

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

DEPARTMENT: Economic and International Development

AGENDA DATE: 7/21/2015

CONTACT PERSON/PHONE: Cary Westin, Economic Development, 212-1614

DISTRICT(S) AFFECTED: 8

SUBJECT:

That the City Manager be authorized to execute a Chapter 380 Economic Development Downtown New Construction Incentive Agreement by and between the City of El Paso and Franklin Avenue Apartments, LLC, the tenant, pursuant to the City's Downtown Sustainable Cities Center Policy, for the construction of a 0.357 acre multifamily housing complex on the vacant lot of 617 W. Franklin Avenue, El Paso, Texas 79901.

(DISTRICT 8) [Cary S. Westin, Economic Development, 212-1614]

BACKGROUND/DISCUSSION:

The City's Downtown New Construction Incentive Policy was adopted by City Council on July 31st, 2012, and amended on February 19th, 2013. The applicant, Franklin Avenue Apartments LLC, is proposing to build 14 units of mid-scale apartments with an executive lounge unit on a vacant lot. The total investment for the proposed development is \$1,000,000.

The agreement consists of a ten (10) year annual rebate (Incremental to the base year value) of the City's portion of ad valorem property taxes on the base year, a (100%) waiver on building and planning fees as part of the Ordinance 017725, a (100%) rebate on the City's Portion of Sales Tax on Construction Materials, and a one-time \$50,000 Pre Development Construction Cost Grant (PDCCG) associated with grading, construction of retaining wall, clean up of debris and related costs for preparation of construction of the property.

PRIOR COUNCIL ACTION:

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

N/A

AMOUNT AND SOURCE OF FUNDING:

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

N/A

BOARD/COMMISSION ACTION:

N/A

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

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

DEPARTMENT HEAD: _____

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

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

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

That the City Manager be authorized to execute a Chapter 380 Economic Development Downtown New Construction Incentive Agreement by and between the City of El Paso and Franklin Avenue Apartments, LLC, the tenant, pursuant to the City's Downtown Sustainable Cities Center Policy, for the construction of a 0.357 acre multifamily housing complex on the vacant lot of 617 Franklin Avenue, El Paso, Texas 79901.

APPROVED this _____ day of _____, 2015.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

for *[Signature]*

Juan S. Gonzalez
Assistant City Attorney

APPROVED AS TO CONTENT:

Cary S. Westin, Managing Director
Economic and International Development

STATE OF TEXAS)
)
COUNTY OF EL PASO) **CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** (this “Agreement”) is made and entered into by and between the **CITY OF EL PASO, TEXAS** (hereinafter referred to as the “CITY”), a Texas home rule municipal corporation, and **FRANKLIN AVENUE APARTMENTS, LLC** (hereinafter referred to as the “FRANKLIN AVENUE APARTMENTS” or “APPLICANT”), a Texas limited liability company, for the purposes and considerations stated below:

WHEREAS, the FRANKLIN AVENUE APARTMENTS desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as “Chapter 380”); and

WHEREAS, the CITY desires to provide, pursuant to Chapter 380, incentives to FRANKLIN AVENUE APARTMENTS to develop City-owned property located at 617 W. Franklin Avenue in El Paso, Texas, such project being more specifically described on **EXHIBIT A** and **EXHIBIT B** attached hereto (the “Development”); and

WHEREAS, the CITY desires to lease the approximate 0.357 acre vacant property for the purposes of constructing multifamily development project comprised of market rate multifamily residential housing and related improvements; and

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

WHEREAS, the CITY determines that a grant of funds to FRANKLIN AVENUE APARTMENTS will serve the public purpose of enhancing the value of the local tax base and foster and support economic growth and opportunity and to ensure new investments will market the area as a thriving place to work, live and visit; and

WHEREAS, the CITY and FRANKLIN AVENUE APARTMENTS desire the redevelopment of the parcel and the CITY has further determined that the Development will advance the CITY’S revitalization strategy for the future growth and development of the downtown area which is the economic heart of the CITY and directly and indirectly results in the creation of additional jobs in the City of El Paso and stimulate commercial activity in an underdeveloped area, the value of such benefits to the CITY outweighing the amount of Grant funds the CITY will provide to FRANKLIN AVENUE APARTMENTS under this Agreement; and

WHEREAS, the Development in the manner more fully described in this Agreement will encourage increased economic development in the City of El Paso’s historic downtown core, result in significant increases in the CITY’S property tax revenues, sales tax revenues, and improve the CITY’S ability to provide for the health, safety and welfare of the citizens of El Paso and creating an area with quality and thriving places to work, live and visit; and

WHEREAS, the CITY has concluded and hereby finds that this Agreement clearly promotes economic development in the City of El Paso and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the CITY and FRANKLIN AVENUE APARTMENTS.

