

CITY CLERK DEPT.

2015 OCT -6 AM 10:26

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

DEPARTMENT: Economic and International Development Department
AGENDA DATE: CCA Consent, October 13, 2015
CONTACT PERSON/PH.: Cary Westin, Managing Director, 915-212-1614
DISTRICT(S) AFFECTED: ALL

SUBJECT:

That the City Manager be authorized to sign the First Amendment to Hotel and Convention Services Agreement between the City of El Paso and EP VIDA, LLC allowing the parties to modify the timeline obligations in the Agreement. This timeline modification is necessitated due to pending litigation which has rendered impossible Applicant's performance of its duties and obligations under the terms and conditions in the Hotel and Convention Services Agreement executed by the parties on or about May 28, 2013. [Economic and International Development, Cary Westin, Managing Director, 915-212-1614].

BACKGROUND/DISCUSSION:

EP Vida, LLC, a Texas limited liability company, will develop a full-service Four Star Rating hotel or higher and Specialty Retail Center conforming to Smart Code design. The hotel development will be a total of 140,000 sq. ft. which includes 21,500 sq. ft of retail space; 15,000 sq. ft. of conference space; and contains approximately two-hundred and twenty (220) rooms with a minimum expenditure of Sixty Four Million Dollars (\$64,000,000), and resulting in Three Hundred (300) new jobs.

The amendment allows the parties to modify timeline obligations in the agreement. This modification is necessary due to pending litigation and to address the various substantive matters in the Agreement due to the replat or otherwise. These events have rendered impossible the applicants performance of duties and obligations under the terms and conditions in the existing agreement.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?
Yes approved Hotel and Convention Services agreement on May 28, 2013.

AMOUNT AND SOURCE OF FUNDING:

General Fund

BOARD/COMMISSION ACTION:

Enter appropriate comments or N/A.
N/A

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

DEPARTMENT HEAD: _____

2015 OCT -6 AM 10:38

RESOLUTION

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

That the City Manager be authorized to sign the First Amendment to Hotel and Convention Services Agreement between the City of El Paso (the "City") and EP VIDA, LLC (the "Applicant") allowing the parties to modify the timeline obligations in the Agreement. This timeline modification is necessitated due to pending litigation which has rendered impossible Applicant's performance of its duties and obligations under the terms and conditions in the Hotel and Convention Services Agreement executed by the parties on or about May 28, 2013.

APPROVED this ____ day of _____, 2015.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Juan S. Gonzalez
Assistant City Attorney

APPROVED AS TO CONTENT:

Cary S. Westin, Managing Director
Economic & International Development

2015 OCT -6 AM 11:11

THE STATE OF TEXAS)
)
COUNTY OF EL PASO) **FIRST AMENDMENT TO
HOTEL AND CONVENTION SERVICES
AGREEMENT**

This First Amendment to Hotel and Convention Services Agreement is made by and between the **CITY OF EL PASO** ("CITY") and **EP VIDA, LLC** ("EP VIDA") and is effective this ____ day of _____, 2015.

Recitals

WHEREAS, effective May 28, 2013 (herein "Effective Date"), the CITY and EP VIDA entered into that certain Hotel and Convention Services Agreement (the "Agreement") relating to the hotel Development described therein, and in the Hotel Site Lease dated May 28, 2013 between the CITY and EP VIDA (the "Lease"), as amended;

WHEREAS, litigation is pending in the County Court at Law Number 5 of El Paso County under Cause Number 2014DCV0727 (the "Litigation") against CITY and EP VIDA, under which the plaintiffs therein are challenging the right of the CITY to have executed the Lease and seeking a declaration that the Lease is void;

WHEREAS, during the pendency of the Litigation, certain performance by the EP VIDA of its duties and obligations under the Lease and the Agreement is rendered impossible and entirely beyond the control of EP VIDA;

WHEREAS, due to the Litigation, numerous timelines for the performance of certain obligations of the CITY and EP VIDA in the Lease and the Agreement, and also in the accompanying Chapter 380 Economic Development Program Agreement between CITY and EP VIDA (the "380 Agreement"), and the Chapter 381 Economic Development Program Agreement between El Paso County and EP VIDA (the "381 Agreement"), are, or will be, unobtainable;

WHEREAS, the Development has been replatted by EP VIDA to more accurately reflect the scope of the hotel project, which replat was approved by the El Paso City Plan Commission on July 17, 2014, and which replat necessitates the amendment of numerous provisions of the Lease and the Agreement, including the description of the Development;

WHEREAS, the CITY and EP VIDA desire to amend the Agreement to address the modification of timeline obligations in the Agreement due to the Litigation and to address various substantive matters in the Agreement due to the replat or otherwise;

AMENDMENTS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration herein recited, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following amendments to the Agreement:

1. Exhibit A to the Agreement is hereby replaced in its entirety by the Exhibit A attached to and made part of this Amendment to reflect the revised description of the Development as set forth in the replat.
2. Section 1 of the Agreement is hereby replaced in its entirety by the following:

Section 1. Term. This Agreement shall be effective for thirteen (13) years from the Effective Date of this Agreement. Provided, however, that due to the delays in the project caused by the Litigation, this Agreement will be extended by the parties so that El Paso VIDA's eligibility for reimbursement for certain activities pursuant to Section 3(b)(2) shall be the forty (40) consecutive quarters as originally set forth in the Agreement.

3. Section 3.(a)(1) of the Agreement is hereby replaced in its entirety by the following:

(1) EP VIDA agrees to develop, construct, at its sole cost, the Hotel and the Specialty Retail Center. EP VIDA shall (i) commence construction to the Hotel and the Specialty Retail Center, and (ii) receive a certificate of occupancy, and be open for business to the general public, within the time and on the terms and conditions as set forth in the Lease, as amended by the First Amendment thereto, which reflect delays necessitated by the Litigation. The Hotel shall be at a minimum a Four Star Rating hotel with approximately two hundred (200) rooms. EP VIDA agrees that it shall make Qualified Expenditures of not less than Sixty Four Million Dollars (\$64,000,000.00) in the Development and/or equipment installed in the Development, which investment shall be made and the equipment installed no later than the date upon which the certificate of occupancy for the hotel is issued. EP VIDA shall submit receipts to the CITY for Qualified Expenditures towards the construction of the Development, in a minimum amount of Sixty Four Million Dollars (\$64,000,000.00) within twenty-four (24) months of the commencement of construction as set forth in the Lease. At a minimum, the Development shall contain the following features: [items A-I are unchanged]

4. Except as expressly amended and modified herein, all other terms and conditions of the Hotel and Convention Services Agreement shall remain in full force and effect and the parties hereby ratify and confirm them in all respects.
5. Any default, whether with notice or otherwise, by EP VIDA in its obligations under the terms of the Agreement, existing as of the date of this Amendment, is hereby waived.

IN WITNESS WHEREOF, this First Amendment to the Hotel and Convention Services Agreement has been approved by the parties hereto as of the dated first noted above.

(Signatures & Acknowledgments continue on following page)

CITY CLERK DEPT.
2015 OCT 21 AM 9:40

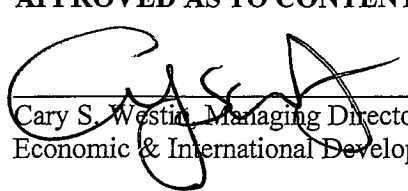
CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:


Juan S. Gonzalez
Assistant City Attorney

APPROVED AS TO CONTENT:


Cary S. Westin, Managing Director
Economic & International Development

ACKNOWLEDGMENT

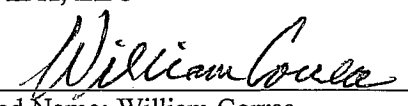
THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2015
by Tomás González, as City Manager of the City of El Paso.

My Commission Expires:

Notary Public, State of Texas

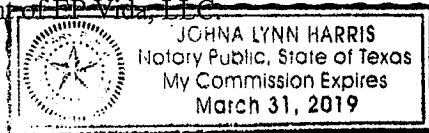
EP VIDA, LLC

By: 
Printed Name: William Correa
Title: President

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

This instrument was acknowledged before me on this 1th day of October, 2015, by William
Correa, as President of EP Vida, LLC.



