

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

**DEPARTMENT:** City Development Department

**AGENDA DATE:** July 31, 2012

**CONTACT PERSON NAME AND PHONE NUMBER:** Mathew McElroy, City Development Department,  
541-4193

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

That the City of El Paso Downtown New Construction Incentive Policy and Sustainable City Centers Incentive Policy are adopted with an effective date of September 1, 2012, and that the City Manager shall be authorized to executive standard Chapter 380 Agreements with applicants in the form and substance as approved by the City Attorney and City Development Director, provided that all eligibility requirements are met and so long as the execution of any particular Agreement will not result in encumbering more than \$2,000,000 per fiscal year in the aggregate for all existing Chapter 380 Agreements under the adopted policies.

**BACKGROUND / DISCUSSION:**

The Downtown New Construction Incentive Policy and Sustainable City Centers Policy are part of the comprehensive Adaptive Re-Use Program taking effect September 1, 2012. Both these policies allow for various incentives for commercial investment in new development and construction, renovation, restoration and rehabilitation of properties, using the design guidelines described within Plan El Paso, within downtown and five Transit Oriented Development areas including Medical Center of the Americas, Five Points, Northgate, Glory Road, and Nestor Valencia transit terminals.

The Chapter 380 Agreements are the contracts utilized to execute the incentive agreements described above.

**PRIOR COUNCIL ACTION:**

Sales and Use Tax rebate policy in place since 2007. Development and construction fee waivers for downtown approved February 2012.

**AMOUNT AND SOURCE OF FUNDING:**

Not applicable

**BOARD / COMMISSION ACTION**

\*\*\*\*\*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*

**RESOLUTION**

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

That the City of El Paso Downtown New Construction Incentive Policy and Sustainable City Centers Incentive Policy (collectively, "Policies"), both of which are attached hereto are adopted with an effective date of September 1, 2012; and

That the City Manager shall be authorized to execute standard Chapter 380 Agreements with Applicants in the form and substance as approved by the City Attorney and City Development Director, provided that all eligibility requirements are met and so long as the execution of any particular Agreement will not result in encumbering more than \$2,000,000 per fiscal year in the aggregate for all existing Chapter 380 Agreements under the adopted Policies.

ADOPTED this the \_\_\_\_\_ day July, 2012.

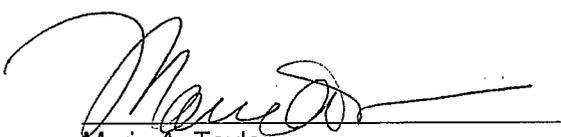
THE CITY OF EL PASO

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

ATTEST:

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

APPROVED AS TO FORM:

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

APPROVED AS TO CONTENT:

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

# **Downtown New Construction Incentive Policy**

## **PURPOSE**

It is the policy of the City of El Paso to provide incentives to promote commercial investment in the renovation, restoration and rehabilitation of properties and new development and construction and use of design guidelines described within Plan El Paso, the City of El Paso's Comprehensive Plan ("Comprehensive Plan") within the Downtown 2015 Plan area, the Downtown Historic District, and within the designated downtown area around San Jacinto Plaza and the Union Plaza District as defined below (more specifically depicted on the Map attached hereto as Exhibit A, the "Incentive Area"), to encourage infill and redevelopment in the City's historic downtown core, and create a vibrant urban fabric with a wide mix of uses, street-oriented buildings, proud architecture of distinctive character; and numerous public and civic gathering spaces. Insofar as these goals are served by enhancing the value of the local tax base and foster and support economic growth and opportunity and to ensure new investments will market the area as a thriving place to work, live and visit, the City of El Paso will give consideration to provide incentives for property development and redevelopment within the downtown area.

The purpose of this policy is to define the financial or other incentives available to encourage renovation, restoration, rehabilitation and new construction within the downtown area that utilize the use of design guidelines described within Plan El Paso, the City of El Paso's Comprehensive Plan ("Comprehensive Plan") .

*The City of El Paso is under no obligation to approve any requested incentive and the right to these incentives is neither intended nor implied.*

## **DEFINITIONS**

Comprehensive Plan – City of El Paso's Comprehensive Plan entitled "Plan El Paso" adopted by El Paso City Council on March 6, 2012.

Downtown Historic District - a special purpose district as defined in Title 20 of the City of El Paso municipal code (as depicted on the Map attached hereto as Exhibit A, within the "Incentive Area").

Downtown Plan – the Downtown 2015 Plan adopted by El Paso City Council on October 31, 2006, and incorporated into the Comprehensive Plan pursuant to the provisions of Section 213.002 of the Texas Local Government Code (as depicted on the Map attached hereto as Exhibit A, within the "Incentive Area – Level 2").

Leadership in Energy and Environmental Design (LEED) – program for construction of buildings that meet the LEED rating system that scores buildings according to their energy savings, water efficiency, CO2 emissions reduction, improved indoor environmental quality and stewardship of resources and sensitivity to their impacts.

