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CITY OF EL PASO, TEXAS

AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: City Development

AGENDA DATE: October 2, 2012

CONTACT PERSON/PHONE: Mathew McElroy, Director, 541-4193

DISTRICT(S) AFFECTED: ALL

SUBJECT:

That the City Manager be authorized to execute a Chapter 380 Economic Development Program Grant Agreement (Impact Fund) between the City of El Paso and the Civitas El Paso Regional Center, LLC, in relation to the establishment and operation of a regional center, pursuant to the U.S. Immigration and Nationality Act, as amended, 8 U.S.C. Sec. 1153(b)(f), and the related regulations released as 8 CFR 204.6 by the U.S. Citizenship and Immigration Service.

BACKGROUND/DISCUSSION:

The EB-5 (Employer-based #5) Foreign Investor Program was created by Congress in 1990 and is administered by the U.S. Citizenship and Immigration Services (USCIS). The EB-5 program grants immigration visas to foreign nationals who make qualifying investments in a job-creating business or new commercial enterprise in the U.S. The EB-5 Regional Center program allows foreign investors seeking legal permanent residency to pool their investments with others within a defined geographic area (El Paso).

Civitas Capital Group, an asset management firm based in Dallas, Texas, is proposing to establish and operate an EB-5 Regional Center within the El Paso city limits. Civitas would manage all aspects of the regional center and assumes all risk associated with El Paso Regional Center and investments. Civitas is seeking a one-time grant of \$32,775 for the Economic Study needed for the EB-5 Regional Center application and to be recognized as the official and exclusive EB-5 regional center utilized by the City of El Paso.

PRIOR COUNCIL ACTION:

No.

AMOUNT AND SOURCE OF FUNDING:

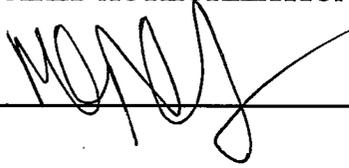
\$32,775.00; General Fund.

BOARD/COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: _____





City Development Department

MEMORANDUM

DATE: August 29, 2012

To: Mayor & Council, City Manager

From: Mathew McElroy, City Development Director
Annaelisa Holguin, Business Retention & Expansion
Coordinator

Subject: Proposed 380 Economic Development Agreement for EB-5
Regional Center

EB-5 (Employer-based #5) Foreign Investor Program – Visa Description

- A federal program created by Congress in 1990 and administered by the U.S. Citizenship and Immigration Services (USCIS).
- Grants immigration visas to foreign nationals who make an investment in a job-creating business or new commercial enterprise in the U.S.
- The Regional Center program attracts foreign investors seeking legal permanent residency allowing them to pool their investment with others.
- Investors must pledge a minimum investment of \$500k to a project within an approved regional center and independently apply for an EB-5 visa.
- If approved by USCIS, foreign investors are granted conditional 2 year green card. After 2 years, the investor must provide proof that project has created at least 10 jobs as a result of investment and met additional investment requirements set by USCIS.



City Development Department

Two Civic Center Plaza – 5th Floor · El Paso, Texas 79901
Phone (915) 541-4622 · Fax (915) 541-4799

Mayor

John F. Cook

City Council

District 1

Ann Morgan Lilly

District 2

Susie Byrd

District 3

Emma Acosta

District 4

Carl L. Robinson

District 5

Dr. Michiel R. Noe

District 6

Eddie Holguin Jr.

District 7

Steve Ortega

District 8

Cortney Carlisle Niland

City Manager

Joyce A. Wilson



- Funds must be “at risk” for a minimum of 2 years.
- Since 2003, the EB-5 regional center program has attracted more than \$3.1 billion in foreign investment to the U.S. and created thousand of new jobs.
- Over 220 Regional Centers across the country, with new applications pending.

Civitas Capital Group – boutique asset management firm based in Dallas, Texas

- Alternative asset management firm focused on the EB-5 Immigrant Investor Pilot Program.
- Exclusive manager of City of Dallas Regional Center – nine projects represent \$250 Million in EB-5 investment and almost \$400 Million of total investment in the City of Dallas.
- Fundraising underway for \$55.5 Million for two new projects, will start fundraising for \$72 Million project in approximately 60 days.
- 100% I-526 petition approvals – more than 100 investors have filed I-526 petitions and 240 investors have escrowed \$120 Million for Civitas projects.
- Targeted job creation of over 5,000 direct, indirect and induced jobs across the nine projects.

Opportunity for City of El Paso – El Paso Regional EB-5 Command Center

- Public-private partnership to bring foreign direct investment dollars to City of El Paso via EB-5 program.
- Leverage existing El Paso and regional economic development incentives and investments to bring projects to fruition.
- Make EB-5 a catalyst to enable or accelerate projects and create jobs.
- EB-5 Regional Center Program allows funds to be pooled for projects in a geographic area (El Paso).



