

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

**DEPARTMENT:** Economic Development  
**AGENDA DATE:** May 18, 2010 Regular Agenda  
**CONTACT PERSON/PHONE:** Kathryn Dodson, PhD, Director 541-4670  
**DISTRICT(S) AFFECTED:** ALL

**SUBJECT:**

Discussion and action on a Resolution that the City Manager be authorized to sign the First Amendment to Chapter 380 Economic Development Program Agreement, between the City of El Paso and Hawkins Center, LP, successor-in-interest to Hawkins Regency, LLC, ("Applicant"), regarding Applicant's redevelopment of the approximately 55-acre property located at 8877 and 8889 Gateway Boulevard in El Paso, Texas (Farah property) and the City financial incentives for economic development related thereto.  
[Economic Development, Kathryn B. Dodson, (915) 541-4872]

**BACKGROUND/DISCUSSION:**

On November 6, 2008 the City of El Paso entered into a Chapter 380 Agreement with Hawkins Regency, LLC related to the construction and operation of a lifestyle mall in El Paso. The developer is now asking to amend the contract to include the following items: to extend contract deadlines for an additional three years; to stipulate that the taxable property value of the development not be reduced below CAD 2009 valuation and to authorize a \$200,000 reduction in the maximum grant award.

**PRIOR COUNCIL ACTION:**

Yes. On April 27, 2010, City Council by motion directed the City Manager to bring back to Council for consideration a modification of the Chapter 380 Agreement

**AMOUNT AND SOURCE OF FUNDING:**

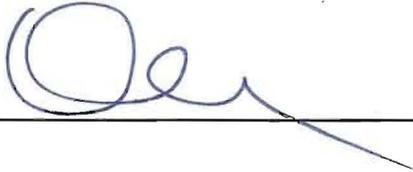
Reduction in the City's liability under the contract from \$8M net present value to \$7.8M net present value General fund (derived from the sales and use tax and ad valorem property tax).

**BOARD/COMMISSION ACTION:**

On April 15, 2010, the Economic and Community Development, Quality of Life and Tourism LRC voted 2-2 for the item. Because of the split vote, the item was brought to April 27 City Council meeting with no recommendation by the LRC.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:** \_\_\_\_\_



**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, between the City of El Paso and Hawkins Center, LP, successor-in-interest to Hawkins Regency, LLC, ("Applicant"), regarding Applicant's redevelopment of the approximately 55-acre property located at 8877 and 8889 Gateway Boulevard in El Paso, Texas (Farah property) and the City financial incentives for economic development related thereto.

**APPROVED this** \_\_\_\_\_ **day of** \_\_\_\_\_ **2010.**

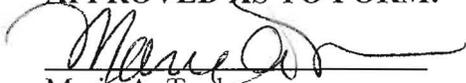
**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook,  
Mayor

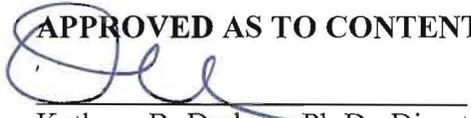
**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Marie A. Taylor  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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

## FIRST AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This First Amendment is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **CITY OF EL PASO, TEXAS** (the "**CITY**") and **HAWKINS CENTER, LP**, successor-in-interest to Hawkins Regency, LLC, ("**APPLICANT**").

**WHEREAS**, on November 6, 2008, 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, to stipulate the minimum taxable property value for the **DEVELOPMENT** during the term of the Agreement, and to reduce 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 4, Section 3. Obligations of Applicant, subsection (a) Development, first paragraph is hereby amended to read as follows:

Subject to the terms and conditions set forth in this Agreement, **APPLICANT** agrees to perform the Site Preparation Work and to redevelop and construct, at its sole cost and expense, or the expense of its lessees or users, the **LIFESTYLE COMPONENT** with a minimum area of the greater of: (i) 50,000 square feet, or (ii) ten percent (10%) of the total square footage of the **DEVELOPMENT** or any portion thereof to the extent that **APPLICANT** elects to redevelop and construct the entire **DEVELOPMENT** or any portion thereof; except that in performance of the Site Preparation Work **APPLICANT** is expressly obligated to and shall commence demolition of buildings presently situated on the Property, to include foundational slabs, by no later than August 1, 2010 and shall complete such demolition work components no later than July 31, 2011, subject to force majeure delays (as addressed in Section 9(j) below) . If **APPLICANT** so elects to construct the entire **DEVELOPMENT** or any portion thereof, identifiable lifestyle amenities will be distributed throughout, as depicted in **APPLICANT'S** detailed site development plan in **Exhibit "B-1"** and listed in **Exhibit "B"**.

2. Page 5, Section 3. Obligations of Applicant, subsection (a) Development, the first two sentences of the fifth paragraph are hereby amended to read as follows:

Subject to force majeure delays (as addressed in Section 9(j) below), **APPLICANT** shall (i) commence the Site Preparation Work within twelve (12) months after the Effective

Date; and (ii) substantially complete the Site Preparation Work within seventy-two (72) months following the Effective Date. In addition, in order for **APPLICANT** to qualify for **GRANT** payments under this Agreement, if **APPLICANT** determines in its sole discretion to construct the **DEVELOPMENT** or portion thereof including the **LIFESTYLE COMPONENT**, **APPLICANT** shall (iii) commence construction of the **LIFESTYLE COMPONENT** within seventy-two (72) months following the Effective Date; and (iv) substantially complete construction of the **LIFESTYLE COMPONENT** within ninety-six (96) months following the Effective Date.

