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

DEPARTMENT: **City Development**

AGENDA DATE: **11/5/2013**

CONTACT PERSON/PHONE: **Mathew McElroy, Economic Development 541-4670**

DISTRICT(S) AFFECTED: **8**

SUBJECT:
That the City Manager be authorized to execute a Tax Abatement Agreement between the City of El Paso and Central City Renal Construction LLC (the "Applicant"), pursuant to the City's Infill Development Incentive Policy, for the construction of a dialysis clinic development to be located at 1310 Murchison Dr., El Paso, Texas. (District 8) [Economic Development, Mathew McElroy (915) 541-4670]

BACKGROUND/DISCUSSION:
The Infill Development Incentive Policy was passed by Council on 08/24/10 and amended on 11/16/10. The applicant (owner), Central City Renal Construction LLC proposes to develop vacant, infill land at 1310 Murchison Dr. and build a dialysis clinic. The agreement consists of a five (5) year tax exemption, Building Fee Waivers and Construction Materials Sales Tax Rebates for development of the vacant land for the proposed use.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?

Yes. On 8/24/10, City Council adopted and on 11/16/10 amended the Infill Development Incentive Policy. Subsequently, On August 6, 2013 City Council approved a resolution authorizing the City Manager to sign an agreement between the City of El Paso and Hector F. Barraza, property owner of 2413 Tremont Ave., El Paso, Texas, per the City of El Paso Infill Development Incentive Policy.

AMOUNT AND SOURCE OF FUNDING:
How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A.

BOARD/COMMISSION ACTION:
N/A

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

LEGAL: (if required) _____ **FINANCE: (if required)**_____

DEPARTMENT HEAD: _____

(Example: If RCA is initiated by Purchasing, client department should sign also). ***Information copy to appropriate Deputy City Manager***

APPROVED FOR AGENDA:

CITY MANAGER:_____ **DATE:** _____

RESOLUTION

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

That the City Manager be authorized to execute a Tax Abatement Agreement between the City of El Paso and Central City Renal Construction LLC, a Texas Limited Liability Company, pursuant to the City's Infill Development Incentive Policy, for the construction of a clinic on the vacant lot located at 1310 Murchison, El Paso, Texas.

APPROVED AND ADOPTED this _____ day of _____ 2013.

CITY OF EL PASO

_____
Oscar Leeser
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Matthew K. Behrens
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Mathew S. McElroy, Director
City Development Department

13-1007-745
ECO 380 Tax Abatement Agreement (Infill Policy)
210917_ MKB

STATE OF TEXAS)
)
COUNTY OF EL PASO)

TAX ABATEMENT AGREEMENT
(Infill Development Incentive Policy)

This **TAX ABATEMENT AGREEMENT** ("Agreement") is entered into by and between the **CITY OF EL PASO, TEXAS**, a home-rule municipality of El Paso County, Texas (the "CITY"), and **Central City Renal Construction LLC**, a property owner (the "APPLICANT"), for the purposes and considerations stated below:

RECITALS:

A. Section 312.002(a) of the Texas Tax Code requires the City to pass a resolution indicating the City's desire to become eligible to participate in tax abatement agreements.

B. The City Council of the City of El Paso, Texas has previously adopted a resolution stating that the CITY elected to be eligible to participate in tax abatements.

C. On November 30, 2010, City Council adopted Tax Abatement Guidelines and Criteria, pursuant to Section 312.002 of the Texas Tax Code, which are referred to as the GUIDELINES AND CRITERIA.

D. The GUIDELINES AND CRITERIA constitute appropriate guidelines and criteria governing tax abatement agreements to be entered into by the CITY as contemplated by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, and are available from the CITY.

E. On August 24, 2010, City Council adopted an Infill Development Incentive Policy, as a supplemental policy, to promote infill development through property tax abatements, among other incentives, for eligible projects meeting certain criteria.

F. Section 2303.051(a-2) of the Texas Government Code requires the Texas Economic Development Bank of the Governor's Office to annually compile data identifying economically distressed counties within the State of Texas that automatically qualify for designation as enterprise zones under Chapter 2303 of the Texas Government Code.

G. Section 2303.101(3) of the Texas Government Code provides that an area automatically qualifies for designation as a state enterprise zone under Chapter 2303 of the Texas Government Code if the area is an area located within a distressed county.

H. The Texas Economic Development Bank of the Governor's Office has designated El Paso County as an economically distressed county within the State of Texas, and thus areas located within El Paso County automatically qualify for designation as an enterprise zone pursuant to Chapter 2303 of the Texas Government Code.

I. Section 312.2011 of the Texas Tax Code provides that the designation of an area as an enterprise zone under Chapter 2303 of the Texas Government Code constitutes designation of the area as a tax abatement reinvestment zone under Chapter 312 of the Texas Tax Code, without further hearing or other procedural requirements other than those provided by Chapter 2303 of the Texas Government Code.

J. Section 312.203 of the Texas Tax Code also provides that a reinvestment zone that is a state enterprise zone is designated for the same period as a state enterprise zone as provided by Chapter 2303 of the Texas Government Code.

K. Under City of El Paso Ordinance No. 017116 dated May 26, 2009, the CITY affirmed its intent that all enterprise zone areas within the City, including its extraterritorial jurisdiction, be considered reinvestment zones in accordance with the Texas Tax Code, Chapter 312;

L. APPLICANT is the owner of REAL PROPERTY located at 1310 Murchison Drive El Paso, Texas 79902 and APPLICANT agrees to construct or rehabilitate a qualifying project on such REAL PROPERTY, which is located within the City of El Paso, El Paso County, Texas.

M. The tax abatement contemplated herein will maintain and enhance the commercial economic base of the El Paso area thereby benefiting the CITY in accordance with the GUIDELINES AND CRITERIA and the Property Redevelopment and Tax Abatement Act, as well as promote infill development in accordance with the CITY's supplemental Infill Development Incentive Policy.

N. The contemplated use and improvement of the REAL PROPERTY, as hereinafter defined, in the amounts and for the purposes set forth in this Agreement and the other terms hereof are consistent with encouraging development of said Enterprise Zone in accordance with the purposes for its creation and are in compliance with the GUIDELINES AND CRITERIA adopted by the CITY and all applicable law.

O. This Tax Abatement Agreement was approved by the CITY at a regularly scheduled meeting consistent with Section 312.207(a) of the Texas Tax Code.

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:

SECTION 1. FINDINGS INCORPORATED.

All the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

A. **Agreement.** The word "Agreement" means this Tax Abatement Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.

B. **APPLICANT.** The word **"APPLICANT"** means Central City Renal Construction LLC a Property Owner.

C. **CITY.** The word "CITY" means the City of El Paso, Texas.

D. **Infill.** The word "Infill" means, a property on which at least two of the following factors are present: the property is wholly or partially located within a designated tax increment financing district, or the property is wholly or partially located within an empowerment zone, or the property is wholly or partially located within a designated redevelopment area pursuant to Chapter 20.14 of El Paso City Code, or the property is located within a designated historic district, or the property is within an older neighborhood of the City. An older neighborhood of the City is defined as a legally recorded and developed subdivision for at least 30 years. The most current definition of Infill in the El Paso City Code will control and govern for this Agreement.

E. **Attainable Rental Housing.** The words "Attainable Rental Housing" mean residential rental housing (single-family or multifamily) for persons having an annual household income at or below 120% of area median income for the El Paso Region, as determined annually by the United States Department of Housing and Urban Development.

F. **Vacant Building.** The words "Vacant Building" means a building that is 60% or more unoccupied and is registered as a vacant building with the City of El Paso, pursuant to Title 18, Chapter 18.40, El Paso City Code.

G. **Smart Code.** The words "Smart Code" means a land development ordinance adopted by City Council as referenced in Title 21, El Paso City Code.

H. **Qualifying Project.** The words "Qualifying Project" mean the construction or rehabilitation of a vacant parcel of land, which is located within either the First Level or Second Level of the eligible Infill Development Incentive Policy boundaries for the CITY, as identified in **Exhibit B**, which is attached hereto and incorporated herein for all purposes.

I. **REAL PROPERTY.** The words "REAL PROPERTY" mean the real property owned by APPLICANT located at 1310 Murchison Drive, El Paso, Texas, 79902, and as more fully described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes. The REAL PROPERTY is the location for APPLICANT's proposed qualifying facility.

J. **Term.** The word "Term", when used in reference to the term of this Agreement, shall mean a period not to exceed seven (7) years from the Effective Date of this Agreement.

SECTION 3. PROPERTY ELIGIBLE FOR TAX ABATEMENT.

The APPLICANT has a fee simple interest in the REAL PROPERTY, which is more fully described in **Exhibit A**. The REAL PROPERTY is located within El Paso County, which is designated as a distressed county by the Governor's Texas Economic Development Bank. The APPLICANT shall be responsible for the construction or rehabilitation of the qualifying project on the REAL PROPERTY. The REAL PROPERTY shall be eligible for tax abatement, subject to the terms and conditions of this Agreement.

SECTION 4. TAX ABATEMENT.

Subject to the terms and conditions of this Agreement, the APPLICANT's fulfillment of any and all requirements of the El Paso Central Appraisal District (CAD) and subject to the rights and holders of any outstanding bonds of the CITY, a portion of ad valorem real taxes from the improvements on the REAL PROPERTY of the APPLICANT otherwise owed to the CITY shall be abated as follows:

A. Abatement Period. The tax abatement period in which the APPLICANT is eligible for REAL PROPERTY abatement shall be five (5) consecutive years, with the first year of abatement being the first tax year that begins after: (i) the issuance of the Certificate of Occupancy for the REAL PROPERTY; and, (ii) the APPLICANT having met the investment amount noted in subsection B, Table 1 below, subject to verification by the CITY and inspection of the REAL PROPERTY to ensure compliance with the Infill Development Incentive Policy requirements. Failure of the APPLICANT to receive its Certificate of Occupancy and meet its investment requirement within two (2) years of the Effective Date of this Agreement shall result in the immediate termination of this Agreement without any further action required by the CITY.

B. Abatement Amount. The tax abatement rate for each abatement year during the tax abatement period shall be based upon the applicable investment level, the location of the REAL PROPERTY in either the First Level or Second Level (identified in **Exhibit B**), and the abatement year schedule, as shown in Table 1 below. The tax abatement rate will apply to the portion of the value of REAL PROPERTY that is subject to abatement, as set forth in Section 3 and such qualifications as noted elsewhere in this Agreement.

TABLE 1:

First Level (First Ring)

Investment: Single family attainable rental housing	Investment: Commercial (including multi-family attainable rental housing)	Year 1	Year 2	Year 3	Year 4	Year 5
$25,000	$50,000	100%	50%	25%	0%	0%
$50,000	$100,000	100%	75%	50%	25%	0%
$100,000	$200,000	100%	100%	75%	50%	25%
	$400,000	100%	100%	75%	66%	50%
	$800,000+	100%	100%	75%	75%	66%

Second Level (Second Ring)

Investment: Single family attainable rental housing	Investment: Commercial (including multi-family attainable rental housing)	Year 1	Year 2	Year 3	Year 4	Year 5
$25,000	$50,000	100%	0%	0%	0%	0%
$50,000	$100,000	100%	50%	0%	0%	0%
$100,000	$200,000	100%	66%	33%	0%	0%
	$400,000	100%	75%	50%	25%	0%
	$800,000+	100%	100%	75%	50%	25%

Said tax abatement shall be based upon the increased value of the REAL PROPERTY over the value in the base year, which is hereby established as 2013, the year in which this Agreement is executed in accordance with the terms of this Agreement and all applicable federal, state, and local laws and regulations.

APPLICANT acknowledges and agrees that based on Table 1 above, the minimum investment requirement for the REAL PROPERTY described herein is Eight Hundred Thousand Dollars and No/100 ($800,000.00); the REAL PROPERTY is located in the FIRST LEVEL (FIRST RING) and is eligible for the abatement of the designated percentage of the CITY's portion of ad valorem property taxes based on the following schedule:

YEAR 1: 100%
YEAR 2: 100%
YEAR 3: 75%
YEAR 4: 75%
YEAR 5: 66%

C. Subsequent Failure to Meet Abatement Requirements. Failure of the APPLICANT to meet the requirements necessary for abatement in any subsequent year after the abatement period

has begun shall not extend the abatement period. Rather, the APPLICANT shall forfeit its eligibility for abatement in any year in which it fails to meet any and all abatement requirements.

