tax purposes. APPLICANT's failure to comply with this prohibition against maintaining the minimum tax value shall constitute an event of default and may result in a termination of this Agreement.

E. **Other Defaults.** Failure of APPLICANT or CITY to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, and APPLICANT or CITY fails to cure such failure within thirty (30) days after written notice from the other party describing such failure shall be deemed an event of default. If such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but if APPLICANT or CITY also fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute the cure of such failure, such act or omission shall be deemed an event of default.

F. **Failure to Cure.** If any event of default by APPLICANT shall occur, and after APPLICANT fails to cure same in accordance herewith, then this Agreement is terminated without any further action required of the CITY and the CITY's obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

## **SECTION 6. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT OF APPLICANT.**

The CITY may terminate this Agreement for its convenience and without the requirement of an event of default by APPLICANT, which shall become effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt.

## **SECTION 7. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- A. **Amendments.** This Agreement 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 both parties.
- 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 El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.
- C. **Assignment of APPLICANT's Rights.** APPLICANT understands and agrees that the CITY expressly prohibits APPLICANT from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds without the CITY's prior written consent. Any such attempt to sell, transfer, assign or convey without the CITY's prior written consent shall result in the immediate termination of this Agreement, with no ability for the APPLICANT to cure.
- D. **APPLICANT's Sale or Transfer of the Development.** Prior to any sale or other transfer of ownership rights in the Development, APPLICANT shall notify the CITY in writing of such sale or transfer within thirty (30) business days of the effectiveness of such sale or transfer. This provision is a material term of this Agreement and the failure to notify the CITY of such sale or transfer within the applicable period shall constitute an event of default.
- E. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. CITY warrants and represents that the individual executing this Agreement on behalf of CITY has full authority to execute this Agreement and bind CITY to the same. The individual executing this Agreement on APPLICANT's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant to the same.
- F. **Completion of Development.** As consideration for the agreements of the CITY as contained herein, APPLICANT agrees that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the Development and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations.

- G. **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.
- H. **Execution of Agreement.** The El Paso City Council has authorized the City Manager to execute and to amend this Agreement on behalf of the CITY where in accordance with the requirements of the Multi-Family Need Incentive Policy and Chapter 380 Grant Program.
- I. **Employment of Undocumented Workers.** During the term of this Agreement, APPLICANT agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), APPLICANT shall repay the amount of the Grant payments received by APPLICANT from the CITY as of the date of such violation not later than one hundred twenty (120) days after the date APPLICANT is notified by CITY of a violation of this section, plus interest from the date the Grant payment(s) was paid to APPLICANT, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to APPLICANT until the date the reimbursement payments are repaid to CITY. CITY may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant payment(s) subject to repayment under this section. APPLICANT is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom APPLICANT contracts.
- J. **Filing.** The CITY shall file this Agreement in the deed records of El Paso County, Texas upon APPLICANT's request and payment of all recordation costs.
- K. **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, 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 obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- L. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

CITY: City of El Paso  
City Manager  
**PO BOX 1890**  
**EL PASO, TX 79950-1890**

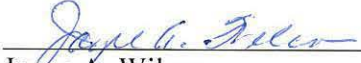
Copy To: City of El Paso  
Director City Development Department  
**PO BOX 1890**  
**EL PASO, TX 79950-1890**

APPLICANT: South El Paso Street Properties, LLC  
415 N. Mesa St.  
El Paso, TX 79901-1221


- M. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the CITY, whether now existing or in the future arising
- N. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 12<sup>th</sup> day of February, 2013.

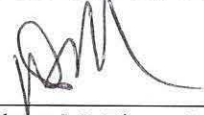
**CITY OF EL PASO, TEXAS**

  
\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Karla Nieman  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Mathew McElroy, Director  
City Development Department



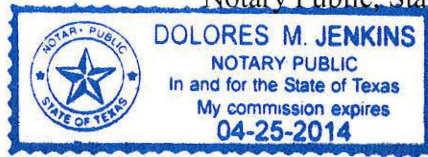
ACKNOWLEDGMENT

STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on the 13<sup>th</sup> day of February, 2013,  
by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso, Texas** (CITY).

Dolores M. Jenkins  
Notary Public, State of Texas

My Commission Expires:  
04/25/2014



(SIGNATURES CONTINUE ON FOLLOWING PAGE)

APPLICANT: South El Paso Street Properties, LLC

Jorge Hernandez  
Name: Jorge Hernandez  
Title: Manager

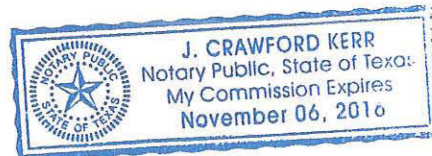
ACKNOWLEDGMENT

STATE OF TEXAS §  
§  
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 1 day of FEBRUARY, 2013, by JORGE HERNANDEZ, as MANAGER of South El Paso Street Properties (APPLICANT).

