

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

DEPARTMENT: Planning and Economic Development Department

AGENDA DATE: Regular Agenda – May 15, 2012

CONTACT PERSON/PHONE NUMBER: Mathew McElroy, Interim Director, Planning and Economic Development Department, 541-4193

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Discussion and action on a resolution that the City Manager be authorized to execute a First Amendment to the Chapter 380 Economic Development Program Agreement between the City of El Paso and Cruzero Development, LLC (the "Applicant"), in connection with the extension of certain contract deadlines and the term, the requirement of additional design standards for the Development during the term of the Agreement, and the increase of the maximum grant payment available to the Applicant under this Agreement to a property tax rebate of the City's portion not to exceed eighteen million dollars (\$18,000,000) allocated over 20 years. (All Districts) [Planning and Economic Development Department – Mathew McElroy, Interim Director 915-541-4193]

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

On April 26, 2011, the City of El Paso entered into a Chapter 380 Economic Development Program Agreement with Cruzero Development, LLC related to the development of a Smart Code Master Planned Community, a large-scale development project which will create complete neighborhoods containing multi-family and single-family detached housing, mixed use commercial, parks, open space, and components of a mass transit system on approximately 228 acres of real property located at the intersection of Joe Battle and Montana Avenue in El Paso, Texas. The Applicant is requesting that the Agreement be amended to include the following: extend certain contract deadlines; extend the term of the Agreement from 10 to 20 years; require additional design standards; and increase the maximum grant payment available to the Applicant to an allocation not to exceed \$18,000,000 over the Agreement term. The total amount rebated to the developer will be determined by the City portion of ad valorem property tax revenue collected on developer improvements to the site – 100% will be rebated for years 1 through 5, 50% for years 6 through 10, and 25% for years 11 through 20. Staff is recommending approval of the First Amendment of the Chapter 380 Agreement as the development is anticipated to 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 citizens of El Paso, and therefore meets the requisites under Chapter 380 of the Texas Local Government Code.

PRIOR COUNCIL ACTION:

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

On April 26, 2011, upon approval by City Council, the City of El Paso and the Applicant entered into a Chapter 380 Economic Development Program and Agreement for the purposes of promoting economic development and stimulating business and commercial activity within the City of El Paso through the development of a Smart Code Master Planned Community on approximately 228 acres of real property located at the intersection of Joe Battle and Montana Avenue in El Paso, Texas.

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?

General Fund – 380 Agreement.

BOARD / COMMISSION ACTION:

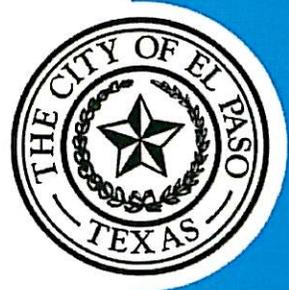
Enter appropriate comments or N/A

On April 17, 2010 the Economic Development, Planning and Tourism LRC unanimously approved bringing forward to City Council a potential Chapter 380 contract between the City and Cruzero Development, LLC. That contract was approved by Council on April 26, 2011.

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

DEPARTMENT HEAD: _____

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager



MEMORANDUM

DATE: May 15, 2012
TO: The Honorable Mayor and City Council
Joyce A. Wilson, City Manager
FROM: Mathew McElroy, Deputy Director Planning & Economic Development
SUBJECT: First Amendment to Chapter 380 Agreement-Cruzero Development, LLC

On April 26, 2011, the City of El Paso entered into a Chapter 380 Economic Development Program Agreement with Cruzero Development, LLC ("Applicant") related to the development of a Smart Code Master Planned Community on approximately 228 acres of real property located at the intersection of Joe Battle and Montana Avenue in El Paso, Texas. The large-scale development project is anticipated to encourage increased economic development and enhance business and commercial activity 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 its citizens through the creation of complete neighborhoods containing multi-family and single-family detached housing, mixed use commercial, parks, open space, and components of a mass transit system.

Given the considerable public benefit that stands to be realized from the success of this project as both a standalone development and an example to future Smart Code Master Planned Communities, it is in the interest of the City to ensure that the development is consistent with all SmartCode policies currently in place. To this end, the Applicant has agreed to adopt architectural design standards consistent with Title 21 (SmartCode) of the El Paso City Code and submit such design standards for review and approval by the City's designated review committee prior to construction. The First Amendment presented herein reflects the Applicant's agreement to such terms, and additionally amends the original Agreement to include the following: extend certain contract deadlines, including a seven month extension to obtain SmartCode rezoning of the development; extend the term of the Agreement from 10 to 20 years; and increase the maximum grant payment available to the Applicant to an allocation not to exceed \$18,000,000 over the term of the Agreement.

Staff is recommending approval of the First Amendment to the Chapter 380 Agreement as the development is anticipated to encourage increased economic development in the City and provide significant increases in the City's property tax revenues, thereby meeting requisites under Chapter 380 of the Texas Local Government Code.

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michiel R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Cortney Carlisle Niland

City Manager
Joyce A. Wilson



2010

Two Civic Center Plaza
El Paso, TX 79901
(915) 541-0000

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign the First Amendment to Chapter 380 Economic Development Program Agreement by and between the City of El Paso and Cruzero Development, LLC (the "Applicant") regarding Applicant's development of a Smart Code Master Planned Community on approximately 228 acres of real property located at the intersection of Joe Battle and Montana Avenue in El Paso, Texas.

APPROVED AND ADOPTED this _____ day of _____, 2012.

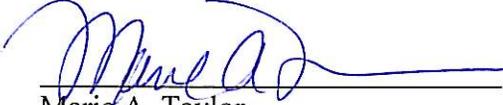
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew McElroy, Deputy Director
Planning & Economic Development

CITY CLERK DEPT.
2012 MAY -9 AM 11:29

**FIRST AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT**

This First Amendment to Chapter 380 Economic Development Program Agreement (“Amendment”) is made this _____ day of _____, 2012, by and between the **CITY OF EL PASO, TEXAS** (the “City”) and **CRUZERO DEVELOPMENT, LLC**, (“Applicant”).

WHEREAS, on April 26, 2011, the City and Applicant entered into a Chapter 380 Economic Development Program and Agreement (the “Agreement”), a copy of which is attached and labeled as Exhibit “A”, for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso; and

WHEREAS, the City and Applicant now desire to amend the Agreement to extend certain contract deadlines and the term, to require additional design standards for the Development during the term of the Agreement, and to increase the maximum grant award available to Applicant under this Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS AND AGREEMENTS, THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:

1. Page 3, Section 2. Term and Grant Period, is amended to read as follows:

Except as otherwise provided herein, the term of this Agreement shall commence on the Effective Date (as hereinafter defined in Section 8 below) and shall terminate on the first to occur of the following: (i) the date when the Grant amount is fully paid; (ii) subject to the provisions of Section 3 below, twenty (20) years from the commencement of the Grant Period (as such term is defined below), plus such additional time thereafter as may be necessary to process the final annual Grant payment pursuant to the procedures described in Sections 3 and 4 below; or (iii) the proper termination of this Agreement in accordance with the applicable provisions contained herein. Applicant’s eligibility for annual Grant payments shall be limited to twenty (20) consecutive years (the “Grant Period”) within the term of this Agreement. The Grant Period shall begin with the filing of the first Grant Submittal Package, which must occur no later than July 31, 2015.