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380 Grant Agreement – Civitas El Paso Regional Center, LLC

- One-time grant of \$32,775 for Economic Study needed for EB-5 Regional Center application.
- Recognize Civitas El Paso Regional Center as the exclusive EB-5 regional center utilized by the City of El Paso.
- Regional Center owned and operated by Civitas – establish and operate EB-5 Regional Center:
 - Civitas to manage all aspects of regional center – expense of reporting requirements; fees for economists, business securities attorneys and consultants to write business and operations plans; reporting and audit; marketing; and ongoing legal and compliance.
 - Civitas solely responsible for evaluating, structuring and approving investments and investors.
 - Civitas assumes all risk associated with Regional Center and investments.
- El Paso benefits from EB-5 investment capital – public and private projects.
- El Paso receives international exposure.

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RESOLUTION

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

That the City Manager be authorized to execute a Chapter 380 Economic Development Program Grant Agreement between the City of El Paso and the Civitas El Paso Regional Center, LLC (the "Applicant"), in relation to the establishment and operation of a regional center (the "**Regional Center**"), pursuant to the U.S. Immigration and Nationality Act, as amended, 8 U.S.C. Sec. 1153(b)(f), and the related regulations released as 8 CFR 204.6 by the U.S. Citizenship and Immigration Service.

APPROVED this _____ day of _____ 2012.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew S. McElroy, Director
City Development Department

STATE OF TEXAS § **ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT**
 § (EB-5 Regional Center – Incentive Project)
COUNTY OF EL PASO §

THIS ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT (this “*Agreement*”) is made and entered by and between the **CITY OF EL PASO**, a Texas home rule municipal corporation, of El Paso County, Texas, (hereinafter called “*City*”) and Civitas El Paso Regional Center, LLLC, a Texas limited liability company (hereinafter called the “*Applicant*”).

WHEREAS, Applicant intends to establish and operate a regional center (the “*Regional Center*”), pursuant to the U.S. Immigration and Nationality Act, as amended, 8 U.S.C. Sec. 1153(b)(f), and the related regulations released as 8 CFR 204.6 (collectively, such statute and regulations referred to herein as the “*INA*”), by the U.S. Citizenship and Immigration Service (the “*USCIS*”) (hereinafter referred to as the “*Project*”); and

WHEREAS, the City has determined that the Project can provide a major tool for economic development in targeted geographical, industry and economic sectors; and

WHEREAS, section 380.001 of the Texas Local Government Code authorizes the City to provide economic development grants for the promotion of state or local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to Applicant will further the objectives of the City, and will benefit the City and its residents and will promote local economic development and stimulate business and commercial activity in the City.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. OBLIGATIONS OF APPLICANT

The purpose of this Agreement is to state the terms and conditions under which Applicant shall be provided an economic development grant by the City to carry out the Project, to be described in the application (the “*Application*”) to USCIS for Applicant’s designation as a “regional center,” as defined at 8 CFR §204.6(m)(3), with respect to the geographic area approved by USCIS as a “regional center” (the “*City of El Paso Regional Center*,” or, the “*CEPRC*”). The parties acknowledge and agree that the City is not and will not be a party to the Application to USCIS.

In consideration of City agreeing to pay the Grant in accordance with the terms, provisions and conditions of this Agreement, Applicant agrees to do the following, which are terms and conditions that must be fulfilled in order to receive the Grant:

A. *General Obligations.* Applicant shall perform all the activities as set forth below including, without limitation:

1. Initiating and managing the application process for the CEPRC with the USCIS in order to obtain designation as a “regional center” under 8 CFR 204.6(m)(3), to include production of the economic study required for the I-924 petition. The I-924 petition to USCIS must be filed within six (6) months following the completion of the economic study required for that petition;

2. Conducting ongoing training for City personnel and participating in regularly scheduled conference calls related to prospective or ongoing projects in the Regional Center.
3. Sourcing equity capital from qualified foreign nationals for investment in the Investment Funds, as defined below;
4. Screening immigrant investors to ensure they qualify as “accredited investors” as defined in applicable U.S. Securities Laws, and otherwise qualify to invest in the applicable Investment Funds under the Securities Laws of jurisdictions other than the United States and its states that apply to such investors;
5. Developing, implementing and managing a robust and documented due diligence process in compliance with applicable regulations (a) to establish how investors will be required to identify all sources of capital and document that it was lawfully obtained pursuant to 8 CFR 204.6(m)(3)(iii) (as amended), and (b) to screen potential investors for eligibility under all applicable regulations, including without limitation the U.S. State Department Non-Proliferation Sanctions lists, the U.S. Treasury Office of Foreign Assets Control Specially Designated Nationals List and the U.S. Commerce Department Bureau of Industry and Security lists;
6. Developing and implementing a procedure to facilitate the filing by prospective foreign investors of I-526 petitions with the USCIS, but in no event shall the Applicant be permitted to require prospective investors to select immigration counsel identified by the Applicant;
7. Developing and implementing a strong compliance program that is in accordance with and responsive to USCIS regulatory requirements with respect to the timely and accurate collection and reporting of alien investor data and to Securities Law requirements;
8. Identifying investment opportunities that will involve the deployment of EB-5 capital within the geographical boundary of the CEPRC, and that are limited to firms or projects within the targeted industries described in *Exhibit A* attached, as such Exhibit may be amended from time to time after consultation with the City Manager, the Applicant and, if required, the USCIS;
9. Assessing such firms’ business plans, their owners’ and/or principals’ business experience and skills, and their ability to apply EB-5 investment funds to achieve their stated objectives;
10. Forming a series of investment vehicles that will assemble EB-5 capital (such investment vehicles, “*Investment Funds*”) and, as general partner, invest such capital solely in compliance with this Agreement and the INA and Securities Laws;
11. Preparing all promotional, marketing, offering and investment documents for each of the Manager Funds in compliance with the INA and Securities Laws;
12. Providing or arranging for relevant translation services for all promotional, marketing, offering and investment documents for each of the Investment Funds;
13. Developing a website for the CEPRC in compliance with the INA and Securities Laws;