Parking structure – As per Title 21 of the El Paso Municipal Code (21.70.010), parking structure means a building containing one or more stories of parking above grade.

San Jacinto Plaza – a three (3) block radius surrounding San Jacinto Plaza (as depicted on the Map attached hereto as Exhibit A, within the “Incentive Area – Level 1”).

Smart Code – a land development ordinance adopted by City Council as referenced in Title 21 of the City of El Paso municipal code. The ordinance is a set of development policies and principles designed to create compact, walkable and mixed-use neighborhoods with a variety of transportation options, conservation of green space and local character with diverse housing options.

Union Plaza District – a special purpose district as defined in Title 20 of the City of El Paso municipal code (as depicted on the Map attached hereto as Exhibit A, within the “Incentive Area – Level 1”).

## **PROGRAM POLICY AND ELIGIBILITY CRITERIA**

It is the policy of the City of El Paso that consideration will be provided in accordance with the guidelines, criteria and procedures outlined in this document. This policy applies to the owners of real property. Project consideration will include the potential impact of the new construction project on the immediate and surrounding area.

The City of El Paso may provide incentives to a property owner if the proposed renovation project meets the following requirements:

1. Is private commercial or multi-family use property that includes investment in adaptive reuse or rehabilitation of any property in a historic district or with a historic designation in the Incentive Area; and
2. Building permits must be granted within twenty-four (24) months after adoption of this Downtown New Construction Incentive Policy; and
3. Renovation is in accordance with the requirements and review provisions of Chapter 20.20 (Historic Landmark Preservation) of the City Code, where applicable.

The City of El Paso may provide incentives to a property owner if the proposed new construction project meets the following criteria:

1. Is private commercial or multi-family use property that includes investment in new construction or renovation located in the Incentive Area (Exhibit A); and
2. New construction project must meet the design guidelines outlined in the City's Comprehensive Plan and Downtown Plan or bring the property into greater conformance with the design guidelines as determined by the City Review Committee; and
3. Includes new construction of a building with a minimum of three (3) stories in height and a minimum of 75,000 square feet; and
4. Renovation projects must have a minimum investment of Two Hundred Fifty Thousand and No/100 U.S. Dollars (\$250,000); and
5. New construction project must include a minimum of 80% spaces within a Parking Structure with no off street surface parking (handicapped spaces exempt if screened and not in first two parking layers as per the City of El Paso Smart Code as defined in Title 21 of the City of El Paso municipal code); and
6. All Parking Structures must contain ground floor retail or building liners in accordance with the City's Comprehensive Plan; and
7. Demonstrates the potential to generate revenues to the City which outweigh costs associated with incentives; and
8. The building permits must be granted within twenty-four (24) months after adoption of this Downtown New Construction Incentive Policy; and
9. The Downtown New Construction Policy incentives described herein will not be eligible for projects that include the demolition of properties with a historic overlay that are deemed historic or contributing unless specifically approved by Council; and
10. The Downtown New Construction Policy incentives described herein may be eligible to be used in conjunction with other incentive programs such as the City's LEED grant.

In addition, the following criteria must be satisfied.

The project must:

1. Show a clear demonstration of public purpose and economic benefit through advancement of the City's revitalization strategy for the future growth and development of the downtown area which is the economic heart of the City and its vibrancy is key to investments made throughout the community and promotes public health, safety, and welfare and creates an area with quality and thriving places to work, live and visit; and
2. Include solid evidence provided by the property owner that demonstrates the financial stability and capacity to complete the project, evidence can include financial statements for a corporation or tax statements for an individual; and
3. Be in compliance with all local, state and federal laws.

The applicant, in order to receive any such incentives from the City of El Paso will make available credible information to enable the City to prepare a fiscal impact analysis. The applicant will update this information annually during the term of any incentives contract. The decision to provide any economic development incentives will be considered on a project-by-project basis, in accordance with the criteria set forth in this policy, and at the discretion of the City Council of the City of El Paso. In order to be eligible for incentives, businesses or individuals must be current on all city taxes or any other obligation to the City.

For purposes of this section, any property in a historic district or with a historic designation shall be subject to the requirements and review provisions of Chapter 20.20 (Historic Landmark Preservation) of the City Code, and shall not be waived by any provision of this policy.

Agreements may be conditioned on the completion of specific improvements to real property. The Agreements shall contain recapture clauses in the event that such conditions are not met.

## **PROCEDURAL AND PROGRAM GUIDELINES**

Any person, partnership, organization, corporation or other entity desiring that the City of El Paso consider providing downtown new construction incentives shall be required to comply with the following procedural guidelines.

### **Application**

Applicants shall submit a completed "Application for Downtown New Construction Incentives" form for consideration of financial incentives to the City Development Department of the City of El Paso, Economic Development Division, 2 Civic Center Plaza, El Paso, Texas 79901.

### **Consideration of the Application**

The City Manager or designee will consider requests for financial incentives in accordance with these policies, the Texas Tax Code, and the Texas Local Government Code. Additional information may be requested as needed. Applicants satisfying the general criteria and meeting the qualification standards will be considered.

When authorized by City Council, the City Manager, on behalf of the City, may enter into an agreement/incentives contract that outlines the terms and conditions between the City and the applicant, and governs the provision of the incentives to be provided for the project.

### **Inspection of the Project**

During the term of such agreement, the City of El Paso will have the right to inspect the project facility during regular business hours to ensure compliance with the agreement and accuracy of the owner certification.

### **Recapture**

If a project is not completed as specified, or if the terms of the agreement are not met, the City has the right to cancel or amend the incentive agreement, recapture any rebated tax amounts, and all previously waived fees and rebated tax amounts shall become due to the City.

## **TYPES OF DIRECT FINANCIAL INCENTIVES AVAILABLE**

### **1. Property Tax Rebate**

The City's portion of the increment ad valorem property taxes over the base year may be rebated to the property owner according to the following schedule:

- 10 year, 100 percent rebate of the City's portion of Property Taxes, increment only for projects located within the San Jacinto Plaza area and the Union

Plaza District as depicted on the Map attached hereto as Exhibit A, the Incentive Area – Level 1

- 5 year, 100 percent rebate of the City’s portion of Property Taxes, increment only for properties located within the Downtown 2015 Plan area as depicted on the Map attached hereto as Exhibit A, the Incentive Area – Level 2

Ad valorem property tax rebate is only available on properties from which the City receives ad valorem taxes (i.e. taxes cannot be diverted through Historic Tax Credits, Transportation Reinvestment Zone, prior 380 agreements, Tax Increment Reinvestment Zones or other means, except for properties within Tax Increment Reinvestment Zone No. 5). The base year used for the calculation of incentives will be the year of contract execution. This incentive will be delivered by execution of a standard Chapter 380 Agreement, as approved by the City Attorney.

**Additional incentive available to support Downtown Public Improvements:**

If the costs for public improvements associated with the development project within the Incentive Area in Level 1 will exceed \$10 million, then the applicant is eligible for an extended contract term in order to receive an additional ad valorem property tax rebate equal to 50% of the public improvements costs based on the following minimum investment level and maximum rebate amount:

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

**2. Ground Floor Retail Sales & Use Tax Rebate**

The City’s portion of sales and use taxes may be rebated to the eligible applicant according to the following schedule:

- 10 Year, 50 percent rebate of City's portion of sales and use taxes from ground floor street oriented retail only for projects located within the San

Jacinto Plaza area and the Union Plaza District as depicted on the Map attached hereto as Exhibit A, the Incentive Area – Level 1.