2. Page 3, Section 3. Obligations of Applicant, subsection (A) Development, subparagraph (1), is amended to read as follows:

Within thirty (30) months of the Effective Date, Applicant agrees to commence or caused to be commenced the construction of the Development, at its sole cost and expense, or the expense of third parties, the Development as depicted in Applicant’s preliminary regulating plan in Exhibit “D”. Further, Applicant agrees to satisfy or cause to be satisfied certain construction build-out requirements for each Phase of the Development such that the valuation of the Property in the Development, as determined by El Paso Central Appraisal District, as of January 1, 2018 is at least One Hundred Eight Million, Six Hundred Eight Thousand Six Hundred Thirty Two and No/100 Dollars (\$108,608,632.00) and as of January 1, 2023 is at least One Hundred Sixty Five

Million and No/100 Dollars (\$165,000,000.00) and as of January 1, 2028 is at least One Hundred Eighty Two Million and No/100 Dollars (\$182,000,000.00).

3. Page 3, Section 3. Obligations of Applicant, subsection (A) Development, subparagraph (2) is amended to revise the deadline for Title 21 "SmartCode" rezoning of the Property to within nineteen (19) months of the Effective Date of the Agreement.
4. Page 3, Section 3. Obligations of Applicant, subsection (A) Development, subparagraph (3) is amended to increase the minimum Qualified Expenditures to Eighteen Million Dollars (\$18,000,000.00).
5. Page 4, Section 3. Obligations of Applicant, subsection (A) Development is amended to add subparagraph (6), to read as follows:

Applicant shall adopt architectural design standards ("design standards") consistent with Title 21, El Paso City Code, and submit such design standards for review to the City's designated review committee. For purposes of this Agreement only, Applicant shall also obtain written approval of the adopted design standards from the City Manager or her designee prior to or contemporaneous with the issuance of the building permits for construction of the Development. Further any public school site in the Development must built consistent with Traditional Neighborhood Development (TND) planning principles for transect zones T3, T4, T4O, and T5 in Title 21, El Paso City Code. The City's approval of the design standards and the public school site(s) requirement as specified herein are material terms of this Agreement and are conditions which must be satisfied for Applicant's eligibility for receipt of Grant payment(s) under this Agreement.

6. Page 4, Section 3. Obligations of Applicant, subsection (B) Amount of Grant, is amended to read as follows:

The Grant amount 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 payment of Eighteen Million Dollars (\$18,000,000.00), subject to reduction as specified in Section 3(A) above.

7. Page 4, Section 3. Obligations of Applicant, subsection (C) Disbursement of Grant, is amended to read as follows:
 - (1) During the term of this Agreement beginning as of the commencement of the Grant Period, which must occur no later than July 31, 2015 and ending twenty years thereafter, or at termination, whichever comes first, and subject to the conditions contained herein, Applicant will be eligible to receive on a yearly basis a Grant payment, determined as follows: for tax years 2014 through and including 2018, an amount equivalent to one hundred percent (100%) of the City's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2019 through and including 2028, an amount equivalent to fifty percent (50%) of the City's portion of ad valorem real property tax increment revenue generated from the Property in the

Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2029 through and including 2033, an amount equivalent to twenty five percent (25%) of the City's portion of ad valorem real property tax increment revenue generated from the Property in the Development based on the increased value of the Property over the Base Property Tax Valuation; and so long as the payment of the Grant does not result in Applicant receiving aggregate grant payments in excess of Eighteen Million Dollars (\$18,000,000.00). For any Grant payment the ad valorem real property tax increment revenue must be attributable solely to the Property's increase in property tax value as determined by the El Paso Central Appraisal District and collected by the City in the fiscal year.

- (2) Eligibility for any Grant payment is expressly contingent upon Applicant's satisfaction of the requirements of this Section 3 of the Agreement.
 - (3) Grant payments will continue until the earlier of the expiration of the Grant period or termination or expiration of this Agreement or until the aggregate of all payments made by the City result in an amount not to exceed EIGHTEEN MILLION DOLLARS (18,000,000.00), or an amount reduced by the provisions of Section 3(A), above. Under no circumstances shall the City be required to disburse under this Agreement more than an aggregate of all payments made by the City that would exceed EIGHTEEN MILLION DOLLARS (\$18,000,000.00), subject to reduction as specified in Section 3(A), above.
 - (4) A Grant payment for any given year may not result in the cumulative Grant payments to date exceeding the cumulative amount of Qualified Expenditures verified as to the date of the active Grant Submittal Package. Such Grant payment may be reduced to an amount that results in a cumulative Grant payment amount not to exceed the cumulative qualified expenditures verified as of the date of the Grant Submittal. A payment balance equal to the amount of any such reduction will be carried forward and paid only when an increase in the cumulative amount of Qualified Expenditures will allow for payment to be made.
8. Page 5, Section 3. Obligations of Applicant, subsection (D) Grant Submittal Package, subparagraph (1), is amended to revise the initial Grant Submittal Package submission deadline to July 31, 2015 and to revise the annual Grant Submittal Package deadline thereafter to no later than July 31 of each year.
 9. Page 6, Section 4, Obligations of City, subsection (B), first paragraph is amended to read as follows:

During the term of this Agreement beginning as of the commencement of the Grant Period, which must occur no later than July 31, 2015 and ending twenty years thereafter, or at termination, whichever comes first, and subject to the conditions contained herein, an amount from the City's general fund will be tendered to Applicant as a Grant payment on a yearly basis, to be determined as follows: for tax years 2014 through and including 2018, an amount equivalent to one hundred percent (100%) of the City's portion of ad valorem real property tax increment revenue generate from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2019 through and including 2028, an amount equivalent to fifty percent (50%) of the City's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon

the increased value of the Property over the Base Property Tax Valuation; and for tax years 2029 through and including 2033, an amount equivalent to twenty five percent (25%) of the City's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; and so long as the payment of the Grant does not result in Applicant receiving aggregate grant payments in excess of Eighteen Million Dollars (\$18,000,000.00). For any Grant payment the ad valorem real property tax increment revenue must be attributable solely to the Property's increase in property tax value as determined by the El Paso Central Appraisal District and collected by the City in the fiscal year.

10. Pages 6 and 7, Section 4. Obligations of City, subsection (B), subparagraphs (1) and (3), are amended to increase the maximum Grant amount specified to Eighteen Million Dollars (\$18,000,000.00).
11. Except as amended herein, the Agreement between the City and Applicant shall remain in full force and effect.

IN WITNESS WHEREOF, the City and Applicant have executed this First Amendment to the Agreement as of the date first written above.

CITY OF EL PASO:

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew McElroy, Deputy Director
Planning and Economic Development
Department

[Signatures and Acknowledgments Continue on the Following Page]

CITY CLERK DEPT.
2012 MAY -9 AM 11:29

APPLICANT:

CRUZERO DEVELOPMENT, LLC

Name (Printed): _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2012, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas (City).

Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGMENT

STATE OF §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2012, by _____, as _____ of Cruzero Development, LLC, a limited liability company, organized and existing under the laws of the State of Texas (Applicant).

Notary Public, State of Texas

My Commission Expires:

Exhibit A

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RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement by and between the City of El Paso and Cruzero Development, LLC (the "Applicant") in relation to the Applicant's development of a Smart Code Master Planned Community on approximately 228 acres of real property located at the intersection of Joe Battle and Montana Avenue in El Paso, Texas, subject to the inclusion of a metes and bounds property description with a corrected survey, if applicable, in the Agreement prior to its execution.

APPROVED AND ADOPTED this 26th day of April, 2011.