14. Engaging international marketing channels for promotion of the Investment Funds in compliance with the INA, Securities Laws and the laws of each foreign jurisdiction in which investors are solicited;

15. Managing the investments of the Investment Funds in compliance with the INA and Securities Laws;

16. Reporting investment results to investors in Investment Funds on a quarterly basis and arranging for an annual audit by an independent certified public accounting firm of each Investment Fund to be provided to investors;

17. Quarterly and annual reporting to USCIS summarizing the number of investors under the Applicant's control, amounts invested, names and addresses of investors, and similar information, and full reporting of information required under the INA regulations and USCIS requirements, including without limitation the status of each investment made by an Investment Fund, in a format and otherwise as required by the USCIS; and

18. Developing and implementing procedure to facilitate the filing by prospective foreign investors of I-829 petitions with the USCIS; and

B. *Reporting.* Applicant shall provide the City with the following reports:

1. All reports and related documents, information, or other data which are required to be produced and given to City to verify on at least an annual basis Applicant's performance of required activities under this Agreement (hereinafter called "*deliverables*") in the format required by the Director of the City's City Development Department (the "*Director*").

2. Such other information as is specifically related to the operation of the CEPRC and required to evidence compliance with this Agreement, or any material applicable laws or regulations, including without limitation the INA and the Securities Laws, only as expressly requested by the Director.

3. Applicant shall certify to the City, in a writing executed by the Applicant's chief executive officer, on a semi-annual basis (commencing December 31, 2012), that Applicant is not, in any material respect, in breach of the terms of this Agreement, including, without limitation, the requirements imposed on its investment activities under Section 1(C) below and applicable laws and regulations.

4. Notwithstanding anything to the contrary contained herein, the City acknowledges and agrees that Applicant will possess certain information obtained from third parties that, either by its nature or pursuant to an agreement executed by Applicant, is confidential and may not be disclosed by Applicant. In the event that the City requests any such information, Applicant shall advise the Director of its obligations to the disclosing third party. In the event that the City nevertheless seeks a disclosure of such information, Applicant shall use reasonable efforts to obtain a consent to such disclosure, but shall not be deemed to have violated the terms of this Agreement to the extent that the disclosing third party fails to provide such consent.

C. *Investment Parameters.* To the extent permitted by law, Applicant shall comply with the following additional limitations in managing Applicant's CEPRC (collectively, the "*Investment Parameters*"):

1. General. Applicant will pursue an investment strategy that (a) is focused on investment opportunities that seek to generate growth and create jobs within the CEPRC, and (b) seeks to provide the Investment Fund investors with a rate of return that is reasonably competitive (as compared to other Regional Centers and similar investment funds). The City recognizes that the Investment Funds will involve risks similar to those of other pooled investment vehicles; further, and specific to investments in Investment Funds, there is the risk that the investments will not meet the employment and economic development requirements of the USCIS and applicable regulations; and that, as a consequence, Investment Fund investors will be required to acknowledge industry standard disclaimer language, including that Investment Fund investments may involve the risk of total loss, and that they are able to absorb a total loss, and specific disclaimer language that the investors acknowledge that they may not qualify for permanent residency status if investments do not perform as projected.

2. Prohibited Investments. Without the prior written approval of the Director and, to the extent applicable, the USCIS, Applicant shall not invest any Investment Fund capital in businesses that are either (a) not within the targeted industries identified in the Application, or (b) that are in any manner involved in (i) the manufacture or sale of armaments, (ii) brewing/distilling or retailing of alcohol as a material activity, (iii) gambling, (iv) tobacco manufacture or retailing as a material activity, (v) sexually oriented business, including pornography or similar adult entertainment, (vi) operating as a pawn shop, body piercing studio, or a tattoo studio as those terms are defined by the El Paso City Code; (vii) raise moral or ethical concerns; (viii) create a negative impact on the environment; (ix) projects that would violate any of the City's existing non-compete agreements. Further, Applicant shall include such restriction as an ongoing restrictive covenant of each business in which an Investment Fund's capital is invested.

