

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

DEPARTMENT: Planning and Economic Development
AGENDA DATE: May 17, 2011
CONTACT PERSON/PHONE: Ernesto Gamboa, , Deputy Director 541-4670
DISTRICT(S) AFFECTED: All

SUBJECT:

Discussion and action that the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement by and between the City of El Paso and Geltmore Aldea, LLC (the "Applicant") in relation to the Applicant's development of a Smart Code Master Planned Community on approximately 196 acres of real property located near the intersection of Interstate Highway I-10 and Executive Drive in El Paso, Texas.
[Planning and Economic Development, Ernesto Gamboa, (915) 541-4670]

BACKGROUND / DISCUSSION:

Geltmore Aldea, LLC owns approximately 196 acres of undeveloped or underdeveloped land within the limits of the City of El Paso, which the developer intends to redevelop as a master planned mixed-use community known as "Aldea." The large-scale redevelopment project will create complete neighborhoods containing residential units of various types and sizes, retail and entertainment space, hotels, offices, parks, open space, and components of a mass transit system. If developed in accordance with plans presented to the City, the construction of the development will significantly enhance the quality of life within the City and increase the City's ad valorem and sales tax base. The total amount rebated to the developer via Chapter 380 Agreement will be determined by the City portion of ad valorem property tax revenue – 100% will be rebated for years 1-5, 50% for years 6-15, and 25% for years 16-20.

PRIOR COUNCIL ACTION:

On May 3, 2011 the El Paso City Council voted to direct Staff to continue working with the Developer and to present a best and final offer at a subsequent City Council meeting.

AMOUNT AND SOURCE OF FUNDING:

[FUNDING IS GENERAL REVENUE FUNDS]

BOARD / COMMISSION ACTION:

On April 21, 2011 the Economic Development, Planning and Tourism LRC unanimously approved bringing forward to City Council a potential Chapter 380 contract.

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

DEPARTMENT HEAD:



Department Head

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 Geltmore Aldea, LLC (the "Applicant") in relation to the Applicant's development of a Smart Code Master Planned Community on approximately 196 acres of real property located near the intersection of Interstate Highway I-10 and Executive Drive in El Paso, Texas.

APPROVED AND ADOPTED this _____ day of _____, 2011.

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:



Ernesto Gamboa, Deputy Director
Planning & Economic Development

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 **GELTMORE ALDEA, LLC**, a New Mexico 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 Exhibits “A” and “A-1”, which are 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” 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 196 acres of real property near the intersection of I-10 and Executive Drive in El Paso, Texas, more fully described by metes and bounds as shown in Exhibit “A-1.”
- I. **Qualified Expenditures.** The words “Qualified Expenditures” means those costs related to horizontal infrastructure improvements incurred by Applicant 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, 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 July 31, 2015.

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". Within thirty (30) days, Applicant will submit a revised Exhibit "D", which removes the Special District currently contained in Exhibit "D". If the City Manager or her designee approves in writing the submission following its receipt, the revised Exhibit "D" will substitute and replace the original Exhibit attached hereto without the need of a written amendment. Submission of a revised Exhibit "D" is a material term of this Agreement. 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, 2018 is at least One Hundred Forty Five Million Five Hundred Fifteen Thousand One Hundred Ninety Nine Dollars (\$145,515,199.00) and as of January 1, 2023 is at least Two Hundred Fifteen Million Fifty Seven Thousand Nineteen and 50/100 Dollars (\$215,057,019.50) and as of January 1, 2028 is at least Two Hundred Twenty One Million Six Hundred Seven Thousand Three Hundred Twenty Five Dollars (\$221,607,325.00).
- (2) Within twelve (12) months of the Effective Date of this Agreement, Applicant shall file with the City a complete application to re-zone all Property within the Development as Smart Code under Title 21, "SmartCode," El Paso City Code, said application to be in conformance with all requirements enumerated in Title 21, El Paso City Code. If within ten (10) business days prior to the expiration of the performance deadline stated in this Section 3(A)(2), 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 sixty (60) 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 Twenty Two Million Dollars (\$22,000,000.00); provided, however, that if Applicant fails to make Qualified Expenditures of at least Twenty Two Million Thousand Dollars (\$22,000,000.00) 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 Twenty Two Million Dollars (\$22,000,000.00). 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 revised preliminary regulating plan may be made by Applicant without written amendment to this Agreement, so long as such modification(s) are: (i) 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; or (ii) will result in a final regulating plan that consists only of the following development types: traditional neighborhood development, cluster land development, T4O or T5 or both, and regional center development and does not include any Special District(s). Within thirty (30) days following such modification(s), Applicant will provide the City a subsequent revised Exhibit "D", to substitute and replace the original and first revised Exhibit "D". Changes other than the modifications identified above shall require approval by City Council as a written contract amendment.
 - (5) Applicant 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. Applicant 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 amount of Twenty Two Million Dollars (\$22,000,000.00), 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, 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 Twenty Two Million Dollars (\$22,000,000.00). For any Grant payment the ad valorem real property tax increment revenue must be attributable 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 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 TWENTY TWO MILLION DOLLARS (\$22,000,000.00), 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 TWENTY TWO MILLION DOLLARS (\$22,000,000.00), 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.
- (5) 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, 2015, 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 31 of each year.
- (2) Concurrent with the submittal of a Grant Submittal Package, Applicant will submit to the City documentation as may be reasonably necessary to verify the expenditure to date of the Qualified Expenditures identified in Exhibit "C", which have not otherwise been verified as part of a prior submittal. The City will provide to Applicant a written explanation for any Qualified Expenditures that the City determines cannot be verified. Applicant may submit additional documentation to the City in order to obtain verification.
- (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.

F. **Conditions Precedent.**

- (1) As a condition precedent to Applicant's obligations under this Agreement, including without limitation its obligations relating to the Development as set forth herein, Applicant shall first have: (i) completed the transfer of fee title to the Property; (ii) obtained from the City and other governmental entities, all permits, approvals and entitlements necessary to commence construction of the Development; (iii) obtained from the Texas Department of Transportation (TxDOT) approval of Phase I of the pass through toll projects to provide Interstate Highway I-10 access to the Development; and (iv) a fully executed agreement between Applicant and the El Paso Water Utilities- Public Service Board related to drainage improvements.
- (2) The parties agree and acknowledge that Applicant's obligation to perform under this Agreement is expressly contingent upon the City's commitment to provide a local match for the anticipated TxDOT pass through toll project Phase I adjacent to the Development and Interstate Highway I-10, which must be approved by TxDOT within twelve (12) months from the Effective Date, and for which Applicant or its affiliates will donate and dedicate any right-of-way required for that project.
- (3) Applicant shall not be obligated to perform under this Agreement and may terminate this Agreement upon written notice if any of the conditions precedent identified in (1) and (2) above are not completed to the sole satisfaction of the Applicant. The conditions precedent do not alter or extend any proscribed deadlines in this Agreement absent a written amendment by the parties to that affect.

G. **Deed Restrictions and Property Covenants.**

- (1) Applicant expressly understands, warrants, and agrees that following the re-zoning of the Property to "SmartCode" under Title 21, El Paso City Code, the Property in the Development must be developed in accordance with Title 21, El Paso City Code and the Property shall remained zoned SmartCode for the term of this Agreement.
- (2) Further, as part of the sale, transfer, assignment, or other conveyance of the Property (or any portion thereof), Applicant shall impose deed restrictions and property covenants to run with the land, which restrict the zoning on the Property to SmartCode for a period of twenty years from the date of the City Ordinance approving the SmartCode re-zoning. The deed restrictions and property covenants required under this Section 3(G) shall be filed of record in the Real Property Records of El Paso County, Texas, be made binding upon the parties thereto, and their assigns, heirs, and successors, and made enforceable by a right of action.

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, 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 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; 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 Twenty Two Million Dollars (\$22,000,000.00). 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.
- (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 greater than TWENTY TWO MILLION DOLLARS (\$22,000,000.00).
- (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 TWENTY

TWO MILLION DOLLARS (\$22,000,000.00), 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.

- C. The City agrees to assist Applicant with its presentations to El Paso County as it requests economic incentives from such authority.

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 as described in Section 3(A)(1), 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 (or cause to be maintained) 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 Sections 3(G) or 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, 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 unreasonably withheld. 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.** Applicant will notify the City on an annual basis, in writing and in conjunction with its Grant submittal package, as applicable, of 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. 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. **Estoppel Certificates.** Any party hereto may request an estoppel certificate from the other party hereto so long as the certificate is requested in connection with a bona fide business purpose. In connection with any such request by Applicant, the City hereby delegates authority to the City Manager to execute and deliver to Applicant an estoppel certificate in a form substantively similar to attached Exhibit "E".

