

CITY CLERK DEPT.
2018 APR 12 AM 11:35

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

DEPARTMENT: Economic and International Development

AGENDA DATE: 4/17/2018, Regular

CONTACT PERSON/PHONE: Jessica L. Herrera-Director, Economic & International Development
212-1624

DISTRICT(S) AFFECTED: 8

SUBJECT:

That the City Manager be authorized to sign the Economic Development Program Grant Agreement between the City of El Paso (the "City") and Brixwood, LLC, (the "Applicant") for the Infill Development located at 311 Montana, Suite B, El Paso, TX 79902, subject to the terms and conditions in this Economic Development Program Grant Agreement. [Economic and International Development, Jessica L. Herrera (915) 212-1624]

BACKGROUND/DISCUSSION:

The developer is proposing to rehabilitate the interior and exterior of the property located at 311 Montana, Suite B, 79902. The project will completely renovate the building façade as well as the interior of Suite B and will create law offices. The building is currently vacant and this rehabilitation will help improve the surrounding community as well as promote high-quality development.

Incentives 311 Montana-A, El Paso, TX, 79902

- **Property Tax Rebate (City's Portion):** The City's portion of ad valorem property taxes may be rebated to the property owner pending full compliance with contract metrics.
- **Construction Materials Sales Tax Rebate:** A one-time rebate of the City's Portion of Sales Taxes (1%) levied on project-related construction materials.
- **Building and Planning Fee Rebate:** A one-time rebate capped at \$10,000 pending submittal of rebate application with one-stop-shop after construction is completed.

The total proposed incentive is not to exceed \$28,738.92

PRIOR COUNCIL ACTION:

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

Yes. City Council approved a Transit Oriented Development Chapter 380 agreement on December 19, 2017 for the project located at 108 South Stanton Street, El Paso, Texas 79901.

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:

N/A

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

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

DEPARTMENT HEAD: E. Lujan
(Example: If RCA is initiated by Purchasing, client department)

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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 sign a Chapter 380 Economic Development Program Agreement in a form substantially similar to the attached document by and between **CITY OF EL PASO, TEXAS** ("City") and **BRIXWOOD, LLC** ("Applicant") in support of the redevelopment of the property located at **311 MONTANA, SUITE B, EL PASO, TEXAS 79902**.

APPROVED this _____ day of _____, 2018.

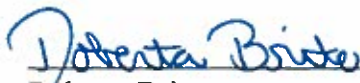
CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



Jessica Herrera, Director
Economic & International Development

STATE OF TEXAS) CHAPTER 380 ECONOMIC DEVELOPMENT
) PROGRAM AGREEMENT
COUNTY OF EL PASO) Infill Development Incentive Policy

This Chapter 380 Economic Development Program Agreement (the “Agreement”) is made and entered into by and between the **CITY OF EL PASO, TEXAS**, a Texas home rule municipal corporation, (the “City”), and **BRIXWOOD, LLC**, a domestic limited liability company (the “Applicant”) for the purposes and considerations stated below.

WHEREAS, the Applicant desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”); and

WHEREAS, the City desires to provide, pursuant to Chapter 380, incentives to the Applicant to construct or renovate the real property located at **311 MONTANA, SUITE B, EL PASO, TX, 79902** (the “Property”) being more specifically described in Exhibit A (the “Project”); and

WHEREAS, the City has the authority under Chapter 380 to make loans or grants of public funds for the purpose of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, on May 30, 2017 the El Paso City Council adopted an Infill Development Incentive Policy (the “Policy”) to promote infill development through property tax rebates, construction materials sales tax rebates, building construction fee rebates or waivers, lien waivers, and expedited plan review for eligible projects meeting Policy criteria; and

WHEREAS, the Property is located in the designated incentive area as more specifically described in the Policy and the Project meets the eligibility requirements of the Policy; and

WHEREAS, the City and Applicant desire the construction or renovation of the Property, and the City has further determined that the Project will advance the City’s revitalization strategy for its future growth and development; directly and indirectly result in the creation of additional jobs in the City; and stimulate commercial activity in an undeveloped area; and

WHEREAS, the City determines that a grant of funds to the Applicant will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the City; and

WHEREAS, the value of such benefits to the City outweigh the amount of the incentive the City will provide to the Applicant under this Agreement; and

WHEREAS, the contemplated use and improvement of the Property in the amounts and for the purposes set forth in this Agreement and the other terms hereof will encourage increased economic development in the City, provide increases in the City’s property and sales tax revenues, and improve the City’s ability to provide for the health, safety and welfare of its citizens; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 and further, is in the best interests of the City and Applicant.

