

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

DEPARTMENT: Economic & International Development Department
AGENDA DATE: CCA Regular, November 12, 2019
CONTACT PERSON/PHONE: Jessica Herrera, Director, (915) 212-1624
DISTRICT(S) AFFECTED: District 8

SUBJECT:

That the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement ("Agreement") between the City of El Paso (the "City") and Summit 11 Investments, L.L.C., (the "Applicant") for a Transit Oriented Development project located at 300 E. Main Street, El Paso, Texas, 79901. The project includes the construction of a mixed-use development on the property and requires the Applicant to make a minimum investment of \$12,000,000.00. Over the term of the Agreement, the City will provide economic incentives not to exceed \$3,197,035.00 in the form of a Property Tax Rebate; a Construction Materials Sales Tax Rebate and a City Master Incentive. (District 8) [Economic & International Development Department, Jessica Herrera, Director, (915) 212-1624]

BACKGROUND/DISCUSSION:

THE SUMMIT 11 INVESTMENT GROUP, LLC will fully redevelop the property located at 300 E. Main St. in Downtown El Paso. The project will activate a mixed-use facility with ground-floor retail and a multi-family residential component. The Applicant will also generate 80 new residential units, new office spaces, co-working spaces, and event space. The estimated real property improvement costs are \$12,000,000. Upon satisfying all contract metrics, the Applicant will receive the following incentive:

- **Property Tax Rebate (City's Portion):** The City's portion of ad valorem incremental property taxes. 15-year grant period. Capped at \$707,035.00.
- **Construction Materials Sales Tax Rebate-** A one-time rebate of the City's Portion (1%) of Sales Taxes levied on project-related construction materials. Capped at \$90,000.00
- **City Master Incentive -** \$2,400,000.00 across 10 Years.

The total proposed incentive is not to exceed \$3,197,035.00.

PRIOR COUNCIL ACTION:

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

No

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 and Impact fund

BOARD/COMMISSION ACTION:

Enter appropriate comments or N/A.

N/A

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

DEPARTMENT HEAD: For 

RESOLUTION

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

That the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement ("Agreement") between the City of El Paso (the "City") and Summit 11 Investments, L.L.C., (the "Applicant") for a Transit Oriented Development project located at 300 E. Main Street, El Paso, Texas, 79901. The project includes the construction of a mixed-use development on the property and requires the Applicant to make a minimum investment of \$12,000,000.00. Over the term of the Agreement, the City will provide economic incentives not to exceed \$3,197,035.00 in the form of a Property Tax Rebate; a Construction Materials Sales Tax Rebate; and a City Master Incentive.

APPROVED this _____ day of _____, 20_____.


CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



Fo Jessica Herrera, Director
Economic & Int'l Development

STATE OF TEXAS)
)
COUNTY OF EL PASO) **CHAPTER 380 ECONOMIC DEVELOPMENT**
) **PROGRAM AGREEMENT**
) (Transit Oriented Development)

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 **SUMMIT 11 INVESTMENT GROUP, LLC** (hereinafter referred to as the “APPLICANT”), a Texas Limited Liability Company, 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 (hereinafter referred to as “Chapter 380”); and

WHEREAS, on May 30, 2017, the El Paso City Council adopted the Transit Oriented Development Policy, as amended on April 2, 2019, authorizing the City to enter into Chapter 380 Agreements to encourage the growth and development of Transit Oriented Development. .

WHEREAS, the CITY desires to provide, pursuant to Chapter 380, incentives to APPLICANT to construct a new development of Mixed-Use property located at **300 E. Main Street, El Paso, Texas 79901**, meeting the eligibility requirements of the Transit Oriented Development Incentive Policy such project being more specifically described on **Exhibit A** attached hereto (the “Project”) which is within the designated incentive area as more specifically depicted on the Map attached hereto as **Exhibit B** (the “Incentive Area”); 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 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, within the City of El Paso’s downtown core; and

WHEREAS, the CITY and APPLICANT desire the construction of the Project and the CITY has further determined that the Project 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 stimulates 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 APPLICANT under this Agreement; and

WHEREAS, the Project 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 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. **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- B. **Applicant.** The word “APPLICANT” means Summit 11 Investment Group, LLC, a Texas Limited Liability Company.
- C. **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. 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, the Base Year Value shall be Three Million One Hundred Thousand Dollars (\$3,100,000.00).
- D. **City.** The word “CITY” means the City of El Paso, Texas.
- E. **City Master Incentive.** The words “City Master Incentive” means an incentive to address the development concerns associated with the rehabilitation project contemplated by the Applicant. Yearly payments will be made in accordance with the following table and subject to the provisions of Section 3. D. (3) of this Agreement:

2023-2026	Up to \$300,000.00 per year
2027-2032	Up to \$200,000.00 per year

For the purposes of this Agreement, the City Master Incentive amount shall not exceed Two Million Four Hundred Thousand Dollars (\$2,400,000.00). The City Master Incentive is funded from the “Auxiliary Fee” as adopted by Ordinance No. 018772.