- M. **Execution of Agreement.** The El Paso City Council has authorized the City Manager to execute this Agreement on behalf of the City.
- N. **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
Exhibit "E": Estoppel Certificate Form
- O. **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.
- P. **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.
- Q. **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.
- R. **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 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.

- S. **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.
- T. **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 Development or the design, construction or operation of any portion of the Development.
- U. **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.
- V. **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: GELTMORE ALDEA, LLC.
6211 San Mateo Blvd NE, Suite 130
Albuquerque, NM 87109

Copy to: Gordon, Davis, Johnson & Shane, PC
4695 North Mesa
El Paso, Texas 79912

- W. **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. Nothing in this Agreement shall be deemed to be a waiver of Applicant's vested rights in the Development of the Property.

- X. **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 ____ day of _____, 20__.

CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



Ernesto Gamboa, Deputy Director
Planning and 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”

The Development is comprised of approximately 196 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, one or more hotels, 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"

PROPERTY DESCRIPTION

BEING ALL OF TRACTS 20A AND 20C, JOHN BARKER SURVEY NO. 10 IN THE CITY OF EL PASO, EL PASO COUNTY, TEXAS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT 1 PIPE IN CONCRETE FOUND AT THE NORTHEAST CORNER OF JOHN BARKER SURVEY NO. 10 THENCE, WITH THE EAST LINE OF SAID SURVEY SOUTH OF 00°46'34" WEST A DISTANCE OF 2511.01 FEET TO A 5/5" REBAR WITH CAP FOUND AND BEING THE POINT OF BEGINNING;

THENCE, WHEN SAID EAST LINE SOUTH 00°46'34" WEST A DISTANCE OF 2044.41 FEET TO A 5/8" REBAR WITH CAP SET;

THENCE, SOUTH 54°19'20" WEST A DISTANCE OF 103.06 FEET TO A 5/8" REBAR WITH CAP FOUND;

THENCE, SOUTH 42°54'13" WEST A DISTANCE OF 238.51 FEET TO A 5/8" REBAR WITH CAP FOUND;

THENCE, SOUTH 20°13'45" WEST A DISTANCE OF 106.51 FEET TO A 5/8" REBAR WITH CAP FOUND;

THENCE, SOUTH 00°32'12" WEST A DISTANCE OF 314.14 FEET TO A 5/8" REBAR WITH CAP FOUND;

THENCE, SOUTH 39°55'47" EAST A DISTANCE OF 172.07 FEET TO A CONCRETE NAIL IN WALL FOUND;

THENCE, SOUTH 89°35'15" EAST A DISTANCE OF 201.17 FEET TO A "X" IN CONCRETE FOUND;

THENCE, SOUTH 00°46'34" WEST A DISTANCE OF 435.018 FEET TO A PK NAIL AND SHINER SET;

THENCE, NORTH 89°09'53" WEST A DISTANCE OF 45091 FEET TO A 5/8" REBAR WITH A CAP SET;

THENCE, SOUTH 00°51'12" WEST A DISTANCE OF 4.08 FEET TO A 5/8" REBAR WITH CAP SET;

THENCE, NORTH 88°09'53" WEST A DISTANCE OF 1313.67 FEET TO A POINT;

THENCE SOUTH 00°51'12" WEST A DISTANCE OF 433.04 FEET TO A 5/8" REBAR WITH A CAP FOUND;

EXHIBIT "A-1"

THENCE SOUTH $39^{\circ}01'12''$ WEST A DISTANCE OF 7.74 FEET TO A 5/8" REBAR WOTJ CAP FOUND;

THENCE SOUTH $00^{\circ}41'42''$ WEST A DISTANCE OF 205.72 FEET TO A 5/8" REBAR WITH CAP FOUND ON THE NORTH RIGHT-OF-WAY OF EXECUTIVE CENTER BOULEVARD AND THE P.C. OF A CURVE TO THE LEFT;

THENCE, 204.81 FOOT WITH THE ARC OF SAID CURVE AND SAID RIGHT-OF-WAY, HAVING A RADIUS OF 1501.76 FEET, A CENTRAL ANGLE OF $07^{\circ}48'50''$ AND A CHORD BEARING SOUTH $49^{\circ}43'45''$ WEST A DISTANCE OF 204.65 FEET TO A 5/8" REBAR WITH CAP FOUND;

THENCE, WITH SAID RIGHT-OF-WAY SOUTH $45^{\circ}49'20''$ WEST A DISTANCE OF 143.41 FEET TO A 5/8" REBAR WITH CAP FOUND;

THENCE, LEAVING SAID RIGHT-OF-WAY NORTH $44^{\circ}03'09''$ WEST A DISTANCE OF 7.48 FEET TO A TXDOT R.O.W BRASS CAP FOUND;

THENCE, NORTH $68^{\circ}23'11''$ WEST A DISTANCE OF 129.15 FEET TO A TXDOT R.O.W. BRASS CAP FOUND ON THE EAST RIGHT-OF-WAY OFF INTERSTATE HIGHWAY NO.10;

THENCE, WITH SAID RIGHT-OF-WAY NORTH $00^{\circ}31'57''$ EAST A DISTANCE OF 105.58 FEET TO A TXDOT R.O.W. MONUMENT WITHOUT A BRASS CAP FOUND;

THENCE, WITH SAID RIGHT-OF WAY NORTH $00^{\circ}46'52''$ EAST A DISTANCE OF 1110.09 FEET TO A TXDOT R.O.W. BRASS CAP FOUND;

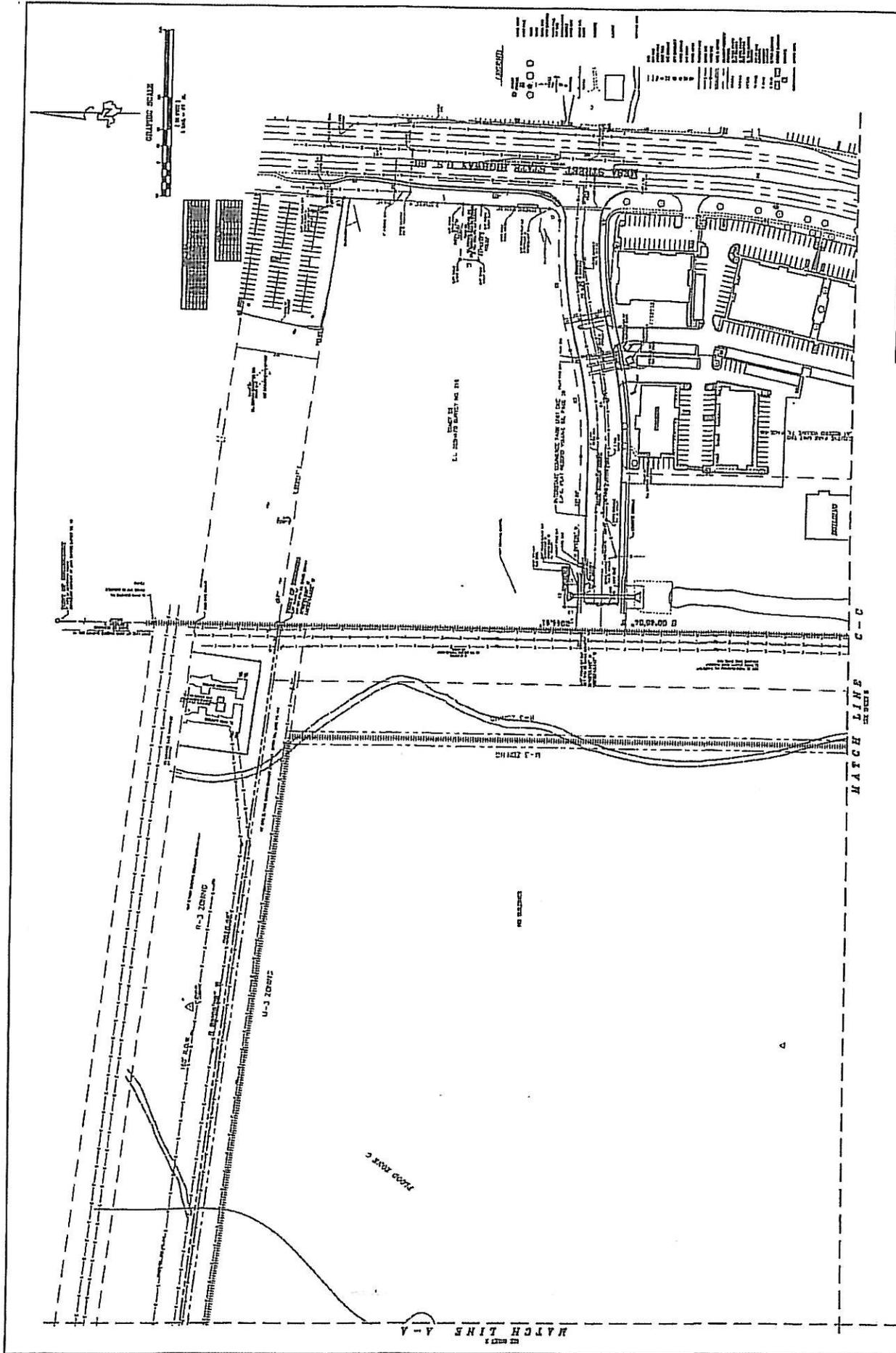
THENCE, WITH SAID RIGHT-OF-WAY NORTH $00^{\circ}49'37''$ EAST A DISTANCE OF 942.76 FEET TO A TXDOT R.O.W. BRASS CAP FOUND;