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 City and Applicant agree as follows:

SECTION 1. Definitions.

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

- A. “Agreement” means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached hereto.
- B. “Applicant” means **BRIXWOOD, LLC**, the owner of the real property located at **311 MONTANA, SUITE B, EL PASO, TX, 79902** (the “Property”).
- C. “Base Year Value” means the valuation of the Property by the El Paso Central Appraisal District as of January 1 of the calendar year of the Effective Date of this Agreement. However, under no circumstances shall the Base Year Value be interpreted to be equivalent or determinative for appraisal purposes or used in any way to determine market value. For the purposes of this Agreement, the Base Year Value amount is **ONE HUNDRED TWENTY-FIVE THOUSAND EIGHT HUNDRED NINETY-NINE AND 00/100 DOLLARS (\$125,899.00)**.
- D. “Building Construction Fee Rebate” means the rebate of certain building construction fees and planning fees as identified in Ordinance 018581 paid for the Project and payable from the City’s general revenue fund. The Building Construction Fee Rebate shall not exceed **TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00)** and will be rebated upon the Applicant’s provision of the Grant Submittal Package to the City to demonstrate that the total construction cost for the Project is greater than the Base Year Value.
- E. “City” means the City of El Paso, Texas.
- F. “Construction Materials Sales Tax Rebate” means a 100% rebate of the City’s one percent (1%) Sales and Use Tax from receipts generated by and attributable solely to materials and labor of Taxable Items consummated at the Property located in the Project in the immediately prior calendar year and remitted from the State Comptroller to the City and payable from the City’s general revenue fund. The Construction Materials Sales Tax Rebate shall not exceed **THREE THOUSAND EIGHT HUNDRED THIRTY-FOUR AND 33/100 DOLLARS (\$3,834.33)** for qualifying expenses.
- G. “Effective Date” means the date on which the El Paso City Council approves this Agreement.
- H. “Grant” means each annual payment to Applicant under the terms of this Agreement computed as the sum of the (i) Construction Materials Sales Tax Rebate and (ii) Property Tax Rebate. For the

purposes of this Agreement, the aggregate Grant payments over the Term of this Agreement shall not exceed **EIGHTEEN THOUSAND SEVEN HUNDRED THIRTY-EIGHT AND 92/100 DOLLARS (\$18,738.92)**.

- I. "Grant Period" means the **FIVE (5)** consecutive years during which the Applicant is eligible for annual Grant payments. The Grant Period shall begin with the first year being the first tax year that begins after the issuance of the certificate of occupancy for the Project.
- J. "Grant Submittal Package" means the documentation required to be supplied to City on a yearly basis as a condition of receipt of any Grant, with such documentation more fully described in Exhibit B, which is attached hereto and incorporated herein for all purposes.
- K. "Minimum Appraisal Value" means the valuation of the Property appraised by El Paso Central Appraisal District during and after the construction or renovation of the Project below which Applicant may not protest nor contest during the Term of this Agreement. Thereafter, under no circumstances shall the Minimum Appraisal Value be interpreted to be equivalent or determinative for appraisal purposes or to be used in any way to determine market value. For the purposes of this Agreement, the Minimum Appraisal Value is **FIVE HUNDRED NINE THOUSAND THREE HUNDRED THIRTY-TWO AND 00/100 DOLLARS (\$509,332.00)**.
- L. "Minimum Investment" means those costs incurred, self-performed or contracted to third parties by the Applicant over the course of the renovation or construction project or furnishing of the improvements for the Project. For the purposes of this Agreement, the Minimum Investment to qualify for the Grant is **THREE HUNDRED EIGHTY-THREE THOUSAND FOUR HUNDRED THIRTY-THREE AND 00/100 DOLLARS (\$383,433.00)**. Where applicable, the average value of two quotes will be used to determine the value of the self-performed work that contributes towards the Minimum Investment.
- M. "Project" means the construction or rehabilitation Project more particularly described in Exhibit A attached hereto and incorporated herein by reference.
- N. "Property" means the real property owned by the Applicant and located at **311 MONTANA, SUITE B, EL PASO, TX 79902**.
- O. "Property Tax Rebate" means a rebate, according to the property tax rebate schedule found in Exhibit C, of the City's portion of the incremental ad valorem property tax revenue generated by the Property above the Base Year Value.
- P. "Term" means the Term of this Agreement which shall commence on the Effective Date and shall terminate on the first to occur of: (i) the date when the Grant is fully paid; (ii) **EIGHT (8)** 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.

SECTION 2. Term and Grant Period.

Except as otherwise provided herein, the term of this Agreement shall commence on the Effective Date and shall terminate on the first to occur of: (i) the date when the Grant is fully paid; (ii) **EIGHT (8)** 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 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 year being the first tax year that begins after the issuance of the certificate of occupancy for the Project. The City shall review the Applicant's eligibility for Grant payments on an annual basis during the Grant Period. Eligibility for Grant payments is defined and determined by Section 3 of this Agreement.

SECTION 3. Obligations of the Applicant.

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

- A. The Applicant agrees that the Project complies with and adheres to the tenants and provisions of the Infill Incentive Policy and is located within the eligible incentive areas identified within the Policy.
- B. The Applicant agrees to construct or renovate, at its sole cost, the Project. Applicant must obtain the building permits for the Project within twelve (12) months from the Effective Date of this Agreement.
- C. The Applicant agrees that it shall make or cause to be made, at its sole cost and expense or the expense of third parties, Minimum Investment of **THREE HUNDRED EIGHTY-THREE THOUSAND FOUR HUNDRED THIRTY-THREE AND 00/100 DOLLARS (\$383,433.00)** associated with this Project, to include the cost of self-performed work (of which the value shall be determined by the average of two independent quotes).
- D. The Applicant agrees that the Project shall not include the demolition of buildings with a historic overlay that are deemed historic or contributing at the time of the execution of this agreement, unless specifically approved by El Paso City Council.
- E. Within twenty-four (24) months of the Effective Date of this Agreement, the Applicant shall submit documentation to the City to verify the qualifying expenses for improvements or new construction and Minimum Investment associated with the completion of the Project.
- F. The Applicant shall pay by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Project and any other property within the

City. Applicant must demonstrate that it has incurred no delinquent taxes by providing certified city tax certificates for each parcel of property owned in the City.

- G. The Applicant shall have the right to contest the appraised value of the Project as provided by law. However, Applicant covenants and agrees that during the Term of this Agreement it shall not challenge or permit anyone else to take actions on its behalf to challenge any assessments by the Central Appraisal District below the Minimum Appraisal Value nor after the Completion of the project. Under no circumstances shall the Minimum Appraisal Value be interpreted to be equivalent or determinative for appraisal purposes or be used in any way to determine market value. Non-compliance under this section will be considered an event of default.

SECTION 4. Disbursement of the Grant.