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

SECTION 1. DEFINITIONS.

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

- A. **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- B. **Base Year Value.** The words “Base Year Value” mean valuation by the El Paso Central Appraisal District as of 2015 for the Property.
- C. **City.** The word “CITY” means the City of El Paso, Texas.
- D. **Comprehensive Plan.** The words “Comprehensive Plan” means the City of El Paso’s Comprehensive Plan entitled “Plan El Paso” adopted by the El Paso City Council on March 6, 2012.
- E. **Construction Materials Sales Tax Rebate.** The words “Construction Materials Sales Tax Rebate” means a 100% rebate of the CITY’s one percent (1%) of Sales and Use Tax Receipts for materials and labor of Taxable Items used in the construction of the Development. To be eligible for this rebate, a current minimum expenditure amount for improvements or new construction of One Million and No/100 Dollars (\$1,000,000.00) is required.
- F. **Development.** The word “Development” means the construction of the Property more specifically described in **EXHIBIT A** and **EXHIBIT B** which are attached hereto and incorporated herein for all purposes.
- G. **Grant.**
 - (1) The word “Grant” means each annual payment to FRANKLIN AVENUE APARTMENTS under the terms of this Agreement computed as the sum of the applicable rebates and grant(s): (i) Property Tax Rebate; (ii) Construction Materials Sales Tax Rebate; and (iii) Pre-Development Construction Cost Grant.
 - (2) **Pre-Development Construction Cost Grant “PDCCG”**– means a grant to offset the costs incurred by the applicant on the development project in order to prepare the property for construction, these costs can include but are not limited to grading, clean-up of debris, building retaining walls, and other similar costs necessary to prepare a property for construction.

- H. **Grant Submittal Package.** The words “Grant Submittal Package” mean 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 C**, which is attached hereto and incorporated herein for all purposes.
- I. **Planning and Building Fee Waivers/Rebate.** The words “Planning and Building Fee Waivers” means 100% of certain planning and building fees will be waived or rebated based on the fee schedule established in Ordinance 017725.
- J. **Project.** The word “Project” means the project more particularly described in **EXHIBIT A** and **EXHIBIT B** attached hereto and incorporated herein by reference.
- K. **Property.** The word “Property” means approximately square feet of real property located at 617 W. Franklin Avenue in El Paso, Texas, more specifically described on **EXHIBIT A** and **EXHIBIT B**.
- L. **Property Tax Rebate.** The words “Property Tax Rebate” means one hundred percent (100%) rebate of the CITY’s portion of the incremental ad valorem property tax revenue, not to exceed the total cumulative value of the CITY’S portion of the incremental ad valorem property tax revenue generated by the subject Development above the Base Year Value for the Grant Period and payable from the CITY’s general revenue fund.
- M. **State Comptroller.** The words “State Comptroller” mean the office of the Texas Comptroller of Public Accounts.
- N. **Taxable Items.** The words “Taxable Items” have the same meaning assigned in Chapter 151, Texas Tax Code.

SECTION 2. TERM AND GRANT PERIOD.

- A. 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) thirteen (13) 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.
- B. The Effective Date of this Agreement shall be the date upon which both parties have fully executed this Agreement. However, FRANKLIN AVENUE APARTMENTS’ eligibility for annual Grant payments shall be limited to ten (10) consecutive years. 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 FRANKLIN AVENUE APARTMENTS’s eligibility for Grant Payments on an annual basis during the Grant Period.

SECTION 3. OBLIGATIONS OF FRANKLIN AVENUE APARTMENTS.