3. Additional Incentives. Notwithstanding the foregoing, or anything else to the contrary in this Agreement, the City is not obligated to provide any economic development or other incentives in connection with any of the investments to be made by the Investment Funds, but shall provide each Investment Fund with due and proper consideration for such economic development or other incentives, as applicable. The scope and nature of any incentives will be evaluated on a case-by-case basis by the Economic Development Division of the City Development Department to consider eligibility for incentives under relevant programs available through the City.

D. *Cooperation with City.* Applicant shall work closely with the Director or his designee, as directed, and shall perform any and all related tasks reasonably required by the Director in order to fulfill the purposes of this Agreement.

E. *City Administrative Costs.* Applicant agrees to reimburse to the City, or its designee, the administrative costs incurred by the City in connection with the Promotional Efforts (to be hereinafter defined in *Exhibit B* attached) to be provided by the City as part of the Grant (such costs collectively "*Administrative Costs*"), provided that such reimbursements shall not exceed a percentage of capital invested by the Applicant in each Investment Fund, as follows:

<u>Amount of Applicant Fund Investment</u>	<u>Administrative Costs Capped Reimbursement Percentage</u>
Less than \$15,000,000	0.50%
Equal to or greater than \$15,000,000	0.25%

Subject to the above limitation, the reimbursable Administrative Costs include, but are not limited to, staffing personnel costs, professional fees, marketing and promotional fees, travel and related expenses and any other administrative costs incurred by the City in connection with the CEPRC, more specifically set forth on *Exhibit B*. Applicant and the City will use commercially reasonable efforts to limit Administrative Costs to the extent feasible; however, it is understood that time and circumstances may affect the costs of individual projects causing them to rise or fall, therefore, expense items may be adjusted over time to reflect actual costs.

The Administrative Costs shall be payable by Applicant to the City contemporaneously with the closing of the investment transaction by the investor entity unless the City and Applicant agree on an alternative payment schedule. Notwithstanding the foregoing, no Administrative Costs shall be due to the City in the event that the recipient of capital from the particular Investment Fund does not actually pay an origination fee or other compensation to Applicant of not less than twice the amount of the Administrative Costs that would otherwise be due. In no event shall the City receive reimbursement payment amounts that would result in City receipt of more than the aggregate of the City's actual costs incurred by the City in connection with its Promotional Efforts for the given fiscal year.

F. *Marketing by Applicant.* Applicant acknowledges and agrees that it will actively promote the CEPRC to qualifying immigrant investors. More specifically, Applicant shall:

1. Promote, in conjunction with the City's own Promotional Efforts, the CEPRC to contacts at El Paso-area or other firms and organizations that can provide sources of appropriate investment transactions for the funds of the CEPRC, including: (a) investment banks and securities brokerage firms; (b) banks and other lenders; (c) real estate finance and brokerage firms; (d) private equity and other investment firms; and (e) transactional attorneys, accountants, wealth managers and other professional service providers;
2. Direct its principals, as is necessary, and with adequate notice to Applicant, to actively participate in the City's Promotional Efforts;
3. Applicant shall obtain the prior written consent of the Public Affairs Office with respect to the use of the City's name, emblems, logos or official seal in any promotional or offering materials for the Applicant (collectively, "*Marketing Materials*").

2. OBLIGATIONS OF CITY; GRANT

During the term of this Agreement and so long as an event of default has not occurred and is not continuing as set forth in Section 1 of this Agreement (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), and conditioned upon Applicant's continued satisfaction and compliance with the terms and conditions of this Agreement, the City shall comply with the following terms and conditions:

1. *Monetary Grant.* Within thirty (30) days from the Effective Date, the City agrees to provide a one-time grant payment to Applicant in the amount of THIRTY TWO THOUSAND

SEVEN HUNDRED SEVENTY FIVE AND NO/100TH DOLLARS (\$32,775.00), as an offset against the Applicant's costs to be incurred in preparing the I-924 petition to USCIS to establish the CEPRC, which shall include the cost of the economic study required for such petition. If Applicant fails to submit the I-924 petition to USCIS within six (6) months following the completion of the economic study, then Applicant shall pay to the City the full amount of the monetary grant as recaptured funds for failure to satisfy this petition filing deadline. Proof of mailing will constitute sufficient evidence of Applicant's compliance with this requirement.

2. *Personnel Services.* The City agrees to use its best faith good efforts to: (i) incorporate the CEPRC into its economic development promotional activities, including a transfer link to the CEPRC's website; (ii) provide at City expense City personnel to accompany representatives of Applicant on overseas investment trips, except however the frequency and trip length will be determined by the City Manager in her sole discretion and control and management of City employees; (iii) invite representatives of Applicant to participate, at Applicant's expense, in the City's overseas business development trips, if any; and (iv) if relevant to the CEPRC, coordinate with the City's Economic Development Division of the City Development Department regarding protocol services and logistical support to foreign business leaders and dignitaries visiting El Paso (such activities, the "*Promotional Efforts*").