- A. During the Term of this Agreement and as more specifically described in Section 2 of this Agreement, the Applicant shall be eligible to receive on a yearly basis the Grant payment.
- B. The Applicant's eligibility for any payment is expressly contingent upon the Applicant's satisfaction of the requirements of Section 3 and Exhibit D of this Agreement. Under no circumstance shall the City be required to disburse more than **EIGHTEEN THOUSAND SEVEN HUNDRED THIRTY-EIGHT AND 92/100 DOLLARS (\$18,738.92)** over the Grant Period as the total amount of the Grant nor shall the Applicant be entitled to receive the Grant unless it satisfies all the requirements of this Agreement. The Applicant agrees to provide the City with any documentation specifically mentioned or stated in this Agreement the City may reasonably require or request to substantiate the Applicant's compliance with this Agreement.
- C. **Grant Submittal Package.** In order to receive the disbursement of the Grant, the Applicant must submit a Grant Submittal Package, as specified below.
 - (1) Unless otherwise agreed by the City and Applicant in writing, the Applicant shall annually submit one Grant Submittal Package which shall be in the form provided in Exhibit B, together with the requisite documentation. The Applicant shall submit to the City the initial Grant Submittal Package to commence the Grant Period no later than **JULY 31, 2021**, or within thirty (30) business days after **JULY 31, 2021**. Thereafter, the Applicant's annual Grant Submittal Package must be submitted on July 31 or within thirty (30) business days after July 31 of each year. A failure by the Applicant to timely submit a Grant Submittal Package in accordance with this paragraph is a waiver by the Applicant to receive a Grant payment for that Grant year.
 - (2) Concurrent with the submittal of a Grant Submittal Package, the Applicant will submit to the City documentation as may be reasonably necessary to verify the expenditure to date of the Minimum Investment, which has not otherwise been verified as part of a prior submittal. The City will provide to the Applicant a written explanation for any Minimum Investment that the City determines cannot be verified. The Applicant may submit additional documentation to the City in order to obtain verification.

(3) If the Applicant fails to timely submit a Grant Submittal Package for a particular year, then the City may give the Applicant written notice of its failure to timely submit such Grant Submittal Package, and the Applicant shall have thirty (30) calendar days calculated from the date on which such written notice is given in which to submit such Grant Submittal Package. The City's determination of the amount of the Grant payment due to the Applicant is final; provided, however that the Applicant may appeal to the City Council within thirty (30) calendar days of payment, the City Council shall hear the appeal within thirty (30) calendar days and the City Council's determination of the amount of the Grant payment shall be final; provided, however, nothing herein shall limit (or be construed to limit) the Applicant's rights and remedies under this Agreement.

- D. **Delinquent Taxes.** The Applicant must demonstrate before the receipts of any Grant payments under this Agreement that the Applicant has incurred no delinquency taxes by providing certified city tax certificates for each parcel of property owned in the City of El Paso.
- E. **Property Value.** The Applicant covenants and agrees that during the Term of this Agreement it shall not contest or protest or permit anyone else to take actions on its behalf to contest or protest any assessments by the El Paso Central Appraisal District of the Base Year Value of **ONE HUNDRED TWENTY-FIVE THOUSAND EIGHT HUNDRED NINETY-NINE AND 00/100 DOLLARS (\$125,899.00)** or lower. Any affirmative act by the Applicant to reduce the assessed value to an amount lower than the Base Year Value will be an event of default that will result in termination of this Agreement. This property value should in no way be interpreted to affect the values set by the Central Appraisal District for tax purposes. Upon the termination of this Agreement, the Applicant agrees that neither this Agreement, nor the values contained within, will be used to contest appraisal values or in the determination of the market value of the Project.
- F. **Right of Access and Inspection.** The Applicant, during normal business hours at its principal place of business in the City, shall allow the City or its agents reasonable access to operating records, accounting, books, and any other records related to the economic development considerations and incentives described herein, which are in the Applicant's possession, custody, or control, for purposes of verifying the Minimum Investment generated by the Project. The confidentiality of such records will be maintained in accordance with and subject to all applicable laws.

SECTION 5. Obligations of the City.

During the Term of this Agreement and so long as an event of default has not occurred and is not continuing as set forth in Section 6 of this Agreement (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), the City shall comply with the following terms and conditions:

- A. The City agrees to rebate certain building construction fees and planning fees as identified in Ordinance 018581 paid for the Project and payable from the City's general revenue fund. The Building Construction Fee Rebate shall not exceed **TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00)** and will be rebated upon the Applicant's provision of the Grant

Submittal Package to the City to demonstrate that the total construction cost for the Project is greater than the Base Year Value.

- B. 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 this Agreement, the Applicant shall be eligible for the annual Grant payment. The Property Tax Rebate is only available on properties from which the City receives ad valorem taxes.

SECTION 6. Events of Default.

Each of the following shall constitute an event of default under this Agreement:

- A. **False Statements.** In the event the Applicant 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 the Applicant fails to cure same within thirty (30) calendar days after written notice from the City describing the violation shall be deemed an event of default. If such violation cannot be cured within such thirty (30) calendar day period in the exercise of all due diligence, and the Applicant fails to commence such cure within such thirty (30) calendar 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 the Applicant obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and the Applicant fails to provide written notice to the City of the false or misleading nature of such warranty, representation or statement within ten (10) calendar days after the Applicant learns of its false or misleading nature, such action or omission shall be deemed an event of default.
- B. **Insolvency.** The dissolution or termination of the Applicant's existence as a going business or concern, the Applicant's insolvency, appointment of receiver for any part of the Applicant's portion of the Property, any assignment of all or substantially all of the assets of the Applicant for the benefit of creditors of the Applicant, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Applicant shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) calendar days after filing, no event of default shall be deemed to have occurred.
- C. **Construction of Development.** The Applicant's failure to comply with its construction obligations set forth in this Agreement and the Applicant's failure to cure same within thirty (30) calendar days after written notice from the City shall be deemed an event of default. If such failure cannot be cured within such thirty (30) calendar day period in the exercise of all due diligence but the Applicant fails or refuses to commence such cure within such thirty (30) calendar day period or fails or refuses to continuously thereafter diligently prosecute such cure, except to the extent such failure is caused by any act or failure to act on the part of the City, such actions or omissions shall be deemed events of default.
- D. **Property Taxes.** Prior to the receipt of any Grant payments under this Agreement, the Applicant must demonstrate that it has incurred no delinquency taxes by providing certified

city tax certificates for each parcel of property owned in the City. Applicants who are exempt from payment of ad valorem property taxes on the subject property are deemed ineligible to participate in this incentive program.

In the event the Applicant allows any property taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) calendar days after written notice thereof from the City and/or El Paso Central Appraisal District, such actions or omissions shall be deemed an event of default. Subject to the restrictions noted herein, during the Term of this Agreement, the Applicant shall have the right to contest the appraised value of the Project provided however, the Applicant agrees that it will not contest or allow any party to contest with the El Paso Central Appraisal District on its behalf a value at or less than the Minimum Appraisal Value, after a Certificate of Occupancy has been issued and Project is complete. The Applicant's failure to comply shall constitute an event of default and may result in a termination of this Agreement.

- E. **Other Defaults.** Failure of the Applicant or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, and if the Applicant or City fails to cure such failure within thirty (30) calendar days after written notice from the other party describing such failure shall be deemed an event of default. If such failure cannot be cured within such thirty (30) calendar day period in the exercise of all due diligence, but if the Applicant or City also fails or refuses to commence such cure within such thirty (30) calendar day period or fails or refuses to continuously thereafter diligently prosecute the cure of such failure, such act or omission shall be deemed an event of default.
- F. **Failure to Cure.** If any event of default by the Applicant shall occur, and after the Applicant fails to cure same in accordance herewith, then this Agreement is terminated without any further action required of the City and the City's obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

SECTION 7. Recapture.

Should the Applicant default under Section 6 of this Agreement and provided a cure period for such default has expired, all incentives previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant within sixty (60) days from the date of such termination.

SECTION 8. Termination of Agreement by City without Default of Applicant.

The City may terminate this Agreement for its convenience and without the requirement of an event of default by the Applicant, which shall become effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt.

SECTION 9. Miscellaneous Provisions.

The following miscellaneous provisions are a part of this Agreement:

- A. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- B. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.
- C. **Applicant's Sale or Transfer of the Development.** Prior to any sale or other transfer of ownership rights in the Property, the Applicant shall notify the City in writing of such sale or transfer within thirty (30) business days of the effectiveness of such sale or transfer. This provision is a material term of this Agreement and the failure to notify the City of such sale or transfer within the applicable period shall constitute an event of default.
- D. **Assignment.** The Applicant understands and agrees that the City expressly prohibits the Applicant from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds or this Agreement without the City's prior written consent. Any such attempt to sell, transfer, assign or convey without the City's prior written consent is void and may result in the immediate termination of this Agreement and recapture of the Grant payments made prior to the attempted transfer.
- E. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The Applicant warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind the Applicant to the same.
- F. **Completion of Development.** As consideration for the agreements of the City as contained herein, the Applicant agrees that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the Project and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations. The Property shall be limited in its use to those uses consistent with the Project consistent with the City's development goals, which include the encouraging of development or redevelopment of the infill incentive areas.
- G. **Confidentiality Obligations.** The confidentiality of 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. To the extent permitted by state or federal law, the City shall maintain the confidentiality of any proprietary information and shall not copy any such

information except as necessary for dissemination to the City's agents or employees and agrees that, as required by the Public Information Act, it will notify the Applicant if a request relating to such proprietary information is received. The 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 the Applicant as a basis for nondisclosure.

- H. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- I. **Employment of Undocumented Workers.** During the term of this Agreement, the 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), the Applicant shall repay the amount of the Grant payments received by the Applicant from the City not later than one hundred twenty (120) calendar days after the date the Applicant is notified by the City of a violation of this section, plus interest from the date the Grant payment(s) was paid to the Applicant, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to the Applicant until the date the reimbursement 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 Grant payment(s) subject to repayment under this section. The Applicant is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom the Applicant contracts.
- J. **Filing.** This Agreement shall be filed in the deed records of El Paso County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of the Applicant.
- K. **Force Majeure.** 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.
- L. **Headings.** The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- M. **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the Project or the design, construction, or operation of the Project, or any portion thereof.
- N. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, delivered personally, sent by a nationally recognized overnight courier,

or sent by facsimile with an original sent by United States first class mail, postage prepared on the same date addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

Applicant: **BRIXWOOD, LLC**
Attn: EDWARD DEV. BUNN, JR.
415 N. MESA, 3rd FLOOR
EL PASO, TX 79901-1221

Copy to: **BRIXWOOD, LLC**
Attn: VICTOR M. FIRTH
415 N. MESA, 3rd FLOOR
EL PASO, TX 79901-1221

City: City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

Copy to: City of El Paso
Director, Economic & International Development
P.O. Box 1890
El Paso, Texas 79950-1890

- O. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising.
- P. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of _____, 2018 (the "Effective Date").

(Signatures Contained on Following Page)

Applicant:

BRIXWOOD, LLC,
a domestic limited liability company

By: 
EDWARD DEV. BUNN, JR.

Its: manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 10 day of April, 2018, by Edward Dev. Bunn, Jr. for **BRIXWOOD, LLC.**




Notary Public, State of Texas

My Commission Expires:
10-18-2019

(Signatures Continue On Following Page)


City:

CITY OF EL PASO, TEXAS:

Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Roberta Brito
Assistant City Attorney



Jessica Herrera, Director
Economic & International Development

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2018,
by Tomás González as City Manager of the City of El Paso, Texas, on behalf of the City of El
Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

Exhibit A
Project Description

Project Address:

311 Montana, Suite B
El Paso, TX 79902

Legal Description:

43 HART 4 & N 19.55 FT OF 3 & S 11.75 FT OF 5 (6876.00 SQFT)

Project Description:

The developer is proposing to rehabilitate the interior and exterior of the property located at 311 Montana, Suite B, 79902. The project will completely renovate the building façade as well as the interior of Suite B and will create a law office space. The building is currently vacant and this rehabilitation will help improve the surrounding community as well as promote high-quality development.

Project Investment (real improvement costs):

\$383,433.00

Project Renderings:

On following page.