My Commission Expires:
3-31-19

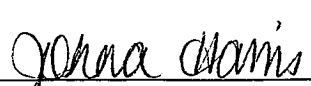

Notary Public, State of Texas

Exhibit A - Description of the Premises

Prepared for: The City of El Paso
August 13, 2014

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being Lot 1, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B at time of recording in Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

THE "TRUE POINT OF BEGINNING" being a found chiseled x on the intersection of the westerly right of way line of Airway Boulevard with the southerly right of way line of Boeing Drive;

Thence along the southerly right of way line of Airway Boulevard, South $01^{\circ}01'53''$ East a distance of 73.24 feet to a point;

Thence leaving said right of way line and along said easement, South $88^{\circ}58'07''$ West a distance of 55.00 feet to a point;

Thence, South $01^{\circ}01'53''$ East a distance of 176.42 feet to a point on the southerly line of Lots 1, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, South $88^{\circ}58'07''$ West a distance of 357.20 feet to a point on the westerly line of Lot 1, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, North $01^{\circ}01'53''$ West a distance of 271.42 feet to a point on the southerly right of way line of Boeing Drive;

Thence along said right of way line, North $88^{\circ}58'07''$ East a distance of 348.20 feet to a point of curve;

Thence along said right of way line, 68.82 feet along the arc of a curve to the right which has a radius of 105.00 feet a central angle of $37^{\circ}33'18''$ a chord which bears South $72^{\circ}15'14''$ East a distance of 67.60 feet to the **TRUE POINT OF BEGINNING** and containing 101,735 Sq. Ft. or 2.336 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.


Ron R. Conde
R.P.L.S. No. 5152
Job No. 414-14

CONDE INC
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6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905
(915) 592-0283 FAX (915) 592-0286

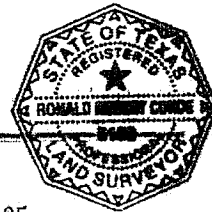


Exhibit A - Description of the Premises

Prepared for: The City of El Paso
August 13, 2014

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being Lot 2, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B at time of recording in Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

COMMENCING FOR REFERENCE at a found chiseled x on the intersection of the westerly right of way line of Airway Boulevard with the southerly right of way line of Boeing Drive; Thence along the southerly right of way line of Airway Boulevard, South 01°01'53" East a distance of 73.24 feet to a point; Thence leaving said right of way line and along said easement, South 88°58'07" West a distance of 55.00 feet to a point; Thence, South 01°01'53" East a distance of 176.42 feet to a point on the northerly line of Lot 2, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B; **THE "TRUE POINT OF BEGINNING"**

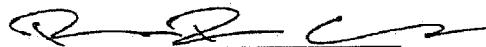
Thence, South 01°01'53" East a distance of 60.00 feet to a point on the southerly line of Lot 2, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, South 88°58'07" West a distance of 357.20 feet to a point on the westerly line of Lot 2, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, North 01°01'53" West a distance of 60.00 feet to a point on the northerly line of Lot 2, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, North 88°58'07" East a distance of 357.20 feet to the **TRUE POINT OF BEGINNING** and containing 21,432 Sq. Ft. or 0.4920 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.



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Exhibit A - Description of the Premises

Prepared for: The City of El Paso
August 13, 2014

METES AND BOUNDS DESCRIPTION

Description of a parcel of land, being Lot 3, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B at time of filing in Real property Records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

COMMENCING FOR REFERENCE at a found chiseled x on the intersection of the westerly right of way line of Airway Boulevard with the southerly right of way line of Boeing Drive; Thence South 09°02'24" East a distance of 314.51 feet to a point for the northeast corner of Lot 3, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B for **THE "TRUE POINT OF BEGINNING"**

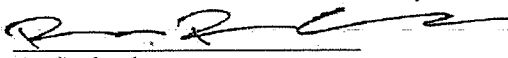
Thence, South 01°01'53" East a distance of 213.58 feet to a point for the southeast corner of Lot 3, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence, South 88°58'07" West a distance of 357.20 feet to a point for the southwest corner of Lot 3, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence, North 01°01'53" West a distance of 213.58 feet to a point for the northwest corner of Lot 3, Block 5A, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence, North 88°58'07" East a distance of 357.20 feet to the **TRUE POINT OF BEGINNING** and containing 76,291 Sq. Ft. or 1.751 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.


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Exhibit A - Description of the Premises

Prepared for: The City of El Paso
August 13, 2014

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Lot 1, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B at time of recording in Real property records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

THE "TRUE POINT OF BEGINNING" being a point on the intersection of the southerly right of way line of Boeing Drive with the westerly line of Lot 1, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said right of way line, North 88°58'07" East a distance of 170.88 feet to a point on the easterly line of Lot 1, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

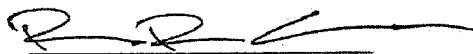
Thence along said line, 182.37 feet along the arc of a curve to the right which has a radius of 389.98 feet a central angle of 26°47'37" a chord which bears South 16°16'47" West a distance of 180.71 feet to a point;

