

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

**DEPARTMENT:** Planning & Economic Development

**AGENDA DATE:** November 8, 2011 (Regular)

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

**DISTRICT(S) AFFECTED:** 8

**SUBJECT:**

Discussion and Action on a Resolution that subject to passage of the Ordinance amending the Final Project Plan and Final Reinvestment Zone Financing Plan related hereto, the City Manager be authorized to execute a Development Agreement by and between the City of El Paso and Donald C. Luciano ("Developer"), to provide an amount not to exceed \$17,780.00, as reimbursement for eligible project costs incurred in Developer's construction of public infrastructure improvements related to Developer's mixed-use development at 910 Texas Avenue, El Paso, Texas. (District 8) [Planning & Economic Development, Mathew McElroy, (915) 541-4193]

**BACKGROUND/DISCUSSION:**

The Final Project Plan and Final Reinvestment Zone Financing Plan for Tax Increment Reinvestment Zone No. 5 was adopted by City Council Ordinance No. 017081 on March 10, 2009. The document is formatted to allow for incorporation of projects eligible for TIRZ funding via an amendment process. The Reinvestment Zone recommended approval of project No. 3: 910 Texas Avenue (Mixed-Use Residential) for eligible project costs as described in the amending Ordinance. The project is the second privately-funded mixed use development with a strong housing component within the Downtown 2015 Plan.

**PRIOR COUNCIL ACTION:**

Final Project Plan and Final Reinvestment Zone Financing Plan adopted by Ordinance No. 017081 on March 10, 2009 and later amended by Ordinance No. 017102 (April 7, 2009) and Ordinance No. 017239 (November 17, 2009) and Ordinance No. 017258 (December 22, 2009).

**AMOUNT AND SOURCE OF FUNDING:**

Item will be funded from existing TIRZ Fund Account No. 502215 / 07412 / 72153041 / 72300 (TIRZ No. 5 Fund). Project No. 3 funding to be amended to allocate \$17,780 for eligible project costs.

**BOARD/COMMISSION ACTION:**

Tax Increment Reinvestment Zone No. 5 Board unanimously approved the amendment on September 8, 2011.

**BOARD/COMMISSION ACTION:**

Tax Increment Reinvestment Zone No. 5 Board unanimously approved the amendment on September 8, 2011.

**\*\*\*\*\*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 subject to passage of the Ordinance amending the Final Project Plan and Final Reinvestment Zone Financing Plan related hereto, the City Manager be authorized to execute a Development Agreement by and between the City of El Paso and Donald C. Luciano ("Developer"), to provide an amount not to exceed \$17,780.00, as reimbursement for eligible project costs incurred in Developer's construction of public infrastructure improvements related to Developer's mixed-use development 'at 910 Texas Avenue, El Paso, Texas, to be paid out of the City's tax increment revenue fund for Tax Increment Reinvestment Zone Number 5, City of El Paso, Texas, subject to the terms and conditions provided in the Development Agreement.

APPROVED this \_\_\_\_ day of \_\_\_\_\_ 2011.

CITY OF EL PASO

ATTEST:

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

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

APPROVED AS TO FORM:

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

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Mathew McElroy, Deputy Director  
Planning and Economic Development



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**WHEREAS**, City has determined that it is in the best interest of the Zone to contract with Developer with regard to the public improvements specified herein in order to provide for the efficient and effective implementation of certain aspects of the Project Plan and Reinvestment Zone Financing Plan.

**NOW, THEREFORE**, in consideration of the promises and of the mutual covenants and agreements of the parties hereto, City and Developer do agree as follows:

#### **SECTION 1. DEFINITIONS.**

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

- (a) **Act.** The word "Act" means the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code (as may be amended).
- (b) **Agreement.** The word "Agreement" means this Development Agreement, together with all exhibits and schedules attached to this Agreement and any subsequent amendments in accordance with the provisions herein.
- (c) **Available Tax Increment.** The words "Available Tax Increment" mean the funds contributed by City, as the sole participating taxing entity, to the Tax Increment Revenue Fund established and maintained by City for the purposes of implementing the projects of the Zone, less the ongoing administrative costs of City and Zone Board for managing the Zone;
- (d) **City.** The word "City" means the City of El Paso, Texas.
- (e) **City Engineer.** The words "City Engineer" mean the City Engineer for the City or his or her designee.
- (f) **City Manager.** The words "City Manager" mean the City Manager for the City or his or her designee.
- (g) **Completion.** The word "completion" means construction of a public improvement in the Zone substantially in accordance with the Project Plan, the Financing Plan and this Agreement as the public improvement can be used and maintained for its intended purpose, as certified by the City Engineer or the City Engineer's authorized designee with responsibility for inspecting and certifying such improvements.
- (h) **Construction Schedule.** The words "Construction Schedule" mean the timetable for constructing the improvements specified in the Project Plan, Financing Plan and this Agreement, as particularly set forth in **Exhibit C**, attached hereto and incorporated herein for all purposes and which timetable may be amended pursuant to the provisions of this Agreement.

- (i) **Project.** The word "Project" means Developer's rehabilitation and construction of a mixed-use development consisting of approximately 5 apartment units and 1,684 square feet of retail space located in the Zone, more particularly described in **Exhibit A**, to include development, construction and installation of certain Public Infrastructure Improvements as specifically set forth in **Exhibit B** to be constructed by Developer at 910 Texas Avenue in the Zone, also known as the 910 Texas Avenue - Project No. 3.
- (j) **Project Costs.** The words "Project Costs" mean eligible "project costs" as defined in Section 311.002, Texas Tax Code, relating to the costs of constructing the Public Infrastructure Improvements in the Project, including the costs of items described in **Exhibit B** hereto.
- (k) **Project Plan and Financing Plan.** The words "Project Plan and Financing Plan" mean the final project plan and final reinvestment zone financing plan for the Tax Increment Reinvestment Zone No. Five, City of El Paso, Texas, as approved by ordinance by the El Paso City Council and as may be amended from time to time.
- (l) **Public Infrastructure Improvements.** Public Infrastructure Improvements will consist of the following items: street lighting, sewer taps and drain lines and other public improvements authorized by the Act. The Public Infrastructure Improvements for this Project are specifically set forth in **Exhibit B**.
- (m) **Tax Increment Revenue Fund.** The words "Tax Increment Revenue Fund" mean the special fund created and maintained by City consisting of the City's tax increments that represent the amount of ad valorem real property taxes levied and collected by City in a given year on the "captured" appraised value of real property taxable by City and located in the Zone. Captured appraised value is the total appraised value of all real property taxable by City and located in the Zone for the particular year less the total appraised value of taxable real property in the base year, as established by ordinance.
- (n) **Zone Board.** The words "Zone Board" mean the Board of Directors of Tax Increment Reinvestment Zone Number Five, City of El Paso, Texas.

## Section 2. TERM.

The term of this Agreement shall commence on the Effective Date and expires on the date which is the earlier to occur of the following: (i) the date Developer receives the final payment for completing the Public Infrastructure Improvements in the Project; or (ii) the date this Agreement is terminated as provided in Section 12; provided that all existing warranties on the Public Infrastructure Improvements shall survive termination of this Agreement; or (iii) the date the Zone expires.

### **Section 3. OBLIGATIONS OF DEVELOPER.**

During the term of this Agreement, Developer shall comply with the following terms and conditions:

(a) In connection with the Project, Developer agrees to complete, or cause to be completed, the following Public Infrastructure Improvements: street lighting, sewer taps and drain lines, as more particularly set forth in **Exhibit B**. Developer agrees to provide, or cause to be provided at its sole expense, all materials, labor, and services for completing the Project and Public Infrastructure Improvements. Additionally, Developer shall provide all traffic control for construction. Developer agrees to provide adequate traffic controls designed to cause minimum inconvenience to motorists, pedestrians and adjacent property owners.

