

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

DEPARTMENT: Economic and International Development Department
AGENDA DATE: CCA Regular March 17, 2015
CONTACT PERSON/PH. NUMBER: Cary Westin, Economic & Int'l Development Department, Managing Director
915-212-1614
DISTRICT(S) AFFECTED: DISTRICT 5

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Discussion and Action on a resolution that the City Manager be authorized to execute a Second Amendment to Chapter 380 Economic Development Agreement between the City and Joe Battle Partners, L.P. (Applicant) regarding Applicant's construction of a large-scale multi-family housing development in El Paso, Texas which extends the deadline to obtain a certificate of occupancy for the development and provides additional consideration to the City for the agreed upon extension. (District 5) Economic and International Development Department – Cary Westin, Managing Director, 915-212-1614.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

On September 29, 2011, the City and Joe Battle Partners, L.P. entered into a Chapter 380 Economic Development Program Agreement related to economic development incentives for the construction of a 336-unit multi-family housing development. The multi-family housing development is located at 12130 Pebble Hills. Per the agreement, the applicant was required to obtain certificates of occupancy for the development by December 29, 2014. The applicant was unable to obtain the necessary certificates within the stated date and is therefore requesting an extension until December 31, 2015. In consideration for the extension, the applicant will be reducing their property tax rebates from 80% to 60% of the incremental ad valorem property tax revenue generated by the subject property. Staff is recommending approval of the Second Amendment of the Chapter 380 Agreement as the development is anticipated to encourage increased economic development in the City, provide significant increases in the City's property tax revenue and improve the City's housing options. Therefore this meets the requisites under the Chapter 380 of the Texas Local Government Code.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes, 1st Amendment was approved on October 15, 2013.

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?

General Fund

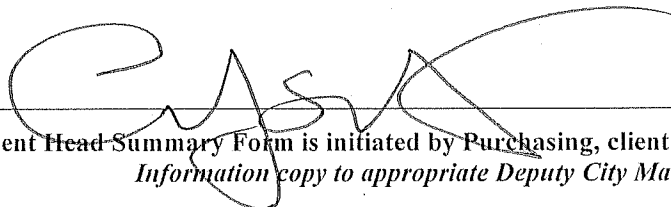
BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

DEPARTMENT HEAD: _____



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to execute a Second Amendment to Chapter 380 Economic Development Agreement between the City and **Joe Battle Partners, L.P.** (Applicant) regarding Applicant's construction of a large-scale multi-family housing development in El Paso, Texas which extends the deadline to obtain a certificate of occupancy for the development and provides additional consideration to the City for the agreed upon extension.

APPROVED this ____ day of _____, 2015.

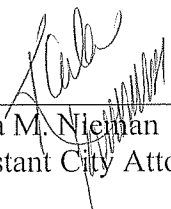
CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Karla M. Niehman
Assistant City Attorney

APPROVED AS TO CONTENT:



Cary S. Westin, Managing Director
Economic & International Development

STATE OF TEXAS § SECOND AMENDMENT TO CHAPTER 380 ECONOMIC
 § DEVELOPMENT PROGRAM AGREEMENT
COUNTY OF EL PASO § (Multi-Family Housing Development)

This Second Amendment to Chapter 380 Economic Development Program Agreement (“2nd Amendment”) is made this ____ day of _____, 2015, by and between the CITY OF EL PASO, TEXAS (the “CITY”) and Joe Battle Partners, L.P. (“APPLICANT”).

WHEREAS, on September 29, 2011, the CITY and Joe Battle Partner, L.P. entered into a Chapter 380 Economic Development Program Agreement (the “Agreement”) related to economic development incentives for the construction of a multi-family housing development in El Paso, Texas; and

WHEREAS, on October 15, 2013, the City and Joe Battle Partner, L.P. entered into a First Amendment of the Agreement (“1st Amendment”) to extend the Applicant’s deadline to obtain a certificate of occupancy for the Development in exchange for providing additional consideration to the City; and

WHEREAS, the parties now desire to amend the Agreement for the purpose of extending the Applicant’s deadline to obtain a certificate of occupancy for the Development in exchange for providing additional consideration to the CITY.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS AND AGREEMENTS, THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:

1. Section 2. **Term and Grant Period**, is replaced in its entirety with the following:

The term of this Agreement shall commence on the effective date (as hereinafter defined) and shall terminate on the first to occur: (i) the date when the Grant is fully paid; (ii) twelve (12) years from the Effective Date, (iii) the proper termination of this Agreement in accordance with the applicable provisions contained herein or (iv) termination by mutual consent of the parties in writing. The Effective Date of this agreement shall be the date upon which both parties have fully executed this Agreement. However, APPLICANT’s eligibility for annual Grant payments shall be limited to five (5) consecutive years (the “Grant Period”) within the term of this Agreement. The Grant Period shall begin with the first tax year that begins after the issuance of the Certificate of Occupancy for the Development. The City shall review APPLICANT’s eligibility for Grant Payments on an annual basis during the Grant Period.

2. Section 3. **Obligations of Applicant**, subsection A is replaced in its entirety with the following:

“APPLICANT agrees to develop and construct, at its sole cost, the Development. APPLICANT must obtain a certificate of occupancy for the Development by **December 31, 2015**. Notwithstanding any other provision in this agreement to the contrary, failure of the Applicant to receive a Certificate of Occupancy for the Development by December 31, 2015, will result in the immediate termination of this agreement. Within thirty (30) days of

the Applicant's failure to meet this deadline, the City will send out a letter notifying the applicant that this Agreement has been terminated."

3. Section 4. **Obligations of City**, subsection B is replaced in its entirety with the following:

The CITY shall determine the total amount of Grant payments due to the APPLICANT, if any, on an annual basis. Provided the APPLICANT satisfies all the requirements of the Agreement, APPLICANT shall be eligible for an annual Grant payment in an amount equal to 60% of the total value of the CITY's portion of the incremental ad valorem property tax revenue generated by the subject property above the Base Year Value for the Development for the given tax year during the Grant Period.

Under no circumstances shall the total aggregate of Grant payments exceed the total value of the City's portion of the incremental ad valorem property tax revenue generated by the subject property in the Development above the Base Year Value for the Grant Period and payable from the CITY's general revenue fund."

4. Section 5. **Events of Default**, is amended to include subsections G and H below:

G. The Development shall not be a qualified low-income housing project as defined in 26 U.S.C.A. section 4(g).

H. APPLICANT shall obtain the consent of the El Paso City Council before using this Agreement as evidence of community support in any application for Housing Tax Credits or other applications for public funding for either the Development or any of the APPLICANT's other related projects.

IN WITNESS WHEREOF, the CITY and APPLICANT have executed this Second Amendment to the Agreement as of the date first written above.

CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

Karla M. Nieman
Assistant City Attorney

APPROVED AS TO CONTENT:

Cary S. Westin, Managing Director
Economic & International Development

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ___ day of ___, 2015, by Tomás González, as City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas (City).

Notary Public, State of Texas

My Commission Expires:

APPLICANT:
Joe Battle Partners, L.P,

By: _____
Its: _____

ACKNOWLEDGMENT

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of ___, 2015, by _____, as _____ of Joe Battle Partners, L.P (APPLICANT).

Notary Public, State of _____

My Commission Expires:
