

**CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Office of Economic Development
AGENDA DATE: Regular Agenda March 31 09
CONTACT PERSON/PHONE: Kathryn Dodson, PhD, Director 541-4670
DISTRICT(S) AFFECTED: [All]

SUBJECT:

[Discussion and Action on a Resolution Establishing the Multi-family Housing Needs Incentives Policy and Chapter 380 Grant Program. Source of Funding: General Fund.] [Economic Development, Kathryn Dodson, Ph.D. (915) 541-4670]

BACKGROUND/DISCUSSION:

Recent local housing market analyses conducted by or on behalf of Fort Bliss have determined that at least 20,000 troops and civilian personnel and their family members are expected to reside within the greater El Paso community, however, the El Paso region currently lacks approximately 8,000 multi-family housing units which are needed to accommodate the dramatic population growth that will result from the expansion of Fort Bliss.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

No

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

380 Grants - General Fund rebates of incremental property taxes paid to City of El Paso

BOARD/COMMISSION ACTION:

Enter appropriate comments or N/A.

LRC March 26, 2009

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: If RCA is initiated by Purchasing, client department should sign also). *Information copy to appropriate Deputy City Manager*

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

**A RESOLUTION ESTABLISHING THE MULTI-FAMILY HOUSING NEEDS
INCENTIVE POLICY AND CHAPTER 380 GRANT PROGRAM**

WHEREAS, Fort Bliss is expanding more than any other installation in the U.S. Armed Forces and by 2013 there will be an additional 28,000 troops stationed at Fort Bliss under Base Realignment and Closure (BRAC) and Grow the Army as well as an additional 37,000 accompanying family members; and

WHEREAS, the continued expansion of Fort Bliss has a significant and positive affect on the economic development of the City of El Paso with recent analyses projecting an annual economic impact of 3,400,000 billion dollars for the City alone; and

WHEREAS, recent local housing market analyses conducted by or on behalf of Fort Bliss have determined that at least 20,000 troops and civilian personnel and their family members are expected to reside within the greater El Paso community, however, the El Paso region currently lacks approximately 8,000 multi-family housing units which are needed to accommodate the dramatic population growth that will result from Fort Bliss expansion; and

WHEREAS, El Paso City Council has determined that it is necessary to establish a short-term city-wide multi-family housing needs incentive policy and accompanying Chapter 380 grant program that promotes and stimulates business activity that will result in the immediate construction of large-scale multi-family housing developments and will alleviate the critical housing needs of the City related to Fort Bliss expansion; and

WHEREAS, Article III, §52a, Texas Constitution and Chapter 380, Texas Local Government Code provides that a municipality may establish programs to promote local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, El Paso City Council has also determined that supporting the continued expansion of Fort Bliss by means of the short-term incentive policy and Chapter 380 grant program described herein, will have a positive economic impact on the local economy and will further City Council's economic development objectives of increasing job creation, increasing redevelopment efforts, and increasing the City's property tax base.

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

1. **FINDINGS AND DETERMINATIONS.** The findings and determinations contained in the recitals above are incorporated herein to support the finding of a public purpose and establishment of the Multi-Family Housing Needs Incentive Policy and Chapter 380 Grant Program, pursuant to Chapter 380, Texas Local Government Code.
2. **PROGRAM ELIGIBILITY AND GRANT FUNDING AMOUNT.** An Applicant who constructs one or more new multi-family housing development projects each consisting of at least 150 housing units with a minimum total aggregate construction of 250 housing

units, which are located within the City limits, shall be eligible for annual reimbursement grants in an amount equal to the designated percentage of Applicant's actual payment of the fees identified in **Table 2** generated after the adoption date of this Resolution, with total aggregate reimbursement grant payments not to exceed the total value of the City's portion of the incremental ad valorem property tax revenue assessed against the subject property above the set base year per development for the term of the Chapter 380 Agreement ("the reimbursement cap"), in conformance with the following incentive schedule (**Table 1**):

Table 1
New Multi-Family Housing Units and Percentage(s) of Fee Reimbursement

<p><u>Tier 1</u></p> <p>For Construction of Units 250 – 500: 25%</p>
<p><u>Tier 2</u></p> <p>For Construction of Units 250 - 500: 25%</p> <p>For Construction of Units 501 – 749: 50%</p>
<p><u>Tier 3</u></p> <p>For Construction of Units 250 – 500: 25%</p> <p>For Construction of Units 501 – 749: 50%</p> <p>For Construction of Units 750+ : 100%</p>
<p><u>For all Tiers:</u> The yearly percentage of fee reimbursement is based on total number of housing units completed in all Development Projects and will be determined on a yearly basis.</p>

