

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

DEPARTMENT: Economic & International Development Department

AGENDA DATE: CCA Regular, October 18, 2016

CONTACT PERSON/PHONE: Cary S. Westin, Managing Director, (915) 212-1614

DISTRICT(S) AFFECTED: District 8

SUBJECT:

Discussion and Action on a resolution, that the City Manager be authorized to execute a Chapter 380 Economic Development Incentive Agreement between the City of El Paso and TOPGOLF USA EL PASO, LLC for the development of a Sports-based Entertainment Facility known as Topgolf® to be located in El Paso, TX. (District 8) [Economic & International Development Department, Cary S. Westin, Managing Director, (915) 212-1614]

BACKGROUND/DISCUSSION:

TopGolf® is a Sports-based Entertainment Facility investing \$15.7M to build within the City of El Paso. The City Economic Development Department staff is recommending that City Council approve a Chapter 380 Economic Incentive Agreement with TopGolf®. TopGolf® is eligible to receive a 75% Property Tax Rebate over a 15-year period not to exceed \$1,738,279.76. The applicant is also eligible for a one-time Development Fee Rebate not to exceed \$34,000. In addition, the applicant is eligible for a 75% Ground Floor Retail Sales and Use Tax Rebate not to exceed \$3,427,450.07.

PRIOR COUNCIL ACTION:

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

Executive Session 6/28/16.

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: _____

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 Incentive Agreement between the City of El Paso and TOPGOLF USA EL PASO, LLC for the development of a Sports-based Entertainment Facility known as Topgolf® to be located in El Paso, TX.

APPROVED this _____ day of _____ 2016.

CITY OF EL PASO

Oscar Leeser, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Juan S. González
Assistant City Attorney

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 (“Agreement”) is made and entered into by and between the **CITY OF EL PASO, TEXAS** (“City”), a Texas home rule municipal corporation, and **TOPGOLF USA EL PASO, LLC** (“Applicant”), a **Delaware Limited Liability Company**, a **Sports-based Entertainment Facility known as Topgolf®** 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 the Texas Constitution Article VIII, Section 52-a; and

WHEREAS, the City desires to provide, pursuant to Chapter 380, an incentive to Applicant to develop the **Sports-based Entertainment Facility** as more fully described below; 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 Applicant will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the City; and

WHEREAS, the City and Applicant desire that development of the **Sports-based Entertainment Facility** occur in the City of El Paso; and

WHEREAS, the creation of the **Sports-based Entertainment Facility** will likely encourage increased economic development in the City, provide increases in the City’s property tax revenues, and improve the City’s ability to provide for the health, safety and welfare of the citizens of El Paso; and

WHEREAS, the City has concluded and hereby finds that this Agreement embodies an eligible “program” and 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 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 parties agree as follows:

SECTION 1. DEFINITIONS.

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

- A. **Affiliate.** The word “Affiliate” means with respect to any specified person or entity, any other person or entity that, directly or indirectly, controls, is under common control with, or is controlled by such specified person or entity. For purposes of this definition, the term “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, through ownership of voting securities or through partnership interest.
- B. **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- C. **Applicant.** The word “Applicant” means Topgolf USA El Paso, LLC, a Delaware limited liability company.
- D. **Base Year Value.** The words “Base Year Value” mean the value of the real and personal property on the rolls as of January 1st of the year in which this Agreement is executed with respect to the Development. However, under no circumstances shall the Base Year Value be interpreted to be equivalent or determinative for appraisal purposes or to be utilized in any way to determine market value. For the purposes of this Agreement, this amount is _____ **[ZERO BASE YEAR VALUE OK?]**
- E. **City.** The word “City” means the City of El Paso, Texas.
- F. **[INTENTIONALLY DELETED]**.
- G. **Development.** The word “Development” means the Sports-based Entertainment Facility as more fully described on Exhibit “A”, which is attached hereto and incorporated herein for all purposes.
- H. **Development Fee Rebate.** The words “Development Fee Rebate” means 100% of certain development fees will be rebated to Applicant based on the fee schedule attached as Exhibit A to Ordinance _____, **but in no event will the total fee waiver or rebate amount exceed Thirty Four Thousand and 00/100 dollars (\$34,000.00).**
- I. **Effective Date.** The date upon which both parties have fully executed this Agreement as set forth on the signature page hereof.
- J. **Event of Default.** This phrase shall have the meaning set forth in Section 5 hereof.
- K. **Event of Nonappropriation.** The phrase means the failure of the City to appropriate for any Fiscal Year, sufficient funds to pay the Grant payment, or the reduction of any previously appropriated money below the amount necessary to permit the City to pay the Grant payments from lawfully available funds.