D. Property Value. APPLICANT covenants and agrees that during the term of this Agreement APPLICANT shall not challenge or permit anyone else to take actions on APPLICANT's behalf to challenge any assessments by the El Paso Central Appraisal District at Two Hundred Seventy Six Thousand Six Hundred Ninety Seven Dollars and No/100 ($276,697.00) or lower. It is the expectation of the parties that the assessed minimum value of REAL PROPERTY on the tax rolls have at least a base value of Two Hundred Seventy Six Thousand Six Hundred Ninety Seven Dollars and No/100 ($276,697.00) during the term of this Agreement and any affirmative act by APPLICANT to reduce the assessed value to an amount lower than Two Hundred Seventy Six Thousand Six Hundred Ninety Seven Dollars and No/100 ($276,697.00) will be an event of default, will result in recapture of taxes that were abated prior to the default, and will result in termination of this Agreement.

SECTION 5. USE OF THE REAL PROPERTY.

As consideration for the agreement of CITY contained herein, APPLICANT agrees that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the construction and the commencement of operations of the qualifying project on the REAL PROPERTY consistent with the requirements set forth herein. APPLICANT agrees that all construction, repairs and improvements to the REAL PROPERTY will be in accordance with all applicable federal, state, and local laws and regulations. The REAL PROPERTY shall be limited in its use to those uses consistent with the development and operation of the qualifying project consistent with the CITY's development goals, which include the encouraging of development or redevelopment of the reinvestment zone.

SECTION 6. REPRESENTATIONS AND OBLIGATIONS OF APPLICANT.

A. APPLICANT warrants, represents and agrees that:

(i) APPLICANT will expend a minimum investment of Eight Hundred Thousand Dollars and NO/100 ($800,000.00) in total real property improvements on the REAL PROPERTY, excluding its acquisition costs;

(ii) The Qualifying Project includes new construction on a vacant lot or renovation of an existing vacant or blighted building(s) to be used for any of the following land uses: single-family homes for attainable rental housing, office, retail, restaurant, multifamily residential facilities, commercial and industrial within the City of El Paso, as authorized by the existing local laws;

(iii) Except in cases of a Qualifying Project which incorporates adaptive reuse, if the REAL PROPERTY is greater than five (5) acres, APPLICANT must submit an application to have the REAL PROPERTY re-zoned as Smart Code, pursuant to Title 21, El Paso City Code;

(iv) Except in cases of vacant land, APPLICANT purchased the REAL PROPERTY within the one-year period preceding the Effective Date of this Agreement;

(v) APPLICANT has neither caused nor contributed to the present condition of the REAL PROPERTY;

(vi) The Qualifying Project does not include the demolition of properties with a historic overlay or properties that are deemed historic, or having a contributing historic structure; and

(vii) The REAL PROPERTY is: (a) a platted, unimproved lot; (b) contains a vacant building; (c) contains a building that has a CAD (Central Appraisal District) physical condition factor of 30 or lower; or (d) will be renovated for use as attainable rental housing.

For purposes of this Section, subsection 6(A)(iii) does not apply if the Qualifying Project incorporates an adaptive reuse that does not expand the existing building by more than fifty (50) percent.

SECTION 7. DEFAULT, CURE AND DELINQUENT TAXES.

A. Event of Default.

The City Manager may declare the APPLICANT in default of this Agreement, if the APPLICANT:

(i) fails to comply with APPLICANT's obligations under this Agreement; or

(ii) files a voluntary petition in bankruptcy, a proceeding in bankruptcy is instituted against the APPLICANT and the APPLICANT is thereafter adjudicated bankrupt, or a receiver for the APPLICANT's assets is appointed; or

(iii) breaches any of the terms or conditions of this Agreement.

B. Ability to Cure.

In the event that APPLICANT defaults -as specified in subsections (i)-(iii) above, the City Manager shall give APPLICANT written notice of such default. APPLICANT shall have thirty (30) days from the date of the notice to cure any such default (the "Cure Period").