ATTEST:

Richarda Duffy Mornsen
Richarda Duffy Mornsen
City Clerk

CITY OF EL PASO

John F. Cook
John F. Cook
Mayor

APPROVED AS TO FORM:

Marie A. Taylor
Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

Kathryn B. Dodson, Ph.D.
Kathryn B. Dodson, Ph.D., Director
Planning & Economic Development

CITY CLERK DEPT.
2011 APR 18 PM 2:30

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 **CRUZERO DEVELOPMENT, LLC**, a Texas limited liability company.
- C. **Base Property Tax Valuation.** The words "Base Property Tax Valuation" mean the valuation of the Property by the El Paso Central Appraisal District as of January 1, 2011.
- D. **City.** The word "City" means the City of El Paso, Texas.
- E. **Development.** The word "Development" means the entirety of Applicant's proposed Smart Code Master Planned Community development upon the Property as more fully described on Exhibit "A", which is attached hereto and incorporated herein for all purposes.
- F. **Grant.** The word "Grant" means a payment on a yearly basis to Applicant under the terms of this Agreement computed with reference to the designated percentage of the City's portion of the ad valorem real property tax increment revenue generated from the Property in the Development as identified in Exhibit "A-1" based upon the increased value of the Property over the value of the Base Property Tax Valuation, as determined by the El Paso Central Appraisal District and collected by the City during the term of this Agreement.
- G. **Grant Submittal Package.** The words "Grant Submittal Package" mean the documentation required to be supplied to the 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. **Property.** The word "Property" means the approximately 228 acres of real property located at the intersection of Joe Battle and Montana Avenue in El Paso, Texas, being legally described as shown in Exhibit "A-1", being attached hereto and incorporated for all purposes.
- I. **Qualified Expenditures.** The words "Qualified Expenditures" means those costs related to horizontal infrastructure improvements incurred by Applicant or contracted third parties in the acquisition, construction or furnishing of the Development, said cost items being specifically described in Exhibit "C."

SECTION 2. TERM AND GRANT PERIOD.

Except as otherwise provided herein, the term of this Agreement shall commence on the Effective Date (as hereinafter defined in Section 8 below) and shall terminate on the first to occur of the following: (i) the date when the Grant amount is fully paid; (ii) subject to the provisions of Section 3 below, ten (10) years from the commencement of the Grant Period (as such term is defined below), plus such additional time thereafter as may be necessary to process the final annual Grant payment pursuant to the procedures described in Sections 3 and 4 below; or (iii) the proper termination of this Agreement in accordance with the applicable provisions contained herein. Applicant's eligibility for annual Grant payments shall be limited to ten (10) consecutive years (the "Grant Period") within the term of this Agreement. The Grant Period shall begin with the filing of the first Grant Submittal Package, which must occur no later July 31, 2014.

SECTION 3. OBLIGATIONS OF APPLICANT.

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

A. Development.

- (1) Within twenty four (24) months of the Effective Date, Applicant agrees to commence or caused to be commenced the construction of the Development, at its sole cost and expense, or the expense of third parties, the Development as depicted in Applicant's preliminary regulating plan in Exhibit "D." Further, Applicant agrees to satisfy or cause to be satisfied certain construction build-out requirements for each Phase of the Development such that the valuation of the Property in the Development, as determined by El Paso Central Appraisal, as of January 1, 2017 is at least One Hundred Eight Million, Six Hundred Eight Thousand Six Hundred Thirty Two and No/100 Dollars (\$108,608,632.00).
- (2) Within twelve (12) months of the Effective Date of this Agreement, Applicant shall apply for and obtain the re-zoning of all Property within the Development under Title 21, El Paso City Code. If within ten (10) business days prior to the expiration of the performance deadline stated herein, Applicant submits to the City a written request for extension along with a reasonable justification for the delay and the same is approved by the City Manager or designee, the performance deadline will automatically extend for an additional thirty (30) days without written amendment to this Agreement. Re-zoning of all Property in the Development to Title 21 "SmartCode" zoning is a material term of this Agreement and is a condition precedent to Applicant's receipt of any Grant payment under this Agreement.
- (3) Applicant agrees that it shall make or cause to be made the Qualified Expenditures of not less than Nine Million Dollars (\$9,000,000.00); provided, however, that if Applicant fails to make Qualified Expenditures of at least Nine Million Dollars (\$9,000,000.00) on the Property, Applicant shall not be deemed to be in default under this Agreement, but the

amount of the Grant shall be reduced proportionately based on the amount by which the Qualified Expenditures are less than Nine Million Dollars (\$9,000,000.00). Applicant shall submit to the City such documentation as may be reasonably necessary to verify the incurred costs of Qualified Expenditures, i.e., invoices marked "paid" to third parties and not submitted or to be submitted to any other governmental and/or taxing entity as part of any expenditure verification obligation for receipt of an economic development financial incentive or other similar verifiable documentation, as reasonably required by the City.

- (4) Modifications to the preliminary regulating plan depicted in Exhibit "D" may be made by Applicant without written amendment to this Agreement, so long as such modification(s): (i) are required to meet the minimum requirements of Title 21 or are otherwise required by City staff as part of Applicant's Title 21 re-zoning application or administrative approvals; (ii) is to reduce the scale of park ponds subject to rain harvesting techniques being approved by the City as part of a land use or permitting application or approval or (iii) will result in a final regulating plan that consists only of the following development types: traditional neighborhood development, cluster land development, and regional center development, all consistent with Table 14 of Title 21, as may be amended, and does not include any Special District(s) not previously identified in the preliminary regulating plan. Within thirty (30) days following such modification(s), Applicant will provide the City a revised Exhibit "D", to substitute and replace the original Exhibit attached herein. Changes other than the modifications identified above shall require approval by City Council as a written contract amendment.
 - (5) Developer agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of improvements to the Property. Developer will be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Development for so long as Applicant is the owner of the Property.
- B. **Amount of Grant.** The Grant amount 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 payment of Nine Million Dollars (\$9,000,000.00), subject to reduction as specified in Section 3(A) above.
- C. **Disbursement of Grant.**
- (1) During the term of this Agreement beginning as of the commencement of the Grant Period, which must occur no later than July 31, 2014 and ending ten years thereafter, or at termination, whichever comes first, and subject to the conditions contained herein, Applicant will be eligible to receive on a yearly basis a Grant payment, determined as follows: for tax years 2013 through and including 2017, an amount equivalent to one hundred percent (100%) of the City's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2018 through and including 2022, an amount equivalent to fifty percent (50%) of the City's portion of ad

valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; and for any Grant payment the ad valorem real property tax increment revenue must be attributable solely to the Property's increase in property tax value as determined by the El Paso Central Appraisal District and collected by the City in the fiscal year.

- (2) Eligibility for any Grant payment is expressly contingent upon Applicant's satisfaction of the requirements of this Section 3 of the Agreement.

Grant payments will continue until the earlier of the expiration of Grant period or termination or expiration of this Agreement or until the aggregate of all payments made by the City results in an amount not to exceed NINE MILLION DOLLARS (\$9,000,000.00), or an amount reduced by the provisions of Section 3(A). Under no circumstances shall the City be required to disburse under this Agreement more than an aggregate of all payments made by the City that would exceed NINE MILLION DOLLARS (\$9,000,000.00), subject to reduction as specified in Section 3(A), above.