(b) Developer agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of improvements to the subject property. Developer will be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project. Developer agrees to pay all monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by Developer in regard to the development of the subject property during construction of the Project and for so long as Developer is owner of the subject property.

(c) Prior to starting any construction, Developer shall prepare or cause to be prepared plans and specifications for the Public Infrastructure Improvements, according to the applicable City design standards and policies, as well as accepted engineering principles and practices to provide for the Public Infrastructure Improvements. The Public Infrastructure Improvements shall be constructed in accordance with the plans and specifications as approved by City Engineer or his designee. Developer agrees that all Public Infrastructure Improvements construction and materials shall be subject to inspection and approval by City Engineer. All Public Infrastructure Improvements materials must conform to City specifications and are subject to quality control testing by City at Developer's sole cost and expense. Developer shall not begin construction on the Public Infrastructure Improvements until the City Engineer has issued a formal "Notice to Proceed."

(d) Developer shall, prior to beginning construction, cause its general contractor(s) to obtain payment and performance bonds naming the City as the beneficiary or obligee of the bonds and in an amount sufficient to cover the entire cost and completion of the Public Infrastructure Improvements in their respective contracts, or obtain said bonds in the event the general contractor(s) fail to procure said bonds. The bonds must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code and must bind both the

Developer and the Surety, their heirs, administrators, executors, successors and assignees jointly and severally. Developer shall not begin construction on the Public Infrastructure Improvements until the City Engineer approves the bonds. Failure to secure the City Engineer's approval of said bonds will be considered a breach of contract.

(e) Developer agrees to commence and complete Public Infrastructure Improvements in accordance with the Construction Schedule contained in **Exhibit C**. The Developer agrees that said work shall be pursued regularly, diligently, and uninterrupted at such a rate of progress as shall ensure completion of the Public Infrastructure Improvements within the time specified. It is expressly understood and agreed, by the Developer and the City, that the time for the completion of the Public Infrastructure Improvements is a reasonable time for completion as specified in **Exhibit C**. If substantial completion of the Public Infrastructure Improvements is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, fire or other casualty, court injunction, necessary condemnation proceedings, interference with third parties, or any circumstances reasonably beyond Developer's control, then at City Engineer's reasonable discretion, the deadlines set forth in the Construction Schedule shall be extended by the period of each such delay, without further authorization required by El Paso City Council.

(f) As to the construction of the Public Infrastructure Improvements, Developer shall make a good faith effort to comply with the City's policy regarding the participation of Minority Business Enterprises and Women Business Enterprises with respect to the design, installation and construction of the Public Infrastructure Improvements required to be performed under this Agreement. Upon Developer's request, City will furnish a list of those business enterprises certified by City as eligible Small, Minority or Women-owned Business Enterprises. Developer shall maintain records showing: its subcontracts, supply agreements, and support with and to disadvantaged business enterprises, and (ii) specific efforts to identify and award contracts to business enterprises that are Small, Minority, or Women-owned Business Enterprises; and (iii) upon request, provide reports of its efforts under this section to City in such form and manner as City may prescribe.

(g) Developer agrees to warrant to City that all work in connection with the Public Infrastructure Improvements shall be performed in a good and workmanlike manner, strictly in accordance with the approved plans, and as otherwise provided in this Agreement. This warranty shall remain in full force and effect prior to City final acceptance of the Public Infrastructure Improvements and for a period of one (1) year from and after the date of City's final acceptance of the Public Infrastructure Improvements. No mechanics liens shall ever be threatened or filed against the property identified as the Public Infrastructure Improvements. It is understood and agreed that, notwithstanding the acceptance of the Public Infrastructure Improvements by City, Developer remains fully responsible for the repair and maintenance of the Public Infrastructure Improvements as such relates to Developer's warranty of the Public

Infrastructure Improvements for a period of one (1) year from the date of the City's acceptance of the Public Infrastructure Improvements for maintenance. Within sixty (60) days after completion of construction and acceptance of the improvements by City, Developer shall convey the Public Infrastructure Improvements to City free and clear of all liens and encumbrances in a form acceptable to City at no additional cost or expense to City.

(h) Developer represents to City that Developer is an entity organized in the State of Texas; that Developer has the authority to enter into this Agreement and to perform the requirements of this Agreement; that Developer's performance under this Agreement shall not violate any applicable judgment, order, law or regulation; that Developer's performance under this Agreement shall not result in the creation of any claim against City for money or performance, any lien, charge, encumbrance or security interest upon any asset of City; that Developer shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital; and that Developer owns the subject property located in the Zone.

(i) With respect to design, development, construction and installation of the Public Infrastructure Improvements, Developer agrees to cooperate with City in providing all necessary information to City in order to assist the City in complying with this Agreement and all documentation to be submitted shall be in a form acceptable to City. Developer agrees to provide periodic reports of such construction to City and Zone Board upon reasonable request.

(j) Developer represents that it understands and agrees that even after the Zone terminates, Developer shall diligently work to successfully complete any and all required improvements that are not completed before the Zone terminates provided that City makes provision for payment to Developer for the Project Costs.

#### **Section 4. COMPENSATION TO DEVELOPER.**

(a) Upon completion of the Public Infrastructure Improvements, Developer shall submit to City a completed reimbursement form, as detailed in Exhibit D, with accompanying documentation. Upon City Manager or her designee's approval and direction, Developer shall receive up to a maximum payment of **SEVENTEEN THOUSAND SEVEN HUNDRED EIGHTY AND NO/100 DOLLARS (\$17,780.00)** as reimbursement for eligible Project Costs of the Public Infrastructure Improvements as identified in Exhibit B, as total reimbursement for designing and constructing the Public Infrastructure Improvements required under the Project Plan, Financing Plan, and this Agreement. The estimated costs reflected in **Exhibit B** may be decreased or increased within each line item, provided that the total costs do not exceed \$17,780.00 City shall not unreasonably withhold approval on requests from Developer on matters under this Agreement.

(b) The sole source of the funds to reimburse Developer for eligible Project Costs shall be the Available Tax Increment Funds contributed by City to the Tax Increment Revenue Fund for the purpose of implementing the Public Infrastructure Improvements of the Project and payments shall be made by City from Available Tax Increment Funds up to the maximum total amount specified in this Agreement as the total reimbursement to Developer for the eligible Project Costs it has expended for the construction of the Public Infrastructure Improvements under this Agreement. THESE AVAILABLE TAX INCREMENT FUND PAYMENTS MADE TO DEVELOPER ARE NOT INTENDED TO REIMBURSE DEVELOPER FOR ALL OF ITS COSTS INCURRED IN CONNECTION WITH PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT.

(c) If Available Tax Increment Funds do not exist in an amount sufficient to make such payments in full when the payments are due to Developer under this Agreement, partial payments shall be made to Developer, and the remainder shall be paid as Available Tax Increment Funds become available. No fees, costs, expenses, or penalties shall be paid to Developer on any late payment. Developer agrees and understands that all payments from the Tax Increment Revenue Fund are subject to the following order of priority: (i) amounts pledged or required for payment of outstanding bonds or debt issued for Zone projects, if any; (ii) administrative costs of the Zone as approved by City and Zone Board; (iii) maintenance of a minimum balance of \$50,000.00 in the Tax Increment Revenue Fund; (iv) other Zone projects previously approved by the Zone Board and the City Council for City.

(d) In the event all or a portion of the Project Costs are determined by City to be ineligible under the Act or is not included in the Project Plan and Financing Plan, the reimbursement shall be reduced by the amount attributable to the ineligible component or the payment of such ineligible costs shall be fully refunded to City by Developer if Developer received compensation from City for such costs prior to the ineligibility determination.

## **Section 5. Inspections, Audits.**

(a) Developer shall allow City reasonable access to the subject property owned or controlled by Developer for inspections during and upon completion of construction of the Public Infrastructure Improvements. Developer agrees to keep its operating records (such as, contracts, paper, correspondence, copy, books, accounts, billings, and other information related to its performance under this Agreement) as may be required by City, its City Engineer, or by state and federal law or regulation. Developer shall allow City reasonable access to documents and records in Developer's possession, custody or control relating to the Public Infrastructure Improvements that City deems necessary to assist City in determining Developer's compliance with this Agreement. The confidentiality of such records will be maintained in accordance with and subject to all

applicable laws including the Public Information Act, Chapter 552, Texas Government Code.

(b) All applicable records and accounts of Developer, together with all supporting documentation, shall be preserved in El Paso County, Texas by Developer throughout the term of this Agreement and for twelve (12) months after the termination of this Agreement, and then transferred, at no cost to City, to City for retention. During this time, City may require that any or all of such records and accounts be submitted for audit to City or a certified public accountant selected by City within ten (10) days following written request for same. Should City discover errors in internal controls or in record keeping associated with the Public Infrastructure Improvements, Developer shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed sixty (60) days after discovery, and notification by City to Developer of such discrepancies. Developer shall inform City in writing of the action taken to correct such audit discrepancies.

If it shall be determined as a result of such audit that Developer has incorrectly stated the cost of the Public Infrastructure Improvements, then such incorrectly stated costs shall be immediately returned to City and become due and payable with interest at the maximum legal rate under applicable law, from the date City paid such overcharges. In addition, if the audit determined that there were overcharges of more than five percent (5%) of the actual project costs for the year in which the discrepancy occurred, and City is entitled to a refund as a result of such overcharges, then Developer shall pay the cost of such audit.

#### **Section 6. FUTURE MAINTENANCE WORK.**

City shall be responsible for any maintenance or repairs of the Public Infrastructure Improvements. City's obligations for such work shall begin upon completion of the Public Infrastructure Improvements as defined by the Agreement and upon expiration of Developer's warranty. City agrees that Developer is not responsible for any maintenance and repair of such work after expiration of Developer's warranty.

#### **Section 7. INSURANCE REQUIREMENTS.**

With no intent to limit Developer's liability or the indemnification provisions set forth below, Developer or Developer's contractor shall provide and maintain certain insurance in full force and effect at all times until completion and conveyance of the Public Infrastructure Improvements to City, at Developer's or Developer's contractor sole expense. An insurance company duly authorized to do business in the State of Texas shall issue such insurance policies. Such insurance is described as follows:

Risks and Limits of Liability. The insurance, at a minimum, must include the following coverage and limits of liability:

<u>COVERAGE</u>	<u>AMOUNT</u>
(1) Worker's Compensation	Statutory for Workers Compensation
(2) Employer's Liability	Bodily Injury by Accident \$500,000 (each accident); Bodily Injury by Disease; \$250,000 (policy limit); Bodily Injury by Disease \$250,000 (each employee)
(3) Comprehensive General Liability (including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations)	Combined limits of \$500,000 per occurrence and \$1,000,000 in the aggregate or its equivalent in umbrella or excess liability coverage
(4) Business Automobile Liability (any auto, including employer's non-owned and hired auto coverage)	\$1,000,000 combined single limit per occurrence

(a) Form of Policies. The insurance may be in one or more policies of insurance, the form of which must be approved by City after review by the City Attorney as to form and City Engineer as to sufficiency, pursuant to the El Paso Municipal Code, Section 13.16.010. City may approve the form of the insurance policies, but nothing the City or Zone Board does or fails to do relieves Developer of its obligation to provide the required coverage under this Agreement.

(b) Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability and Professional Liability, must name City (and its elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.

(c) Deductibles. Developer shall be responsible for and bear (and shall contract with each applicable contractor to bear and assume) any claims or losses to the extent of any deductible amounts and waives (and shall contract with each contractor to waive) any claim it may have for the same against City or Zone Board, its officers, agents, or employees.

(d) Cancellation. Each policy must expressly state that it may not be canceled or non-renewed unless thirty (30) days advance notice of cancellation or intent not to renew is given in writing to City Clerk by the insurance company. Developer shall (and shall contract with each contractor to) give written notice to City Clerk within five (5) days of the date upon which total claims by any party against such person reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement.

(e) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against City, its elected and appointed officials, officers, agents, or employees.

(f) Endorsement of Primary Insurance. Each policy, except Workers Compensation and Professional Liability (if any), must contain an endorsement that such policy is primary insurance to any other insurance available to the additional insured with respect to claims arising under this Agreement and that the insurance applies separately to each insured.

(g) Liability for Premium. Developer shall pay (and shall contract with contractors to pay) all insurance premiums for coverage required by this section, and City or Zone Board shall not be obligated to pay any premiums.

(h) Subcontractors. Developer and Contractor shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements. Developer shall provide (and shall contract with contractors to provide) copies of insurance certificates to City Clerk.

(i) Delivery of Policies. The originals of all policies referred to above, or copies thereof certified by the agent or attorney-in-fact issuing them together with written proof that the premiums have been paid, shall be deposited by Developer with the City Clerk prior to beginning work under this Agreement, and thereafter before the beginning of each year of the term of this Agreement. Notwithstanding the termination notice provisions in this Agreement, the failure of Developer to provide the City Clerk with the above proof of insurance prior to beginning work and thereafter prior to the beginning of each year of the term of this Agreement, shall constitute a default on the part of Developer entitling City, upon three (3) days written notice to Developer to terminate this Agreement. This default provision shall also apply to the proof of insurance requirements under circumstances where a policy is canceled or expires during a given year of the term. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Developer throughout the term of this Agreement, continuously and without interruption, maintains in force the required insurance coverage set forth above. Failure of Developer to comply with this requirement shall constitute a default of Developer allowing City, at its option, to terminate this Agreement.

## **Section 8. INDEMNIFICATION.**

**Developer will INDEMNIFY, HOLD HARMLESS, and DEFEND the City, Zone Board, City's elected officials, agents, employees, officers, directors, and representatives of the City, individually or collective, from AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES, COURT COSTS, AND**

ALL OTHER DEFENSE COSTS AND INTEREST) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT, including any act or omission by Developer, its agents, employees, contractors or subcontractors while in the exercise of performance of the rights or duties under this Agreement, all, without however, waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas Law. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any person or entity. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Developer every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. In addition, Developer shall promptly advise City in writing of any claim or demand against City or Developer known to Developer related to or arising out of Contractor's activities under this Agreement. Developer will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Developer may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Developer will pay all judgments finally establishing liability of City in actions defended by Developer pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Developer, and premiums on any appeal bonds. The City, at its election and own expense, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest without relieving Developer of any of its obligations under this paragraph. The City will not be responsible for any loss of or damage to the Developer's property from any cause.

Developer shall require all of its contractors and subcontractors to include in their subcontracts indemnity in favor of the City utilizing the indemnification language contained herein, in its entirety.

To the extent permitted by Texas law, no director, officer, employee or agent of City or Zone Board shall be personally liable for any liability arising under or growing out of this Agreement.

#### **Section 9. TEXAS WORKERS' COMPENSATION REQUIREMENTS.**

This Section is applicable to construction of the Public Infrastructure Improvements, the costs for which Developer is seeking reimbursement from City,

(a) Definitions for this Section:

(i) "Certificate of coverage" ("certificate") -- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

(ii) "Duration of the project" -- includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

(iii) "Persons providing services on the project" ("subcontractor") -- includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(iv) "Contractor" shall mean the general contractor or general contractors of Developer or their subcontractors.

(v) "Governmental Entity" shall mean the City of El Paso.

(b) The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreement, which meets the statutory requirements of Texas Labor Code, Section 401.011(44), for all employees of the Contractor providing services on the project for the duration of the project.

(c) The Contractor must provide a certificate of coverage to the Governmental Entity prior to being awarded the contract.

(d) If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Governmental Entity showing that coverage has been extended.

(e) The Contractor shall obtain from each person providing services on a project, and provide to the Governmental Entity:

(i) A certificate of coverage, prior to that person beginning work on the project, so the Governmental Entity will have on file certificates of coverage, showing coverage for all persons providing services on the project; and

(ii) no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

(f) The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

(g) The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Contractor knows or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

(h) The Contractor shall post on each project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered and stating how a person may verify coverage and report lack of coverage.

(i) The Contractor shall contractually require each person with whom it contracts to provide services on the project, to:

(i) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(ii) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(iii) include in all contracts to provide services on the project the language in Section 9(j) herein;

(iv) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(v) obtain from each other person with whom it contracts, and provide to the Contractor:

(A) a certificate of coverage, prior to the other person beginning work on the project; and

(B) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(vi) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(vii) notify the Governmental Entity in writing by certified mail or personal delivery within ten (10) days after the person knew or shown have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(viii) contractually require each person with whom it contracts, to perform as required by Sections 9(i)-(viii), with the certificates of coverage to be provided to the person for whom they are providing services.

(j) By signing this Agreement or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Governmental Entity that all employees of the Contractor who will provide services on the project will be

covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

(k) Developer's failure to comply with any of these provisions is a breach of contract by Developer that entitles City to terminate this Agreement if Developer does not remedy the breach within ten (10) days after receipt of notice of breach from City.

#### **Section 10. EMPLOYMENT OF UNDOCUMENTED WORKERS.**

During the term of this Agreement, Developer 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), Developer shall repay the amount of the reimbursements received by Developer from the City as of the date of such violation not later than one hundred twenty (120) days after the date Developer is notified by City of a violation of this section, plus interest from the date the reimbursement payment(s) was paid to Developer, at the rate of seven percent (7%) per annum. The interest will accrue from the date the reimbursement payment(s) were paid to Developer until the date the reimbursement payments are repaid to City. City may also recover court costs and reasonable attorney's fees incurred in an action to recover the reimbursement payment(s) subject to repayment under this section. Developer is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Developer contracts.

#### **Section 11. PREVAILING WAGES AND WAGE RATE PENALTY.**

(a) Developer and its general contractor(s) shall pay to all workers, wages that are not less than the general prevailing wage rates as set forth in **Exhibit E** (including **Exhibits E-1 through E-4**), incorporated herein and made a part of this Agreement. The general prevailing wage rates contained herein shall be posted at the Project work site in a prominent and accessible place where it can be easily seen by all workers employed on the Project. Developer shall stipulate in all construction contracts with its general contractor(s) engaged in furtherance of the execution of this Agreement that said general contractor(s) pay and cause its subcontractor(s) to pay not less than the prevailing wage rate for its workers and shall attach as an exhibit to said contracts a copy of **Exhibit E** (including **Exhibits E-1 through E-4**). Developer's contractors and subcontractors shall submit required payroll certification documentation to the City Engineer or his designee for inspection and review, as specified in **Exhibit E**.

(b) Pursuant to Chapter 2258, Texas Government Code, Developer shall forfeit as a penalty to the City sixty dollars (\$60.00) for each laborer, workman or

mechanic employed for each calendar day or portion thereof, that such laborer, workman, or mechanic is paid less than the said stipulated wage rates for any work done under said contract by Developer or any subcontractor under the Developer. Developer shall stipulate in all contracts with general contractor(s) engaged by Developer in furtherance of the performance of this Agreement that the general contractor is subject to this \$60.00 penalty if the general contractor fails to pay said prevailing wage rates to its workers.

**(c) In accordance with Chapter 2258, Texas Government Code, City shall be entitled to withhold payment from Developer under this Agreement to satisfy this penalty, even if the party incurring the penalty is a general contractor of Developer. Release or disbursement of funds withheld as a penalty hereunder shall be governed by Chapter 2258.**

## **Section 12. DEFAULT AND TERMINATION.**

(a) In the event that Developer fails to commence construction of the Project, fails to complete construction of the project, or fails to perform any other obligation pursuant to the terms of this Agreement, City may terminate this Agreement if Developer does not take adequate steps to cure its failure within ninety (90) calendar days after receiving written notice from City requesting the failure be cured. In the event of such default and as the exclusive remedy of City, Developer shall return any payments under this Agreement for the construction of the Public Infrastructure Improvements under development at the time of the default within sixty (60) calendar days after receiving written notice from City that Developer has defaulted on this Agreement.

(b) In the event Developer provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, and Developer fails to cure same within thirty (30) days after written notice from City describing the violation shall be deemed an event of default. If such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, and Developer fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, such actions or omissions shall also be deemed an event of default. Further, if Developer obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and Applicant fails to provide written notice to City of the false or misleading nature of such warranty, representation or statement within ten (10) days after Developer learns of its false or misleading nature, such action or omission shall be deemed an event of default. In the event this Agreement is terminated pursuant to this paragraph, all reimbursement payments previously provided by City pursuant to this Agreement shall be recaptured and repaid by Developer within sixty (60) days from the date of such termination.

### Section 13. Notice.

All notices provided for herein shall be sufficient if sent by certified mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

CITY: The City of El Paso  
Attn: City Manager  
2 Civic Center Plaza, 10<sup>th</sup> Floor  
El Paso, Texas 79901-1196

copy to: The City of El Paso  
Attn: Director, Economic Development  
2 Civic Center Plaza, 2<sup>ND</sup> Floor  
El Paso, Texas 79901-1196

DEVELOPER: Donald C. Luciano  
1400 Texas Ave.  
El Paso, Texas 79901

or such other addresses as the parties may designate to each other in writing from time to time.

### Section 14. Miscellaneous Provisions.

(a) Assignment. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the authorized representative of the other party hereto. Any attempted assignment or delegation by either party shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph and will constitute an event of default.

(b) Captions. The Section headings and titles contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(c) Effective Date. The effective date (the "Effective Date") of this Agreement shall be the date the El Paso City Council approves this Agreement for execution by City.

(d) Entire Agreement. This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto relating to the Agreement. There exists no other written or oral understanding, agreements, or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

(e) Execution of Agreement. El Paso City Council has authorized the City Manager to execute this Agreement on behalf of City.

(f) Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Texas along with any applicable provisions of federal law or the City Charter or any ordinance of the City of El Paso. The parties agree that venue for any litigation arising from this Agreement shall lie in El Paso, El Paso County, Texas.

(g) Legal Authority. All persons executing this Agreement represent, warrant, and guarantee that they have full legal authority to enter into this Agreement and bind their respective organizations thereto.

(h) Legal Construction. Every provision of this Agreement is severable, and if any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement. Where the context of the Agreement requires, the singular shall include the plural and vice versa and the masculine gender shall include feminine.

(i) Relationship of Parties. Developer acknowledges that it is not an agent, servant, or employee of the City and is therefore, responsible for its own actions performed by itself, its agents or employees during the term of this Agreement and that none of Developer's employees or contractors will be deemed to be employees or contractors of City for any purpose whatsoever. Developer shall be solely responsible for the compensation of such employees, contractors and subcontractors. The parties hereto further understand and agree that no party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

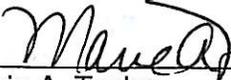
[SIGNATURE PAGE ON FOLLOWING PAGE]

**IN WITNESS THEREOF**, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

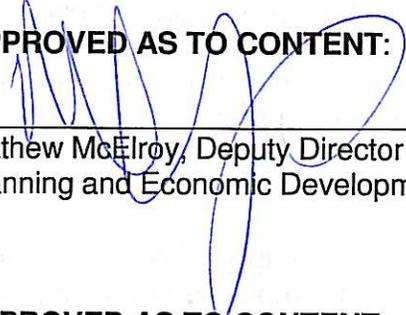
**CITY OF EL PASO:**

\_\_\_\_\_  
Joyce Wilson, City Manager

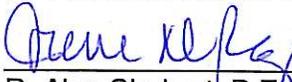
**APPROVED AS TO FORM:**

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

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Mathew McElroy, Deputy Director  
Planning and Economic Development

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
for R. Alan Shubert, P.E.  
City Engineer

**DEVELOPER:**

  
\_\_\_\_\_  
By: Donald. C. Luciano  
Title: Owner

[Acknowledgments on Following Page]

**ACKNOWLEDGMENTS**

THE STATE OF TEXAS    )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by **Joyce Wilson**, as City Manager of the **City of El Paso**, on behalf of said municipal corporation (CITY).