- F. **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.

- G. **Construction Materials Sales Tax Rebate.** The words “Construction Materials Sales Tax Rebate” means a 100% rebate of the CITY’s one percent (1%) Sales and Use Tax Receipts for materials and labor of Taxable Items used in the construction of the Development. For the purposes of this Agreement, this rebate amount shall not exceed Ninety Thousand Dollars (\$90,000.00).
- H. **Development.** The word “Development” means new construction or rehabilitation of commercial properties or multi-family development within the incentive area that utilize design guidelines described in the Comprehensive Plan and meet the eligibility criteria of the Transit Oriented Development Incentive Policy incorporated herein for all purposes, such Development of the Project being more specifically described by **Exhibit A**, which is attached hereto and incorporated herein for all purposes.
- 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. **Grant.** The word “Grant” means each annual payment to APPLICANT under the terms of this Agreement computed as the sum of the following rebates/incentives as applicable: (i) Property Tax Rebate; (ii) Construction Materials Sales Tax Rebate; and (iii) City Master Incentive. The aggregate amount of grant payments shall not exceed Three Million One Hundred Ninety-Seven Thousand Thirty-Five Dollars (\$3,197,035.00).
- M. **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.
- N. **Minimum Appraisal Value.** The words "Minimum Appraisal Value" mean the value of the real and personal property and improvement of the Development during and after the construction of the Development below which Applicant and its Affiliate(s) may not protest nor contest the appraised value of the Development with the El Paso Central Appraisal District during the term of this Agreement. Thereafter, under no circumstances shall the Minimum Appraisal Value be interpreted to be equivalent or determinative for appraisal purposes or to be utilized in any way to determining market value. This 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. Non-compliance under this Section will be considered an Event of Default and subject to the provisions under

Sections 5 and 6. For the purposes of this Agreement, the Minimum Appraisal Value is Nine Million One Hundred Thousand Dollars (\$9,100,000.00).

- O. **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. For purposes of this Agreement, the Minimum Investment amount will be Twelve Million Dollars (\$12,000,000.00).
- P.. **Project.** The word “Project” means the project more particularly described in **Exhibit A** attached hereto and incorporated herein by reference.
- Q. **Property.** The word “Property” means approximately **0.61 acres** of real property located at **300 E. Main Street**, in El Paso, Texas, more specifically described on **Exhibit A** incorporated herein by reference for all purposes of this Agreement.
- R. **Property Tax Rebate.** “Property Tax Rebate” means a rebate, according to the property tax rebate schedule found in Exhibit D, of the City’s portion of the incremental ad valorem property tax revenue generated by the Property above the Base Year Value. The base year used for the calculation of incentives will be the year of contract execution. For purposes of this Agreement, the total amount of Property Tax Rebate payments shall not exceed Seven Hundred Seven Thousand Thirty-Five Dollars (\$707,035.00).
- S. **State Comptroller.** The words “State Comptroller” mean the office of the Texas Comptroller of Public Accounts.

SECTION 2. TERM AND GRANT PERIOD.

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) Eighteen (18) years from the Effective Date, (iii) the proper termination of this Agreement in accordance with the applicable provisions contained herein or (iv) termination by mutual consent of the parties in writing. The Effective Date of this Agreement shall be the date upon which both parties have fully executed this Agreement. However, APPLICANT’s eligibility for annual Grant payments shall be limited to Fifteen (15) consecutive years for Development (the “Grant Period”) within the term of this Agreement and subject to the individual provisions regulating the individual rebates/incentives. The Grant Period shall begin with the first year being the first tax year that begins after the issuance of the Certificate of Occupancy for the Development. The CITY shall review APPLICANT’s eligibility for Grant Payments on an annual basis during the Grant Period.

SECTION 3. OBLIGATIONS OF APPLICANT.

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

A. **PROJECT.**

(1) APPLICANT agrees that the new construction Project is a private commercial or multi-family use property that includes investment in new construction located in the Incentive Area depicted on **Exhibit B** attached hereto.

(2) APPLICANT agrees to develop and construct, at its sole cost, the Project. APPLICANT must obtain the building permits for the Project within six (6) months from the Effective Date.

(3) APPLICANT agrees that it shall meet the design guidelines outlined in the City's Transit Oriented Development Policy.