In consideration of CITY agreeing to pay the Grant in accordance with the terms, provisions and conditions of this Agreement, FRANKLIN AVENUE APARTMENTS agrees to the following, which are obligations of FRANKLIN AVENUE APARTMENTS that must be fulfilled in order to receive the Grant:

A. DEVELOPMENT.

- (1) FRANKLIN AVENUE APARTMENTS agrees to develop and construct, at its sole cost, the Development. FRANKLIN AVENUE APARTMENTS must obtain the building permits for the Development within six (6) months from the Effective Date of this Agreement and a Certificate of Occupancy for the Development within twenty four (24) months from the Effective Date of this Agreement.
- (2) FRANKLIN AVENUE APARTMENTS agrees that the construction and renovation of the Development will adhere to the design guidelines outlined in the Comprehensive Plan and the Downtown Plan.
- (3) FRANKLIN AVENUE APARTMENTS agrees that it shall make or cause to be made, at its sole cost and expense or the expense of third parties, a minimum investment of One Million and 00/100 Dollars (\$1,000,000.00) on the construction of the Property.
- (4) FRANKLIN AVENUE APARTMENTS 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 Development and any other property within the City of El Paso. FRANKLIN AVENUE APARTMENTS must demonstrate that it has incurred no delinquent taxes by providing certified city tax certificates for each parcel of property owned in the City of El Paso. FRANKLIN AVENUE APARTMENTS shall have the right to contest the appraised value of the Development as provided by law. However, FRANKLIN AVENUE APARTMENTS 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 El Paso Central Appraisal District at the Base Year Value, One Hundred Nine Thousand Two Hundred and 00/100 Dollars (\$109,200.00), or lower.

B. DISBURSEMENT OF GRANT.

- (1) During the term of this Agreement and beginning as of the commencement of the Grant Period and ending ten years thereafter, or at termination, whichever comes first, and subject to the conditions contained in this Agreement, FRANKLIN AVENUE APARTMENTS shall be eligible to receive on a yearly basis the Grant payment.
- (2) FRANKLIN AVENUE APARTMENTS' eligibility for any Grant payment is expressly contingent upon APPLICANT'S satisfaction of the requirements of Section 3 of this Agreement. During the term of this agreement, under no circumstance shall the CITY be required to disburse more than One Hundred Forty Six Thousand Seven Hundred Sixty Dollars and 08/100 (\$146,760.08) as the total amount of the Grant nor

shall APPLICANT be entitled to receive the Grant unless it satisfies all the requirements of this Agreement. APPLICANT agrees to provide the CITY with any documentation the CITY may reasonably require or request to substantiate the APPLICANT'S compliance with this Agreement. The aforementioned amounts exclude the amounts associated with the **Pre-Development Construction Cost Grant** amount as described in this Agreement. The **Pre-Development Construction Cost Grant** will be paid in accordance with the terms as set out in Section 4. A.

(3) In order to receive the disbursement of the Grant, FRANKLIN AVENUE APARTMENTS must submit a Grant Submittal Package, as specified in Section 3(C) below.

C. GRANT SUBMITTAL PACKAGE.

(1) Unless otherwise agreed by the CITY and FRANKLIN AVENUE APARTMENTS in writing, FRANKLIN AVENUE APARTMENTS shall annually submit one Grant Submittal Package in the form provided in **EXHIBIT C**, together with the requisite documentation. No later than July 31, 2017, FRANKLIN AVENUE APARTMENTS shall submit to the CITY the initial Grant Submittal Package to commence the Grant Period. Thereafter, FRANKLIN AVENUE APARTMENTS' annual Grant Submittal Package must be submitted no later than July 31 of each year.

(2) If FRANKLIN AVENUE APARTMENTS shall fail to timely submit a Grant Submittal Package for a particular year, then the CITY may, but is not obligated to, give FRANKLIN AVENUE APARTMENTS written notice of its failure to timely submit such Grant Submittal Package, and FRANKLIN AVENUE APARTMENTS 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. Failure to timely submit a Grant Submittal Package is a waiver of the Grant due to FRANKLIN AVENUE APARTMENTS for the period that would have been covered by a timely submitted Grant Submittal Package.

(3) The CITY'S determination of the amount of the Grant payment due to FRANKLIN AVENUE APARTMENTS is final; provided, however FRANKLIN AVENUE APARTMENTS may appeal to the City Council within thirty (30) days of payment, the City Council shall hear the appeal within thirty (30) 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) FRANKLIN AVENUE APARTMENTS'S rights and remedies under this Agreement.

SECTION 4. OBLIGATIONS OF CITY.