3. *Exclusivity.* The City agrees that, during the term of this Agreement, the CEPRC contemplated by this Agreement shall be the official and exclusive EB-5 regional center utilized by the City for its City-sponsored projects to be funded in whole or in part by EB-5- related investment funds. Notwithstanding the foregoing, the City may use other EB-5 regional centers for City-sponsored projects that are rejected by Applicant.

4. *Waiver of Conflict of Interest.* The City acknowledges that affiliates of Applicant are and will be during the term of this Agreement actively engaged in managing regional centers located elsewhere in Texas and the United States for and in partnership with other municipalities. Notwithstanding any provision of this Agreement to the contrary, the City agrees to waive any potential conflict of interest of Applicant with respect to the foregoing and agrees that such activities by affiliates of the Applicant shall not constitute a breach or violation of this Agreement in any respect.

3. GENERAL COVENANTS

During the term of this Agreement, Applicant agrees and covenants as follows:

A. *Performance of Services.* Applicant shall perform all the activities under this Agreement in conformance with the highest professional standards and all applicable laws and regulations, including without limitation the INA and Securities Laws. Applicant covenants and warrants that all its agents, affiliates, or sub-contractors that perform activities under this Agreement shall be fully qualified and competent to perform the activities described in Section 1 and that all such agents, affiliates, or sub-contractors shall comply fully with all of the terms of this Agreement in the performance of those activities.

B. *Compliance with Laws.* Applicant shall at all times remain in compliance with, and shall cause the Investment Funds to at all times remain in compliance with, all applicable Securities Laws.

C. *Maintenance of Existence.* Applicant shall remain in existence and in good standing under the laws of the State of Texas.

D. *No Representation of City.* Applicant shall not hold itself out as having the power or authority to represent or act on behalf of the City or as being the agent of the City and no such power or authority shall be implied.

4. REPRESENTATIONS

Applicant hereby makes each of the following representations to the City:

A. *Organization, Existence, Etc.* Applicant is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Texas. Applicant has the lawful authority to perform its obligations under this Agreement. Applicant is duly authorized to conduct business in the State of Texas and each other jurisdiction in which the nature of its activities requires such authorization.

B. *Power and Authority.* Applicant has all necessary power and authority to carry on its present business, to enter into this Agreement, to consummate the transactions herein contemplated and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by Applicant are within the Applicant's powers and have been duly authorized by all necessary action of the Applicant and its members.

C. *No Conflict.* None of (i) the execution and delivery of this Agreement, (ii) the consummation of any of the transactions herein contemplated, (iii) compliance with the terms and provisions hereof or (iv) performance hereunder will contravene the organizational documents of Applicant or any legal requirements to which Applicant is subject or any judgment, decree, license, order or permit applicable to Applicant, or will conflict or be inconsistent with, or will result in any breach of any of the material terms of the covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of a lien upon any of the property or assets of Applicant pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which Applicant is a party or by which the Applicant is bound, or to which the Applicant is subject.

D. *No Consents; No Defaults.* All proceedings required to be taken by or on behalf of the Applicant to authorize Applicant to make and deliver this Agreement and to perform the covenants, obligations and agreements of Applicant hereunder have been duly taken. No consent, approval, order, authorization, filing, notice or other action to the execution and delivery of this Agreement by Applicant or the performance by Applicant of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, governmental authority or other person, other than any such consent, approval, order, authorization, filing, notice or other action which already has been taken or unconditionally given. Applicant is not in default (nor are there any circumstances that with notice or lapse of time or both would become a default) under any covenant or obligation pursuant to this Agreement.

E. *Valid and Binding Obligation.* This Agreement is the legal, valid and binding obligation of Applicant, enforceable against Applicant in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

F. *No Litigation, Investigation or Inquiry.* There is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Applicant, threatened against or affecting Applicant, the outcome of which could (a) materially and adversely affect the validity or enforceability of or the authority or ability of Applicant to perform its obligations under this Agreement, or (b) have a material and adverse effect on the

consolidated financial condition or results of operations of Applicant or on the ability of Applicant to conduct its business as presently conducted or as proposed or contemplated to be conducted. None of the Applicant, any affiliate of Applicant or any of their principals, partners, members, shareholders, officers, board members, employees or agents has been the subject of any investigation, inquiry, proceeding, ruling, finding, judgment, administrative action, litigation, conviction, insolvency proceeding or cause of action in any court or by any regulatory or governmental authority in any jurisdiction that could (a) materially and adversely affect the ability of Applicant to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of Applicant or on the ability of Applicant to conduct its business as presently conducted or as proposed or contemplated to be conducted, or (c) be otherwise required to be disclosed under any Securities Laws.