Rendering: Suite B Façade

Architectural rendering of Suite B Façade showing two elevations, a site map, and a location map. The elevations show a building facade with a central section highlighted in orange and red. The site map shows the building's location on a street grid with "4TH ALBERTA" labeled. The location map shows the building's position within a larger site boundary.

E-001 Project No: 01822010 Revision: A-2	Designer: RAY Checker: RAY Notes: AS NOTED	ELEVATIONS PLAN TENANT IMPROVEMENT NEW OFFICE SPACE FOR BRANDS HOTEL 113 BROADWAY SUITE 10 1L PHASE 1E CAD 1000	a. This drawing is a preliminary design and is subject to change without notice. It is not to be used for construction purposes without the written consent of the architect.		Scale: Date: Project No.:
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Exhibit B
Grant Submittal Package Form

_____ believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by _____ of _____.

Pursuant to the Agreement, _____ submits this Grant Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted, at completion of the Project and no later than July 31st of each year of the Grant Period:

1. Site development plan approvals for the Project if not previously verified;
2. Copies of all applicable approvals and permits, including the Certificate of Occupancy, for the Project if not previously verified;
3. Documentation to evidence Minimum Investment to date and not previously verified;
4. Property tax payment receipts for the Property;
5. Proof of ownership for subject Property;
6. Documentation to evidence the amount of sales taxes paid as a result of the sales of taxable items by retailers at the Property;

It is understood by _____ that the City of El Paso has up to 90 days to process this request and reserves the right to deny the Grant request if the company has not complied with the terms of the Agreement.

Signature: _____

Date: _____

Exhibit C

Infill Development Incentive Policy Schedule of Property Tax Rebate

An approved project may have the City's portion of the project's ad valorem property taxes rebated. All qualifying projects receive a 100% rebate on the City's incremental property tax for years 1-3 and a 75% rebate on the City's incremental property tax for years 4-5.

The following table shows the Property Tax Rebate Schedule under the approved Infill Development Incentive Policy:

Table C-1. Infill Development Incentive Policy Schedule of Property Tax Rebate

Year 1	Year 2	Year 3	Year 4	Year 5
100%	100%	100%	75%	75%

Exhibit D
Incentive Summary Table

If the applicant 1) invests a total of \$383,433 in private investment and 2) the Project fulfills the requirements specified in Section 3 of this Agreement, then the applicant will be eligible to receive the incentives and respective maximum amounts specified below for the full term of the contract. Failure to invest the total amount will constitute an event of default.

Table D-1. Incentive Summary Table

Incentive Type	Maximum Incentive Amount
5 Year Property Tax Rebate	\$14,904.59
Construction Materials Sales Tax Rebate	\$3,834.33
Building and Planning Fee Rebate	\$10,000.00
TOTAL	\$28,738.92

Brixwood, LLC

Goal 1: Create an Environment Conducive to Strong, Sustainable
Economic Development

1.1 Stabilize and expand El Paso's tax base



B r i x w o o d , L L C

PROJECT SUMMARY

- Brixwood, LLC will be renovating the property located at 311 Montana, Suite B.
- The applicant will be investing a total of \$383,433
- The project will completely renovate the building façade as well as the interior of Suite B and will create office space
- The project meets all requirements of the Infill Incentive Development Policy that was approved by city council on May 30, 2017

OVERVIEW



EXISTING



PROPOSED

PROPOSED CITY INCENTIVES

<u>5-year Property Tax Rebate</u>	<u>\$14,904.59</u>
<u>Construction Materials Sales Tax Rebate (one-time)</u>	<u>\$3,834</u>
<u>Building and Planning Fee Rebate (capped)</u>	<u>\$10,000.00</u>
<u>*Total proposed incentive amount:</u>	<u>\$28,738.92</u>

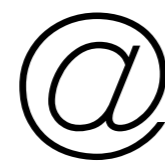
**incentive not to exceed specified amount*

THANK YOU

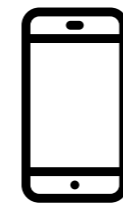
Stephanie Santiago

Economic and International Development

City 3 – 801 Texas 2nd floor



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