Notary's Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's name (printed):

\_\_\_\_\_

THE STATE OF TEXAS    )  
                                  )  
COUNTY OF EL PASO    )

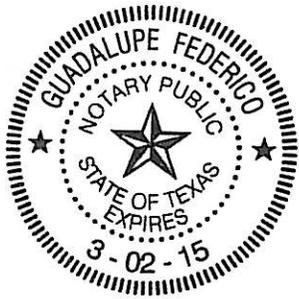
This instrument was acknowledged before me on this 6<sup>TH</sup> day of OCTOBER, 2011 by **Donald C. Luciano**, an individual (DEVELOPER)

Notary's Commission Expires:

3/2/2015

  
\_\_\_\_\_  
Notary Public, State of Texas  
Notary's name (printed):

GUADALUPE FEDERICO



**EXHIBIT A**  
[Legal Description]

Lot 15 and the East 1/2 of Lot 16, Block 223, CAMPBELL'S ADDITION, an addition to the City of El Paso, El Paso County, Texas, according to the map or plat recorded in Volume 2, Page 68, Plat Records of El Paso County, Texas; commonly known as 910 Texas Avenue, El Paso, Texas.



**EXHIBIT B**  
Public Infrastructure Improvements

[ATTACHED]

Summary of costs covered under the TIRZ Public Infrastructure Program for property located at 910 Texas Ave.

**Electrical**

Street Lighting - \$2,795

**Plumbing**

Drain Lines - \$7,660

Sewer Taps - \$7,325

**Total TIRZ Funds - \$17,780**

**EXHIBIT C**  
Construction Schedule

[ATTACHED]

	Outline Number	Name	Duration	Start	Finish
1	1	Contracts			
2	1.1	- Supply Lot Sale Agreement			Completed
3	1.2	- Supply Construction Agreement			Completed
4	1.3	- Supply Contract Plans			Completed
5	1.4	- Supply Contract Specifications			Completed
6	1.5	- Supply Contract Site Plan			Completed
7	1.6	- Secure Financing			Completed
8	1.7	- Construction Loan Settlement			Completed
9	2	Document Review & Revision			
10	2.1	- Review & Finalize Plans		5/1/2011	5/1/2011
11	2.2	- Review & Finalize Specifications		5/5/2011	5/10/2011
12	2.3	- Review & Finalize Site Plan		5/10/2011	5/15/2011
13	2.4	- Print Construction Drawings		5/15/2011	5/20/2011
14	2.5	- Approve Revised Plans		5/20/2011	5/21/2011
15	2.6	- Approve Revised Specifications		5/22/2011	5/25/2011
16	2.7	- Approve Revised Site Plan		5/25/2011	5/30/2011
17	3	Bids & Contracts			
18	3.1	- Make Copies of Plans		6/1/2011	6/1/2011

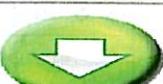
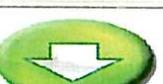
19	3.2	- Make Copies of Specifications		6/1/2011	6/1/2011
20	3.3	- Distribute Plans & Specifications		6/2/2011	6/2/2011
21	3.4	- Receive Bids		N/A	
22	3.5	Review Bids			
25	3.6	- Execute Subcontractor Agreements		INHOUSE	
26	4	Grading & Building Permits			
27	4.1	- Schedule lot stake-out		11/1/2011	11/30/2011
28	4.2	- Stake lot			
29	4.3	- File Grading Permit Application			
30	4.4	- File Building Permit Application			
34	4.8	- Install Construction Entrance			
35	4.9	- Install Sediment Controls			
36	4.10	- Sediment Control Insp.			
37	4.11	- Grading Permit Issued			
38	4.12	- County Permit Process			

39	4.13	- Building Permit Approved			
40	4.14	- Pay Permit Fees and Excise Taxes			
41	4.15	- Building Permit Issued		11/1/2011	11/30/2011
42	5	Site Work			
43	5.1	- Clear Lot		12/1/2011	12/30/2011
44	5.2	- Strip Topsoil & Stockpile			
45	5.3	- Stake Lot for Excavation			
46	5.4	- Rough grade lot			
47	5.5	- Excavate for foundation		12/1/2011	12/30/2011
48	6	Foundation			
49	6.1	- Layout footings		1/4/2012	1/30/2012
50	6.2	- Dig Footings & Install Reinforcing			
51	6.3	- Footing Inspection			
52	6.4	- Pour footings			
53	6.5	- Pin Footings			
54	6.6	- Stock Block, Mortar, Sand			

55	6.7	- Build Block Foundation			
56	6.8	- Foundation Certification		1/4/2012	1/30/2012
57	6.9	(Location Survey)			
58	6.10	- Fill Block Cores w/ Concrete		2/1/2012	2/17/2012
59	6.11	- Steel Delivery			
60	6.12	- Set Lintels, Bolts, Cap Block			
61	6.13	- Lumber Delivery			
62	6.14	- Waterproofing and Drain Tile		2/1/2012	2/17/2012
63	7	Rough Carpentry			
64	7.1	- Set Steel		2/1/2012	2/28/2012
65	7.2	- 1st Floor Deck Framing			
66	7.3	- 1st Floor Wall Framing		2/1/2012	2/28//2012
69	7.6	- Draw #3 (Second Floor Deck)			
70	7.7	- 2nd Floor Wall Framing		3/1/2012	3/20/2012
71	7.8	- Set Roof Trusses		3/20/2012	4/15/2012
72	7.9	- Frame Roof			
73	7.10	- Install Roof Plywood			
74	7.11	- Install Windows & Doors			

75	7.12	- Frame Basement			
76	7.13	- Frame Basement Bulkheads		3/20/2012	4/15/2012
85	9	H.V.A.C.			
86	9.1	- HVAC Layout & Measure		4/18/2012	5/5/2012
87	9.2	- HVAC Rough-in			
88	9.3	- HVAC Set Indoor Units			
89	9.4	- HVAC Temporary Heat		4/18/2012	5/5/2012
90	10	Plumbing Rough-in			
91	10.1	- Plumbing Sub-slab		5/10/2012	5/30/2012
92	10.2	- Plumbing Layout			
93	10.3	- Plumbing rough-in			
94	11	County Plumbing Sub-slab Inspection			
95	12	County Plumbing Rough-in Inspection		5/10/2012	5/30/2012
96	13	Electric Rough-in			
97	13.1	- Set Electric Boxes		6/1/2012	6/18/2012
98	13.2	- Install Electric Service Panel			
99	13.3	- Electrical Walk-through			
100	13.4	- Electrical Rough-wire		6/1/2012	6/18/2012
101	14	Specialty Rough-ins			
102	14.1	- Central Vacuum		6/20/2012	7/5/2012

		Rough-in			
103	14.2	- Alarm System Rough-in			
104	14.3	- Telephone System Rough-in			
105	14.4	- Television System Rough-in			
106	14.5	- Audio Visual Rough-in			
107	15	County Electrical inspection		6/20/2012	7/5/2012
108	16	(Rough-ins )			
109	17	County Framing Inspection		7/10/2012	7/15/2012
110	18	Roofing			
111	18.1	- Roofing Paper Installed		7/16/2012	7/22/2012
112	18.2	(Roof, windows, doors)			
113	18.3	- Stock Roof Shingles		7/25/2012	8/10/2012
114	18.4	- Install Roof Shingles		7/25/2012	8/10/2012
115	19	Exterior Finishes			
116	19.1	- Siding		8/10/2012	8/17/2012
117	19.2	- Exterior Trim			
118	19.3	- Brick Arch Forms			
119	19.4	- Brick Veneer		8/10/2012	8/17/2012
120	20	Insulation			
121	20.1	- Caulk & Air Seal		8/17/2012	8/21/2012