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

D. Grant Submittal Package.

- (1) Unless otherwise agreed by the City and Applicant in writing, each Grant Submittal Package shall be in the form provided in Exhibit "B" together with the requisite documentation. No later than July 31, 2014, Applicant shall submit to the City an initial Grant Submittal Package to commence the Grant Period. Thereafter, the Applicant's annual Grant Submittal Package must be submitted no later than July 1 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 Qualified Expenditures identified in Exhibit "C", which have not otherwise been verified as part of a prior submittal.
- (3) 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 so long as such determination is made in accordance with the terms and conditions of this Agreement; 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. Payment of Taxes.

- (1) Applicant shall pay or cause to be paid by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the real and business personal property it owns in the Development and any other property owned 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, upon the City's request in determining Applicant's eligibility for Grant payment receipt.
- (2) Applicant shall have the right to contest the appraised value of the Property and 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 El Paso Central Appraisal District at Base Property Tax Valuation 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 not 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 receipt of the Applicant's Grant Submittal Package.
- B. During the term of this Agreement beginning as of the commencement of the Grant Period, which must occur no later than July 31, 2014 and ending ten years thereafter, or at termination, whichever comes first, and subject to the conditions contained herein, an amount from the City's general fund will be tendered to Applicant as a Grant payment on a yearly basis, to be determined as follows: for tax years 2013 through and including 2017, an amount equivalent to one hundred percent (100%) of the City's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2018 through and including 2022, an amount equivalent to fifty percent (50%) of the City's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; and for any Grant payment the ad valorem real property tax increment revenue must be attributable solely to the Property's increase in property tax value as determined by the El Paso Central Appraisal District and collected by the City in the fiscal year.
 - (1) Such Grant payments will continue until the earlier of the expiration of the term of the Agreement or until the aggregate of all payments made results in no more than NINE MILLION DOLLARS (\$9,000,000.00).

- (2) It is expressly understood by the Applicant and the City that Grant payments made pursuant to this Agreement are conditioned upon: (i) Applicant's construction of the Development or portion thereof in accordance with the terms and conditions set forth in this Agreement; (ii) the City's receipt of ad valorem property tax increment revenue which is attributable solely to the Property's increase in property tax value over the Base Property Tax Valuation in sufficient amount of such Grant payment and from annual appropriations of such funds of the City as may be legally set aside by the City for the implementation of economic development or financing programs authorized by Chapter 380 of the Texas Local Government Code, Section 52-a, Article III of the Texas Constitution, or other statutory authority or the home-rule powers of the City under applicable Texas law. In no event shall any Grant payment exceed the total value of the City's designated percentage amounts of its portion of the ad valorem property tax increment revenues generated by the Property in the Development based upon the increased value over the Base Property Tax Valuation as are actually received in hand by the City.
- (3) Under no circumstances shall the City be required to disburse under this Agreement more than an aggregate of all Grant payments made by the City that would exceed NINE MILLION DOLLARS (\$9,000,000.00), subject to reduction as specified in Section 3(A) above, nor shall Applicant be entitled to receive the Grant unless it satisfies all the requirements of Section 3 of this Agreement.

SECTION 5. EVENTS OF DEFAULT.

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

- A. **Failure to Obtain Title 21 "SmartCode" Zoning.** Failure to obtain re-zoning of all Property in the Development under Title 21 "SmartCode", El Paso City Code within the proscribed deadline and Applicant's failure to cure such failure within thirty (30) days after written notice from the City describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if Applicant fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure to the City's satisfaction, such event shall be deemed an event of default.
- B. **Failure to Construct and Maintain Development.** Applicant's failure or refusal to construct the Development and maintain the Development thereafter through the entire Grant Period of this Agreement, and Applicant's failure or refusal to cure within thirty (30) days after written notice from the City describing such failure, shall be deemed an event of default. However, if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but the Applicant has not yet commenced such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure, such actions or omissions shall also be deemed an event of default.

- C. **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.
- D. **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.
- E. **Property Taxes.** Applicant has the right to contest the appraised value of the Property and Development as provided by law, subject to the restrictions contained in this Agreement. 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.
- F. **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.
- G. **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. RECAPTURE.

Should Applicant default under Section 5(C) of this Agreement and provided that the cure period for such default has expired, the City reserves the right to recapture any and all previously awarded Grant payments.

SECTION 7. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT.

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 8. 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 or its performance obligations under this Agreement without the City's prior written consent, which will not be unreasonable withheld. Any such sale, transfer, assignment or conveyance 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.** Within thirty (30) days following any sale or other transfer of ownership rights in the Development or of individual parcels within the Development, Applicant shall notify the City in writing 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. **Confidentiality Obligations.** Applicant acknowledges that the City is subject to the Public Information Act, Chapter 552, Texas Government Code (the "Act"). The City will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Act, it will notify Applicant if a request relating to such proprietary information is received. Applicant further acknowledges that the Act excepts disclosure of trade secret and confidential commercial information and that Applicant will need to assert its proprietary interest as a basis for nondisclosure.
- H. **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.
- I. **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date upon which both parties have fully executed this Agreement.
- J. **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.

- K. **Entire Agreement.** This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto relating to the subject matter of this Agreement. All prior negotiations, discussions, correspondence, and preliminary understandings between the parties are superseded by this Agreement. There exists no other written or oral understanding, agreements, or assurances with respect to such matters except as are set forth herein.
- L. **Execution of Agreement.** The El Paso City Council has authorized the City Manager to execute this Agreement on behalf of the City.
- M. **Exhibits.** The following Exhibits are attached and incorporated by reference for all purposes.
- Exhibit "A": Development Description
Exhibit "A-1": Property Description
Exhibit "B": Grant Submittal Form
Exhibit "C": Qualified Expenditures
Exhibit "D": Preliminary Regulating Plan
- N. **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.
- O. **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.
- P. **Headings and Construction.** The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All references to the singular shall include the plural, and to the plural the singular.
- Q. **Inspections, Access to Records.** Applicant, at its principal place of business in El Paso, shall allow the City or its agents reasonable access and inspect operating records, accounting, books and any other records related to the economic development considerations and incentives described herein, which are in Applicant's, possession, custody or control, for purposes of verifying the Qualified Expenditures generated by the Development and for audit, if so requested by the City. The confidentiality of such records will be maintained in accordance with and subject to all applicable laws including the Public Information Act, Chapter 552, Texas Government Code. Further, Applicant shall allow the City reasonable access to the subject property owned or controlled by Applicant for inspections during construction of the Development. All inspections will

be made only after giving at least twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and or operations of the Applicant or the Development. For physical inspections, any inspection will be made with one (1) or more representatives of Applicant, and in accordance with its safety standards, if any.

- R. **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.
- S. **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present, and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the Developer or the design, construction or operation of any portion of the Development.
- T. **Non-Waiver.** No course of dealing on the part of the City or Applicant nor any failure or delay by the City or Applicant in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power, or privilege owing under this Agreement.
- U. **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
Director
Planning and Economic Development Department
2 Civic Center Plaza
El Paso, Texas 79901

APPLICANT: Cruzero Development, LLC
c/o Wendy Viramontes
International Garment Processors
12651 Montana Avenue
El Paso, Texas 79938

Copy To:

James E. Baumann
Guevara, Baumann, Coldwell, Reedman & Luther, LLP
4171 North Mesa Street, Suite B-201
El Paso, Texas 79902

- V. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Development unless specifically enumerated herein.
- W. **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.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have executed this Agreement on this 27th day of April, 2011.

CITY OF EL PASO, TEXAS

Joyce A. Wilson
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Marie A. Taylor
Marie A. Taylor
Assistant City Attorney

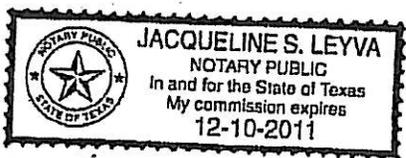
APPROVED AS TO CONTENT:

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

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 27th day of April, 2011, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas (CITY).



Jacqueline S. Leyva
Notary Public, State of Texas

My Commission Expires: 12/10/2011

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

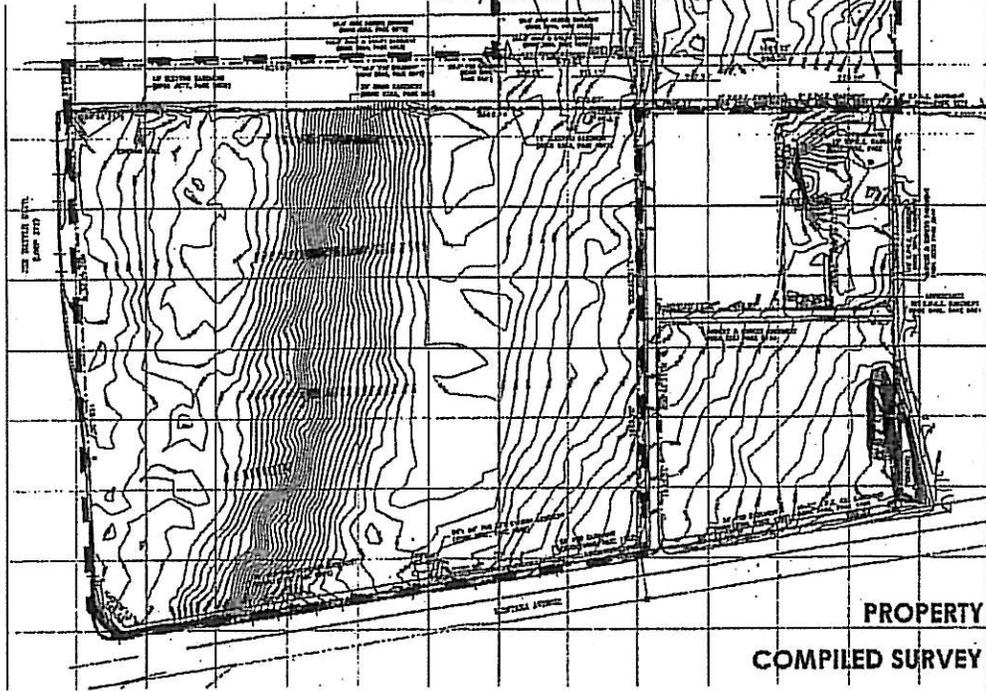
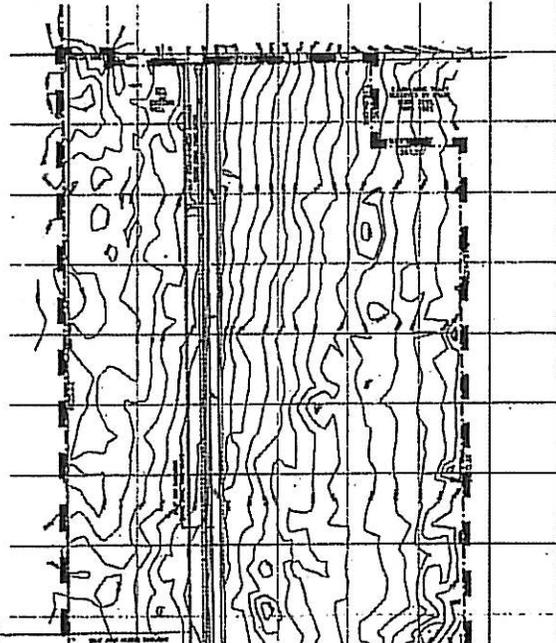
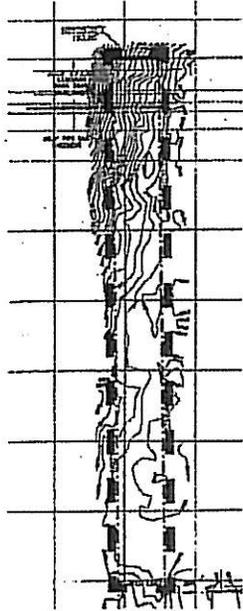
CITY CLERK DEPT.
2011 APR 18 PM 2:38

EXHIBIT "A"

The Development is comprised of approximately 228 acres. The Development is a proposed Smart Code zoned master planned mixed-use community to be located within the City Limits of El Paso, Texas. The community will contain multi-family and single-family detached housing, mixed commercial, retail, parks, open space and components of a mass transit system. The Development is divided into development parcels and defined by metes and bounds as shown in **Exhibit A-1**.

EXHIBIT A-1

Compiled Surveys	202 acres	As Mapped
Survey Correction	13.2916 acres	Attached
Public Road ROWs not in Surveys	Apprx. 13 acres	Net Difference from CAD acreage
Total Acreage	228 acres	Subject to Final Platting



**PROPERTY DESCRIPTION
COMPILED SURVEY OF PROPERTY**

N.T.S.

EXHIBIT A-1

Being Tract 6B and a portion of
Tracts 6A, 6A1 and 6B2,
Section 33, Block 79, Township 2,
Texas and Pacific Railway Company Surveys
El Paso County, Texas.
October 25, 2011

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Tract 6B and a portion of Tracts 6A, 6A1 and 6B2 Section 33, Block 79, Township 2, Texas and Pacific Railway Company Surveys El Paso County, Texas, and being more particularly described by metes and bounds as follows

Commencing for reference at a found brass cap marked 28,29,32,33 TX GLO 1994, from which a found brass cap stamped SW-TDC Texas GLO 1994, bears North 89°19'16" East a distance of 3,650.29 feet; Thence North 89°19'16" East a distance of 186.62 feet to a set 1/2" rebar with cap marked TX 5152 on the easterly right of way line of Joe Battle Blvd (loop 375); Thence along said right of way line South 02°43'55" East a distance of 187.01 feet to a set 1/2" rebar with cap marked TX 5152 for the "TRUE POINT OF BEGINNING";

Thence leaving said right of way line, South 89°58'21" East (Due East Blk. 3179, Pg. 263) a distance of 2,368.84 feet to a set 1/2" rebar with cap marked TX 5152 on the westerly right of way line of Justice Street as dedicated in Blk. 3231, Pg. 338, Real property records of El Paso County, Texas;

Thence along said right of way line, South 00°40'51" East (South 00°41'07" East, Blk. 3231, Pg. 0338) a distance of 1,863.70 feet to a found 1/2" rebar with cap marked TX 5152 at the northerly right of way of Montana Avenue (U.S. Highway 62) as reference in TX D.O.T. right of way Map S-149, control No. 374;

Thence along said right of way line, South 81°17'02" West (South 81°15'23" West, Blk. 3179, Pg. 0263) & (South 81°12'00" West, R.O.W. Map S-149, control No. 374) a distance of 2,202.26 feet to a point witnessed by found disturbed TX.D.O.T. brass cap which bears South 14°00'51" West a distance of 0.43 feet;

Thence along said right of way line, North 45°29'13" West (North 45°30'52" West, Blk. 3179, Pg. 0263) & (North 42°26'44" West, R.O.W. Map 375, control No. 2552) a distance of 166.43 feet to a found TX.D.O.T. brass cap "STA 616+00" at the easterly right-of-way line of Joe Battle Blvd. (Loop 375) as referenced in sheet 11 of T.X.D.O.T. Right-Of-Way Map, Control No. 2552, Sect. No.2;

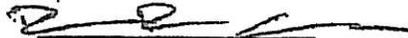
Thence along said right of way line, North 00°31'00" West (North 00°30'52" West, Blk. 3179, Pg. 0263) & (North 02°33'16" West, R.O.W. Map 375, control No. 2552) a distance of 99.84 feet to a found TX.D.O.T. brass cap "STA 615+00";

Thence with said right of way line, North 02°43'55" West (North 02°44'59" West, Blk. 3179, Pg. 263) & (North 00°19'09" East, R.O.W. Map 375, control No. 2552) a distance of 1,984.18 feet (1,983.38 feet, R.O.W. Map 375, control No. 2552) to the "TRUE POINT OF BEGINNING" and containing 4,749,922 square feet or 109.04 acres of land more or less.