During the term of this Agreement and so long as an event of default has not occurred and is continuing as set forth herein (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), CITY shall comply with the following terms and conditions:

- A. The CITY agrees to pay to FRANKLIN AVENUE APARTMENTS a one-time, **Pre-Development Construction Cost Grant “PDCCG”**, in the amount of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000). These funds will be applied by APPLICANT to the costs associated with the construction of a retaining wall on the PROPERTY. PDCCG funds will be paid from the Sustainable City Center Incentive Fund after APPLICANT submits proof of completion of the construction of the retaining wall on the PROPERTY to CITY.
- B. The CITY agrees to process any Grant Payments to FRANKLIN AVENUE APARTMENTS within ninety (90) days after its approval of the FRANKLIN AVENUE APARTMENTS’s Grant Submittal Package.
- C. The CITY shall determine the total amount of Grant payments due to the FRANKLIN AVENUE APARTMENTS, if any, on an annual basis. Provided the FRANKLIN AVENUE APARTMENTS satisfies all the requirements of this Agreement, FRANKLIN AVENUE APARTMENTS shall be eligible for the annual Grant payment.
- D. The CITY agrees to waive 100% of certain Building and Planning fees associated with the Project as allowed per Ordinance 017725.

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- A. **False Statements.** In the event the FRANKLIN AVENUE APARTMENTS 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 FRANKLIN AVENUE APARTMENTS fails to cure same within thirty (30) 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) day period in the exercise of all due diligence, and FRANKLIN AVENUE APARTMENTS 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 FRANKLIN AVENUE APARTMENTS obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and FRANKLIN AVENUE APARTMENTS fails to provide written notice to the CITY of the false or misleading nature of such warranty, representation or statement within ten (10) days after FRANKLIN AVENUE APARTMENTS 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 Section, all Grant Payments previously provided by the CITY pursuant to this Agreement shall be recaptured and repaid by FRANKLIN AVENUE APARTMENTS within sixty (60) days from the date of such termination.
- B. **Insolvency.** The dissolution or termination of FRANKLIN AVENUE APARTMENTS’s existence as a going business or concern, FRANKLIN AVENUE APARTMENTS’S insolvency, appointment of receiver for any part of FRANKLIN AVENUE APARTMENTS’S portion of the Property, any assignment of all or substantially all of the

assets of FRANKLIN AVENUE APARTMENTS for the benefit of creditors of FRANKLIN AVENUE APARTMENTS, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against FRANKLIN AVENUE APARTMENTS shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.

- C. **Construction of Development.** FRANKLIN AVENUE APARTMENTS's failure to comply with its construction obligations set forth in this Agreement and FRANKLIN AVENUE APARTMENTS's failure to cure same within thirty (30) days after written notice from the CITY shall be deemed an event of default. If such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but FRANKLIN AVENUE APARTMENTS fails or refuses to commence such cure within such thirty (30) 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 reimbursement grant payments under this incentive program, the FRANKLIN AVENUE APARTMENTS must demonstrate that it has incurred no delinquency taxes by providing certified city tax certificates for each parcel of property owned in the City of El Paso. In the event FRANKLIN AVENUE APARTMENTS 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) 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, FRANKLIN AVENUE APARTMENTS shall have the right to contest the appraised value of the Development provided however, the FRANKLIN AVENUE APARTMENTS agrees that it will not contest or allow any party to contest on its behalf a value of less than Base Year Value which the parties have agreed is the minimum value for tax purposes. FRANKLIN AVENUE APARTMENTS's failure to comply with this prohibition against maintaining the minimum tax value shall constitute an event of default and may result in a termination of this Agreement.

- E. **Other Defaults.** Failure of FRANKLIN AVENUE APARTMENTS 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 FRANKLIN AVENUE APARTMENTS or CITY fails to cure such failure within thirty (30) 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) day period in the exercise of all due diligence, but if FRANKLIN AVENUE APARTMENTS or CITY fail or refuse to commence such cure within such thirty (30) 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 FRANKLIN AVENUE APARTMENTS shall occur, and after FRANKLIN AVENUE APARTMENTS 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 6. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT OF FRANKLIN AVENUE APARTMENTS.