3. Page 6, Section 3. Obligations of Applicant, subsection (b) Amount of Grant, is hereby amended in its entirety to read as follows:

(b) **AMOUNT OF GRANT.** The total **GRANT** amount payable by the **CITY** under this Agreement, if any, shall be the aggregate of all payments made that results in a maximum Net Present Value of Seven Million Eight Hundred Thousand Dollars (\$7,800,000.00).

4. Page 6, Section 3. Obligations of Applicant, subsection (c) Disbursement of Grant, the first sentence of subsection (c) is hereby amended to delete the words "sixty (60) months" and substitute with the words "ninety-six (96) months", thereby extending the Applicant's deadline to submit an Initial Grant Submittal Package to the City by an additional thirty-six months.
5. Page 7, Section 3. Obligations of Applicant, subsection (c) Disbursement of Grant, fourth paragraph, is hereby amended to read as follows:

**GRANT** payments will continue until the earlier of the expiration of the term of this Agreement or until the aggregate of all payments made results in a Net Present Value of SEVEN MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$7,800,000.00). Under no circumstances shall the **CITY** be required to disburse under this Agreement more than an aggregate of all payments made that would exceed the Net Present Value of SEVEN MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$7,800,000.00), nor shall **APPLICANT** be entitled to receive the **GRANT** unless it satisfies all the requirements of Section 3 of this Agreement.

6. Page 8, Section 3. Obligations of Applicant, subsection (f) Property Value, is hereby amended to add the following additional paragraph, to read as follows:

**APPLICANT** covenants and agrees that for each year during the term of this Agreement, **APPLICANT** will submit to the El Paso Central Appraisal District a rendition of real property valuation in an aggregated amount of at least \$18,980,000.00 for all properties in the **DEVELOPMENT**. **APPLICANT** must file Form 50-141 General Real Estate Rendition of Taxable Property or other form(s) as required by the El Paso Central Appraisal District after January 1 of each year and not later than April 15 or by May 15 of that year if **APPLICANT** has filed a written request for an extension to file the same with that agency. In no event shall **APPLICANT'S** obligations under this

paragraph constitute an affirmative act to reduce the assessed value under this Section 3(f).

7. Page 9, Section 3, Obligations of Applicant, subsection (i) Relocation Penalty, the last sentence of the first paragraph is hereby amended to read as follows:

"The annual **GRANT** payments under this Agreement shall be reduced by the amount of any penalties assessed under this Section 3(i), resulting in the maximum **GRANT** amount of \$7.8 million NPV being reduced by the corresponding amount of any such penalties."

8. Page 11, Section 4, Obligations of City, subsection (b), third subparagraph is hereby amended to read as follows:

Such **GRANT** Payments will continue until the earlier of the expiration of the term of this Agreement or until the aggregate of all payments made results in no greater than a Net Present Value of SEVEN MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$7,800,000.00).

9. Page 12, Section 5, Termination and Recapture, is hereby amend to add the following additional subsection (c), to read as follows:

**(c) Failure to Commence or Substantially Complete Demolition.** In the event **APPLICANT** fails to commence demolition of buildings presently situated on the Property, to include foundational slabs, or to substantially complete such demolition work components of the Site Preparation Work within the time periods specified in Section 3 of this Agreement, **CITY** shall provide **APPLICANT** thirty (30) days written notice of such failure, and if **APPLICANT** fails or refuses to cure within said thirty (30) day time period, the same shall constitute an event of default under this Agreement and the **City** may take the following non-exclusive actions: (i) enforce specific performance of **APPLICANT'S** obligation with respect to demolition work hereunder, (ii) terminate this Agreement by written notice thereof to **APPLICANT**, whereupon the obligations of both parties shall cease, and recapture from **APPLICANT** any and all previously awarded grant payments pursuant to the provisions of Section 7 below; or (iii) pursue other remedies available to the **CITY** at law or in equity.

10. Page 18, Section 9. Miscellaneous Provisions, subsection (k) Grant Period, is hereby amended in its entirety to read as follows:

**(k) Grant Period.** The Grant Period (the "Grant Period") shall commence upon the date that is twelve (12) months following the issuance of the first Certificate of Occupancy to the first lessee or user in the **LIFESTYLE COMPONENT**, which must occur no later than ninety-six (96) months following the Effective Date. If the Grant Period as defined herein has not commenced after ninety-six (96) months following the Effective Date, the **CITY** shall have the right to terminate this Agreement by providing to **APPLICANT** thirty (30) day written notice of such termination.

Except as amended herein, the Agreement between **CITY** and **APPLICANT** shall remain in full force and effect.

**IN WITNESS WHEREOF, 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:**

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

**APPLICANT:**

HAWKINS CENTER LP,  
a Texas limited partnership

By: Hawkins Center GP, LLC,  
a Texas limited liability company

Its: General Partner

By: \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Title: \_\_\_\_\_

[ACKNOWLEDGMENTS ON FOLLOWING PAGE]

**ACKNOWLEDGMENT**

STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2010, 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 \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF                   §  
                                  §  
COUNTY OF       EL PASO   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, as \_\_\_\_\_ of Hawkins Center GP, LLC, General Partner on behalf of Hawkins Center LP, a limited partnership, organized and existing under the laws of the State of Texas (**APPLICANT**).

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_