(4) APPLICANT agrees that the renovation will be of a building with a minimum of thirteen (13) stories in height and minimum of 220,000 square feet.

(5) APPLICANT agrees that the Project shall not include the demolition of properties with a historic overlay that are deemed historic or contributing unless specifically approved by El Paso City Council.

(6) APPLICANT agrees that it shall make or cause to be made, at its sole cost and expense Minimum Investment of Twelve Million Dollars (\$12,000,000.00) for redevelopment/rehabilitation.

(7) Within twenty-four (24) months of the Effective Date of this Agreement, APPLICANT shall submit documentation to the CITY to verify the Minimum Investment associated with the completion of the Project to include Certificates of Occupancy.

(8) 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 and any other property within the City of El Paso. APPLICANT must demonstrate that it has incurred no delinquent taxes by providing certified city tax certificates for each parcel of property owned in the City of El Paso. APPLICANT 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 actions on its behalf to challenge any assessments by the Central Appraisal District at Minimum Appraisal Value or lower.

B. **AMOUNT OF GRANT.**

The total amount of the Grant payable by the CITY under this Agreement if any, shall not exceed the aggregate amount of Three Million One Hundred Ninety-Seven Thousand Thirty-Five Dollars (\$3,197,035.00)

C. **DISBURSEMENT OF GRANT.**

(1) During the term of this Agreement and beginning as of the commencement of the Grant Period and ending Fifteen (15) years thereafter, or at termination, whichever comes first, and subject to the conditions contained in this Agreement, APPLICANT shall be eligible to receive on a yearly basis the Grant payment.

(2) APPLICANT'S eligibility for any Grant payment is expressly contingent upon APPLICANT'S satisfaction of the requirements of Section 3 of this Agreement. Under no circumstance shall the CITY be required to disburse more than Three Million One Hundred Ninety-Seven Thousand Thirty-Five Dollars (\$3,197,035.00) 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.

(3) In order to receive the disbursement of the Grant, APPLICANT must submit a Grant Submittal Package, as specified in Section 3(E) below.

D. **GRANT SUBMITTAL PACKAGE.**

(1) Unless otherwise agreed by the CITY and APPLICANT in writing, APPLICANT shall annually submit one Grant Submittal Package shall be in the form provided in **Exhibit C**, together with the requisite documentation. Applicant shall submit to the CITY the initial Grant Submittal Package to commence the Grant Period on November 12, 2022 or within thirty (30) business days after November 12, 2022. The initial Grant Submittal Package cannot be submitted any earlier than November 12, 2022. Thereafter, the APPLICANT'S annual Grant Submittal Package must be submitted on November 12 of each year or within thirty calendar days after November 12.

(2) Concurrent with the submittal of a Grant Submittal Package APPLICANT will submit to the CITY documentation as may be reasonably necessary to verify the expenditure to date of the Minimum Investments which have not otherwise been verified as part of a prior submittal. Proof of minimum investment includes, but is not limited to: bank statements, copies of checks, or receipts evidencing payment by the Applicant. The CITY will provide to APPLICANT a written explanation for any Minimum Investments that the CITY determines cannot be verified. APPLICANT may submit additional documentation to the CITY in order to obtain verification.

(3) **City Master Incentive ("CMI") Documentation.** Payments associated with this incentive will begin on November 12, 2023. As part of their yearly Grant Submittal Package, APPLICANT will provide CITY with Profit and Loss statement covering the prior, immediate calendar year. Any profit amount over fifteen percent (15%), on an annual basis, shall reduce the CMI payment amount. This percentage will be calculated using the following basis:

Aggregated NOI (property NOI + City Grant Payments – Cost of Financing)
Total Project Investment

Certain operational expenditures are subject to yearly or cumulative caps. Meeting or exceeding these caps will result in a reduction of the maximum, yearly payment as contemplated in Section 1. E. The specified caps are as follows:

- a.) Administrative and General Fee: 8% of gross receipts per year;
- b.) Sales and Marketing: 7% of gross receipts per year;
- c.) Property Maintenance and Cleaning not to exceed 7% of gross receipts per year;
 - 1. Operating Expenses, which are out of the APPLICANT's control, and are typified by the following: Utilities, Property Insurance, Trash Removal, and contracts for the maintenance of the building mechanicals will not be capped for purposes of determining NOI.

The above-listed documentation shall be included in the Grant Submittal Package in the form provided in **Exhibit C**.