- L. **[INTENTIONALLY DELETED]**.
- M. **Grant.** The word “Grant” means each annual payment to APPLICANT under the terms of this Agreement computed as the sum of the following rebates over a 20-year term as applicable (i) Property Tax Rebate, (ii) Development Fee Rebate, and (iii) Ground Floor Retail Sales and Use Tax Rebate. For the purposes of this Agreement, this amount is Five Million, One Hundred Ninety-Nine Thousand, Seven Hundred Twenty-Nine and 83/100 dollars (\$5,199,729,83).
- N. **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 Exhibits B and C, which are attached hereto and incorporated herein for all purposes.
- O. **Ground Floor Retail Sales & Use Tax Rebate.** The words “Ground Floor Retail Sales and Use Tax Rebate” means seventy-five 75% rebate of the CITY’S one percent (1%) Sales and Use Tax Receipts generated by and attributable solely to Retailer sales 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. For historic landmark buildings or contributing buildings within the historic districts, the Ground Floor Retail Sales and Use Tax Rebate means 100% of the CITY’S one percent (1%) Sales and Use Tax Receipts generated by and attributable solely to Retailer sales 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. This rebate will be paid for a maximum of Seventeen (17) years, within the Grant Period as defined in Section 2 and subject to the maximum combined Grant amount as stated in Section 1. M. above.
- P. **Minimum Appraisal Value.** The words “Minimum Appraisal Value” mean the value of the real and personal property and improvements of the Development after the construction of the Development below which Applicant and its Affiliate(s) cannot protest nor contest the appraised value of the Development with the El Paso Central Appraisal District during the term of this Agreement. Under no circumstances shall the Minimum Appraisal Value be interpreted to be equivalent or determinative for appraisal purposes or be utilized in any way to determine market value. For the purposes of this Agreement, this amount is _____.
- Q. **Minimum Investment:** The words “Minimum Investment” mean those costs incurred by APPLICANT or third parties in the construction, or furnishing of the improvements for the Project, to include cash and in-kind contributions. For the purposes of this Agreement, this amount is Fifteen Million, Seven Hundred Thousand and 00/100 dollars (\$15,700,000.00).
- R. **Project.** The word “Project” means the project more particularly described in **EXHIBIT A** attached hereto and incorporated herein by reference.

- S. **Property.** The word “Property” means approximately square feet of real property located in El Paso, Texas and more specifically described via Metes and Bounds in **EXHIBIT A**.
- T. **Property Tax Rebate.** The words “Property Tax Rebate” means Seventy-Five percent (75%) rebate 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 and payable from the CITY’s general revenue fund. This rebate will be paid for a maximum of Fifteen (15) years, within the Grant Period as defined in Section 2 and subject to the maximum combined Grant amount as stated in Section 1. M. above.
- U. **Qualified Expenditures.** The words “Qualified Expenditures” means those costs incurred by or on behalf of Applicant in the acquisition, construction or furnishing of the Development. For the purposes of this Agreement, the minimum Qualified Expenditures amount is Fifteen Million, Seven Hundred Thousand and 00/100 dollars (\$15,700,000.00).
- V. **Retailer(s).** The word “Retailer(s)” means tenants and lessees of the Property in the Development required by the State Comptroller to collect Sales and Use Tax on the sale of Taxable Items consummated in the City at the Property in the Development.
- W. **Sales and Use Tax.** The words “Sales and Use Tax” mean the CITY’S one percent (1%) sales and use tax imposed pursuant to Chapter 321 of the Texas Tax Code on the sale of Taxable Items by Retailers consummated at the Property located in the Development and remitted to the CITY by the State Comptroller, to be used only as a measurement for computation of the Grant to be paid through the use of general funds.
- X. **Sales Tax Receipts.** The words “Sales Tax Receipts” mean receipts of Sales and Use Tax revenue remitted from the State Comptroller based upon the Retailers’ collection of Sales and Use Tax during the term of this Agreement, which are generated by and solely attributable to the Retailers’ sale of Taxable Items consummated at the Property located in the Development in El Paso, Texas.
- Y. **State Comptroller.** The words “State Comptroller” mean the office of the Texas Comptroller of Public Accounts.
- Z. **Taxable Items.** The words “Taxable Items” have the same meaning assigned in Chapter 151, Texas Tax Code.