THENCE, WITH SAID RIGHT-OF-WAY NORTH $21^{\circ}15'05''$ WEST A DISTANCE OF 941.69 FEET TO A TXDOT R.O.W. BRASS CAP FOUND;

THENCE, WITH SAID RIGHT-OF-WAY NORTH $21^{\circ}19'16''$ WEST A DISTANCE OF 236.75 FEET TO A TXDOT R.O.W. BRASS CAP FOUND;

THENCE, LEAVING SAID RIGHT-OF-WAY NORTH $00^{\circ}47'22''$ EAST A DISTANCE OF 236.59 FEET TO A CHISELED "X" ON CONCRETE MONUMENT SET;

THENCE, SOUTH $82^{\circ}25'29''$ EAST A DISANCE OF 2616.36 FEET TO THE POINT OF BEGINNING CONTAINING 196.270 ACRES OR 8,549,568 SQUARE FEET.



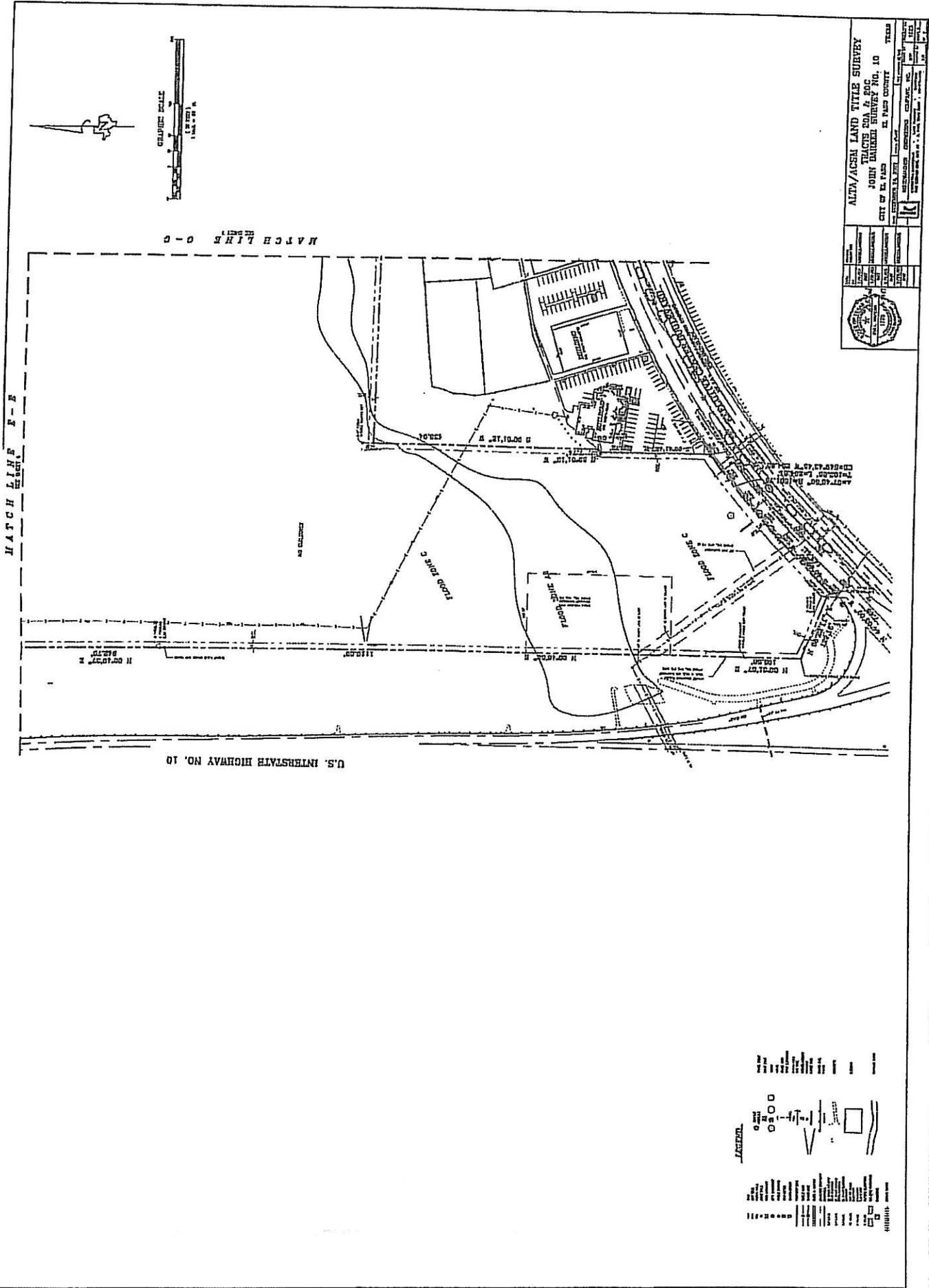
ALTA/ACSA LAND TITLE SURVEY
 TRACTS 20A & 20C
 JOHN BARBER SURVEY NO. 10
 CITY OF EL PASO, TEXAS

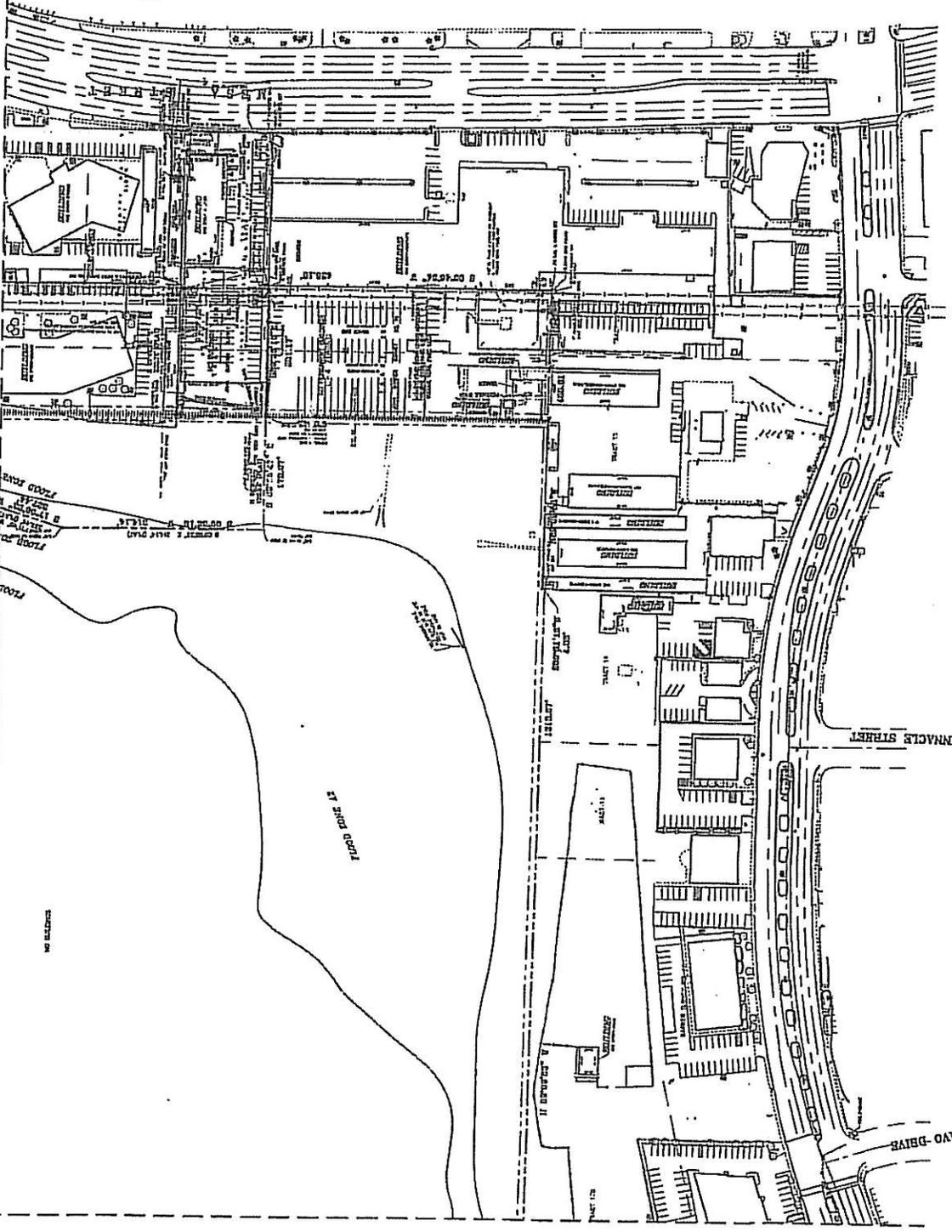
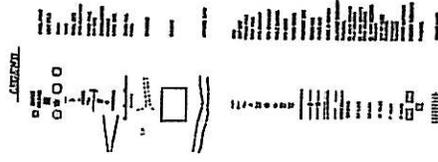
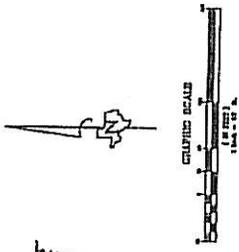
REVISIONS	
NO.	DESCRIPTION
1	AS SHOWN