122	20.2	- Draft & Fire Stop			
123	20.3	- Batt Insulation		8/17/2012	8/21/2012
126	23	Drywall			
127	23.1	- Stock Drywall		8/22/2012	8/27/2012
128	23.2	- Hang Drywall			
129	23.3	- Remove Scrap Drywall			
130	23.4	- Tape and Finish Drywall			
131	23.5	- Sand Drywall			
132	23.6	- Drywall Point-up		8/22/2012	8/27/2012
133	24	(Insulation & drywall applied)		8/27/2012	8/31/2012
134	25	Floor Finishes			
135	25.1	- Ceramic Tile		9/1/2012	9/15/2012
138	25.4	- Install Carpet		9/1/2012	9/15/2012
140	26	Paint			
141	26.1	- Prep Drywall for Prime Coat		9/16/2011	9/25/2012
142	26.2	- Prime Paint Drywall			
143	26.3	- Prep Trim for Prime Coat			
144	26.4	- Prime Trim			
145	26.5	- Finish Coat Trim			

146	26.6	- Finish Coat Drywall			
147	26.7	- Caulk Exterior Windows & Doors			
148	26.8	- Finish Coat Exterior Trim & Siding		9/16/2012	9/25/2012
150	28	Interior Trim			
151	28.1	- Interior Trim Delivery		9/26/2012	9/30/2012
152	28.2	- Install Interior Doors			
153	28.3	- Install Interior Trim			
154	28.4	- Install Cabinetry			
155	28.5	- Install Appliances			
156	28.6	Interior Trim		9/26/2012	9/30/2012
157	29	H.V.A.C. Trim			
158	29.1	- Install Grills & Registers for Paint		10/1/2012	10/4/2012
159	29.2	- Set Outdoor Units		10/1/2012	10/4/2012
160	30	Plumbing Trim			
161	30.1	- Set Fixtures		10/5/2012	10/10/2012
162	30.2	- Connect Appliances			
163	31	County Final Plumbing Inspection		10/5/2012	10/10/2012
164	32	Exterior Landscaping			
165	32.1	- Rough Final Grade		10/11/2012	10/15/2012
168	32.4	- Sidewalks			
171	32.7	- Final Grade Seed		10/11/2012	10/15/2012
172	33	Electrical Final Trim			

173	33.1	- Switch & Plug		10/16/2012	10/20/2012
174	33.2	- Install Fixtures			
175	33.3	- Connect Appliances		10/16/2012	10/20/2012
176	34	Hardware			
177	34.1	- Door Hardware		10/21/2012	10/28/2012
178	34.2	- Bath Hardware			
179	34.3	- Mirrors			
180	34.4	- Shower Doors			
184	38	Final Building Inspection			
185	39	Use & Occupancy Certificate			
186	40	First Walk-thru		10/21/2012	10/28/2012

**EXHIBIT D**  
Reimbursement Request Form

[ATTACHED]



TIRZ Project Reimbursement Request

ECONOMIC DEVELOPMENT DEPARTMENT

City of El Paso, Texas
2 Civic Center Plaza
El Paso, TX 79901-1196
915-541-4810 or 541-4670

I. PROPERTY INFORMATION

PROPERTY ADDRESS:
DOWNTOWN PLAN DISTRICT: CURRENT ZONING:

II. CONTACT / PAYEE INFORMATION

REPRESENTATIVE(S):
MAKE PAYABLE TO:
ADDRESS: ZIP CODE: PHONE:
E-MAIL ADDRESS: FAX:

III. PROJECT INFORMATION

A. TYPE OF PROJECT (e.g. mixed use, office, etc)
TIRZ IMPROVEMENTS COMPLETED:
TOTAL COST OF PROJECT:
TIRZ IMPROVEMENTS COST REIMBURSEMENT:
B. TOTAL SQUARE FOOTAGE:
BREAKDOWN OF SQUARE FOOTAGE BY USE (ie: residential, retail, office, etc.):
CONSTRUCTION START DATE
COMPLETION DATE:

IV. ADDITIONAL INFORMATION

OWNER(S) OF RECORD FOR THE ABOVE DESCRIBED PARCEL(S):
Printed Name: Signature:
OWNERS'S REPRESENTATIVE FOR THE ABOVE DESCRIBED PARCEL(S):
Printed Name: Signature:
Is Proof of Payment for Services Attached?

\*\*OFFICE USE ONLY\*\*
STAFF
RECEIVED DATE:
ACCEPTED BY:
PAYMENT MAILED OR RECEIVED:
TIRZ ACTIONS:

**EXHIBIT E**

Prevailing Wage Rates Schedule

- Exhibit E-1: Current Building Construction Trades Wage Rates
- Exhibit E-2: City of El Paso Definitions of Building Wage Rate Classifications
- Exhibit E-3: City of El Paso Apprenticeship Program
- Exhibit E-4: Payrolls and Basic Records Requirements



## 2008 Building Construction Trades Wage Rates

City of El Paso, Texas

CLASSIFICATION	BASE WAGE PER HOUR	TOTAL FRINGES PER HOUR	HOURLY PREVAILING WAGE RATE	PER DIEM WAGE RATE
Automatic Fire Sprinkler Fitter	25.30	13.30	38.60	308.80
Brick masons and Block masons	17.94	-	17.94	143.52
Carpenters – Acoustical Ceiling	12.00	0.50	12.50	100.00
Carpenter – Rough	14.71	-	14.71	117.68
Carpenter – All Other Work	17.17	-	17.17	137.36
Caulker / Sealers	10.00	-	10.00	80.00
Door & Hardware and Locksmith	12.00	1.35	13.35	106.80
Drywall and Ceiling Tile	12.00	0.50	12.50	100.00
Drywall Finishers & Tapers	12.00	0.50	12.50	100.00
Electrician	19.09	6.45	25.54	204.32
Electronic Technician	18.43	1.01	19.44	155.52
Elevator Installers and Repairers	31.35	15.10	46.45	371.6
Floor Layers–Carpet & Resilient	11.50	-	11.50	92.00
Floor Layers – Specialty	11.50	-	11.50	92.00
Floor Layers – Wood	11.50	-	11.50	92.00
Fork Lift Operator	9.37	-	9.37	74.96
Glaziers	10.00	-	10.00	80.00
Hazardous Materials Removal	10.00	-	10.00	80.00
HVAC & Refrigeration Mechanics	22.00	-	22.00	176.00
Insulation Workers – Mechanical	10.00	-	10.00	80.00
Irrigator	14.92	-	14.92	119.36
Laborer, Common	8.00	0.50	8.50	68.00
Laborer, Skilled	9.00	0.50	9.50	76.00
Man-lift Operator	12.13	-	12.13	97.04
Masons, Cement Finishers	11.91	-	11.91	95.28
Mason, Rock and Stone	9.00	-	9.00	72.00
Painters	10.00	0.50	10.50	84.00
Paper Hanger	10.00	0.50	10.50	84.00
Pipe layers	15.00	-	15.00	120.00
Pipe Fitters and Steamfitters	20.50	7.95	28.45	227.6

<b>CLASSIFICATION</b>	<b>BASE WAGE PER HOUR</b>	<b>TOTAL FRINGES PER HOUR</b>	<b>HOURLY PREVAILING WAGE RATE</b>	<b>PER DIEM WAGE RATE</b>
Plaster and Stucco Applicator	13.00	0.50	13.50	108.00
Plumbers	20.50	7.95	28.45	227.60
Reinforcing Iron and Rebar	11.00	-	11.00	88.00
Roofers	10.25	-	10.25	82.00
Sheet Metal Workers	15.00	12.16	27.16	217.28
Structural Iron & Steel Workers	10.59	-	10.59	84.72
Tile and Marble Setters	12.00	-	12.00	96.00
Truck Drivers, Heavy and Tractor-Trailer	14.69	-	14.69	117.62
Truck Drivers, Light < 26,000	9.00	-	9.00	72.00