SECTION 2. TERM AND GRANT PERIOD.

The term of this Agreement shall be Twenty (20) years from the first Grant, including any renewal agreed upon by the parties. The Effective Date of this Agreement shall be the date upon which both parties have fully executed this Agreement, as noted below.

The Grant Period shall begin with the first tax year that begins after the issuance of the Certificate of Occupancy for the Development. Failure of the Applicant or its Affiliate to receive its Certificate of

Occupancy within two (2) years of the Effective Date of this Agreement shall result in the immediate termination of this Agreement.

The Applicant's eligibility for Grant payments shall be limited to Twenty (20) consecutive years (the "Grant Period") within the term of this Agreement and subject to the specific rebate periods described in Sections 1.O. and 1.T., above. The City shall review Applicant's eligibility for Grant Payments on an annual basis in accordance with Exhibits B and C, during the Grant Period.

SECTION 3. OBLIGATIONS OF APPLICANT.

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

- A. Applicant agrees that it and its Affiliate or a third party on behalf of Applicant will develop, construct, and operate the Development at its sole cost. Applicant and its Affiliate shall commence construction and or improvements of the Development within twelve (12) months of the Effective Date of this Agreement. Moreover, during construction of the Development the Applicant and its Affiliate agree to hire and purchase goods and services from local manufacturers, suppliers, contractors and labor. Applicant and its Affiliate agree that 65% of the total manufacturers, suppliers, contractors and labor used in the development and construction of the property come from local sources, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency. **[TO BE DISCUSSED]** Applicant and its Affiliate agree that Qualified Expenditures of not less than Fifteen Million, Seven Hundred Thousand and 00/100 dollars (\$15,700,000.00) shall be made by Applicant or on Applicant's behalf in the Development. The City shall be permitted to review Applicant's and it's Affiliate's receipts of Qualified Expenditures to evidence the minimum investment of Fifteen Million, Seven Hundred Thousand and 00/100 dollars (\$15,700,000.00).
- B. Unless otherwise agreed by the City and Applicant, each Grant Submittal Package shall be in the form provided in Exhibit "C". If Applicant fails to timely submit a Grant Submittal Package for a particular year, the City shall, give Applicant written notice of its failure to timely submit such Grant Submittal Package, and Applicant shall have thirty (30) calendar days from the date on which such written notice is given in which to submit such Grant Submittal Package. A failure by 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. The City's determination of the amount of the Grant payment due to Applicant is final; provided, however, that the Applicant may appeal to the City Council within thirty (30) days of payment. The City Council shall hear the appeal within thirty (30) days of request for appeal and the City Council's determination of the amount of the Grant payment shall be final. Nothing herein shall limit (or be construed to limit) Applicant's rights and remedies as described in Section 5 of this Agreement.
- C. 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 Development. 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 any other property owned by the Applicant with the City of El Paso. The parties to this Agreement agree that the taxable value of the Development, after completion of all construction and improvements, will have an initial Minimum Appraisal Value of \$[] and thereafter as adjusted annually for normal depreciation during the term of this Agreement. Applicants shall have the right to contest the appraised value of the Development 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 action on its behalf to challenge any assessments by the Central Appraisal District equal to the Minimum Appraisal Value or lower. Any such action will be deemed an event of default that will result in the 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, Applicant agrees that neither this Agreement, nor the values contained within, will be utilized to contest appraisal values or in the determination of the market value of the Development.