SURVEY DATA	
DATE	BY
10/15/1988	J. BARBER

TOTALS	
ACRES	SQ. FT.
1.0000	69,696.00

ADDITIONAL DATA	
DESCRIPTION	AMOUNT
AREA UNDER ROOF	10,000.00
AREA OF LOT	69,696.00





ALTA/ACSK LAND TITLE SURVEY
 TRACTS 20A, 20B1 & 20C
 JOHN BARBER SURVEY NO. 10
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

EXHIBIT 'B'
Grant Submittal Package Form

Applicant believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by _____. Pursuant to the Agreement, **Applicant** 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. Property Tax Payment Receipt(s) of payment for tax year ____ not previously submitted.
2. Qualified Expenditures to date.
3. Copy of ordinance evidencing Smart Code Zoning for property defined by Exhibit "A-1". (Only required upon first submission of Grant Submittal Package).
4. List of current PID's within the geographic boundaries of the area defined by metes and bounds on Exhibit "A-1".

It is understood by **Applicant** that the City of El Paso has up to ninety (90) days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

APPLICANT:
GELTMORE ALDEA, LLC

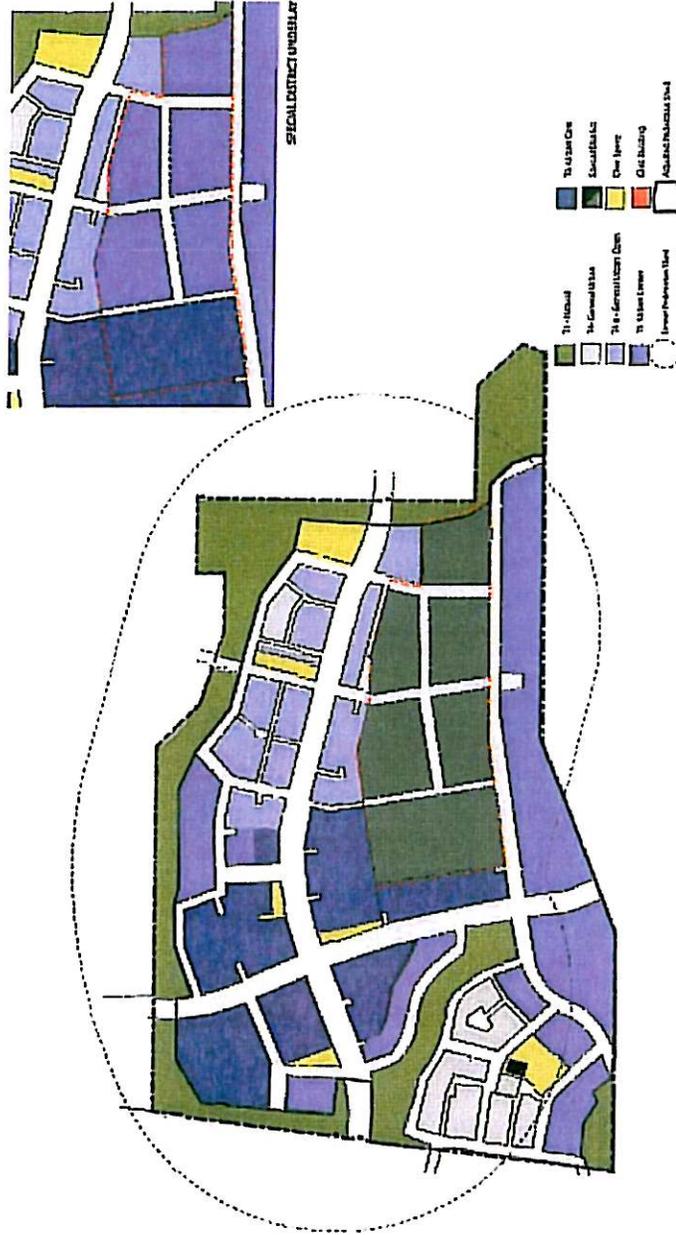
Name: _____
Title: _____

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 and to include land acquisition costs to the extent the land acquisition costs for any land for horizontal infrastructure required under Smart Code provisions in excess of land required to be dedicated absent Smart Code zoning. The proposed horizontal infrastructure improvements and their anticipated associated cost for the Development are shown summarized below:

Water Facilities	\$ 760,724
Sanitary Sewer Facilities	\$ 688,990
Storm Sewer Facilities	\$ 910,188
Road Facilities	\$9,484,332
Pond / Channel Facilities	\$4,072,775
Park / Landscape Facilities	\$4,820,125
Dry Utility	\$1,040,310
Contingency	\$2,177,745
Engineering Fee	\$1,197,759
TOTAL:	\$25,152,948

EXHIBIT "D" Preliminary Regulating Plan



REGULATING PLAN
Scale 1" = 500'

**MINER VILLAGE EL PASO, TEXAS
TOD MASTER PLAN**
© 2010 Placemakers LLC for Discussion Purposes Only

EXHIBIT "E"
Estoppel

