



# COMMISSIONERS COURT COMMUNICATION

AGENDA DATE : 8-20-2012

CONSENT OR REGULAR: Addendum

CONTRACT REFERENCE NO  
(IF APPLICABLE): 2012-0391

## **SUBJECT:**

Approve and authorize the County Judge to sign a Chapter 381 Economic Development Agreement with Cruzero Development, LLC regarding a Smart Code Master Planned Community located at the intersection of Loop 375 and Montana Avenue.

## **BACKGROUND/DISCUSSION OF TOPIC:** To include statutory requirement, operational impact, or performance goal.

El Cruzero is a 259 acre land area on the Northeast corner of Joe Battle (Loop 375) at Montana Avenue. The land is largely vacant with the exception of a parcel which includes the County Sheriffs Office. El Cruzero will have both a Traditional Neighborhood Development (TND) and a Regional Commercial Development (RCD). The development will follow Smart Code practices and models additional sustainable development principals and will take place in three phases.

## **FISCAL IMPACT:**

Upon commencement of the installation of infrastructure (e.g. new roads and utilities), the County will reimburse incremental taxes on the property over the 2011 Base Year. The value of this incentive can be mirrored with a Chapter 381 agreement reimbursement schedule. The request is that the County approve a 381 agreement which is capped at 9 million over 20 years.

## **PRIOR COMMISSIONERS COURT ACTION (IF ANY):**

N/A

## **RECOMMENDATION:**

N/A

## **COUNTY ATTORNEY APPROVAL**

The attached document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

COUNTY ATTORNEY:

LEGAL REVIEW:

LEGAL REVIEW NOTES (If Applicable):

DATE:

SUBMITTED BY: County Judge Veronica Escobar, (915) 546-2098

**STATE OF TEXAS            )**  
**)**           **CHAPTER 381 ECONOMIC DEVELOPMENT**  
**COUNTY OF EL PASO    )**                   **PROGRAM AGREEMENT**

This Chapter 381 Economic Development Program Agreement (“Agreement”) is made and entered into by and between the **COUNTY OF EL PASO, TEXAS** (“County”), a political subdivision of the State of Texas, and **CRUZERO DEVELOPMENT, LLC** (“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 381 of the Texas Local Government Code (“Chapter 381”); and

**WHEREAS**, the County desires to provide, pursuant to Chapter 381, an incentive to Applicant to develop a Smart Code Master Planned Community as more fully described below; and

**WHEREAS**, the County has the authority under Chapter 381 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the County of El Paso; and

**WHEREAS**, the County 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 County; and

**WHEREAS**, the County seeks to induce Applicant to construct the Smart Code Master Planned Community, a large-scale redevelopment project which will create complete neighborhoods containing multi-family and single-family detached housing, mixed use commercial, parks, open space, and components of a mass transit system; and

**WHEREAS**, the County and Applicant desire that development of the Smart Code Master Planned Community occur in the County of El Paso; and

**WHEREAS**, the creation of the Smart Code Master Planned Community will encourage increased economic development in the County, provide significant increases in the County’s property tax revenues, and improve the County’s ability to provide for the health, safety and welfare of the citizens of El Paso; and

**WHEREAS**, the County has concluded and hereby finds that this Agreement embodies an eligible “program” and clearly promotes economic development in the County of El Paso and, as such, meets the requisites under Chapter 381 of the Texas Local Government Code and further, is in the best interests of the County 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 381 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- B. **Applicant.** The word “Applicant” means **CRUZERO DEVELOPMENT, LLC**, a Texas limited liability company.
- C. **Base Property Tax Valuation.** The words “Base Property Tax Valuation” mean the valuation of the Property by the El Paso Central Appraisal District as of January 1, 2011.
- D. **County.** The word “County” means the County of El Paso, Texas.
- E. **Development.** The word “Development” means the entirety of Applicant’s proposed Smart Code Master Planned Community development upon the Property as more fully described on Exhibit “A”, which is attached hereto and incorporated herein for all purposes.
- F. **Grant.** The word “Grant” means a payment on a yearly basis to Applicant under the terms of this Agreement computed with reference to the designated percentage of the County’s portion of the ad valorem real property tax increment revenue generated from the Property in the Development as identified in Exhibit “A-1” based upon the increased value of the Property over the value of the Base Property Tax Valuation, as determined by the El Paso Central Appraisal District and collected by the County during the term of this Agreement.
- G. **Grant Submittal Package.** The words “Grant Submittal Package” mean the documentation required to be supplied to the City, on behalf of the County, on a yearly basis as a condition of receipt of any Grant, with such documentation more fully described in Exhibit “B”, which is attached hereto and incorporated herein for all purposes.
- H. **Property.** The word “Property” means the approximately 228 acres of real property located at the intersection of Joe Battle and Montana Avenue in El Paso, Texas, being legally described as shown in Exhibit “A-1”, being attached hereto and incorporated for all purposes.
- I. **Qualified Expenditures.** The words “Qualified Expenditures” means those costs related to horizontal infrastructure improvements incurred by Applicant or contracted third parties in the acquisition, construction or furnishing of the Development, said cost items being specifically described in Exhibit “C.”
- J. **City.** The word “City” means the City of El Paso, Texas.