D. **RETAILERS REPORT.** During the term of this Agreement beginning with the Commencement Date, APPLICANT shall provide the CITY, and maintain during the term of this Agreement: a list of each Retailer that occupies or occupied the Development during the Grant Period including the taxpayer identification number, taxpayer outlet number (as shown on the Texas Sales Tax Permit), taxpayer name and taxpayer location as reported to the State Comptroller, and any other information required by the State Comptroller to generate and provide the CITY with the Comptroller's Sales Tax Report for the Grant Period (the "Retailers Report").

E. **WAIVERS OF SALES TAX CONFIDENTIALITY.**

(1) Applicant shall cause the Retailers to provide the CITY and APPLICANT, and maintain during the term of this Agreement a Waiver of Sales Tax Confidentiality from each Retailer which authorizes the State Comptroller to release to the CITY and APPLICANT Sales and Use Tax information pertaining to the sale of Taxable Items by Retailers at the Property in the Development during the term of this Agreement substantially in the form attached hereto as **Exhibit C**. APPLICANT will be responsible for obtaining the Waivers of Sales Tax Confidentiality from Retailers and providing the Waivers of Sales Tax Confidentiality to the CITY. APPLICANT shall cause the Retailers to maintain an effective Waiver of Sales Tax Confidentiality during the term of this Agreement. The CITY will verify all such information, but the CITY shall not have an obligation to otherwise collect sales tax information and will have no obligation to make payments under this Agreement without such sales and use tax payment confirmation from the State Comptroller.

(2) The confidential sales tax information provided or reported by the State Comptroller to the CITY shall be used to determine in the amount of the Grant payment that APPLICANT is eligible to receive. For any particular Grant Submittal Package and Grant amount determination, the CITY shall only consider the Sales and Use Tax Receipts attributable to Retailers that appear on the Retailers Report and that have a valid and effective Waiver of Sales Tax Confidentiality on file with the CITY.

(3) While agreement is in effect, APPLICANT shall, upon request of CITY, provide such additional documentation as may be reasonably requested by the CITY to evidence, support and establish the Sales and Use Tax Receipts.

SECTION 4. OBLIGATIONS OF 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 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 approve or reject any Grant Submittal Package within ninety (90) days after its receipt. The City agrees to process any Grant Payments to Applicant within ninety (90) days after its approval of the Applicant's Grant Submittal Package.
- B. Pursuant to the City's "Incentives Policy – Guidelines and Criteria" and a cost/benefit calculation completed solely by and at the City's discretion, the City shall determine the total amount of Grant Payments due to the Applicant, if any, on an annual basis.
- C. The City shall determine the total amount of Grant payments due to the Applicant, if any, on an annual basis as provided in Exhibit B.
- D. The CITY agrees to rebate 100% of certain Building and Planning fees associated with the Project as allowed per Ordinance _____, up to Thirty-Four Thousand and 00/100 dollars (\$34,000.00). The City also agrees to expedite all development and building permit applications for the development.
- E. **[INTENTIONALLY DELETED]**
- F. Under no circumstances shall the total aggregate of Grant payments exceed Five Million, One Hundred Ninety-Nine Thousand, Seven Hundred Twenty-Nine and 83/100 dollars (\$5,199,729,83).

SECTION 5. EVENTS OF DEFAULT.

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

- A. **Failure to Maintain Development.** Applicant's or its Affiliate's failure or refusal to operate the Development pursuant to this Agreement through the Grant Period (excluding temporary closures due to casualty, remodeling, etc. which shall be permitted), and Applicant's or its Affiliate's failure or refusal to cure within sixty (60) days after written notice from the City describing such failure, shall be deemed an event of default. If such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, but the Applicant and its Affiliate have commenced such cure within such sixty (60) day period and continue to

thereafter diligently prosecute the cure of such failure, such actions or omissions shall not be deemed an event of default.