JMK  
Notary Public, State of TEXAS

My Commission Expires:  
\_\_\_\_\_

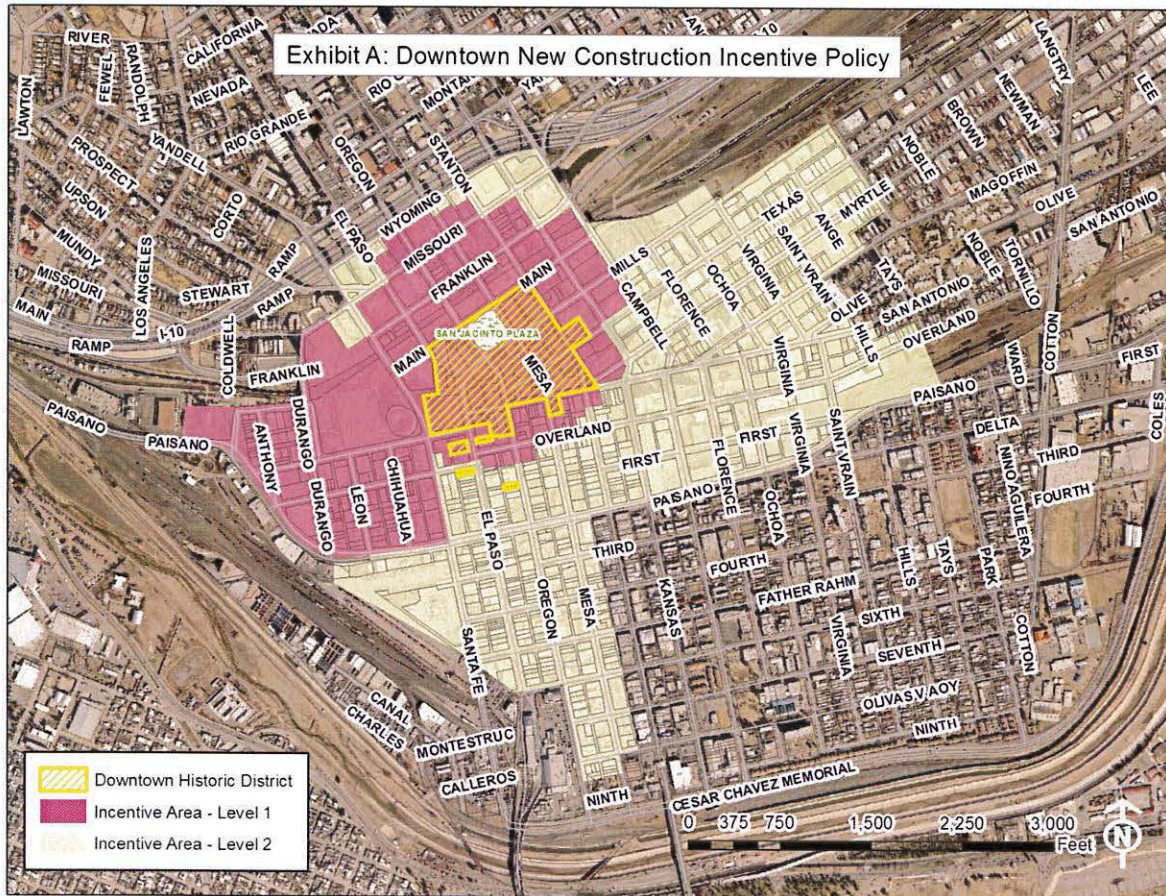


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**EXHIBIT A**

**119 CAMPBELL LOT 10 3484 SQ FT**

## EXHIBIT B Incentive Area



## EXHIBIT C

### [Grant Submittal Package Form]

**South El Paso Street Properties** believes that it has substantially met its obligations under the Chapter 380 Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ and signed by \_\_\_\_\_ of **South El Paso Street Properties**. Pursuant to the Agreement, **South El Paso Street Properties** submits this Grant Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted.

1. Site Development plan approvals;
2. Property tax payment receipts for the Property located in the Incentive Area;
3. Proof of ownership for subject Property;
4. Copies of all applicable approvals and permits;
5. Documentation to evidence the amount of sales taxes paid as a result of the sales of Taxable Items by Retailers at the Property located in the Incentive Area;
6. Retailers Report;
7. Waiver of Sales Tax Confidentiality Forms for Retailers on the Retailers Report;
8. Documentation to evidence Minimum Expenditures to date and not previously verified.

It is understood by \_\_\_\_\_ that the City of El Paso has up to 60 days to process this request and reserves the right to deny the Grant request if the company has not complied with the terms of the Agreement.

Signature: \_\_\_\_\_



**EXHIBIT D**

**Waiver of Sales Tax Confidentiality**

Date \_\_\_\_\_

I authorize the State of Texas Comptroller of Public Accounts to release sales tax Information pertaining to the taxpayer indicated below to \_\_\_\_\_, a \_\_\_\_\_, its successors, assigns or nominees, and the **City of El Paso, Texas**. I understand that this waiver applies only to place of business located at \_\_\_\_\_ in the City of El Paso, El Paso County, Texas.

Please print or type the following information as shown on your Texas Sales and Use Tax permit:

Name of Taxpayer Listed on Texas Sales Tax Permit:

\_\_\_\_\_  
Name Under Which Taxpayer is Doing Business (d/b/a or Store Name):

\_\_\_\_\_  
Taxpayer Mailing Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Physical Location of Business Permitted for Sales Tax in El Paso, Texas:

\_\_\_\_\_  
Texas Taxpayer ID Number  
Tax Outlet Number  
(As shown of Texas Sales Tax Permit)

Authorized Signature

\_\_\_\_\_  
Printed Name:

Title:

Phone:

The authorized signature must be an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at (800) 531-5441.