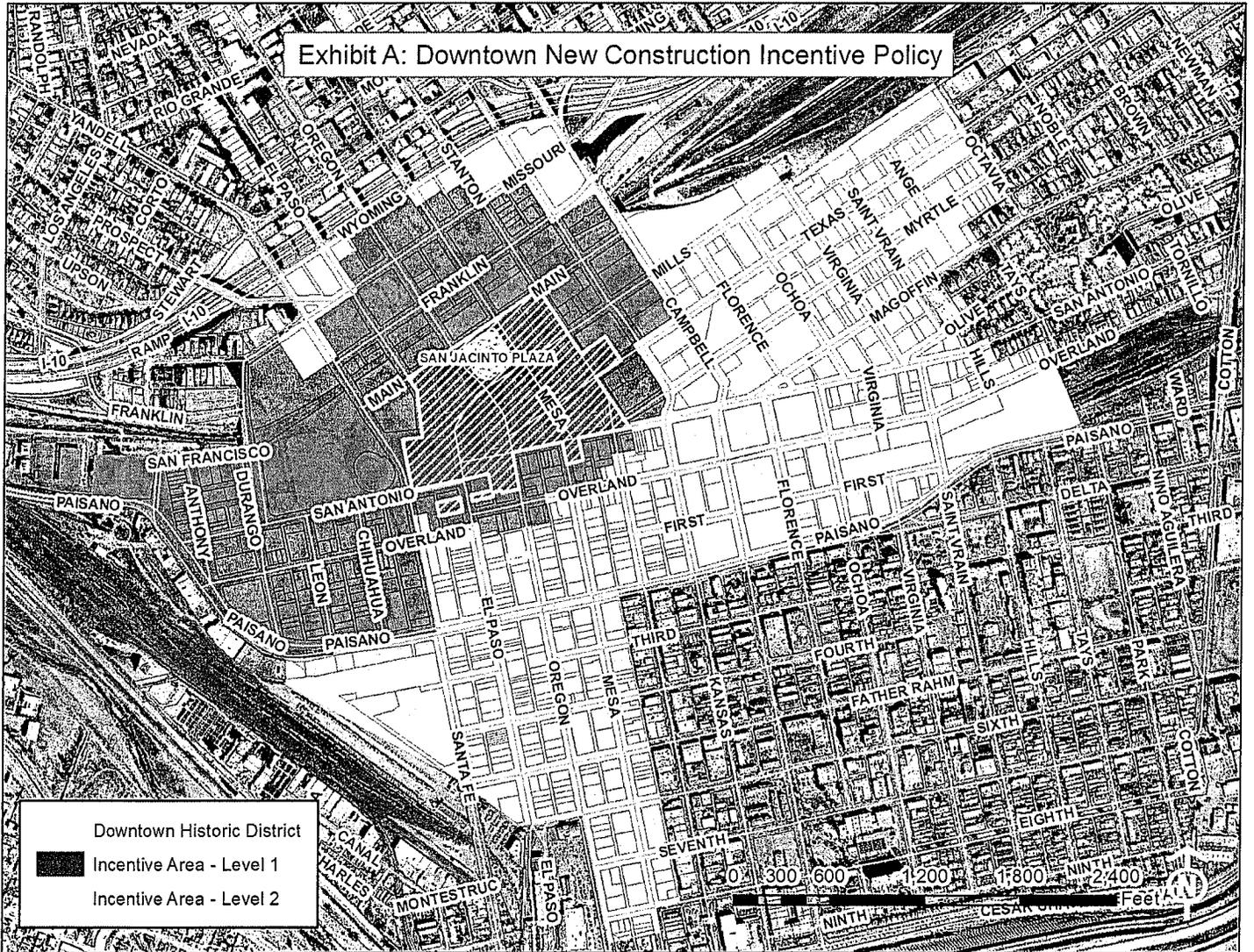
- For historic landmark buildings or contributing buildings within the historic districts, 5 Year, 100 percent rebate of City's portion of sales and use taxes from ground floor street oriented retail only for projects located within the Downtown Historic District as depicted on the Map attached hereto as Exhibit A.
- 5 Year, 50 percent rebate of City's portion of sales and use taxes from ground floor street oriented retail only for properties located within the Downtown 2015 Plan area as depicted on the Map attached hereto as Exhibit A, the Incentive Area – Level 2.

Eligibility for this incentive is subject to the City's receipt of waivers of confidentiality of sales tax payments from the applicant's retail tenants.

#### **TERM OF FINANCIAL INCENTIVES**

The availability of financial incentives under this Policy shall remain in effect for two (2) years from adoption by City Council.

Exhibit A



# Sustainable City Centers Incentive Policy

## PURPOSE

It is the policy of the City of El Paso to provide incentives to promote sustainable city centers and use of design guidelines described within Plan El Paso, the City of El Paso's Comprehensive Plan ("Comprehensive Plan") within the Transit-Oriented Development (TOD) Overlay defined below (more specifically depicted on the Map attached hereto as Exhibit A, the "Incentive Area") to improve all types of mobility and travel choices, spur economic development, support Downtown revitalization, and invest in established neighborhoods. The success of the Rapid Transit System (RTS) will also hinge on the quality of urban spaces that surround the RTS stations. TOD is a design and development strategy that links higher-density, walkable neighborhoods to transit stations. TOD strengthens the urban fabric that surrounds public transportation with a mix of daily uses, including housing, retail and office. This strategy acknowledges that most transit riders begin and end their trips as pedestrians, and that the streets around RTS stations should be safe, interesting and convenient places to walk. Insofar as these goals are served by enhancing the value of the local tax base and set the stage for longer-term multimodal transportation investments that support the City's future land use vision by restoring lost urban fabric and concentrate on a human-scaled smart growth strategy, the City of El Paso will give consideration to provide incentives for sustainable city centers in the TOD Overlay.

The purpose of this policy is to define the financial or other incentives available to encourage sustainable city centers to jump start economic development in urban locations specifically located along these five primary corridors, the TOD Overlay, to improve the quality of life for El Paso residents while reducing the City's carbon footprint.

*The City of El Paso is under no obligation to approve any requested incentive and the right to these incentives is neither intended nor implied.*

## DEFINITIONS

Comprehensive Plan – Plan El Paso, the City of El Paso's Comprehensive Plan adopted by El Paso City Council on March 6, 2012.

Leadership in Energy and Environmental Design (LEED) – program for construction of buildings that meet the LEED rating system that scores buildings according to their energy savings, water efficiency, CO2 emissions reduction, improved indoor environmental quality and stewardship of resources and sensitivity to their impacts.

Smart Code – a land development ordinance adopted by City Council as referenced in Title 21 of the City of El Paso municipal code. The ordinance is designed to create compact, walkable and mixed-use neighborhoods with a variety of transportation options, conservation of green space and local character with diverse housing options.

Smart Code Regulation Plan – means a zoning map or set of maps that shows the transect zones, civic zones, special districts if any, and special requirements if any, of areas subject to, or potentially subject to, regulation by the SmartCode.

Transit-Oriented Development (TOD) Overlays – a ¼ mile radius around the five Rapid Transit System (RTS) stations located in the areas of Five Points, Nestor Valencia, Glory Road, Northgate and the entire Medical Center of the Americas (MCA) Smart Code Zone.

## **PROGRAM POLICY AND ELIGIBILITY CRITERIA**

It is the policy of the City of El Paso that consideration for the project will be provided in accordance with the guidelines, criteria and procedures outlined in this document. This policy applies to the owners of real property. Project consideration will include the potential impact of the new construction project on the immediate and surrounding area. The City of El Paso may provide incentives to a property owner if the proposed new construction project meets the following criteria:

1. Private commercial or multi-family use property that includes investment in transit-oriented development within the Incentive Area; and
2. New construction project must meet the design guidelines outlined in the City's Comprehensive Plan, and more specifically, in the Urban Design Element and Community Design Manual of City's Comprehensive Plan and in the proposed Smart Code Neighborhood Plans and specific transect zone applied to an individual property (the "Design Requirements"); and
3. Private commercial or multi-family use property that includes investment of a minimum of \$200,000 for new construction or a minimum of \$50,000 if adaptive reuse or rehabilitation and utilizes the Design Requirements; and
4. Demonstrates the potential to generate revenues to the City which outweigh costs associated with incentives;
5. The building permits were granted within forty-eight (48) months after adoption of this Sustainable City Centers Incentive Policy; and

6. The Sustainable City Centers Policy incentives described herein will not be eligible for projects that include the demolition of properties with a historic overlay that are deemed historic or contributing.
7. The Sustainable City Centers Policy incentives described herein may be eligible to be used in conjunction with other incentive programs such as the City's LEED grant.
8. Include solid evidence provided by the property owner that demonstrates the financial stability and capacity to complete the project, evidence can include financial statements for a corporation or tax statements for an individual; and
9. Be in compliance with all local, state and federal laws.

The applicant, in order to receive any such incentives from the City of El Paso will make available credible information to include, but not limited to, all appropriate and substantiating documents detailing eligible reimbursement amount requested to enable the City to prepare a fiscal impact analysis. The applicant will update this information annually during the term of any incentives contract. The decision to provide any economic development incentives will be considered on a project-by-project basis, in accordance with the criteria set forth in this policy, and at the discretion of the City Council of the City of El Paso. In order to be eligible for incentives, businesses or individuals must be current on all city taxes or any other obligation to the City.

For purposes of this section, any property in a historic district or with a historic designation shall be subject to the requirements and review provisions of Chapter 20.20 (Historic Landmark Preservation) of the City Code, and shall not be waived by any provision of this policy.

Agreements may be conditioned on the completion of specific improvements to real property. The Agreements shall contain recapture clauses in the event that such conditions are not met.

## **PROCEDURAL AND PROGRAM GUIDELINES**

Any person, partnership, organization, corporation or other entity desiring that the City of El Paso consider providing sustainable city centers incentives shall be required to comply with the following procedural guidelines.

### **Application**

Applicants shall submit a completed "Application for Sustainable City Centers Incentives" form for consideration of financial incentives to the City Development Department of the City of El Paso, Economic Development Division, 2 Civic Center Plaza, El Paso, Texas 79901.

### **Consideration of the Application**

The City Manager or designee will consider requests for financial incentives in accordance with these policies, the Texas Tax Code, and the Texas Local Government Code. Additional information may be requested as needed. Applicants satisfying the general criteria and meeting the qualification standards will be considered.

When authorized by City Council, the City Manager, on behalf of the City, may enter into an agreement/incentives contract that outlines the terms and conditions between the City and the applicant, and governs the provision of the incentives to be provided for the project.

### **Inspection of the Project**

During the term of such agreement, the City of El Paso will have the right to inspect the project facility during regular business hours to ensure compliance with the agreement and accuracy of the owner certification.

### **Recapture**

If a project is not completed as specified, or if the terms of the agreement are not met, the City has the right to cancel or amend the incentive agreement, recapture any rebated tax amounts, and rebated tax amounts shall become due to the City.

## **TYPES OF DIRECT FINANCIAL INCENTIVES AVAILABLE**

### **Construction Materials Sales Tax Rebate**

The Construction Materials Tax Rebate Program is an economic development tool designed to provide incentives for transit-oriented development within the Incentive Area. A 100% rebate of the City's portion of sales tax used on materials and labor with a current minimum expenditure amount for improvements or new construction of \$50,000. This incentive will be delivered by execution of a Chapter 380 Rebate contract.

## **Property Tax Rebate**

The City's portion of the increment ad valorem property taxes over the base year may be rebated to the property owner according to the following:

### A. New Construction

1. 5 year, 100 percent rebate of the City's portion of Property Taxes, increment only for new construction meeting the Design Requirements within the Five Points, Nestor Valencia Glory Road and Northgate RTS stations; or
2. 7 year, 100 percent rebate of the City's portion of Property Taxes, increment only for new construction meeting the Design Requirements for projects located in the MCA Smart Code Zone.

### B. Reuse or Rehabilitation

1. 5 year, 100 percent rebate of the City's portion of Property Taxes, increment only for adaptive reuse or rehabilitation meeting the Design Requirements for projects over \$100,000 within the Five Points, Nestor Valencia, Glory Road and Northgate RTS stations; or
2. 7 year, 100 percent rebate of the City's portion of Property Taxes, increment only for adaptive reuse or rehabilitation meeting the Design Requirements for projects over \$100,000 located in the MCA Smart Code zone.

Ad valorem property tax rebate is only available on properties from which the City receives ad valorem taxes (i.e. taxes cannot be diverted through Historic Tax Credits, Transportation Reinvestment Zone, prior 380 agreements, Tax Increment Reinvestment Zones or other means, except for properties within Tax Increment Reinvestment Zone No. 5). The base year used for the calculation of incentives will be the year of contract execution. This incentive will be delivered by execution of a standard Chapter 380 Agreement, as approved by the City Attorney.

## **Ground Floor Retail Sales & Use Tax Rebate**

The City's portion of sales and use taxes may be rebated to the eligible applicant according to the following:

1. 5 year, 50 percent abatement of the City's portion of sales taxes from ground floor street oriented retail within the Five Points, Nestor Valencia, Glory Road and Northgate RTS stations; or

2. 7 year, 50 percent abatement of the City's portion of sales taxes from ground floor street oriented retail located in the MCA Smart Code Zone.

Eligibility for this incentive is subject to the City's receipt of waivers of confidentiality of sales tax payments from the applicant's retail tenants.

### **TERM OF FINANCIAL INCENTIVES**

The availability of financial incentives under this Policy shall remain in effect for four (4) years from adoption by City Council.

### **SUPPLEMENTAL BENEFITS AVAILABLE TO PROMOTE TRANSIT-ORIENTED DEVELOPMENT**

#### **Building Construction Fee Waivers**

If the City Council approves by ordinance the reduction or the waiver of building construction fees and planning fees associated with transit-oriented development within the Incentive Area, the Economic Development Department will implement the Building Construction Fee Waiver Program approved by City Council for the purpose of providing eligible property owners an opportunity to apply for an exemption from planning and building fees associated with new construction or renovation and occupancy of such facilities. If this Sustainable City Centers Incentive policy program policy and eligibility criteria are met, then 100% of the certain development fees will be waived based on the fee schedule established in the ordinance or other appropriate resolution of Council, but in no event will the total fee waiver amount exceed \$10,000.