(4) If APPLICANT fails to timely submit a Grant Submittal Package for a particular year, then the CITY may give APPLICANT written notice of its failure to timely submit such Grant Submittal Package, and APPLICANT shall have thirty (30) calendar days calculated from the date on which such written notice is given in which to submit such Grant Submittal Package. Failure to timely submit a Grant Submittal Package is a waiver of the Grant due to the APPLICANT for the period that would have been covered by a timely submitted Grant Submittal Package. The CITY'S determination of the amount of the Grant payment due to APPLICANT is final.

SECTION 4. OBLIGATIONS OF CITY.

During the term of this Agreement and so long as an event of default has not occurred (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 process any Grant Payments to APPLICANT within ninety (90) days after its approval of the APPLICANT's Grant Submittal Package.
- B. The CITY shall determine the total amount of Grant payments due to the APPLICANT, if any, on an annual basis. Provided the APPLICANT satisfies all the requirements of this Agreement, APPLICANT shall be eligible for the annual Grant payment.

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 APPLICANT provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, and APPLICANT 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 APPLICANT 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 APPLICANT obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and APPLICANT 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 APPLICANT 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 APPLICANT within sixty (60) days from the date of such termination.
- B. **Insolvency.** The dissolution or termination of APPLICANT's existence as a going business or concern, APPLICANT'S insolvency, appointment of receiver for any part of APPLICANT'S portion of the Property, any assignment of all or substantially all of the assets of APPLICANT for the benefit of creditors of APPLICANT, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against APPLICANT 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.** APPLICANT's failure to comply with its construction obligations set forth in this Agreement and as detailed in Exhibit A and APPLICANT'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 APPLICANT 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 Applicant must demonstrate that it has incurred no delinquency taxes by providing certified city tax certificates for each parcel of property owned in the City of El Paso. Applicants who are exempt from payment of ad valorem property taxes on the subject property are deemed ineligible to participate in this incentive program

In the event APPLICANT allows any property taxes owed to the CITY to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) 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 shall have the right to contest the appraised value of the Development provided however, the APPLICANT agrees that it will not contest or allow any party to contest on its behalf a value at or less than Minimum Appraisal Value. APPLICANT'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 APPLICANT or CITY to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, and APPLICANT 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 APPLICANT or CITY also fails or refuses 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 APPLICANT shall occur, and after APPLICANT fails to cure same in accordance herewith, then this Agreement is terminated without any further action required of the CITY and the CITY's obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

SECTION 6. RECAPTURE.

Should the APPLICANT default under Section 5 of this Agreement and provided that the cure period for such default has expired, all Grant Payments previously provided by the CITY pursuant to this Agreement shall be recaptured and repaid by APPLICANT within sixty (60) days from the date of such termination.

SECTION 7. 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, 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 8. 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.** APPLICANT understands and agrees that the CITY expressly prohibits APPLICANT 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 APPLICANT to cure.
- D. **APPLICANT's Sale or Transfer of the Development.** Thirty days prior to any sale or other transfer of ownership rights in the Development, APPLICANT shall notify the CITY in writing 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 behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant to the same.
- F. **Completion of Development.** As consideration for the agreements of the CITY as contained herein, APPLICANT 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. **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, APPLICANT agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), APPLICANT shall repay the amount of the Grant payments received by APPLICANT from the CITY as of the date of such violation not later than one hundred twenty (120) days after the date APPLICANT is notified by CITY of a violation of this section, plus interest from the date the Grant payment(s) was paid to APPLICANT, at the

rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to APPLICANT 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. APPLICANT is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom APPLICANT contracts.

- I. **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.
- J. **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
PO Box 1890
El Paso, TX 79950-1890

Copy To: City of El Paso
Economic and International Development
PO Box 1890
El Paso, TX 79950-1890

APPLICANT: Summit 11 Investment Group, LLC
C/O Madhi Nair, Managing Member
300 E. Main St. Suite 620
El Paso, TX 79901

- K. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the CITY, whether now existing or in the future arising.
- L. **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 _____, 201__.

CITY OF EL PASO, TEXAS

Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Roberta Brito
Assistant City Attorney

for 

Jessica Herrera, Director
Economic and International Development

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2019,
by **Tomás González**, as **City Manager of the City of El Paso, Texas (CITY)**.

Notary Public, State of Texas

My Commission Expires:

APPLICANT:
Summit 11 Investment Group, LLC

Madhi Nair
Managing Member

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2019
by **Madhi Nair**, as **Managing Member** of Summit 11 Investment Group, LLC (APPLICANT).