- B. **False Statements.** In the event the Applicant or its Affiliate 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 Applicant or its Affiliate fails to cure same within thirty (30) days after written notice from the City 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, but the Applicant and its Affiliate commence such cure within such thirty (30) day period and continuously thereafter diligently prosecutes the cure of such violation, such actions or omissions shall not be deemed an event of default. Further, if Applicant or its Affiliate obtains actual knowledge that any previously provided warranty, representation or statement has become materially false or misleading after the time that it was made, and Applicant or its Affiliate fails to provide written notice to the City of the false or misleading nature of such warranty, representation or statement within thirty (30) days after Applicant or its Affiliate 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 5B, all Grant Payments previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant or its Affiliate within sixty (60) days from the date of such termination.
- C. **Insolvency.** The dissolution or termination of Applicant's or its Affiliate's existence as a going business or concern, Applicant's or its Affiliate's insolvency, appointment of receiver for any part of Applicant's or its Affiliate's portion of the Property, any assignment of all or substantially all of the assets of Applicant or its Affiliate for the benefit of creditors of Applicant or its Affiliate, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Applicant or its Affiliate, 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.
- D. **Construction of Development.** Applicant's or its Affiliate's failure to comply with its construction obligations set forth in this Agreement and Applicant's or its Affiliate's failure to cure same within ninety (90) days after written notice from the City shall be deemed an event of default. If such failure cannot be cured within such ninety (90) day period and Applicant and its Affiliate fails or refuses to commence such cure within such ninety (90) day period, 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.
- E. **Property Taxes.** In the event Applicant or its Affiliate 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, Applicant and its Affiliate shall have the right to contest the appraised value of the Development.

- F. **Other Defaults.** Failure of Applicant, its Affiliate, 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 Applicant, its Affiliate or City fails to cure such failure within sixty (60) 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 sixty (60) day period in the exercise of all due diligence, and Applicant, its Affiliate, or City commences such cure within such sixty (60) day period and continuously thereafter diligently prosecute the cure of such failure, such act or omission shall not be deemed an event of default.
- G. **Failure to Cure.** If any event of default by Applicant, its Affiliate, or City shall occur, and after Applicant, its Affiliate, or City fails to cure same in accordance herewith, then this Agreement may be terminated without any further action required of the Applicant, its Affiliate, or City and the Applicant's, its Affiliate's, or 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. [WANTS CLARIFICATION]
- H. **Liability.** In no event will either party be liable to the other party for any indirect, special, punitive, exemplary, incidental or consequential damages. In no event shall the liability of either party exceed the value of Grant Payments issued hereunder. This limitation will apply regardless of whether or not the other party has been advised of the possibility of such damages.

SECTION 6. 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 Applicant or its Affiliate, if any state or federal statute, regulation, case law, or other law renders this Agreement null and void 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 all 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.** Applicant understands and agrees that the City expressly prohibits Applicant or its Affiliate 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 is void and may result in the immediate termination of this Agreement, with no ability for the Applicant to cure.

- D. **Applicant's or Affiliate's Sale or Transfer of the Development.** Prior to any sale or other transfer of ownership rights in the Development, Applicant and its Affiliate shall notify the City in writing of such sale or transfer within thirty (30) business days of the Applicant's or its Affiliate's knowledge of 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.
- 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 Applicant's and its Affiliate's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant and Affiliate to the same.
- F. **Completion of Development.** As consideration for the agreements of the City as contained herein, Applicant and its Affiliate 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.
- G. **Confidentiality Obligations.** The confidentiality of such records employment records and any other records related to the City's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. Specifically, the City will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Public Information Act, it will notify Applicant if a request relating to such proprietary information is received. Applicant represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of Applicant as a basis for nondisclosure.
- H. **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, Applicant and its Affiliate agree not to knowingly employ any undocumented workers as a Topgolf employee as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant and its Affiliate shall repay the amount of the Grant payments received by Applicant or its Affiliate from the City as of the date of such violation not later than one hundred twenty (120) days after the date Applicant

or its Affiliate is notified by City of a violation of this section, plus interest from the date the Grant payment(s) was paid to Applicant or its Affiliate, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to Applicant or its Affiliate 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.