City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

_____, 20____

Geltmore, LLC

Re: Chapter 380 Economic Development Program Agreement (the "Agreement") dated effective _____, 2011, by and between the **CITY OF EL PASO, TEXAS** (the "City"), a Texas home rule municipal corporation, and **GELTMORE, LLC**, a New Mexico limited liability company ("Owner")

Ladies and Gentlemen:

1. Owner is and remains the Applicant under the Agreement covering the Property.
2. The Agreement contains the full and complete agreement of the parties with respect to the subject matter thereof. No other understandings (oral or written) exist with respect thereto. The Agreement is in full force and effect.
3. Any known default:[]
4. The remaining term of the Agreement is _____.
5. To the best of City's knowledge, as of the date hereof there is no known default under the Agreement, except as noted in paragraph 3 above. To the best of City's knowledge, there exists no condition, event, fact, or occurrence which, by service of notice or passage of time, or both, if uncured, would constitute a default on the part of Owner under the Agreement except as noted in paragraph 3 above.
6. City acknowledges that Applicant is desirous of obtaining a loan from [] ("Lender") in the approximate amount of \$ _____, secured by a lien against Applicant's interest in the Property (the "Loan").

The City has delivered this Estoppel in satisfaction of the provisions of Section 8(L) of the Agreement. The person executing this Estoppel has the power and authority to execute and deliver this Estoppel on behalf of the City. The City certifies that Owner, [Purchaser and any lender or [Lender] and their respective affiliates, successors, assigns and/or participants, may rely on the representations contained herein in connection with [the acquisition of the Property and any loan secured thereby] or [the Loan].

CITY OF EL PASO, TEXAS

_____,
City Manager

APPROVED AS TO FORM:

Assistant City Attorney

APPROVED AS TO CONTENT:

_____, Director
Planning and Economic Development Department