**All persons required to be licensed or certified must meet those qualifications to be paid the associated rate.**

**CITY OF EL PASO DEFINITIONS OF BUILDING WAGE RATE  
CLASSIFICATIONS**

1	<b>Automatic Fire Sprinkler Fitter, Certified</b>	Assembles, installs and repairs pipes, fittings, and fixtures for sprinkler systems for fire prevention. Locates <i>and</i> marks position of pipe and pipe connections and passage holes for pipes in ceilings. Cuts openings to accommodate fixtures. Assembles and tests lines <i>and</i> fittings. Performs other related duties.
2	<b>Brickmasons and Blockmasons</b>	Lay and bind building materials, such as brick, structural tile, concrete block, cinder block, glass block, and terra-cotta block, with mortar and other substances to construct or repair walls, partitions, arches, sewers, and other structures. Exclude "Stonemasons". Classify installers of mortarless segmental concrete masonry wall units in "Landscaping and Grounds-keeping Workers".
3	<b>Carpenters - Acoustical Ceiling Installation</b>	Construct, erect, install, or repair the structure for acoustical ceiling tile.
4	<b>Carpenter - Rough</b>	Construct, erect, install, or repair structures and fixtures made of wood, such as concrete forms; building frameworks, including partitions, joists, studding, and rafters; wood stairways, window and door frames. May also install cabinets, and siding. Include brattice builders who build doors or brattices (ventilation walls or partitions) in underground passageways to control the proper circulation of air through the passageways.
5	<b>Carpenter - All Other Work</b>	Construct, erect, install or repair cabinets and other fixtures or structures requiring a high level of workmanship. Includes Cabinetmakers and Bench Carpenters - Cut, shape, and assemble wooden articles or set up and operate a variety of woodworking machines, such as power saws, jointers, and mortisers to surface, cut or shape lumber or to fabricate parts for wood products. Perform related duties such as trim work, and structural framing.
6	<b>Caulker / Sealers</b>	Applies water proofing agents or caulk to a variety of structures and materials
7	<b>Door &amp; Hardware Specialist</b>	Installs doors, hardware and accessories.
8	<b>Drywall and Ceiling Tile Installers</b>	Apply plasterboard or other wallboard to ceilings or interior walls of buildings. Apply or mount acoustical tiles or blocks, strips, or sheets of sound-absorbing materials to ceilings and walls of buildings to reduce or reflect sound. Materials may be of decorative quality. Includes metal stud framing. Exclude "Carpet Installers", "Carpenters", and "Tile and Marble Setters".
9	<b>Drywall Finishers &amp; Tapers</b>	Seal joints between plasterboard or other wallboard to prepare wall surface for painting or papering.
10	<b>Electrician</b>	Plan and execute the layout and installation of electrical conduit, switch panels, buss bars, outlet boxes, electrical wires and cables, lighting standards, lighting fixtures, receptacles, switches, and other electrical devices and apparatus necessary for the complete installation of wiring systems.
11	<b>Electronic Technician</b>	Set-up, rearrange, or remove switching and dialing equipment used in central offices. Service or repair telephones and other communication equipment on customers' property. May install equipment in new locations or install wiring and telephone jacks in buildings under construction. Install, program, maintain, and repair security and fire alarm wiring and equipment. Ensure that work is in accordance with relevant codes. Exclude "Electricians" who do a broad range of electrical wiring.

12	<b>Elevator Installers and Repairers</b>	Assemble, install, repair, or maintain electric or hydraulic freight or passenger elevators, escalators, or dumbwaiters.
13	<b>Fence Erectors - Include with skilled labor</b>	Erect and repair metal and wooden fences and fence gates around highways, industrial establishments, residences, or farms, using hand and power tools. Excludes rock & stone fences.
14	<b>Floor Layers - Carpet and Resilient</b>	Apply blocks, strips, or sheets of shock-absorbing, sound-deadening, or decorative coverings to floors. Lay and install carpet from rolls, tiles or blocks on floors. Install padding and trim flooring materials. Installs variety of soft floor materials including vinyl and PCP. Exclude wood floors and specialty floors.
15	<b>Floor Layers - Specialty</b>	Prepares surface, installs and finishes specialty floor material such as that found in a gymnasium.
16	<b>Floor Layers - Wood</b>	Install, scrape and sand wooden floors to smooth surfaces using floor scraper and floor sanding machine, and apply coats of finish.
17	<b>Fork Lift Operator</b>	Person certified to operate a fork lift. (Industrial Forklift Operator is in Group 2 in the Heavy Schedule).
18	<b>Glaziers</b>	Install glass in windows, skylights, store fronts, and display cases, or on surfaces, such as building fronts, interior walls, ceilings, and tabletops.
19	<b>Hazardous Materials Removal Workers</b>	Identify, remove, pack, transport, or dispose of hazardous materials, including asbestos, lead-based paint, waste oil, fuel, transmission fluid, radioactive materials, contaminated soil, etc. Specialized training and certification in hazardous materials handling or a confined entry permit are generally required. May operate earth-moving equipment or trucks. Includes mold.
20	<b>Heating, Air Conditioning and Refrigeration Mechanics</b>	Repair and service heating, central air conditioning, or refrigeration systems, including oil burners, hot-air furnaces, and heating stoves. (Installation is performed by sheet metal worker). Includes HVAC mechanic.
21	<b>Insulation Workers - Floor, Ceiling, and Wall - Include with trade</b>	Line and cover structures with insulating materials. May work with batt, roll, or blown insulation materials.
22	<b>Insulation Workers - Mechanical</b>	Apply insulating materials to pipes or ductwork, or other mechanical systems in order to help control temperature.
23	<b>Irrigator, Certified</b>	Certified to install watering systems in various sizes and grades of lawn in order to maintain sufficient pressure and to insure even dispersal of water.
24	<b>Laborer, Common</b>	A general term used on construction work covering many unskilled occupations. Performs unskilled manual duties in all phases of construction. May use tools and other necessary equipment. Does not ordinarily perform work permitting exercise of independent judgment.
25	<b>Laborer, Skilled</b>	Performs manual duties in all phases of construction. May use simple tools and other necessary equipment. May assist other workers by performing a variety of duties such as furnishing materials tools and supplies and holding materials or tools during installation. May work on different phases or areas of a project or with different crafts. Is often transferred from job to job. May direct the work of the common laborer. Has the ability to work without close supervision. Degree of independent judgment required varies with the task performed. Includes tenders and hod carriers.