Table 2
Project-Generated Fees Eligible for Reimbursement

- Environmental Fees (per unit)	- Grading permit clearing & access
- Storm water Utility Fees (per unit)	- Plan checking fees
- Subdivision platting application fees (amending, major final, major combination, major preliminary, minor subdivision, resubdivision final, resubdivision preliminary, resubdivision combination)	- Sign permit fees
	-Building permit fees
- Rezoning application fees	- Vacation of recorded subdivision fees
- Special permit application fees	- Vacation of public easement fees
- Detailed Site Development application fees	- Vacation of public rights-of-way fees

- Zoning condition or amendment release application fees	-Dedication of Public easements by metes & bounds fees
- Off-premise sign demolition fees	- Dedication of rights of way by metes & bounds fees - ROW metes & bounds dedication fees
- Building demolition fees	- Parkland Fee
Reimbursement of the identified fees above is available as applicable, and only if the Applicant was required to pay the fees listed.	

In addition, if the Applicant is required to make a parkland dedication(s), the Applicant will be eligible for an additional amount equal to the per unit maximum Parkland fee (currently \$680/unit for multifamily development) less the applicable percentage reduction in Table 1, subject to the total reimbursement cap.

Further, Applicant's reimbursement eligibility is expressly subject to the following program requirements:

- A. ***Minimum Construction required.*** The Applicant must construct one or more new multi-family housing development projects each consisting of at least 150 housing units with a minimum total aggregate construction of 250 housing units to be eligible for annual reimbursement grants under the terms and conditions specified in its Chapter 380 Grant Agreement with the City. Only multi-family housing development projects that have not received any building permits prior to the adoption date of this Resolution are eligible for participation in this incentive program.

For purposes of this incentive program, "multi-family housing" means a dwelling or group of dwellings on one (1) lot or contiguous lots containing separate living units for five (5) or more families, but which may have joint services or facilities including duplexes, 3-4 unit structures, and apartment-type structures with five units or more. Multi-family housing also includes condominium units in structures of more than one living unit. Applicants are strongly encouraged to construct scattered site multi-family housing unit complexes.

For each multi-family housing development that consists of 400 or less housing units, the Applicant will be required to obtain a Certificate of Occupancy for such multi-family housing developments constructed within twenty-four (24) months from the execution date of the Chapter 380 Grant Agreement. For each multi-family housing development that consists of over 400 housing units, the Applicant will be required to obtain a Certificate of Occupancy for such multi-family housing developments constructed within thirty-six (36) months from the execution date of the Chapter 380 Grant Agreement. Where the parties' Agreement is amended to include additional multi-family housing development(s) that are eligible for reimbursement, the applicable Certificate of Occupancy issuance deadline governed by the size of each additional multi-family housing development shall run from the amendment execution date as to those additional development(s).

- B. **Site Development Plan.** The Applicant must submit a site development plan for each proposed multifamily housing development for administrative approval by the Development Services Department- Planning Division prior to the issuance of any building permits. The site development plan must include the following information: legal description of the property or metes and bounds description; boundaries of the property proposed for development; location and arrangement of structures; size and use of structures, including number of dwelling units and number of bedrooms in each unit; lots lines with dimensions of the areas; required yards and setbacks; landscaped planted areas, where applicable; curb cuts and driveways; pedestrian ways and sidewalks; stamp or seal of a professional engineer, registered architect, or registered land surveyor who prepared the plans; on-site parking areas, and loading/unloading berths where applicable (showing number and size of on-site parking spaces, including accessible spaces, and lighting of parking areas); storm water drainage; retaining walls, where applicable; screening walls or fences, where required; utility rights-of-way and easements; size and sign of exterior signs; architectural design of buildings (side elevations). The Applicant shall also submit proof of ownership, certified city tax certificates for each parcel of property.
- C. **No Property Tax Delinquency.** 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.
- D. **Permits.** The Applicant must demonstrate that it obtained all applicable approvals and permits required under federal, state, and local laws and regulations prior to commencing construction in order to be eligible for reimbursement under this incentive program.
- E. **Separate Agreements required.** In order to take advantage of this incentive program, the Applicant must execute a separate Chapter 380 Agreement with the City, consistent with Chapter 380 of the Texas Local Government Code, agreeing to the terms and conditions under which Applicant will be entitled to reimbursement grant payments. Under any Agreement the duration of eligibility for receipt of annual reimbursement grant payments as to each development project shall be for five (5) years. The Agreement shall be in the form and substance substantially similar to the Chapter 380 Economic Development Program Agreement attached to this Resolution as **Exhibit "A"** and the City Manager is hereby granted authority to enter into and amend such Agreements when the proposed multi-family housing development meets the program guidelines and requirements specified herein.
- F. **Documentation required.** As part of the Applicant's contractual obligations, Applicant will be required to provide documentation necessary to support each grant payment request, in the form prescribed by the City's Director of Economic Development.