The CITY may terminate this Agreement for its convenience and without the requirement of an event of default by FRANKLIN AVENUE APARTMENTS, 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 7. 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 both parties.
- 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. **Assignment of Applicant's Rights.** FRANKLIN AVENUE APARTMENTS understands and agrees that the CITY expressly prohibits FRANKLIN AVENUE APARTMENTS from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds without the CITY's prior written consent. Any such attempt to sell, transfer, assign or convey without the CITY's prior written consent shall result in the immediate termination of this Agreement, with no ability for the FRANKLIN AVENUE APARTMENTS to cure.
- D. **Applicant's Sale or Transfer of the Development.** Prior to any sale or other transfer of ownership rights in the Development, FRANKLIN AVENUE APARTMENTS 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 and all Grant Payments previously provided by the CITY pursuant to this Agreement shall be recaptured and repaid by FRANKLIN AVENUE APARTMENTS within sixty (60) days from the date of such termination.
- E. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. CITY warrants and represents that the individual executing this Agreement on behalf of CITY has full authority to execute this Agreement and bind CITY to the same. The individual executing this Agreement on FRANKLIN AVENUE APARTMENTS's behalf warrants and represents that he or she

has full authority to execute this Agreement and bind FRANKLIN AVENUE APARTMENTS to the same.

- F. **Completion of Development.** As consideration for the agreements of the CITY as contained herein, FRANKLIN AVENUE APARTMENTS agrees that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the Development and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations. FRANKLIN AVENUE APARTMENTS will also ensure that the architect hired to design the Development is a licensed architect.
- G. **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.
- H. **Employment of Undocumented Workers.** During the term of this Agreement, FRANKLIN AVENUE APARTMENTS 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), FRANKLIN AVENUE APARTMENTS shall repay the amount of the Grant payments received by FRANKLIN AVENUE APARTMENTS from the CITY as of the date of such violation not later than one hundred twenty (120) days after the date FRANKLIN AVENUE APARTMENTS is notified by CITY of a violation of this section, plus interest from the date the Grant payment(s) was paid to FRANKLIN AVENUE APARTMENTS, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to FRANKLIN AVENUE APARTMENTS 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 Grant payment(s) subject to repayment under this section. FRANKLIN AVENUE APARTMENTS is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom FRANKLIN AVENUE APARTMENTS contracts.
- I. **Filing.** The CITY shall file this Agreement in the deed records of El Paso County, Texas upon FRANKLIN AVENUE APARTMENTS's request and payment of all recordation costs.
- J. **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.
- K. **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, 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.

CITY: City of El Paso
City Manager
300 N. Campbell Street
El Paso, Texas 79901

Copy To: City of El Paso
Director Economic & International Development
300 N. Campbell Street
El Paso, Texas 79901

Applicant: Renard Johnson
8600 Boeing Drive
El Paso, TX 79925

L. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the CITY, whether now existing or in the future arising

M. **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 _____, 2015.

CITY OF EL PASO, TEXAS

Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Juan S. Gonzalez
Assistant City Attorney

Cary S. Westin, Managing Director
Economic and International Development

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

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 (CITY)**.

Notary Public, State of Texas

My Commission Expires:

FRANKLIN AVENUE APARTMENTS, LLC:

Name: Renard Johnson
Title: Owner, Franklin Ave. Apartments LLC

ACKNOWLEDGMENT

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2015, by **Renard Johnson**, as **Owner** of **FRANKLIN AVENUE APARTMENTS, LLC**, a Texas limited liability company.

Notary Public, State of _____

My Commission Expires:

EXHIBIT A

[Mixed Use Property Legal Description / Development Description]

Legal Description

BEING LOTS 4 THROUGH 8, BLOCK 13 SUNSET HEIGHTS, AN ADDITION TO THE CITY OF EL PASO, EL PASO COUNTY, TEXAS (.357 ACRES)

Development Description

The Applicant proposes to construct a multi-family residential project on the Leased Premises that consists of the following elements and approximate number and type of units and related improvements and amenities:

- 14-unit mid-upscale apartments
- Executive lounge unit
- Twenty-four (24) parking spaces, including sixteen (16) tandem spaces

EXHIBIT B SITE PLAN



EXHIBIT C

[Grant Submittal Package Form]

FRANKLIN AVENUE APARTMENTS, LLC (FRANKLIN AVENUE APARTMENTS) believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by _____ of **FRANKLIN AVENUE APARTMENTS**. Pursuant to the Agreement, **FRANKLIN AVENUE APARTMENTS** 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.