G. *Disclosure.* The materials delivered to the City by Applicant are true, correct and complete in all material respects and do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

5. TERM

A. *Generally.* The term of this Agreement shall begin on the Effective Date and end on the tenth (10th) anniversary of the date of USCIS approval of the I-924 petition to initially establish the CEPRC (the “**Approval Date**,” and the tenth (10th) anniversary thereof, the “**Initial Term End Date**”) (the “**Initial Term**”); *provided, however*, that the Initial Term shall automatically extend for two (2) successive five (5) year extension periods, commencing on the Initial Term End Date and ending a maximum of ten (10) years thereafter, such that the term of this Agreement shall extend to the twentieth (20th) anniversary of the Approval Date (“**Termination Date**”), unless Applicant or the City shall terminate this Agreement sooner in accordance with its terms.

B. *General Right to Terminate.* Each of the Applicant and the City shall have the right to terminate the Agreement prior to the Termination Date if (i) the other party has failed to comply in any material respect with its duties and obligations as set forth in this Agreement or has made a material misrepresentation in this Agreement, or (ii) whether by action of the USCIS or by expiration of the applicable provisions of the INA or otherwise, the Approval Date has not occurred by December 31, 2013, or after having been designated a “regional center,” the CEPRC, is no longer so designated for any reason. Further, the City shall have the limited right to terminate this Agreement for convenience, which may be exercised only if: (a) the City has provided the Applicant with 90-day prior written notice of its intent to terminate for convenience; (b) the Initial Term End Date has been met; and (c) each City-sponsored project supported by Investment Funds has been under management at the CEPRC for more than five years. Notwithstanding the foregoing, the City may terminate this Agreement for its convenience and without the requirement of an event of default by Applicant if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical, or illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt, which termination shall become effective immediately; provided, that the City shall provide Applicant prompt written notice of any such termination.

C. *General Termination Procedure.* A party seeking to terminate the Agreement shall deliver to the other party notice clearly identifying the basis for the related claim of noncompliance (the “**Default Notice**”). Upon receipt of the Default Notice, if the basis therefore is reasonably curable with due diligence within ninety (90) calendar days the receiving party may provide the other with notice (a “**Cure Notice**”) that the receiving party intends to cure the condition giving rise to the Default Notice. The termination of the Agreement shall be effective either (a) sixty (60) days from the date that the Default Notice is delivered, or (b) in the event that the Cure Notice is sent, if the condition giving rise the

Default Notice has not theretofore been cured, upon the earlier of ninety (90) days from the date on which the Cure Notice is delivered or if the receiving party is no longer diligently pursuing cure of the condition giving rise to the Default Notice.

D. *Effect of Termination.*

Upon termination of this Agreement the obligations of both parties shall cease, except Applicant shall continue to process and pay amounts to be reimbursed as Administrative Costs in accordance with the terms of this Agreement for Promotional Efforts performed by the City prior to the date specified in the termination notice.

6. CONFIDENTIALITY OBLIGATIONS

To the extent permitted by state or federal law, the City agrees to hold in confidence all proprietary and confidential information provided by Applicant, or obtained from third-party records in connection with this Agreement under the terms stated herein. The City shall be permitted to disclose such information (i) to its agents or employees who are reasonably deemed by the City to have a need to know such information for purposes of this Agreement; provided, that such agents and employees shall hold in confidence such information to the extent required of the City hereunder or (ii) to the extent required by order of court or by state or federal law. 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 the proprietary information to the extent permitted by law and agrees that, as required by the Act, it will notify Applicant and any affected third-party 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 and/or the affected third-party will need to assert the proprietary interest as a basis for nondisclosure.

7. NO THIRD PARTY BENEFICIARIES

This Agreement is not intended to and does not confer any, rights, privileges, or causes of action upon any third party.

8. OWNERSHIP OF DOCUMENTS

All non-public deliverables prepared or assembled by one party to this Agreement and delivered to the other party, together with any other related documents or items, shall be the sole property of the disclosing party, unless otherwise specifically agreed to in writing by the disclosing party.

9. COMPLIANCE WITH LAWS AND REGULATIONS

This Agreement is entered into subject to and controlled by all applicable laws, rules, and regulations of the City of El Paso, Texas, the State of Texas and the Government of the United States of America. Applicant shall, during the course of performance of this Agreement, comply with all applicable City codes and ordinances, as amended and all applicable State, Federal and other applicable jurisdictions' laws, rules and regulations, as amended.

10. INDEPENDENT CONTRACTOR

Manager's status shall be that of an independent contractor and not an agent, servant, employee, or representative of City in the performance of the services under this Agreement. Manager shall exercise independent judgment in performing services under this Agreement and is solely responsible for setting

working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Agreement or act of Manager in the performance of this Agreement shall be construed as making Manager the agent, servant or employee of City, or making Manager or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which City provides its employees.

11. 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 Project or Applicant's performance of activities related to this Agreement.