- J. **Execution of Agreement.** The City Manager has received authority to execute this Agreement on behalf of the City from the City Council through approval of a resolution.
- K. **Filing.** The City shall promptly file this Agreement in the deed records of El Paso County, Texas.
- L. **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed beyond such party's reasonable control by reason of war, civil commotion, acts of God, severe 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 reasonably delayed.
- M. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when (i) actually delivered or (ii) three (3) days after deposit in the United States mail, first class, postage prepaid, or (iii) the next business day after timely deposit with an overnight courier such as FedEx, 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
P.O. Box 1850
300 N. Campbell Street
El Paso, Texas 79950-1850

Copy To: City of El Paso
Director
Economic & International Development Department
P.O. Box 1850
801 Texas Avenue
El Paso, Texas 79950-1850

APPLICANT: Topgolf USA El Paso, LLC
8750 N. Central Expressway, Suite 1200
Dallas, TX 75231
Attn: Legal Department

- N. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Development unless specifically enumerated herein.
- O. **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.

[Signatures begin on the following page]

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of _____, 20__.

CITY OF EL PASO, TEXAS

Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Juan S. González
Assistant City Attorney

Cary S. Westin, Managing Director
Economic and International Development

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20__, by **Tomás González**, as **City Manager** of the **City of El Paso, Texas (CITY)**.

Notary Public, State of Texas

My Commission Expires:

[Signatures continue on the following page]

**APPLICANT: TOPGOLF USA
EL PASO, LLC**

By: _____
William Davenport
Manager of Topgolf USA
El Paso, LLC

ACKNOWLEDGMENT

**STATE OF TEXAS §
 §
COUNTY OF DALLAS §**

This instrument was acknowledged before me on the _____ day of _____, 20____,
by **William Davenport**, as **Manager of Topgolf USA El Paso, LLC** (APPLICANT).

Notary Public, State of Texas

My Commission Expires:

EXHIBIT A
[Development & Legal Description]

EXHIBIT B

[Grant Submittal Package Form]

Topgolf believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by **Topgolf** Pursuant to the Agreement, **Topgolf** 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. Property Tax Payment Receipt(s) showing proof of payment for tax year _____.
2. Documentation supporting the 65% local preference at the first grant submittal. **[TO BE DISCUSSED]**
3. Documentation (i.e. bank statements, copies of checks) to evidence the amount of sales taxes paid as a result of the sales of Taxable Items by Retailers at the Property located in the Incentive Area;
4. Retailers Report; and
5. Waiver of Sales Tax Confidentiality Forms for Retailers on the Retailers Report;

It is understood by **Topgolf** that the City of El Paso has up to ninety (90) days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

Signature:

TOPGOLF USA EL PASO, LLC

NAME: _____
TITLE: _____
of **TOPGOLF USA EL PASO, LLC**

EXHIBIT C

Waiver of Sales Tax Confidentiality

Date _____

I authorize the State of Texas Comptroller of Public Accounts to release sales tax Information pertaining to the taxpayer indicated below to _____, a _____, its successors, assigns or nominees, and the City of El Paso, Texas. I understand that this waiver applies only to place of business located at _____ in the City of El Paso, El Paso County, Texas.

Please print or type the following information as shown on your Texas Sales and Use Tax permit:

Name of Taxpayer Listed on Texas Sales Tax Permit:

Name Under Which Taxpayer is Doing Business (d/b/a or Store Name):

Taxpayer Mailing Address:

Physical Location of Business Permitted for Sales Tax in El Paso, Texas:

Texas Taxpayer ID Number
Tax Outlet Number
(As shown of Texas Sales Tax Permit)

Authorized Signature

Printed Name:
Title:
Phone:

The authorized signature must be an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at (800) 531-5441.