3. **TERM.** The Multi-Family Housing Needs Incentive Policy and Chapter 380 Grant Program established herein shall exist from the date of the adoption of this Resolution until December 31, 2013, at which time this incentive program shall cease and no further Chapter 380 Agreements shall be executed under this program. The City's Director of Economic Development shall monitor this incentive program and if prior to December 31, 2013, the City will have incentivized the construction of approximately 8,000 multi-family housing units through the existing Chapter 380 Agreements, the El Paso City Council may reconsider the need for continuation of this program by separate formal action.

ADOPTED this ____ day of _____, 2009.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



Kathryn B. Dodson, Ph.D., Director
Economic Development Department

STATE OF TEXAS)
)
COUNTY OF EL PASO) **CHAPTER 380 ECONOMIC DEVELOPMENT**
) **PROGRAM AGREEMENT**
) (Multi-Family Housing Development)

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 **COMPNAME** (hereinafter referred to as the "APPLICANT"), a **CORPSTATE** 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, the CITY desires to provide, pursuant to Chapter 380, an incentive to APPLICANT to construct the large-scale multi-family housing development as more fully described below; 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 promoting local economic development and enhancing business and commercial activity within the CITY; and

WHEREAS, the CITY and APPLICANT desire that construction of the large-scale multi-family housing development occur in the City of El Paso to alleviate the critical housing needs of the City related to Fort Bliss expansion; and

WHEREAS, the creation of the large-scale multi-family housing development will encourage increased economic development in the CITY, provide significant increases in the CITY's property tax revenues, and improve the CITY's ability to provide for the health, safety and welfare of the citizens of El Paso; 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 **COMPNAME**, a **CORPSTATE** Corporation.
- C. **City.** The word "CITY" means the City of El Paso, Texas.
- D. **Development.** The word "Development" means one or more multi-family housing developments, each consisting of at least 150 housing units with a minimum total aggregate construction of 250 housing units, as more fully described by **EXHIBIT A**, which is attached hereto and incorporated herein for all purposes.
- E. **Base Year Value.** The words "Base Year Value" mean the value of the real and personal property on the rolls as of January 1st of the year in which this Agreement is executed.
- F. **Grant.** The word "Grant" means an annual payment to APPLICANT under the terms of this Agreement computed as an amount equal to the designated percentage in Section 4 Table 2 of Applicant's actual payment of fees identified in Section 4, Table 1 of this Agreement, 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 Development identified in Exhibit A above the Base Year Value for the term of the Agreement and payable from the CITY's general revenue fund. In addition, if the APPLICANT is required to make a parkland dedication(s), APPLICANT will be eligible for an additional amount equal to the per unit maximum Parkland fee (currently \$680/unit for multifamily development) less the applicable percentage reduction in Table 1, subject to the total reimbursement cap.
- G. **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 B**, which is attached hereto and incorporated herein for all purposes.
- H. **Multi-family Housing.** The words "multi-family housing" mean a dwelling or group of dwellings on one (1) lot or contiguous lots containing separate living units for five (5) or more families, but which may have joint services or facilities including duplexes, 3-4 unit structures, and apartment-type structures with five units or more. Multi-family also includes condominium units in structures of more than one living unit.

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, APPLICANT's eligibility for annual Grant payments shall be limited to five (5) consecutive years (the "Grant Period") within the term of this Agreement. 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.

During the term of this Agreement, APPLICANT shall comply with the following terms and conditions:

- A. APPLICANT agrees to develop and construct, at its sole cost, the Development. APPLICANT must obtain a certificate of occupancy for the Development within () months [INSERT 24 OR 36 (IF OVER 400 HOUSING UNITS)] of the Effective Date of this Agreement.
- B. Prior to the issuance of any building permits for the Development, the APPLICANT must submit to CITY's Development Services Department-Planning Division for administrative approval a site development plan for each multi-family housing development identified in Exhibit A. The site development plan must include the following information: legal description of the property or metes and bounds description; boundaries of the property proposed for development; location and arrangement of structures; size and use of structures, including number of dwelling units and number of bedrooms in each unit; lots lines with dimensions of the areas; required yards and setbacks; landscaped planted areas, where applicable; curb cuts and driveways; pedestrian ways and sidewalks; stamp or seal of a professional engineer, registered architect, or registered land surveyor who prepared the plans; on-side parking areas, and loading/unloading berths where applicable (showing number and size of on-site parking spaces, including accessible spaces, and lighting of parking areas); storm water drainage; retaining walls, where applicable; screening walls or fences, where required; utility rights-of-way and easements; size and sign of exterior signs; architectural design of buildings (side elevations).
- C. Prior to commencing construction of the Development, APPLICANT, must submit to the CITY documentation that demonstrates that it obtained all applicable approvals and permits required under federal, state, and local laws and regulations.
- D. Unless otherwise agreed by the CITY and APPLICANT, each Grant Submittal Package shall be in the form provided in **EXHIBIT B**. If APPLICANT fails to timely submit a Grant Submittal Package for a particular year, 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 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, that the