Bearing basis is true north for a Transverse Mercator Surface Projection as determined by GPS methods based at center of this site.

All referenced documents are recorded in the Deed Records of the El Paso County, Texas unless otherwise specified.

A plat of even date accompanies this description.


Ron R. Conde
R.P.L.S. No. 5152



job #1011-12

CONDE, INC.
ENGINEERING / LAND SURVEYING / PLANNING
6080 SURETY DRIVE SUITE 100 / EL PASO, TEXAS 79905
(915) 592-0283 FAX (915) 592-0286



Land - Mark Professional Surveying Inc.

"Serving Texas, New Mexico and Arizona"

METES AND BOUNDS DESCRIPTION

VIRAMONTES PARCEL "A"

FIELD NOTE DESCRIPTION OF 8.1746 ACRES OUT OF SURVEY 33, BLOCK 79, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY SURVEYS, EL PASO COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING for reference at an existing Brass Cap stamped "28-29-32-33-Texas GLO-1994", lying at the common boundary corner of Survey Nos. 28, 29, 32 and 33, Block 79, Township 2, Texas and Pacific Railway Surveys; *whence* National Geodetic Survey Station "EAST-15 (EPGS-1980)" (X=160,353.25 ft.; Y=827,571.23 ft.) bears South 55°47'24" East, a distance of 1381.097 varas (3836.38 feet); **THENCE**, North 89°18'53" East, with the common boundary line of Surveys 28 and 33, a distance of 67.201 varas (186.67 feet) to a 5/8 rebar with cap stamped "LAND-MARK Tx4869 NM11402" for the **POINT OF BEGINNING** for this parcel description; *whence* an existing 1/2" rebar with cap stamped "TX5152" bears North 89°18'53" East, a distance of 0.144 varas (0.40 feet);

THENCE, North 89°18'53" East, continuing with said common boundary of Surveys 28 and 33, a distance of 648.886 varas (1802.46 feet) to a 5/8 rebar with cap stamped "LAND-MARK Tx4869 NM11402" set for a corner of this parcel; *whence* an existing 1/2" rebar with cap stamped "TX5152" bears North 50°38'00" West, a distance of 0.036 varas (0.10 feet);

THENCE, South 00°41'07" East, a distance of 75.294 varas (209.15 feet) to a 5/8 rebar with cap stamped "LAND-MARK Tx4869 NM11402" set in the "1937 Baker" common boundary line of Surveys 28 and 33, Block 79, Township 2, Texas and Pacific Railway Surveys, also being the north line of Tract 6A1, Survey 33, for a corner of this parcel; *whence* an existing 5/8" rebar with cap stamped "FXS RPLS 2198", bears North 28°28'06" East, a distance of 0.050 varas (0.14 feet);

THENCE, North 89°58'50" West, with said "1937 Baker" common boundary, a distance of 646.520 varas (1795.89 feet) to a 5/8 rebar with cap stamped "LAND-MARK Tx4869 NM11402" set in the easterly right-of-way line of Loop 375 (Joe Battle Boulevard) for a corner of this parcel; *whence* an existing 1/2" rebar with cap stamped "TX5152" bears North 70°00'41" West, a distance of 0.173 varas (0.48 feet);

THENCE, North 02°44'12" West, with said easterly right-of-way line, a distance of 67.385 varas (187.18 feet) to the **TRUE POINT OF BEGINNING**.

Said parcel contains 8.1746 Acres (356,088 Sq. Ft.) more or less.

Viramontes Parcel "A"
Page 2 of 2

- Notes: 1.) All courses are based upon true north as determined at National Geodetic Survey Station "East-15 (EPSG-1980)"
2.) Theta = $-03^{\circ}03'05.24''$
3.) Average combined grid factor = 0.999792
4.) Distances are horizontal surface measurements

I, Larry L. Drewes, Licensed State Land Surveyor of El Paso County, Texas, do hereby certify that the foregoing Survey was made by me on the ground, according to law, and the limits, boundaries and corners, with marks, natural and artificial, are truly and correctly described in the forgoing plat and field notes.

Job # 11-03-27987A
April 28, 2011
Date of Survey: March 17, 2011 thru July 12, 2011



Land - Mark Professional Surveying Inc.

"Serving Texas, New Mexico and Arizona"

METES AND BOUNDS DESCRIPTION

VIRAMONTES PARCEL "B"

FIELD NOTE DESCRIPTION OF 2.7971 ACRES OUT OF SURVEY 33, BLOCK 79, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY SURVEYS, EL PASO COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING for reference at an existing Brass Cap stamped "28-29-32-33-Texas GLO-1994", lying at the common boundary corner of Survey Nos. 28, 29, 32 and 33, Block 79, Township 2, Texas and Pacific Railway Surveys; *whence* National Geodetic Survey Station "EAST-15 (EPGS-1980)" (X=160,353.25 ft.; Y=827,571.23 ft.) bears South $55^{\circ}47'24''$ East, a distance of 1381.097 varas (3836.38 feet); *THENCE*, North $89^{\circ}18'53''$ East, with the common boundary line of Surveys 28 and 33, a distance of 716.087 varas (1989.13 feet) to a 5/8 rebar with cap stamped "LAND-MARK TX4869 NM11402" for the POINT OF BEGINNING for this parcel description; *whence* an existing 1/2" rebar with cap stamped "TX5152" bears North $50^{\circ}38'00''$ West, a distance of 0.036 varas (0.10 feet);

THENCE, North $89^{\circ}18'53''$ East, continuing with said common boundary of Surveys 28 and 33, a distance of 206.291 varas (573.03 feet) to a 5/8 rebar with cap stamped "LAND-MARK TX4869 NM11402" set in the westerly right-of-way line of J.C. Viramontes Drive (90.0 feet wide) for a corner of this parcel; *whence* an existing 1/2" rebar with cap stamped "TX5152" bears North $54^{\circ}28'46''$ West, a distance of 0.072 varas (0.20 feet);

THENCE, South $00^{\circ}41'07''$ East, with said westerly right-of-way line, a distance of 77.828 varas (216.19 feet) to a 5/8 rebar with cap stamped "LAND-MARK TX4869 NM11402" set in the "1937 Baker" common boundary line of Surveys 28 and 33, Block 79, Township 2, Texas and Pacific Railway Surveys, also being the north line of Tract 6A1, Survey 33, for a corner of this parcel; *whence* an existing 1/2" rebar with cap stamped "TX5152" bears North $13^{\circ}24'16''$ West, a distance of 0.047 varas (0.13 feet);

THENCE, North $89^{\circ}58'50''$ West, with said "1937 Baker" common boundary, a distance of 206.305 varas (573.07 feet) to a 5/8 rebar with cap stamped "LAND-MARK TX4869 NM11402" set for a corner of this parcel; *whence* an existing 5/8" rebar with cap stamped "PKS RPLS 2198" bears North $28^{\circ}28'06''$ West, a distance of 0.050 varas (0.14 feet);

THENCE, North $00^{\circ}41'07''$ West, a distance of 75.294 varas (209.15 feet) to the TRUE POINT OF BEGINNING.