Notary Public, State of Texas

My Commission Expires:

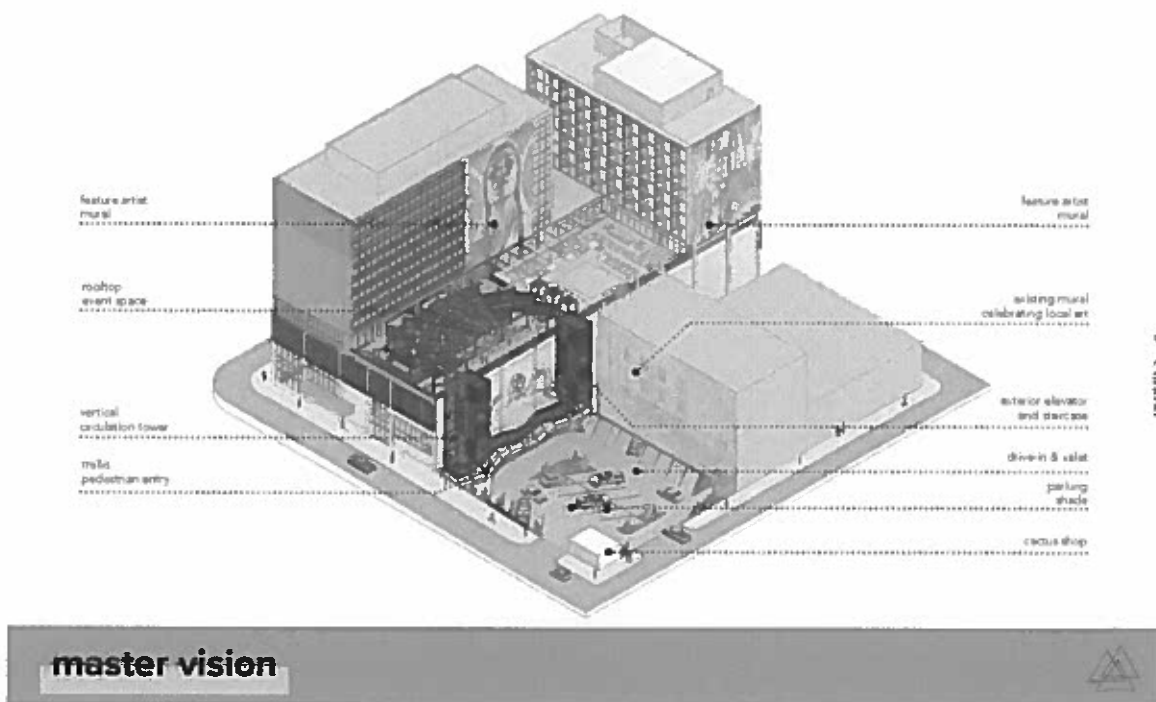
EXHIBIT A

[Legal Description / Renderings / Narrative of Project]

Legal Description: Being a portion of Block 10, Anson Mills Subdivision, El Paso County, El Paso, TX.

Physical Address: 300 E. Main Dr. El Paso, Texas 79901

Rendering



Narrative of Project:

This project entails the adaptive reuse of an existing office building. Approximately 80 multi-family dwelling units will be constructed as part of the development on floors 2-13. The ground floor will consist of retail and/or commercial uses.

EXHIBIT B
[Streetcar Corridor Incentive Area]



EXHIBIT C
[Grant Submittal Package Form]

Summit 11 Investment Group, LLC believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by _____ of **Summit 11 Investment Group, LLC**. Pursuant to the Agreement, **Summit 11 Investment Group, LLC** 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. **[INITIAL GRANT SUBMITTAL ONLY]** Site Development Plan Approvals;
2. **[INITIAL GRANT SUBMITTAL ONLY]** Proof of ownership for subject property
3. **[INITIAL GRANT SUBMITTAL ONLY]** Copies of all applicable approvals and permits
4. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation evidencing the materials and labor of Taxable Items used in the construction of the Development eligible for rebate to Applicant under the Construction Materials Sales Tax Rebate;
5. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation (i.e. Stamped paid invoices, bank statements, copies of checks) to evidence minimum expenditures to date and not previously verified,
6. **Property tax** payment receipts for the property located in the Incentive area showing proof of payment for tax year _____ :
7. **[INITIAL GRANT SUBMITTAL ONLY]** Certificate of Occupancy
8. **City Master Incentive Documentation:**
 - i. a. Profit and Loss Statement for the Previous Calendar Year including the following information.
 - ii. Total operating expenses
 - iii. Vacancy Rate

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.

Summit 11 Investment Group, LLC

Name: _____
Title: _____

EXHIBIT D

[Property Tax Rebate Schedule]

Incremental Property Tax Rebate Schedule				
Years 1-4	Years 5-7	Years 8-10	Years 11-13	Years 14-15
100%	90%	75%	50%	25%