1. Site Development plan approvals;
2. Property tax payment receipts for the Properties;
3. Copies of all applicable approvals and permits;

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: _____



Chapter 380 Redevelopment Agreement

**Franklin Avenue Apartments LLC
617 West Franklin Avenue**



Chapter 380 Redevelopment Agreement

Applicant: Franklin Avenue Apartments LLC

District: 8

Project Address:

617 West Franklin Avenue
El Paso, TX 79901

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

1.1 – Stabilize & Expand El Paso’s tax base



Project Description

- **\$1 million** in construction investment
- **Current status:** 0.35 acres (15,246 sq ft) of vacant, undeveloped land owned by the City of El Paso.
- Applicant proposes to build a 2-story multi-family residential complex:
 - 14 units of mid-scale apartments
 - an executive lounge unit
 - 24 parking spaces
- April 2015 - City has *leased land* to Franklin Avenue Apartments LLC.



Proposed Incentives

- **Property Tax Rebate (City's Portion):** A **ten year** annual rebate (Incremental to the base year value) of the City's portion of ad valorem property taxes on the base year.
- **Construction Materials Rebate-** Chapter 380 Agreement for a one time grant payment of the City's Portion of Sales Tax (1%) after the applicant has obtained a certificate of completion and the project is completed.



Proposed Incentives

- **Development Fee Waivers-** The City may rebate/waive up to 100% of the development fees associated with new construction or renovation of the applicant's facility, per Ordinance 017725.
- **Pre Development Construction Cost Grant (PDCCG) –** One time, Fifty Thousand (\$50,000) grant associated with grading, construction of a retaining wall, clean-up of debris, and related costs for preparation of construction of property.



Location of 617 West Franklin Ave





Current Conditions of the Site 617 West Franklin Avenue



"Delivering Outstanding Services"



Proposed Renderings 617 West Franklin Avenue



3 SOUTH ELEVATION
1" = 20'-0"



4 WEST ELEVATION
1" = 20'-0"



2 SECOND FLOOR PLAN
1" = 20'-0"



1 SITE PLAN
1" = 30'-0"



SIZE AND USE OF STRUCTURES	SQ. FEET	3RD FLOOR	TOTAL
RETAIL	1,200	0	1,200
OFFICE	8,700	0	8,700
PARKING SPACES	14	NA	NA
FAR	6.74	0.00	0.00
TOTAL AREA	TOTAL COMPLETION	11,700	11,700

Required Documentation List

1. Large Description:
 - a. BEYOND CORNER: THE PROPOSED BLOCK OF ROBERT HEADRICKS, AN ADDITION TO THE CITY OF EL PASO, EL PASO COUNTY TEXAS ACCORDING TO THE PLAN THEREOF FILED IN VOLUME 10, PAGE 47, EL PASO COUNTY PLAT RECORDS, (5.564 ACRES).
2. Location and arrangement of structures: As shown on plan.
3. Size and use of structures:

STRUCTURE	AREA	USE	REMARKS
4. Lot lines with dimensions of areas: See setbacks on plan. (5,320 sq. ft.)
5. Proposed setbacks: None.
6. Lot coverage: 2.437 sq. ft. = 10% of property.
7. Easement locations: As shown on plan.
8. Curbs and sidewalks: As shown on plan.
9. Pedestrian ways and sidewalks: As shown on plan.
10. Architect seal: As shown on plan.
11. On-Street Parking: 14.

TYPE	AREA	REMARKS
12. Storm Water Drainage: None.
13. Retaining Walls: As shown on plan.
14. Screening Walls: None. (N.Y. Fence set back at alley and between apartment units, as shown on plan.)
15. Utility Right-of-Way: As shown on plan.
16. Architectural design of buildings: Complete elevations as shown on plan.
17. Bicycle rack: None.

Franklin Apartments
EXIGO 1



Proposed Renderings 617 West Franklin Avenue



"Delivering Outstanding Services"



Proposed Total Incentive Package 617 West Franklin Avenue

Rebate Type	Grant Payment
10 Yr. (City's Portion) Property Tax Rebate	\$86,760.08
Construction Materials Sales Tax Rebate (City's Portion)	\$10,000.00
Pre Development Construction Cost Grant (PDCCG)	\$50,000.00
Projected Total Incentive Package	\$146,760.08



EL PASO

OPEN FOR BUSINESS

Jessica Herrera
Redevelopment Manager
915-212-1624
herrerajl@elpasotexas.gov

(915) 212-0094
ED@elpasotexas.gov
[Facebook.com/EPOpenForBusiness](https://www.facebook.com/EPOpenForBusiness)
Twitter [@EPOpenForBiz](https://twitter.com/EPOpenForBiz)

"Delivering Outstanding Services"