## **SECTION 2. TERM AND GRANT PERIOD.**

Except as otherwise provided herein, the term of this Agreement shall commence on the Effective Date (as hereinafter defined in Section 8 below) and shall terminate on the first to occur of the following: (i) the date when the Grant amount is fully paid; (ii) subject to the provisions of Section 3 below, twenty (20) years from the commencement of the Grant Period (as such term is defined below), plus such additional time thereafter as may be necessary to process the final annual Grant payment pursuant to the procedures described in Sections 3 and 4 below; or (iii) the proper termination of this Agreement in accordance with the applicable provisions contained herein. Applicant's eligibility for annual Grant payments shall be limited to twenty (20) consecutive years (the "Grant Period") within the term of this Agreement. The Grant Period shall begin with the filing of the first Grant Submittal Package, which must occur no later July 31, 2015.

## **SECTION 3. OBLIGATIONS OF APPLICANT.**

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

### **A. Development.**

- (1) Within fourteen (14) months of the Effective Date, Applicant agrees to commence or caused to be commenced the construction of the Development, at its sole cost and expense, or the expense of third parties, the Development as depicted in Applicant's preliminary regulating plan in Exhibit "D." Further, Applicant agrees to satisfy or cause to be satisfied certain construction build-out requirements for each Phase of the Development such that the valuation of the Property in the Development, as determined by El Paso Central Appraisal District, as of January 1, 2018 is at least One Hundred Eight Million, Six Hundred Eight Thousand Six Hundred Thirty Two and No/100 Dollars (\$108,608,632.00), and as of January 1, 2023 is at least One Hundred Sixty Five Million and No/100 Dollars (\$165,000,000, and as of January 1, 2028 is at least One Hundred Eight Two Million and No/100 Dollars (\$182,000,000).
- (2) Within three (3) months of the Effective Date of this Agreement, Applicant shall apply for and obtain the re-zoning of all Property within the Development under Title 21, El Paso City Code. If within ten (10) business days prior to the expiration of the performance deadline stated herein, Applicant submits to the City, on the County's behalf, a written request for extension along with a reasonable justification for the delay and the same is approved by the City Manager or designee, the performance deadline will automatically extend for an additional thirty (30) days without written amendment to this Agreement. Re-zoning of all Property in the Development to Title 21 "SmartCode" zoning is a material term of this Agreement and is a condition precedent to Applicant's receipt of any Grant payment under this Agreement.
- (3) Applicant agrees that it shall make or cause to be made the Qualified Expenditures of not less than Nine Million Dollars (\$9,000,000.00); provided, however, that if Applicant fails

to make Qualified Expenditures of at least Nine Million Dollars (\$9,000,000.00) on the Property, Applicant shall not be deemed to be in default under this Agreement, but the amount of the Grant shall be reduced proportionately based on the amount by which the Qualified Expenditures are less than Nine Million Dollars (\$9,000,000.00). Applicant shall submit to the City, on the County's behalf, such documentation as may be reasonably necessary to verify the incurred costs of Qualified Expenditures, i.e., invoices marked "paid" to third parties and not submitted or to be submitted to any other governmental and/or taxing entity as part of any expenditure verification obligation for receipt of an economic development financial incentive or other similar verifiable documentation, as reasonably required by the City, on the County's behalf.

- (4) Modifications to the preliminary regulating plan depicted in Exhibit "D" may be made by Applicant without written amendment to this Agreement, so long as such modification(s): (i) are required to meet the minimum requirements of Title 21 or are otherwise required by City staff as part of Applicant's Title 21 re-zoning application or administrative approvals; (ii) is to reduce the scale of park ponds subject to rain harvesting techniques being approved by the City as part of a land use or permitting application or approval or (iii) will result in a final regulating plan that consists only of the following development types: traditional neighborhood development, cluster land development, and regional center development, all consistent with Table 14 of Title 21, as may be amended, and does not include any Special District(s) not previously identified in the preliminary regulating plan. Within thirty (30) days following such modification(s), Applicant will provide the City, on the County's behalf, a revised Exhibit "D", to substitute and replace the original Exhibit attached herein. Changes other than the modifications identified above shall require approval by the El Paso County Commissioners Court as a written contract amendment.
- (5) Developer agrees to obtain or cause to be obtained, all necessary permits and approvals from County and/or all other governmental agencies having jurisdiction over the construction of improvements to the Property. Developer will be responsible for paying, or causing to be paid, to County and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Development for so long as Applicant is the owner of the Property.
- (6) Applicant shall adopt architectural design standards ("design standards") consistent with Title 21, El Paso City Code, and submit such design standards for review to the City's designated review committee. For purposes of this Agreement only, Applicant shall also obtain written approval of the adopted design standards from the City Manager or her designee, on behalf of the County, prior to or contemporaneous with the issuance of the building permits for construction of the Development. Further any public school site in the Development must built consistent with Traditional Neighborhood Development (TND) planning principles for transect zones T3, T4, T4O, and T5 in Title 21, El Paso City Code. The City's approval, on behalf of the County, of the design standards and the public school site(s) requirements as specified herein are material terms of this Agreement and are conditions which must be satisfied for Applicant's eligibility for receipt of Grant payment(s) under this Agreement.

- B. **Amount of Grant.** The Grant amount payable by the County under this Agreement, if any, shall not exceed the aggregate of all payments made by the County that results in a maximum aggregate payment of Nine Million Dollars (\$9,000,000.00), subject to reduction as specified in Section 3(A) above.
- C. **Disbursement of Grant.**
- (1) During the term of this Agreement beginning as of the commencement of the Grant Period, which must occur no later than July 31, 2015 and ending twenty years thereafter, or at termination, whichever comes first, and subject to the conditions contained herein, Applicant will be eligible to receive on a yearly basis a Grant payment, determined as follows: for tax years 2014 through and including 2018, an amount equivalent to one hundred percent (100%) of the County's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2019 through and including 2028, an amount equivalent to fifty percent (50%) of the County's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; and for tax years 2029 through and including 2033, an amount equivalent to twenty five percent (25%) of the County's portion of ad valorem real property tax increment revenue generated from the Property in the Development based on the increased value of the Property over the Base Property Tax Valuation; and so long as the payment of the Grant does not result in Applicant receiving aggregate grant payments in excess of Nine Million Dollars (\$9,000,000.00). For any Grant payment the ad valorem real property tax increment revenue must be attributable solely to the Property's increase in property tax value as determined by the El Paso Central Appraisal District and collected by the County in the fiscal year.
  - (2) Eligibility for any Grant payment is expressly contingent upon Applicant's satisfaction of the requirements of this Section 3 of the Agreement.
  - (3) Grant payments will continue until the earlier of the expiration of the Grant period or termination or expiration of this Agreement or until the aggregate of all payments made by the County results in an amount not to exceed NINE MILLION DOLLARS (\$9,000,000.00), or an amount reduced by the provisions of Section 3(A). Under no circumstances shall the County be required to disburse under this Agreement more than an aggregate of all payments made by the County that would exceed NINE MILLION DOLLARS (\$9,000,000.00), subject to reduction as specified in Section 3(A), above.
  - (4) A Grant payment for any given year may not result in the cumulative Grant payments to date exceeding the cumulative amount of Qualified Expenditures verified as to the date of the active Grant Submittal Package. Such Grant payment may be reduced to an amount that results in a cumulative Grant payment amount not to exceed the cumulative qualified expenditures verified as of the date of the Grant Submittal. A payment balance equal to

the amount of any such reduction will be carried forward and paid only when an increase in the cumulative amount of Qualified Expenditures will allow for payment to be made.

- (5) In order to receive the disbursement of the Grant, Applicant must submit a Grant Submittal Package, as specified in Section 3(D) below.

D. **Grant Submittal Package.**

- (1) Unless otherwise agreed by the County and Applicant in writing, each Grant Submittal Package shall be in the form provided in Exhibit "B" together with the requisite documentation. No later than July 31, 2015, Applicant shall submit to the City, on the County's behalf, an initial Grant Submittal Package to commence the Grant Period. Thereafter, the Applicant's annual Grant Submittal Package must be submitted no later than July 31 of each year.
- (2) Concurrent with the submittal of a Grant Submittal Package, Applicant will submit to the City, on the County's behalf, documentation as may be reasonably necessary to verify the expenditure to date of the Qualified Expenditures identified in Exhibit "C", which have not otherwise been verified as part of a prior submittal.
- (3) If Applicant fails to timely submit a Grant Submittal Package for a particular year, the City, on the County's behalf, may 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. The City's determination, on the County's behalf, of the amount of the Grant payment due to Applicant is final so long as such determination is made in accordance with the terms and conditions of this Agreement; provided, however, that the Applicant may appeal to the El Paso County Commissioners Court within thirty (30) days of payment. The Commissioners Court shall hear the appeal within thirty (30) days of request for appeal and the Commissioners Court'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.

E. **Payment of Taxes.**

- (1) Applicant shall pay or cause to be paid by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the real and business personal property it owns in the Development and any other property owned within the County of El Paso. Applicant must demonstrate that it has incurred no delinquent taxes by providing certified County tax certificates for each parcel of property owned in the County of El Paso, upon the City's request, on behalf of the County, in determining Applicant's eligibility for Grant payment receipt.
- (2) Applicant shall have the right to contest the appraised value of the Property and 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 El Paso Central Appraisal District at Base Property Tax Valuation or lower.

#### **SECTION 4. OBLIGATIONS OF COUNTY.**

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), County shall comply with the following terms and conditions:

- A. The County has contracted with the City to administer this agreement and will, by and through the City, process any Grant Payments to Applicant within ninety (90) days after receipt of the Applicant's Grant Submittal Package.
- B. During the term of this Agreement beginning as of the commencement of the Grant Period, which must occur no later than July 31, 2015 and ending twenty years thereafter, or at termination, whichever comes first, and subject to the conditions contained herein, an amount from the County's general fund will be tendered to Applicant as a Grant payment on a yearly basis, to be determined as follows: for tax years 2014 through and including 2018, an amount equivalent to one hundred percent (100%) of the County's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2019 through and including 2028, an amount equivalent to fifty percent (50%) of the County's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; and for tax years 2029 through and including 2033, an amount equivalent to twenty five percent (25%) of the County's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; and so long as the payment of the Grant does not result in Applicant receiving aggregate grant payments in excess of Nine Million Dollars (\$9,000,000.00). For any Grant payment, the ad valorem real property tax increment revenue must be attributable solely to the Property's increase in property tax value as determined by the El Paso Central Appraisal District and collected by the County in the fiscal year.
  - (1) Such Grant payments will continue until the earlier of the expiration of the term of the Agreement or until the aggregate of all payments made results in no more than NINE MILLION DOLLARS (\$9,000,000.00).
  - (2) It is expressly understood by the Applicant and the County that Grant payments made pursuant to this Agreement are conditioned upon: (i) Applicant's construction of the Development or portion thereof in accordance with the terms and conditions set forth in this Agreement; (ii) the County's receipt of ad valorem property tax increment revenue which is attributable solely to the Property's increase in property tax value over the Base Property Tax Valuation in sufficient amount of such Grant payment and from annual



appropriations of such funds of the County as may be legally set aside by the County for the implementation of economic development or financing programs authorized by Chapter 381 of the Texas Local Government Code, Section 52-a, Article III of the Texas Constitution, or other statutory authority of the County under applicable Texas law. In no event shall any Grant payment exceed the total value of the County's designated percentage amounts of its portion of the ad valorem property tax increment revenues generated by the Property in the Development based upon the increased value over the Base Property Tax Valuation as are actually received in hand by the County.

- (3) Under no circumstances shall the County be required to disburse under this Agreement more than an aggregate of all Grant payments made by the County that would exceed NINE MILLION DOLLARS (\$9,000,000.00), subject to reduction as specified in Section 3(A) above, nor shall Applicant be entitled to receive the Grant unless it satisfies all the requirements of Section 3 of this Agreement.

## **SECTION 5. EVENTS OF DEFAULT.**

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

- A. **Failure to Obtain Title 21 "SmartCode" Zoning.** Failure to obtain re-zoning of all Property in the Development under Title 21 "SmartCode", El Paso City Code within the proscribed deadline and Applicant's failure to cure such failure within thirty (30) days after written notice from the City, on behalf of the County, describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if Applicant fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure to the City's satisfaction, on behalf of the County, such event shall be deemed an event of default.
- B. **Failure to Construct and Maintain Development.** Applicant's failure or refusal to construct the Development and maintain the Development thereafter through the entire Grant Period of this Agreement, and Applicant's failure or refusal to cure within thirty (30) days after written notice from the City, on behalf of the County, describing such failure, shall be deemed an event of default. However, if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but the Applicant has not yet commenced such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure, such actions or omissions shall also be deemed an event of default.
- C. **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, on behalf of the County, 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, on behalf of the County, 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 County pursuant to this Agreement shall be recaptured and repaid by Applicant within sixty (60) days from the date of such termination.

- D. **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.
- E. **Property Taxes.** Applicant has the right to contest the appraised value of the Property and Development as provided by law, subject to the restrictions contained in this Agreement. In the event Applicant allows any property taxes owed to the County 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, on behalf of the County, and/or El Paso Central Appraisal District, such actions or omissions shall be deemed an event of default.
- F. **Other Defaults.** Failure of Applicant or County 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 County 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 County 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.
- G. **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 County and the County'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 Applicant default under Section 5(C) of this Agreement and provided that the cure period for such default has expired, the County reserves the right to recapture any and all previously awarded Grant payments.

## **SECTION 7. TERMINATION OF AGREEMENT BY COUNTY WITHOUT DEFAULT.**

The County 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 381 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 County expressly prohibits Applicant from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds or its performance obligations under this Agreement without the County's prior written consent, which will not be unreasonable withheld. Any such sale, transfer, assignment or conveyance without the County'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.** Within thirty (30) days following any sale or other transfer of ownership rights in the Development or of individual parcels within the Development, Applicant shall notify the City, on behalf of the County, in writing of such sale or transfer. This provision is a material term of this Agreement and the failure to notify the City, on behalf of the County, 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. County warrants and represents that

the individual executing this Agreement on behalf of County has full authority to execute this Agreement and bind County 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 County 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. **Confidentiality Obligations.** Applicant acknowledges that the County is subject to the Public Information Act, Chapter 552, Texas Government Code (the "Act"). The County will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Act, it will notify Applicant if a request relating to such proprietary information is received. Applicant further acknowledges that the Act excepts disclosure of trade secret and confidential commercial information and that Applicant will need to assert its proprietary interest 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. **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date upon which both parties have fully executed this Agreement.
- J. **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 County as of the date of such violation not later than one hundred twenty (120) days after the date Applicant is notified by City, on behalf of the County, 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 County. County 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.
- K. **Entire Agreement.** This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto relating to the subject matter of this Agreement. All prior negotiations, discussions, correspondence, and preliminary understandings between the parties are superseded by this Agreement. There exists no other written or oral understanding, agreements, or assurances with respect to such matters except as are set forth herein.

- L. **Execution of Agreement.** The El Paso County Commissioners Court has authorized the County Judge to execute this Agreement on behalf of the County.
- M. **Exhibits.** The following Exhibits are attached and incorporated by reference for all purposes.
- Exhibit "A": Development Description
  - Exhibit "A-1": Property Description
  - Exhibit "B": Grant Submittal Form
  - Exhibit "C": Qualified Expenditures
  - Exhibit "D": Preliminary Regulating Plan
- N. **Filing.** The Applicant may file this Agreement in the deed records of El Paso County, Texas upon payment of all recordation costs.
- O. **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.
- P. **Headings and Construction.** The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All references to the singular shall include the plural , and to the plural the singular.
- Q. **Inspections, Access to Records.** Applicant, at its principal place of business in El Paso, shall allow the County or its agents or the City or its agents, on behalf of the County, reasonable access and inspect operating records, accounting, books and any other records related to the economic development considerations and incentives described herein, which are in Applicant's, possession, custody or control, for purposes of verifying the Qualified Expenditures generated by the Development and for audit, if so requested by the County or the City, on behalf of the County. The confidentiality of such records will be maintained in accordance with and subject to all applicable laws including the Public Information Act, Chapter 552, Texas Government Code. Further, Applicant shall allow the County or the City, on behalf of the County, reasonable access to the subject property owned or controlled by Applicant for inspections during construction of the Development. All inspections will be made only after giving at least twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and or operations of the Applicant or the Development. For physical inspections, any inspection will be made with one (1) or more representatives of Applicant, and in accordance with its safety standards, if any.