Exhibit A

MCA

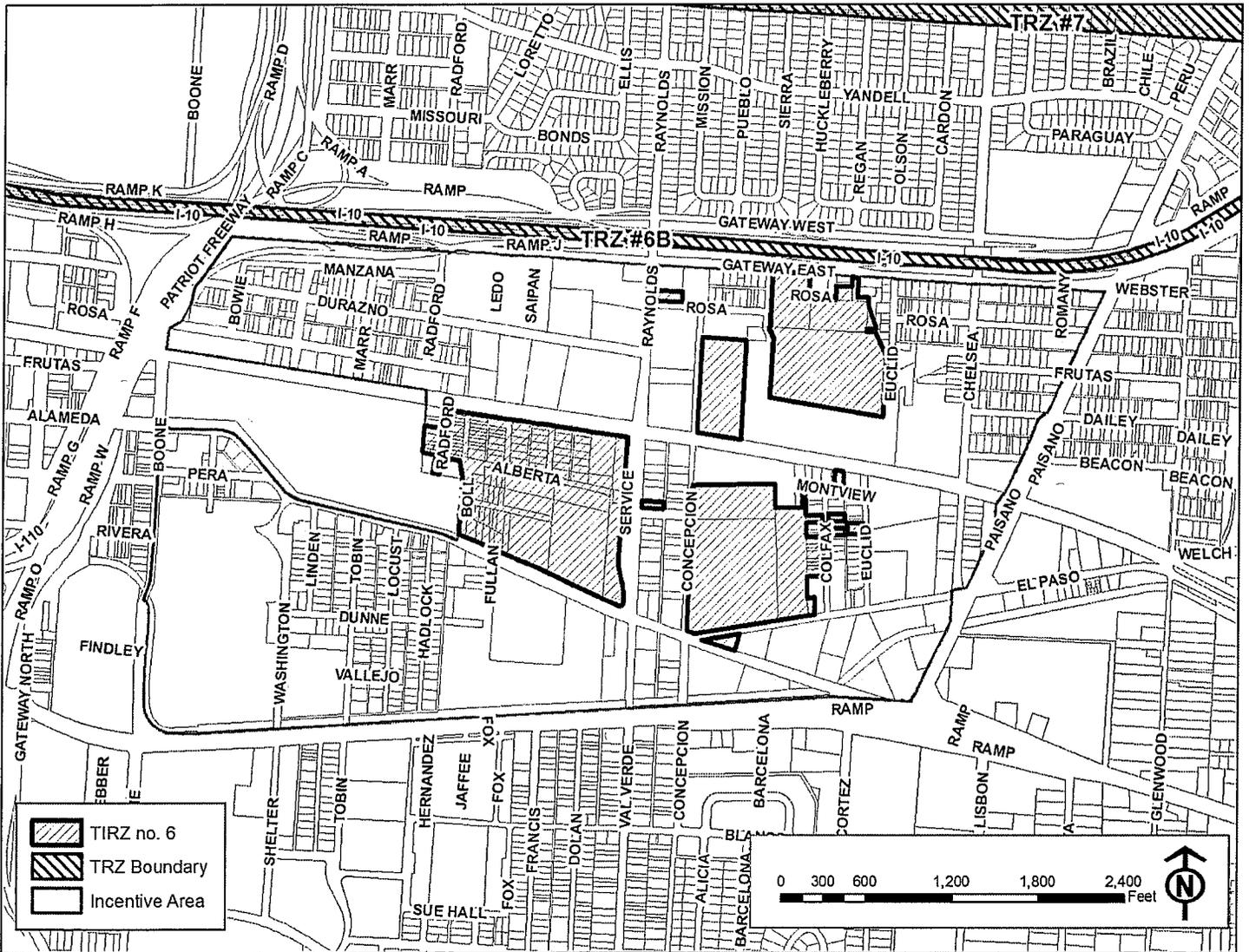


Exhibit A

Five Points

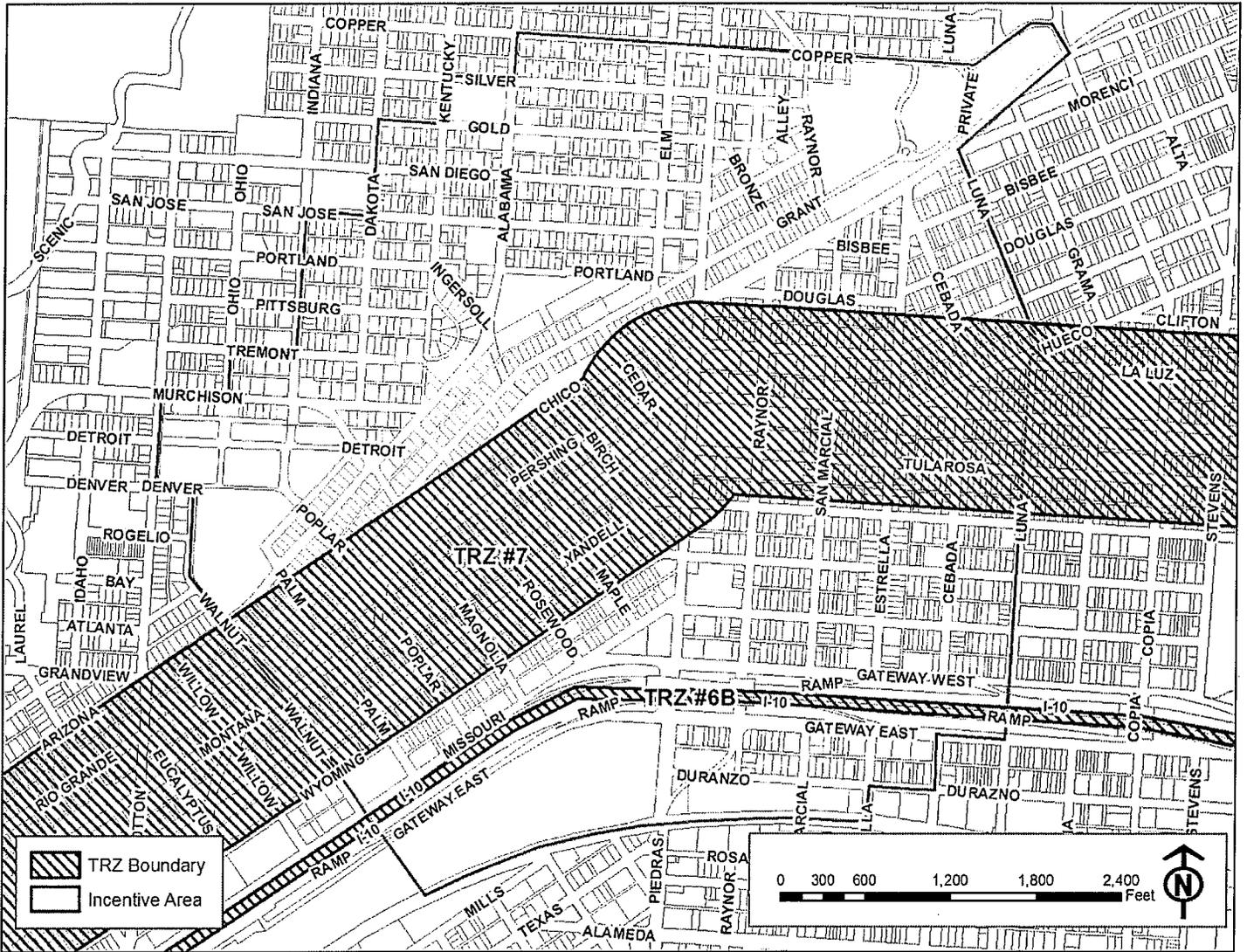