APPLICANT may appeal to the City Council within thirty (30) days of payment. The City Council shall hear the appeal within thirty (30) days of request for appeal and the City Council's determination of the amount of the Grant payment shall be final. Nothing herein shall limit (or be construed to limit) APPLICANT's rights and remedies as described in Section 5 of this Agreement.

- E. 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.

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 an annual Grant payment in an amount equal to the Table 1-designated percentage of APPLICANT's actual payment of the Development-related fees identified in Table 2 below and generated after _____, 2009 and an additional amount equal to the per unit maximum Parkland fee (currently \$680/unit for multifamily development) less the applicable percentage reduction in Table 1, if APPLICANT is required to make a parkland dedication(s); with all Grant payments to be made in accordance with the applicable fee reimbursement percentage identified in Table 1 below, subject to the following additional terms and conditions:
 - (1) The yearly percentage(s) of fee reimbursement in Table 1 is based on the total number of housing units for which a certificate of occupancy has been issued in all multi-family housing developments identified in Exhibit A and will be calculated on a yearly basis upon submission of APPLICANT's Grant Submittal Package.
 - (2) Reimbursement of the fees identified in Table 2 in the form of Grant payments to APPLICANT are available as applicable and on a one-time basis, and only if the APPLICANT paid or caused to be paid the fees identified in Table 2.

- (3) 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 Development above the Base Year Value for the term of the Agreement and payable from the CITY's general revenue fund.

Table 1
New Multi-Family Housing Units and Percentage(s) of Fee Reimbursement

<p><u>Tier 1</u></p> <p>For Construction of Units 250 – 500: 25%</p>
<p><u>Tier 2</u></p> <p>For Construction of Units 250 - 500: 25%</p> <p>For Construction of Units 501 – 749: 50%</p>
<p><u>Tier 3</u></p> <p>For Construction of Units 250 – 500: 25%</p> <p>For Construction of Units 501 – 749: 50%</p> <p>For Construction of Units 750+ : 100%</p>

Table 2
Project-Generated Fees Eligible for Reimbursement

- Environmental Fees (per unit)	- Grading permit clearing & access
- Storm water Utility Fees (per unit)	- Plan checking fees
- Subdivision platting application fees (amending, major final, major combination, major preliminary, minor subdivision, resubdivision final, resubdivision preliminary, resubdivision combination)	- Sign permit fees
	- Building permit fees
- Rezoning application fees	- Vacation of recorded subdivision fees
- Special permit application fees	- Vacation of public easement fees
- Detailed Site Development application fees	- Vacation of public rights-of-way fees
- Zoning condition or amendment release application fees	-Dedication of Public easements by metes & bounds fees

- Off-premise sign demolition fees	- Dedication of rights of way by metes & bounds fees - ROW metes & bounds dedication fees
- Building demolition fees	-Parkland Fee
Reimbursement of the identified fees above is available as applicable, and only if the Applicant was required to pay the fees listed.	

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
2 Civic Center Plaza
El Paso, Texas 79901

Copy To: City of El Paso
Economic Development Department Director
2 Civic-Center Plaza
El Paso, Texas 79901

APPLICANT: _____

- 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 ____ day of _____, 20__.

CITY OF EL PASO, TEXAS

 Joyce A. Wilson
 City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

 Marie A. Taylor
 Assistant City Attorney

 Kathryn Dodson, Director
 Economic Development Department

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
 COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20__, by **Joyce A. Wilson, as City Manager of the City of El Paso, Texas (CITY).**

 Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

EXHIBIT A

[Legal Description/Project Development]

EXHIBIT B

[Grant Submittal Package Form]

COMPNAME believes that it has substantially met its obligations under the Chapter 380 Agreement dated the _____ day of _____, 20__ and signed by _____ of **COMPNAME**. Pursuant to the Agreement, **COMPNAME** 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 all properties owned in the City of El Paso.
3. Proof of ownership for subject properties.
4. Copies of all applicable approvals and permits
5. Receipts of all qualified fees eligible for Reimbursement under this Agreement.

COMPNAME hereby applies for a Grant of \$_____ for reimbursement of qualified eligible fees related to the construction of _____ (# of units) in _____ (#of Multi-Family Developments). The name, address and number of units of each Development follows:

Development Name	Address	# of Units
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