- R. **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.
- S. **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The County, its past, present, and future officers, elected officials, employees and agents of the County, do not assume any responsibilities or liabilities to any third party in connection with the Developer or the design, construction or operation of any portion of the Development.
- T. **Non-Waiver.** No course of dealing on the part of the County or Applicant nor any failure or delay by the County or Applicant in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power, or privilege owing under this Agreement.
- U. **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.

COUNTY: County of El Paso  
 County Judge  
 500 E. San Antonio  
 El Paso, Texas 79901

Copy To: El Paso County Auditor  
 500 E. San Antonio  
 El Paso, Texas 79901

Copy To: City of El Paso  
 Director  
 Planning and Economic Development Department  
 2 Civic Center Plaza  
 El Paso, Texas 79901

APPLICANT: Cruzero Development, LLC  
 c/o Wendy Viramontes  
 International Garment Processors  
 12651 Montana Avenue  
 El Paso, Texas 79938

Copy To: James E. Baumann  
Guevara, Baumann, Coldwell, Reedman & Luther, LLP  
4171 North Mesa Street, Suite B-201  
El Paso, Texas 79902

- V. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the County and the City of El Paso, 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.
- W. **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 20<sup>th</sup> day of August, 2012.

**ATTEST:**

**COUNTY OF EL PASO, TEXAS**

\_\_\_\_\_  
County Clerk Delia Briones

\_\_\_\_\_  
County Judge Veronica Escobar

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant County Attorney

**ACKNOWLEDGMENT**

**STATE OF TEXAS           §**  
**COUNTY OF EL PASO    §**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **Veronica Escobar**, as **County Judge** of the **County of El Paso, Texas**.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:  
\_\_\_\_\_

**APPLICANT:**  
**Cruzero Development, LLC**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

**STATE OF TEXAS           §**  
**COUNTY OF EL PASO§**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of **Cruzero Development, LLC**.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:  
\_\_\_\_\_



## **EXHIBIT “A”**

The Development is comprised of approximately 228 acres. The Development is a proposed Smart Code zoned master planned mixed-use community to be located within the City Limits of El Paso, Texas. The community will contain multi-family and single-family detached housing, mixed commercial, retail, parks, open space and components of a mass transit system. The Development is divided into development parcels and defined by metes and bounds as shown in **Exhibit A-1**.

**Exhibit "A-1"**

**Boundary Survey (Attached)**

**Exhibit D - Preliminary Regulating Plan – (Attached)**

**Exhibit C**  
**Qualified Expenditures**

Qualified expenditures are those horizontal infrastructure improvements within the Development that are located in the public right of way or are dedicated to the City of El Paso for public use including: water, water facilities, sanitary sewer, sanitary sewer facilities, storm drainage, roadway improvements, bridge facilities, pond facilities, ponds, parks, park facilities, sidewalks, landscaping, and streetscape. Qualified Expenditures may also include costs to design, construct and/or install the aforementioned horizontal infrastructure; engineering and surveying; and all hard costs and the soft costs related to design, construction, installation of such horizontal infrastructure improvement projects, as determined by the City, on the County's behalf. The proposed horizontal infrastructure improvements and their anticipated associated cost for the Development are shown summarized below:

**Preliminary Opinion of Probable Construction Costs**

Earthwork	\$2,363,470
Street Improvements	15,675,500
Storm Drainage Improvements	2,728,020
Water Distribution	2,633,976
Wastewater Collection	3,476,056
Traffic and Pedestrian Control	75,000
Stormwater Pollution Prevention	112,125
Mobilization & Bonds	1,353,207
Contingency	<u>2,841,735</u>
Total	\$31,259,090

**EXHIBIT B**

**[Grant Submittal Package Form]**

**Applicant** believes that it has substantially met its obligations under the Chapter 381 Agreement dated the 20<sup>th</sup> day of August, 2012 and signed by \_\_\_\_\_. Pursuant to the Agreement, **Applicant** 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) of payment for tax year \_\_\_\_\_ not previously submitted.
2. Qualified Expenditures to date.
3. Copy of ordinance evidencing Smart Code Zoning for property defined by Exhibit "A-1". (Only required upon first submission of Grant Submittal Package).
4. List of current PID's within the geographic boundaries of the area defined by metes and bounds on Exhibit "A-1 "

It is understood by **Applicant** that the City, on behalf of the County 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.

**Cruzero Development, LLC**

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

**STATE OF** \_\_\_\_\_ §  
**COUNTY OF** \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of **Cruzero Development, LLC. (APPLICANT).**

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

**Exhibit "A-1"**

**Metes and Bounds**

**(To be supplied prior to Execution of the Contract)**