C. Recapture of Abated Taxes.

If the default cannot be cured within the Cure Period in the exercise of all due diligence, and APPLICANT fails to commence to cure within the Cure Period or fails to continuously thereafter diligently prosecute the cure of such failure, APPLICANT is liable for and shall pay to the CITY within thirty (30) days from the expiration of the Cure Period all taxes abated by virtue of this Agreement with interest at the statutory rate for delinquent taxes as determined by Section 33.01 of the Texas Tax Code, as amended.

The parties further agree that any abated taxes, including interest thereon, as a result of this Agreement shall be recoverable against the APPLICANT, its successors and assigns and shall constitute a tax lien against the APPLICANT's REAL PROPERTY and PERSONALTY made subject to this Agreement. CITY shall have all remedies for collection of the abated taxes as are provided generally in the Tax Code for the collection of delinquent property tax. The abated tax amount shall incur penalties as provided for

delinquent taxes in the Tax Code and penalties shall commence to accrue after the thirty (30) day payment period.

D. Termination. Failure to cure an event of default within the Cure Period and/or failure to pay the abated taxes pursuant to Section 7C above, shall be grounds for the CITY to terminate this Agreement for cause. APPLICANT agrees that upon termination the amount of taxes abated by virtue of this Agreement, together with any interest and penalties that have accrued, shall constitute a tax lien against the subject property or if found invalid by a court of law, said amount shall constitute liquidated damages to the CITY.

E. Delinquent Taxes. Should APPLICANT allow its real or personal property taxes owed the CITY to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such taxes, this Agreement shall automatically terminate without notice and so shall the abatement of the taxes for the tax year of the delinquency. Further, the total taxes assessed without abatement for that tax year shall be paid within sixty (60) days from the date of the termination.

SECTION 8. RIGHT OF ACCESS FOR INSPECTION.

APPLICANT further agrees that the CITY, its agents and employees, shall have reasonable rights to access the REAL PROPERTY to inspect the construction and improvements and other items subject to this Agreement in order to ensure that the construction and improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. After completion of the construction and improvements, the CITY shall have the continuing right of inspection to ensure that such are thereafter maintained and operated in accordance with this Agreement. All inspections will be made only after giving at least twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and or operations of the APPLICANT. All inspections will be made with one (1) or more representatives of the APPLICANT, and in accordance with its safety standards, if any.

SECTION 9. ANNUAL CERTIFICATION.

On or before March 31 of each year, APPLICANT shall provide to CITY's Economic Development Department written certification that APPLICANT is in compliance with each applicable term and condition of this Agreement. Such certification shall be in a form reasonably satisfactory to the CITY, and shall include, at a minimum, information supporting APPLICANT's conclusions that it met (or expects to meet) each condition and requirement to abatement set forth in this Agreement. Any failure of the CITY to request or demand such certification shall not constitute a waiver of such certification or any future certification. Further, it will be the responsibility of APPLICANT to provide the reports as required herein. The CITY is not obligated to request the annual certifications, and will not certify APPLICANT's eligibility to receive any tax abatement without the reports. Failure to provide these required reports in a timely manner shall constitute grounds for termination of this Agreement.

SECTION 10. CANCELLATION, TERMINATION OR MODIFICATION.

The CITY and APPLICANT agree that the CITY may cancel, terminate or modify this Agreement if APPLICANT fails to comply with this Agreement.

SECTION 11. AUTHORIZATION TO SIGN THIS AGREEMENT.

The CITY's execution of this Agreement was authorized by Resolution of the City Council at a regularly scheduled City Council meeting authorizing the City Manager to execute the Agreement on behalf of the CITY. Each person signing this Agreement on behalf of the APPLICANT represents and warrants that he or she has the authority to legally bind the APPLICANT to the provisions hereof and that the representations made to the CITY as inducement to enter into this Agreement are still true and correct.

SECTION 12. NOTICE.

All notices, communications and reports required under this Agreement shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, or overnight delivery to the addresses below, unless and until either party is notified in writing of such other address prescribed for receipt:

Notice to *APPLICANT*:

Central City Renal Construction LLC
Andy Carnahan
8117 Preston Road, Suite #400
Dallas, Texas 75225

Notice to CITY:

City Manager
City of El Paso
PO Box #1890
El Paso, TX 79950-1890

Copy To:

City of El Paso
City Development Department Director
P.O. Box 1890
El Paso, Texas 79950-1890

SECTION 13. MISCELLANEOUS PROVISIONS.

A. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. It is the intention and agreement of the parties to this Agreement that each such illegal, invalid or unenforceable provision shall be amended by the parties hereto to the extent necessary to make it legal, valid and enforceable while achieving the same objective of such

provision, or, if that is not possible, by substituting therefore another provision that is legal, valid and enforceable and achieves the same objectives (or, if such provision cannot be amended or a provision substituted therefore in a manner that is legal, valid and enforceable and achieves the same objectives, then such provision shall be amended or a new provision substituted therefore that achieves as closely as possible the same objectives or economic position as the illegal, invalid or unenforceable provision, irrespective of whether such amendment or substituted provision is materially different than the illegal, invalid or unenforceable provision).

B. Notwithstanding any provision in this Agreement to the contrary, APPLICANT's and CITY's only liability for breaching any provision of this Agreement shall be the remedies expressly set forth in this Agreement.

C. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. However, APPLICANT cannot assign this Agreement unless written permission is first granted by the CITY. Any attempt to transfer without the prior written consent of the CITY shall be void and shall constitute an event of default that will result in the termination of this Agreement and recapture of the taxes abated prior to the attempted transfer. The City, however, agrees to a one-time assignment to Central City Complex LP (a Texas limited partnership), but must receive the appropriate notice in accordance with this paragraph.

D. It is understood and agreed between the parties that the APPLICANT, in performing its obligations hereunder, is acting independently, and the CITY assumes no responsibility or liability in connection therewith to third parties. **THE APPLICANT FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY FROM ANY AND ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS, INCLUDING ATTORNEYS' FEES, OF ANY NATURE WHATSOEVER ARISING OUT OF APPLICANT'S OBLIGATIONS HEREUNDER**.

E. This Agreement shall be construed under the laws of the State of Texas. Venue for any action arising under state law under this Agreement shall be the State District Court of El Paso County, Texas.

F. A certified copy of this Agreement in recordable form shall be recorded in the Real Property Records of El Paso County, Texas by the CITY upon APPLICANT's request and payment of all recordation fees.

G. The confidentiality of any records related to the CITY's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. Specifically, the CITY will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Public Information Act, it will notify Applicant if a request relating to such proprietary information is received. Applicant represents that it understands that the Public

Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of Applicant as a basis for nondisclosure.

H. It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

I. 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 payments received by APPLICANT from the CITY as of the date of such violation not later than one hundred twenty (120) days after the date APPLICANT is notified by the CITY of a violation of this section, plus interest from the date the payment(s) was paid to APPLICANT, at the rate of seven percent (7%) per annum. The interest will accrue from the date the payment(s) were paid to APPLICANT until the date the payments are repaid to the CITY. The CITY may also recover court costs and reasonable attorney's fees incurred in an action to recover the 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.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

This Agreement is performable in El Paso County, Texas, to be effective as of the _____ of _____, 2013 (the "**EFFECTIVE DATE**").

CITY OF EL PASO, TEXAS

_____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

_____
Matthew K. Behrens
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Mathew S. McElroy, Director
City Development Department

APPLICANT: Central City Renal Construction LLC

_____
Name:_____
Title:_____
Date: _____

(ACKNOWLEDGMENTS BEGIN ON THE FOLLOWING PAGE)

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2013, by **Joyce A. Wilson** as **City Manager** of the **City of El Paso, Texas** (CITY).

_____
Notary Public, State of Texas
Name printed: _____

My Commission Expires:

_____

ACKNOWLEDGMENT

STATE OF Texas §
§
COUNTY OF Dallas §

This instrument was acknowledged before me on the 3rd day of Sept., 2013, by Andrew T. Carnahan, as President of **Central City Renal Construction LLC**, a limited liability company organized and existing under the laws of the State of Texas.