Said parcel contains 2.7971 Acres (121,843 Sq. Ft.) more or less.

Viranontes Parcel "B"
Page 2 of 2

- Notes: 1.) All courses are based upon true north as determined at National Geodetic Survey Station "East-15 (EPGS-1980)"
2.) Theta = $-03^{\circ}03'05.24''$
3.) Average combined grid factor = 0.999792
4.) Distances are horizontal surface measurements

I, Larry L. Drewes, Licensed State Land Surveyor of El Paso County, Texas, do hereby certify that the foregoing Survey was made by me on the ground, according to law, and the limits, boundaries and corners, with marks, natural and artificial, are truly and correctly described in the forgoing plat and field notes.

Job # 11-03-27987B
Date of Survey: March 17, 2011 thru July 12, 2011

VIRAMONTES TRACT I

STATE OF TEXAS } 29.471 ACRES OUT OF
COUNTY } SURVEY 28, BLOCK 79,
OF } TSP. 2, T. 2P, R. 7E, CO.
EL PASO } G.L.O. FILE 154782

** SEE ATTACHED PLAT **

FIELD NOTES of a survey of 29.471 acres of land made for F. C. VIRAMONTES by elite of his desire to purchase surplus Public School land. Said survey is situated in El Paso County about North 65° East, 13 miles from the County Seat, and is more particularly described by meters and bounds as follows:

BEGINNING AT A 1/2" REBAR WITH PLASTIC CAP STAMPED "TK1976-NM6846" set on the West boundary of a Texas Department of Correction (TDC) 92.331 acre tract for the SOUTHEAST AND BEGINNING CORNER OF THIS PARCEL, said corner is the Northeast corner of an equal size adjacent tract and has a coordinate value of K=161,000.25 ft.; Y=831,027.39 ft. in the Central Zone of the Texas Coordinate System (NAD-27). From said corner, National Geodetic Survey Station "EAST-15 (RFGS-1980)" (K=160,353.25 ft.; Y=827,571.23 ft.) bears South 07°33'06" West, 1266.095 varas, and a 3-inch diameter brass cap stamped "SW-TDC - Texas GLO-1994" set in an 8-inch diameter concrete post at the Southwest corner of said TDC 92.331 acre tract bears South 00°41'07" East, 462.940 varas;

THENCE North 00°41'07" West, with the West boundary of said TDC tract, at 332.800 varas, pass the Southeast corner of a 3.000 acre tract reserved by the State, constituting for a total distance of 462.940 varas to a 3-inch diameter brass cap stamped "NW-TDC - Texas GLO-1994" set in an 8-inch diameter concrete post on the South boundary of the adjacent Diamond Shamrock 160 acre tract and at the Northwest corner of said TDC tract for the Northeast corner of this parcel;

THENCE South 09°18'53" West, with the South boundary of said Diamond Shamrock tract, at 130.14 varas, pass the Northwest corner of said reserved 3.000 acre tract, constituting for a total distance of 359.307 varas to a 1/2" rebar with plastic cap stamped "TK1976-NM6846" set on the East right-of-way of a 54 varas wide road easement for the Northwest corner of this parcel;

THENCE South 00°41'07" East, with the East right-of-way of said 54 varas wide road easement and the North-South center line of Survey 28, 462.940 varas to 1/2" rebar with plastic cap stamped "TK1976-NM6846" set at the Northwest corner of aforesaid equal size adjacent tract for the Southwest corner of this parcel;

THENCE North 09°18'53" East, with the North boundary of said equal size tract, 359.307 varas to the point of beginning.

CONTAINING 29.471 ACRES OF LAND.

ALL COURSES ARE BASED UPON TRUE NORTH AS DETERMINED AT NATIONAL GEODETIC SURVEY STATION "EAST-15 (RFGS-1980)"
THETA = -03°03'05.24" AVERAGE GRID FACTOR = 0.999702
DISTANCES ARE HORIZONTAL SURFACE MEASUREMENTS.

SURVEYED: June, 1997.

FIELD SURVEY PERSONNEL: Jorge Munoz, Richard Caro and Robert Hopper.

I, Robert L. Pounds, Licensed State Land Surveyor of El Paso County, Texas, do hereby certify that the foregoing Survey was made by me on the ground, according to the limits, boundaries and corners, with marks, natural and artificial, as truly and correctly described in the foregoing plat and field notes.

Robert L. Pounds
Robert L. Pounds, Licensed State Land Surveyor

Filed for record in my office this 12th day of June, 1997, at 5:00 o'clock P.M., and duly recorded this 13th day of June, 1997, in Book 11, Page 217, of the field note records of El Paso County, Texas.

Robert L. Pounds
Robert L. Pounds, El Paso County Surveyor

VIRAMONTES TRACT 2

STATE OF TEXAS) 29.471 ACRES OUT OF
COUNTY) SURVEY 28, BLOCK 79,
OF) TSP. 2, TERRY CO.
EL PASO) OLO FILE 134792

SEE ATTACHED PLAT

FIELD NOTES of a survey of 29.471 acres of land made for J. C. VIRAMONTES by virtue of his desire to purchase surplus Public School land. Said Survey is situated in El Paso County about North 65° East, 13 miles from the County Seat, and is more particularly described by metes and bounds as follows:

BEGINNING AT A 3-INCH DIAMETER BRASS CAP STAMPED '5W-TDC TEXAS GLO-1994' set in an 8-inch diameter concrete post on the common boundary of Surveys 28 and 33, for the SOUTHEAST AND BEGINNING CORNER OF THIS PARCEL AND THE SOUTHWEST CORNER OF A TEXAS DEPARTMENT OF CORRECTION 92.331 ACRE TRACT, said corner has a coordinate value of X=160,947.17, Y=629,742.61. It is the Central Zone of the Texas Coordinate System (NAD-27). From said beginning corner, National Geodetic Survey Station 'EAST-15' (EPGS-1980) (X=160,353.25, Y=627,572.23) bears South 12° 44' West, 910.648 varas, and a 3-inch diameter brass cap stamped '27-28-33-34 - Texas GLO-1994' set in an 8-inch diameter concrete post at the Southeast corner of Survey 28 bears North 89° 18' 53" East, 595.368 varas;

THENCE South 89° 18' 53" West, with the common boundary of Surveys 28 and 33, 349.387 varas to a 1 1/2" cedar with plastic cap stamped 'TX1976-NM6846' set on the East right-of-way of a 54 varas wide road easement for the Southwest corner of this parcel and the South 1/4 corner of Survey 28, from this corner, a 3-inch diameter brass cap stamped '28-29-32-33 - Texas GLO-1994' set in an 8-inch diameter concrete post at the Southwest corner of Survey 28 bears South 89° 18' 53" West, 954.755 varas;

THENCE North 00° 41' 07" West, with the East right-of-way of said 54 varas wide road easement and the North-South center line of Survey 28, 462.940 varas to a 1 1/2" cedar with plastic cap set for the Northwest corner of this parcel and the Southwest corner of an equal size adjacent tract;

THENCE North 89° 18' 53" East, with the common boundary of said adjacent tract, 359.387 varas to a 1 1/2" cedar with plastic cap stamped 'TX1976-NM6846' set on the West boundary of aforesaid Texas Department of Correction Tract for the Northeast corner of this parcel;

THENCE South 00° 41' 07" East, with the West boundary of said Texas Department of Correction Tract, 462.940 varas to the point of beginning.