Chapter 380

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

1.1 Stabilize and expand El Paso's tax base



TopGolf®

- Combination of a 2-year effort
- Mayor and Council toured site 2 years ago
- [TopGolf®](#) is a premier golf entertainment complex
- 29 venues serving 13 million guests annually
- Enjoyed by all ages and skill levels
- Each venue features climate-controlled hitting bays for year-round play, a chef-driven food and beverage menu, music and hundreds of HDTVs.
- Brings interactive experiences to the community through its Topgolf U lessons, leagues, The Topgolf Tour, KidZone parties, social and corporate events, and the World Golf Tour (WGT) app.



What Makes a TopGolf®



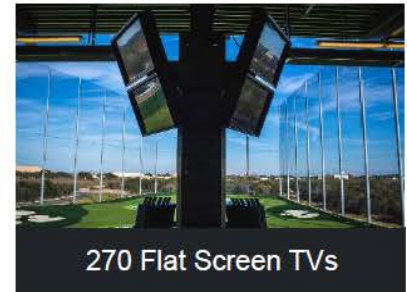
3 Level Facility



102 Hitting Bays



11 Outfield Targets



270 Flat Screen TVs



3,000 SF Event Space



2,500 SF Kitchen



3,000 SF Roof Terrace

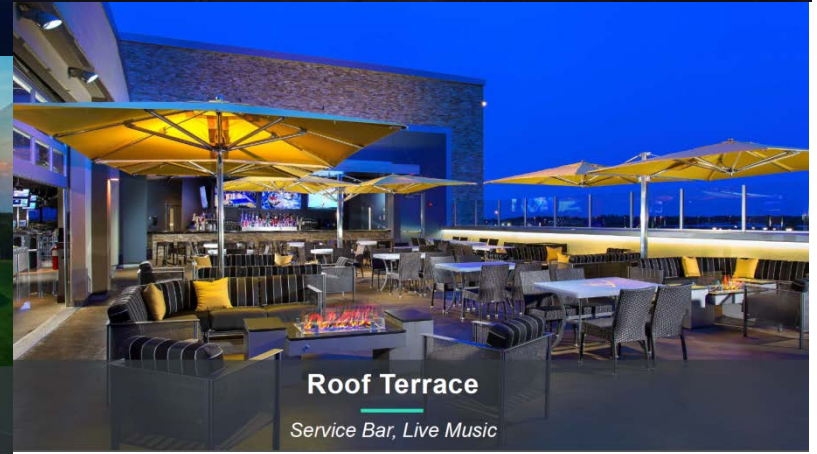


50 Table Restaurant

"Delivering Outstanding Services"



What Makes a TopGolf®



"Delivering Outstanding Services"



Project Description

- Applicant Investment -- \$15.7 Million
- Location-Montecillo
- Applicant in accordance with Category 4 of City Incentive Policy:
 - Destination Retail – attracts a regional/national client base
 - Expanding the tax base
 - Spurs development
 - Will encourage increased economic development throughout the City
- Eligible for the following Incentives:
 - 75% City Real and Personal Property Tax Rebate- 15 Years
 - \$1.7 Million
 - 75% City Sales Tax Rebate – 17 Years
 - \$3.4 Million
 - Rebate 100% Certain Building & Planning Fees
 - \$34,000



Additional Data

Description	Estimated Tax (5yr period)
City of El Paso***	\$579,426.59
EP County	\$1,437,818.02
EPISD	\$1,268,845
EPCC	\$428,489
Univ Med Ctr	\$744,664.30

*Table reflects estimated tax collected (100%) for each jurisdiction over a 5 year period

**Based on 2016 CAD values

***Includes reduction of 75% City Real and Personal Property Tax Rebate



EL PASO

OPEN FOR BUSINESS

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