12. INDEMNITY

APPLICANT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY APPLICANT'S BREACH OF, OR FAILURE TO PERFORM, ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT (INCLUDING ANY INSURANCE OBLIGATION), OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF APPLICANT, ITS OFFICERS, AGENTS, EMPLOYEES OR SUB-CONSULTANTS/MANAGERS, IN THE PERFORMANCE OF THIS AGREEMENT, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES TO THIS AGREEMENT AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY, AND SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

13. ASSIGNMENT

This Agreement provides for unique professional services. Manager, therefore, shall not sell, assign, transfer or convey this Agreement, in whole or in part, without the prior written consent of the City.

14. NOTICES

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for the City, to:

City of El Paso
City Manager
2 Civic Center Plaza
El Paso, TX 79901

With a copy to:

City of El Paso
City Development Department Director
2 Civic Center Plaza
El Paso, Texas 79901

If intended for Applicant, to:

Civitas El Paso Regional Center, LLC
900 Jackson Street, Suite 150
Dallas, Texas 75202
Attn: Chief Executive Officer
Phone: (214) 572-2300
Facsimile: (214) 572-2398

15. VENUE

The obligations of the parties to this Agreement shall be performable in El Paso County, Texas, and if legal action is necessary in connection with or to enforce rights under this Agreement, exclusive venue shall lie in El Paso County, Texas.

16. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

17. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

18. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument. If this Agreement is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Agreement to be executed.

19. CAPTIONS

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

20. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties and their respective administrators, successors and permitted assigns.

21. 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 payment 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. The 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.

22. 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 Project unless specifically enumerated herein.

23. EXECUTION OF AGREEMENT

The El Paso City Council has authorized the City Manager to execute this Agreement on behalf of the City.

24. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS

This Agreement (together with all Exhibits hereto) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Agreement. Except as otherwise provided elsewhere in this Agreement, this Agreement cannot be modified without written supplemental agreement executed by both parties.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2012 (the "Effective Date").

CITY OF EL PASO

By _____
Joyce A. Wilson, City Manager

APPROVED AS TO FORM:

By _____
Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

By _____
Mathew S. McElroy, Director
City Development Department

APPLICANT:

Civitas El Paso Regional Center, LLC

By _____
Authorized Officer

Name

Title

EXHIBIT A
TARGETED INDUSTRIES

1. Building, Development and Infrastructure
2. Human Health, Education and Wellness
3. Hotels and Convention Centers
4. Restaurants
5. Retail
6. Media, Entertainment and Amenities
7. Stadiums and Sports Complexes
8. Public Private Partnerships for Infrastructure and Technology for International Border Crossings
(Ports of Entry)

EXHIBIT B
ESTIMATED ANNUAL REIMBURSEABLE EXPENSES
SUBJECT TO CAP

Economic Development and Promotional Activities for the CEPRC

- Industry conferences and events
- Marketing materials and presentations
- Publicity and brand development
- Website

Professional staff

Administrative fees

Domestic and International Travel and related expenses

Consultants and Representatives (Accountants, Legal, Marketing)

Contingencies

Miscellaneous

Plus any and all applicable indirect cost expenses as calculated by the City on an annual basis.



EB-5 Program: Attracting Foreign Investment to the City of El Paso



What is an EB-5 Regional Center?

- ❖ Regional Centers receive designation from the U.S. Citizenship and Immigration Services (USCIS) to administer EB-5 investment projects adhering to the USCIS EB-5 program regulations
 - Grants immigration visas to foreign nationals who make the required minimum investment in a job-creating business or new commercial enterprise in the U.S.
 - 10,000 visas allocated annually for EB-5 investors
 - Over 220 Regional Centers in the U.S., with new applications pending
 - Since 2003, the total EB-5 Regional Centers have attracted approximately \$3.1 Billion in foreign investment to U.S. and created thousands of new jobs



EB-5 Visa Investment Requirements

- ❖ Investment in a new commercial enterprise **or** troubled business where jobs will be preserved
- ❖ Capital investment of \$1 million **or** \$500k in a Targeted Employment Area (high unemployment or rural area)
- ❖ Investment funds must be derived by lawful means
- ❖ New enterprise must benefit the U.S. economy
- ❖ New enterprise must create full time employment for at least 10 U.S. workers
- ❖ Investor must have a policy-making role in the new enterprise
- ❖ Investment funds must be “**at-risk**” for a minimum of **2 years**



Opportunity for City of El Paso El Paso Regional Center

- ❖ Public-private partnership to bring foreign direct investment dollars to the City of El Paso via EB-5 program
- ❖ EB-5 Regional Center allows funds to be pooled for projects in a specific geographic area (El Paso County)
- ❖ Leverage existing El Paso and regional economic development incentives and investments to bring projects to fruition
- ❖ Internationally promotes El Paso and attracts foreign high-net worth investors
- ❖ Make EB-5 program a catalyst to enable or accelerate projects and create jobs