Patricia E. Coffey
Notary Public, State of Texas

My Commission Expires:
6/14/16

PATRICIA E. COFFEY
Notary Public, State of Texas
My Commission Expires
June 14, 2016

Exhibit A

[Legal Description of the REAL PROPERTY]

Lot 2, Block 1, PNH SUBDIVISION REPLAT, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof recorded in Clerk's File No. 20120077255, of the Plat Records of El Paso County, Texas.
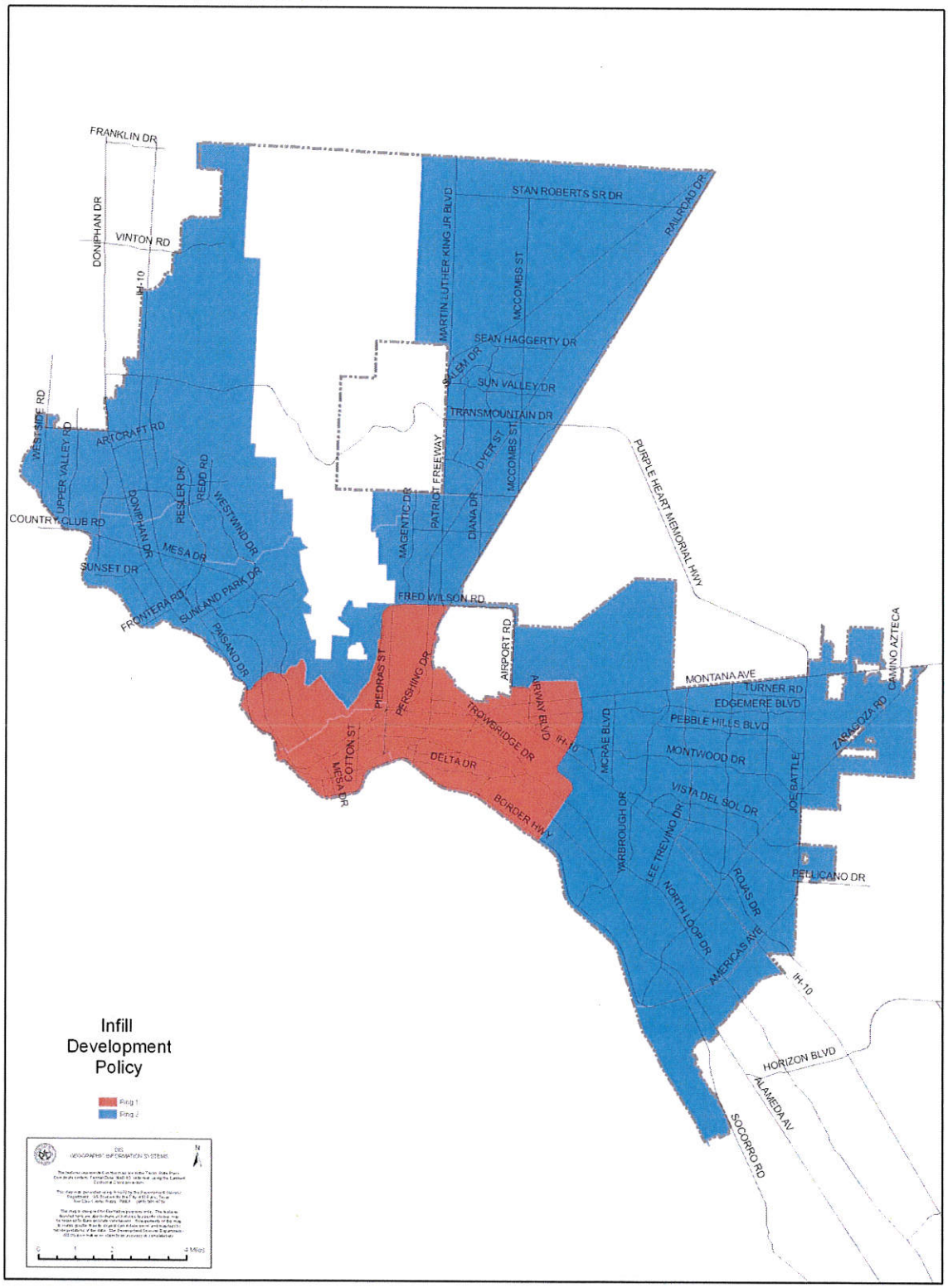
Exhibit B
INFILL DEVELOPMENT POLICY - ELIGIBLE AREAS (FIRST and OUTER RINGS)