26	<b>Landscaping and Grounds-keeping Workers - include with Common Labor</b>	Landscape or maintain grounds of property using hand or power tools or equipment. Workers typically perform a variety of tasks, which may include any combination of the following: sod laying, mowing, trimming, planting, watering, fertilizing, digging, raking, sprinkler installation, and installation of mortarless segmental concrete masonry wall units.
27	<b>Lather</b>	Installs light iron and metal furring such as rods, channels, and other bars or systems to which metal lath, rock lath, or other materials used as a substitute for lath are to be attached. Installs metal lath, rock lath, and other materials used as a substitute for lath. Installs metal plastering accessories such as corner beads, door and window casing beads, metal picture mold, chair rails, and other metals plastering accessories which are covered and/or serve as ground or guard.
28	<b>Locksmith</b>	Self explanatory.
29	<b>Manlift Operator</b>	Self-explanatory
30	<b>Masons, Cement and Concrete Finishers</b>	Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, roads, or curbs using a variety of hand and power tools. Align forms for sidewalks, curbs, or gutters; patch voids; use saws to cut expansion joints. Classify installers of mortarless segmental concrete masonry wall units in "Landscaping and Groundskeeping Workers".
31	<b>Mason, Rock</b>	Constructs partitions, fences, walks, etc., using rock. Cutting, grouting and pointing of materials listed above which is necessary shall be part of this classification. May also build or repair rock retaining walls. cutting or placing of rock in mortar or other similar material.
32	<b>Mason, Stone</b>	Constructs partitions, fences, walks, fireplaces, chimneys, smokestacks, etc., using stone, marble, granite, slate and artificial stone. Cutting, grouting, and pointing of materials listed above which is necessary shall be part of this classification. May also build or repair stone retaining wall, cutting or placing of stone in mortar or other similar material.
33	<b>Mechanic</b>	Maintains and repairs construction tools and equipment.
34	<b>Medical Gas Installer, Certified</b>	Assemble, install, alter, and repair pipelines or pipe systems that carry medical gases or liquids. Specialized training and certification required.
35	<b>Metal Building Erector</b>	Assembles prefabricated metal buildings according to blueprint specification, using hand tools, power tools, and hoisting equipment. Erects frame of building, using hoist. Bolts steel frame members together. Attaches wire and insulating materials to framework. Bolts sheet metal panels to framework. Reads blueprint to determine location of items, such as doors, windows, ventilators, and skylights and installs items, using cutting torch, wrenches, and power drill. Trims excess sheet metal, using cutting torch, power saw, and tin snips.
36	<b>Millwright</b>	Self-explanatory.
37	<b>Painters - Building</b>	Paint walls, equipment, buildings, bridges, and other structural surfaces, using brushes, rollers, and spray guns. May remove old paint to prepare surface prior to painting. May mix colors or oils to obtain desired color or consistency. Exclude "Paperhangers."
38	<b>Paper Hanger</b>	Measures, cuts, and hangs wallpaper.

39	<b>Pipelayers</b>	Lay pipe for storm or sanitation sewers, drains, and water mains. Perform any combination of the following tasks: grade trenches or culverts, position pipe, or seal joints.
40	<b>Pipe Fitters and Steamfitters</b>	Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems. Includes pressurized lines and flow lines for gas, air, and oil found in industrial settings. Includes persons, not certified, who install fire sprinklers.
41	<b>Plaster and Stucco Applicator</b>	Apply interior or exterior plaster, cement, stucco, or similar materials. May also set ornamental plaster. Applies interior and exterior plastering of stone imitation or any patented materials when cast. Applies acoustical plaster or materials used as substitutes for acoustical plaster, as well as the preparatory pointing and taping of drywall surfaces to receive these finishes. Applies scratch and brown coats on walls and ceilings where tile, mosaic or terrazzo is to be applied. Molds and sets ornamental plaster and trim and runs ornamental plaster cornice and molding. Installs metal corner beads when stuck by using plastic materials.
42	<b>Plumbers</b>	Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems.
43	<b>Reinforcing Iron and Rebar Workers</b>	Position and secure steel bars or mesh in concrete forms in order to reinforce concrete. Use a variety of fasteners, rod-bending machines, blowtorches, and hand tools. Include rod busters.
44	<b>Roofers</b>	Cover roofs of structures with shingles, slate, asphalt, aluminum, wood, and related materials. May spray roofs, sidings, and walls with material to bind, seal, insulate, or soundproof sections of structures. Includes metal and membrane roofs.
45	<b>Sheet Metal Workers</b>	Fabricate, assemble, install, and repair sheet metal products and equipment, such as ducts, control boxes, drainpipes, and furnace casings. Work may involve any of the following: setting up and operating fabricating machines to cut, bend, and straighten sheet metal; shaping metal over anvils, blocks, or forms using hammer; operating soldering and welding equipment to join sheet metal parts; inspecting, assembling, and smoothing seams and joints of burred surfaces. Include sheet metal duct installers who install prefabricated sheet metal ducts used for heating, air conditioning, or other purposes.
46	<b>Structural Iron and Steel Workers</b>	Raise, place, and unite iron or steel girders, columns, and other structural members to form completed structures or structural frameworks. May erect metal storage tanks and assemble prefabricated metal buildings. Exclude "Reinforcing Iron and Rebar Workers".
47	<b>Tile and Marble Setters</b>	Apply hard tile and marble to walls, floors, ceilings, and roof decks. Includes Terrazzo.
48	<b>Truck Drivers, Heavy and Tractor-Trailer (Greater than 26,000 GVW)</b>	Drive a tractor-trailer combination or a truck with a capacity of at least 26,000 GVW, to transport and deliver goods, livestock, or materials in liquid, loose, or packaged form. May be required to unload truck. May require use of automated routing equipment. Requires commercial drivers' license.
49	<b>53-3033.00 - Truck Drivers, Light or (Under 26,000 GVW)</b>	Drive a truck or van with a capacity of under 26,000 GVW, primarily to deliver or pick up merchandise or to deliver packages within a specified area. May require use of automatic routing or location software. May load and unload truck. Exclude "Couriers and Messengers".

- **Welder** - Receives rate prescribed for craft performing operation to which welding is incidental.

**CITY OF EL PASO  
APPRENTICESHIP PROGRAM**

Section 5.24B-A.1 of the General Conditions states that the Contractor and each subcontractor must participate in a U.S. Department of Labor (DOL) certified apprenticeship program for all job classifications which are "apprenticeable occupations" as defined by DOL regulations.

On City Building Structure Projects over \$100,000.00 in value, apprenticeship programs must be in place and will be enforced whenever the following trades are utilized:

Bricklayer  
Carpenter  
Drywall applicator  
Electrician  
Glazier  
Painter  
Pipefitter  
Plasterer  
Plumber  
Roofer  
Sheet Metal worker  
Structural Worker/Ironworker  
Taper  
Operating Engineer

At least one apprentice must be present on the job site if any of the trades listed above are utilized by your company or subcontractor; should an apprentice not be present on any given day, then labor for that category of work cannot be performed. In the event that City personnel conducts a site visit and observes that this requirement is not being met by you or any subcontractor, as a prime contractor, your company will be found to be in non-compliance.

Prior to the start of work within these trades, contractor and/or subcontractor(s) must provide written certification to Contract Compliance that he/she is a sponsor or participant in a DOL approved apprenticeship program. Apprentices and journeymen must be identified as such on all payroll certification reports submitted to the City.

Descriptions for the nature of the work for all job classifications is available on-line at the DOL Bureau of Labor Statistics' home page, [www.bls.gov](http://www.bls.gov). The City of El Paso will enforce utilization of all trades as they are defined by DOL.

## EXHIBIT E-4: PAYROLLS AND BASIC RECORDS

### 7.5 Payrolls and Basic Records

- 7.5.1 Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, the workers correct classification, hourly rates of wages paid, including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof, daily and weekly number of hours worked, deductions made and actual wages paid.
- 7.5.2 Whenever the City of El Paso has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.
- 7.5.3 Contractors employing apprentices and trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- 7.5.4 The Contractor shall submit weekly for each week in which any contract work is performed the original copy of all payrolls submitted shall set out accurately and completely all of the information required to be maintained. This information may be submitted in any form desired. Optional form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.
- 7.5.4.1 Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or the agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- 7.5.4.1.1 That the payroll for the payroll period contains the information required, and that such information is correct and complete.
- 7.5.4.1.2 That each laborer or mechanic (including each helper, apprentice, and trainee), employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned other than permissible deductions.
- 7.5.4.1.3 That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- 7.5.4.2 The falsification of any of the above certifications may subject the Contractor or the Subcontractor to debarment.
- 7.5.4.3 The Contractor or Subcontractor shall make the records required under this Section available for inspection, copying or transcription by authorized representatives of the El Paso City Government and/or appropriate State or Federal agency, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the City of El Paso may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.