Previous Actions

- ❖ Two previous RFP's seeking a firm to assist the City in establishing an EB-5 Regional Center in El Paso
 - \$96,000 - \$250,000
- ❖ Two unsolicited proposals received from investment firms proposing to establish and administer an EB-5 Regional Center in El Paso
 - \$32,000 - \$200,000+
- ❖ Meetings with EB-5 Management firms
- ❖ Discussions with Texas municipality-oriented EB-5 Regional Centers
- ❖ Discussions with economic development stakeholders in El Paso



Civitas Capital Group

- ❖ Background
 - Asset management firm with focus on EB-5 Immigrant Investor Program
 - Headquartered in Dallas, Texas
 - Exclusive manager of the City of Dallas EB-5 Regional Center
 - Nine EB-5 projects represent \$250 million in EB-5 projects and almost \$400 million of total investment in the City of Dallas; fundraising underway for \$55.5 million for 2 new projects, will start fundraising for \$72 million project in approximately 60 days.
 - Targeted job creation of over 5,000 direct, indirect and induced jobs over next several years
 - 240 EB-5 investors have escrowed \$120 million for Civitas projects
 - More than 100 EB-5 investors have currently filed I-526 petitions for Civitas projects
 - 100% I-526 petition approval rate (petition for investors seeking lawful permanent residence) on adjudications to date



Civitas EB-5 Projects

- \$64 million senior secured loan to develop a 387-unit multifamily community
- \$10 million senior secured corporate loan to develop two affordable assisted living facilities
- \$15 million senior secured corporate loan to create a call center
- \$5.5 million preferred equity investment to redevelop a historic building into a boutique hotel
- \$8.5 million corporate loan to expand a large local restaurant franchise
- \$8 million senior secured corporate loan to develop 260-unit multifamily project



Public Private Partnership

- ❖ 380 Agreement with “Civitas El Paso Regional Center, LLC”
- ❖ **Civitas agrees to** establish and operate an EB-5 Regional Center in El Paso, to include:
 - ✓ Application process for EB-5 Regional Center status (must be filed within six months)
 - ✓ On-going EB-5 training for City personnel
 - ✓ Sourcing equity capital from qualified foreign national for investment in El Paso projects
 - ✓ Screening immigrant investors
 - ✓ Fulfilling compliance rules per USCIS and SEC
 - ✓ Assessing firm’s/project’s business plans, their owner’s experience, skills and ability to apply EB-5 investment funds
 - ✓ Preparing all promotional and marketing materials – to include website for the El Paso Regional Center
 - ✓ Managing the investments in compliance with all applicable laws
 - ✓ All necessary reporting



Public Private Partnership

❖ **City agrees to:**

- 380 agreement: term of ten (10) years
 - ✓ Automatically extends for two (2) consecutive five (5) year periods
 - ✓ Either Civitas or City can terminate agreement
- Provide a one-time grant payment of \$32,775 for the Economic Study required for the EB-5 Regional Center Application
- Recognize the Civitas El Paso Regional Center as the official and exclusive EB-5 regional center utilized by the City
- Incorporate the regional center into economic development promotional activities



EB-5 Regional Center Cost Summary

City of El Paso	Civitas El Paso Regional Center
<ul style="list-style-type: none"> • \$32,775: <u>one-time</u> grant payment for Economic Study • *Annual travel costs to market El Paso projects * City to be reimbursed “Administrative Costs” as defined in 380 Agreement at closing of each investment transaction 	<ul style="list-style-type: none"> • \$6,230: USCIS filing fee • \$7,500: Legal fees (I-924 review) • \$18,500: Industry conferences & events • \$14,000: Marketing • \$50,000: Websites (5 languages) • \$82,000: Travel • \$35,000: Publicity • \$63,000: Foreign consultants • \$75,000: Legal Fees (transactions)
	Total: \$338,000



Civitas El Paso Regional Center Summary

- ❖ Upon approval of EB-5 application, the El Paso Regional Center would be owned and operated by Civitas El Paso Regional Center, LLC
 - Civitas to manage all aspects of the El Paso Regional Center
 - El Paso Regional Center will encompass all of El Paso County
 - Civitas has sole responsibility for evaluating, structuring and approving both investments and investors
 - Civitas assumes all risk associated with the El Paso Regional Center and investments
- ❖ The City of El Paso benefits from EB-5 investment capital
 - Public and Private projects
- ❖ The City of El Paso receives international exposure



Civitas Team

Daniel J. Healy – Chief Executive Officer

Rafael M. Anchia – Senior Advisor and a partner with Dallas-based global law firm

Gabriel Hidalgo – Managing Director for Investments

James C. Crigler, III – Managing Director of Business Development

Tina R. Hou – Managing Director for Investor Relations

Caitlin E. Rhodes – Chief Financial Officer

Najam F. Syed – Asset Manager

Douglas S. Conner – Investments Associate

Estefania Flores – Investor Relations Associate