Thence along said line, South 29°40'37" West a distance of 28.65 feet to a point of curve;

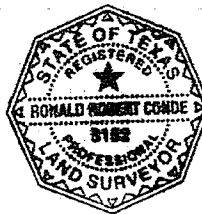
Thence along said line, 127.12 feet along the arc of a curve to the left which has a radius of 415.88 feet a central angle of 17°30'50" a chord which bears South 20°55'12" West a distance of 126.63 feet to a point on the westerly line of Lot 1, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, 319.57 feet along the arc of a curve to the left which has a radius of 2883.36 feet a central angle of 06°21'01" a chord which bears North 10°58'22" West a distance of 319.40 feet to the **TRUE POINT OF BEGINNING** and containing 28,059 Sq. Ft. or 0.6441 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.



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Exhibit A - Description of the Premises

Prepared for: The City of El Paso
August 13, 2014

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Lot 2, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B at time of recording in Real property records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

COMMENCING FOR REFERENCE at a point on the intersection of the southerly right of way line of Boeing Drive with the westerly line of Lot 1, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B; Thence along the southerly right of way line of Boeing Drive, North 88°58'07" East a distance of 170.88 feet to a point on the common line of Lots 1 and 2, Block 5B, Proposed plat of El Paso International Replat of Unit 3 Replat B for **THE "TRUE POINT OF BEGINNING"**

Thence along the southerly right of way line of Boeing Drive, North 88°58'07" East a distance of 88.79 feet to a point for the common corner of Lots 2 and 3, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence along said line, South 01°01'53" East a distance of 120.00 feet to a point;

Thence along said line, North 88°58'07" East a distance of 155.76 feet to a point on the easterly line of Lot 2, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B

Thence along said line, South 01°01'53" East a distance of 142.18 feet to a point;

Thence along said line, North 88°58'07" East a distance of 13.00 feet to a point;

Thence along said line, South 01°01'53" East a distance of 78.52 feet to a point;

Thence along said line, South 88°58'07" West a distance of 13.00 feet to a point;

Thence along said line, South 01°01'53" East a distance of 204.31 feet to a point on the southerly line of Lot 2, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B

Thence along said line, South 88°58'07" West a distance of 43.74 feet to a point;

Thence, North 02°06'53" West a distance of 96.34 feet to a point;

Thence, South 85°16'00" West a distance of 301.29 feet to a point on the westerly line of Lot 2, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

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Exhibit A - Description of the Premises

Thence along said line, 473.75 feet along the arc of a curve to the left which has a radius of 2883.36 a chord which bears North 09°26'27" West a distance of 473.22 feet to a point on the southerly right of way line of Boeing Drive to the **TRUE POINT OF BEGINNING**" and containing 129,966 Sq. Ft. or 2.984 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.



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R.P.L.S. No. 5152
Job No. 414-14



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Page 6 of 8

Exhibit A - Description of the Premises

Prepared for: The City of El Paso
August 13, 2014

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Lot 3, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B at time of recording in Real property records of El Paso County, Texas and being more particularly described by Metes and Bounds as follows:

COMMENCING FOR REFERENCE at a point on the intersection of the southerly right of way line of Boeing Drive with the westerly line of Lot 1, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B; Thence along the southerly right of way line of Boeing Drive, North 88°58'07" East a distance of 259.67 feet to a point for the northwest corner of Lot 3, Block 5B, Proposed plat of El Paso International Replat of Unit 3 Replat B for **THE "TRUE POINT OF BEGINNING"**

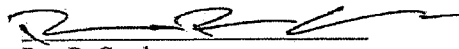
Thence along said right of way line, North 88°58'07" East a distance of 155.76 feet to a point for the northeast corner of Lot 3, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence leaving said right of way line, South 01°01'53" East a distance of 120.00 feet to a point for the southeast corner of Lot 3, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence, South 88°58'07" West a distance of 155.76 feet to a point for the southwest corner of Lot 3, Block 5B, Proposed plat of El Paso International Airport Replat of Unit 3 Replat B;

Thence, North 01°01'53" West a distance of 120.00 feet to the **TRUE POINT OF BEGINNING** and containing 18,691 Sq. Ft. or 0.4291 acres of land more or less.

Note: Bearings based on plat of El Paso International Airport Replat of Unit 3 Replat A, recorded in File No. 20130028872, Real property records of El Paso County, Texas.


Ron R. Conde
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Exhibit A - Description of the Premises