Exhibit A

Glory Road

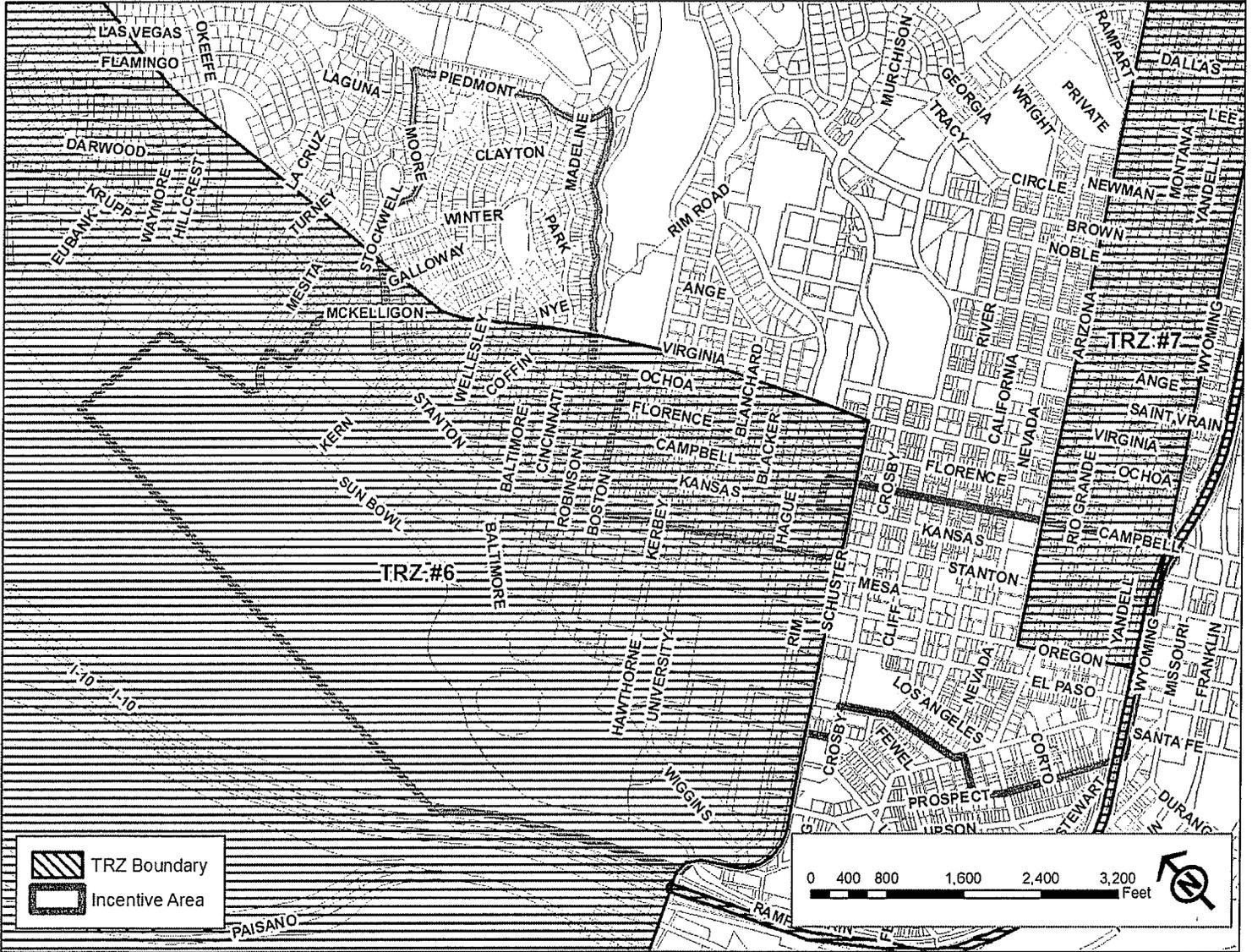


EXHIBIT A  
Nestor Valencia