CONTAINING 29.471 ACRES OF LAND.

ALL COURSES ARE BASED UPON TRUE NORTH AS DETERMINED AT NATIONAL GEODETIC SURVEY STATION 'EAST-15' (EPGS-1980)
THETA = -03° 03' 05.74" AVERAGE GRID FACTOR = 0.999792
DISTANCES ARE HORIZONTAL SURFACE MEASUREMENTS.

SURVEYED: June, 1997.

FIELD SURVEY PERSONNEL: Jorge Munoz, Richard Caro and Robert Hoppel.

I, Robert L. Founds, Licensed State Land Surveyor of El Paso County, Texas, do hereby certify that the foregoing Survey was made by me on the ground, according to law, and that the Units, boundaries and corners, with marks, natural and artificial, are truly and correctly described in the foregoing plat and field notes.

Robert L. Founds, Licensed State Land Surveyor

Filed for record in my office this 17th day of June, 1997, at 5:00 o'clock P.M. and duly recorded this 17th day of June, 1997, in Book 10, Page 212 of the field note records of El Paso County, Texas.

Robert L. Founds, El Paso County Surveyor



VIRAMONTES TRACT 3

STATE OF TEXAS) 49.170 ACRES OUT OF
 COUNTY) SURVEY 28, BLOCK 79,
 OF) T&P.R.V.CO.
 EL PASO) GLO FILE 134752

FIELD NOTES of a survey of 49.170 acres of land made for J. C. VIRAMONTES by virtue of his desire to purchase Kiplas Public School land. Said Survey is situated in El Paso County about North 65° East, 13 miles from the County Seat, and is more particularly described by metes and bounds as follows:

** SEE ATTACHED PLAT **

BEGINNING AT A 1/2" REBAR WITH PLASTIC CAP STAMPED "TK1976-NM6846" set on the common boundary of Surveys 28 and 33 at its intersection with the East right-of-way of a 54 varas wide road easement for the SOUTHEAST AND BEGINNING CORNER OF THIS PARCEL, said corner also being the South 1/4 corner of Survey 28 and has a coordinate value of $X=159,949.93$ ft.; $Y=879,703.01$ ft.; in the Central Zone of the Texas Coordinate System (NAD-27). From said beginning corner, National Geodetic Survey Station "EAST-15" (EPS-1980) ($X=160,353.25$ ft.; $Y=827,511.23$ ft.) bears South 13°22'53" East, 899.896 varas, and a 3-1/8 inch diameter brass cap stamped "27-28-33-34" - Texas GLO-1994" set in an 8-inch diameter concrete post at the Southeast corner of Survey 28 bears North 89°18'53" East, 954.755 varas;

THENCE South 89°18'53" West, with the common boundary of Surveys 28 and 33, at 54 varas, pass the West right-of-way of said road easement, continuing for a total distance of 238.689 varas to a 1/2" rebar with plastic cap stamped "TK1976-NM6846" set for the Southwest corner of this parcel, from this corner, a 3-inch diameter brass cap stamped "28-29-32-33" - Texas GLO-1994" set in an 8-inch diameter concrete post at the Southwest corner of Survey 28 bears South 89°18'53" West, 716.056 varas;

THENCE North 00°41'07" West, at 36 varas, pass the North right-of-way of a 36 varas wide utility easement, at 68.4 varas, pass the North right-of-way of a 32.4 varas wide access easement, at 925.88 varas, pass the Southwest corner of a 69.781 varas wide perpetual and non-exclusive access easement, continuing for a total distance of 1737.164 varas to a point on the North right-of-way of a perpetual easement to El Paso Electric Co. (100 feet wide) for the Northwest corner of this parcel, from this corner, a 3-inch diameter brass cap stamped "29-21-28-29" - Texas GLO-1994" set in an 8-inch diameter concrete post at the Northwest corner of Survey 28 bears South 89°59'26" West, 716.116 varas, thence North 00°41'07" West, 164.970 varas;

THENCE North 89°59'26" East, with the North right-of-way of said El Paso Electric Co. easement a distance of 69.786 varas to a 3-inch diameter brass cap stamped "NW-160 AC - Texas GLO-1994" set in an 8-inch diameter concrete post at the Northwest corner of the Diamond Shamrock 160 acre tract for the Northeast corner of this parcel;

THENCE South 00°41'07" East, with the West boundary of said Diamond Shamrock tract, at 108.008 varas, pass the South right-of-way of said El Paso Electric Co. easement, continuing for a total distance of 810.481 varas to a 3-inch diameter brass cap stamped "SW-160 AC - Texas GLO-1994" set in an 8-inch diameter concrete post at the Southwest corner of said Diamond Shamrock tract;

THENCE North 89°18'53" East, with the South boundary of said Diamond Shamrock tract, at 114.908 varas, pass the West right-of-way of a former 54 varas wide road easement, continuing for a total distance of 168.508 varas to a 1/2" rebar with plastic cap stamped "TK1976-NM6846" set on the East right-of-way of said road easement at the Northwest corner of an adjacent 29.471 acre tract;

THENCE South 00°41'07" East, with the North-South center line of Survey 28 and the East right-of-way of said 54 varas wide road easement, at 462.940 varas, pass the common West corner of two adjacent 29.471 acre tracts, continuing for a total distance of 925.680 varas to the point of beginning.

CONTAINING 49.170 ACRES OF LAND.

ALL COURSES ARE BASED UPON TRUE NORTH AS DETERMINED AT NATIONAL GEODETIC SURVEY STATION "EAST-15" (EPS-1980)
 THETA = -03°05'05.24" AVERAGE GRID FACTOR = 0.999792
 DISTANCES ARE HORIZONTAL SURFACE MEASUREMENTS.

Exhibit C

Qualified Expenditures

Qualified expenditures are those horizontal infrastructure improvements within the Development that are located in the public right of way or are dedicated to the City of El Paso for public use including: water, water facilities, sanitary sewer, sanitary sewer facilities, storm drainage, roadway improvements, bridge facilities, pond facilities, ponds, parks, park facilities, sidewalks, landscaping, and streetscape. Qualified Expenditures may also include costs to design, construct and/or install the aforementioned horizontal infrastructure; engineering and surveying; and all hard costs and the soft costs related to design, construction, installation of such horizontal infrastructure improvement projects, as determined by the City. The proposed horizontal infrastructure improvements and their anticipated associated cost for the Development are shown summarized below:

Preliminary Opinion of Probable Construction Costs

Earthwork	\$2,363,470
Street Improvements	15,675,500
Storm Drainage Improvements	2,728,020
Water Distribution	2,633,976
Wastewater Collection	3,476,056
Traffic and Pedestrian Control	75,000
Stormwater Pollution Prevention	112,125
Mobilization & Bonds	1,353,207
Contingency	<u>2,841,735</u>
Total	\$31,259,090

EXHIBIT D

