

REDCATS SALES TAX REBATE PROPOSAL

Project Overview

Prior to approaching the City Council for approval, Redcats USA coordinated with the Texas Comptroller of Public Accounts to obtain a formal opinion with respect to sourcing all Texas sales through the El Paso customer contact center. The Comptroller rendered a favorable opinion which means that with internal modification to Redcats existing business operations, all sales to Texas residents (regardless of location) taken by the El Paso customer contact center would be subject to sales tax payable to the County of El Paso.

In exchange for the company's willingness to restructure and the resulting professional fees required to modify business operations, Redcats is proposing to participate in a 50/50 share of the resultant sales tax increment for the first 5 years not to exceed \$625K. The benefits to the County for entering into the Sales Tax Recapture Agreement are:

1. Opportunity to significantly increase sales tax revenue on an annual basis
2. Redcats restructuring of business operations further embeds the company within the community optimizing opportunities for expansion/retention
3. Creates good will with a major employer
4. Solidifies retention of 430 existing full time positions and retention of 244 part-time positions
5. Provides opportunity for an economic development win with a creative/innovative approach that does not take a single existing dollar from the County of El Paso. The incentive will be paid solely on the sales tax increment.

Current Situation

Without the modification to the existing business operations, only Texas sales originating from El Paso county will pay sales tax to the County. Based on historical sales figures, the average sales per month from El Paso county are approximately \$92K per month resulting in tax collection of about \$460 per month or \$5,524 per year.

What they are Asking

Redcats is asking to enter into a Chapter 381 Agreement that will allow for a 50/50 share of the incremental sales taxes generated by the El Paso center should they modify business operations. During the period of July 2007 to April 2011, Redcats USA had \$200,481,478 in Texas Sales. Of these sales, only \$4.23M were local which generated \$21,178 in county taxes. Had all Texas sales been sourced through the El Paso location for this same time period the resulting sales tax revenue for the County of El Paso would have been \$1,002,407 a difference of \$981,229.

By approving this contract, the county stand to gain considerable sales tax revenue that is currently going to other Texas counties. Based on these historical sales tax figures, it is estimated the county will capture an average of \$4.455M in sales per month. Under the structure of the proposed contract, it is estimated that the county will keep \$136K per year in sales tax and rebate approximately \$125K per year. The total amount that the county is liable for is capped at \$625 for five years regardless of sales volumes.

If the county agrees to these terms, it will be receiving more than \$130k per year in sales tax collections than it presently receives.

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

This Chapter 381 Economic Development Program Agreement ("Agreement") is made and entered into by and between the **COUNTY OF EL PASO, TEXAS**, a political subdivision of the State of Texas, ("**COUNTY**"), and **RUSA TEXAS, LLC** (the "**APPLICANT**"), a Delaware limited liability company, doing business in the State of Texas, 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 (hereinafter referred to as "Chapter 381"); and

WHEREAS, the **COUNTY** desires to provide, pursuant to Chapter 381, an incentive to **APPLICANT** to retain jobs at the **DEVELOPMENT** 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 of El Paso; and

WHEREAS, the **COUNTY** and **APPLICANT** desire the retention of existing jobs at the **DEVELOPMENT** and;

WHEREAS, the anticipated job retention in the manner more fully described in this Agreement will encourage increased economic development in the **COUNTY**, provide significant increases in the **COUNTY'S** sales tax revenues, and improve the **COUNTY'S** ability to provide for the health, safety and welfare of the citizens of El Paso County; 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. TERM.

Except as otherwise provided herein, the term of this Agreement shall commence on the Effective Date (as hereinafter defined) and shall terminate on the first to occur of: (i) the date when the **GRANT** amount is fully paid; (ii) subject to the provisions of Section 3(d) below, five (5) years from the commencement of the Grant Period (as hereinafter defined), 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; (iii) seven (7) years from the Effective Date; or (iv) the proper termination of this Agreement in accordance with the applicable provisions contained herein. **APPLICANT'S** eligibility for **GRANT** payments, however, shall be limited to five (5) consecutive years (the "Grant Period") within the term of this Agreement.

SECTION 2. 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 and incorporated herein by reference.
- (b) **APPLICANT.** The word "**APPLICANT**" means RUSA Texas, LLC, a Delaware limited liability company, operating and doing business in the State of Texas.
- (c) **COUNTY.** The word "**COUNTY**" means the County of El Paso, Texas.
- (d) **Development.** The word "**DEVELOPMENT**" means the customer contact and fulfillment center located at 500 S. Mesa Hills Drive, El Paso, Texas, more fully described in **Exhibit "A"** attached hereto and fully incorporated herein by reference.
- (e) **Full-Time Employment.** The words "Full-Time Employment" mean a job requiring a minimum of two thousand and eighty (2,080) hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave, with full company benefits, including company paid health insurance (employee must not be required to pay more than fifty percent (50%) of the premium) with such jobs being located at the **DEVELOPMENT**, within the County of El Paso, Texas.
- (f) **GRANT.** The word "**GRANT**" means payments to **APPLICANT** under the terms of this Agreement computed with reference to sales and use tax revenue generated and paid by the **DEVELOPMENT**, remitted from the Texas Comptroller of Public Accounts ("State Comptroller") to the **COUNTY** and payable from the **COUNTY'S** general revenue fund.

- (g) **Grant Submittal Package.** The words "Grant Submittal Package" mean the documentation required to be supplied to **COUNTY's contract administrator, the City of El Paso Economic Development Department**, on a yearly basis as a condition of receipt of any **GRANT** payment, accompanied by the submittal form, which is attached as **Exhibit "B"** to this Agreement.
- (h) **Part-Time Employment.** The words "Part-Time Employment" mean a job requiring less than 2,080 hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave regardless of whether or not it includes company paid insurance, with such jobs being located at the **DEVELOPMENT**, within the County of El Paso, Texas.

SECTION 3. OBLIGATIONS OF APPLICANT.

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

- (a) **DEVELOPMENT.** **APPLICANT** agrees to maintain and operate the **DEVELOPMENT**, at its sole cost and expense, at 500 S. Mesa Hills, El Paso, Texas and specifically, to perform the following obligations with respect to operation of the **DEVELOPMENT**:
 - (i) **APPLICANT** will operate a customer contact and fulfillment center as the retailer's single place of business in Texas, as defined under Texas Tax Code §§151.008 and 321.002;
 - (ii) **APPLICANT'S** employees at the **DEVELOPMENT** will receive all sales orders from **APPLICANT'S** Texas resident customers for purchase of taxable tangible personal property and those orders must be fulfilled by direct shipping or delivery from either an out-of-state third party supplier (traditional "drop ship" arrangement) or an out-of-state, related company provided the related company holds a separate legal entity status from **APPLICANT**;
 - (iii) **APPLICANT** will direct or cause to be directed to the **DEVELOPMENT** all incoming telephone, internet, and catalog sales orders that are originating from Texas residents;
 - (iv) **APPLICANT** will continue to operate its internet sales website through Redcats USA, LP, an out-of-state third party servicer, or any out-of-state, related company provided the related company holds a separate legal entity status from **APPLICANT**; and

(v) **APPLICANT** will take all reasonable commercial efforts necessary to accomplish the parties' intent that all Texas local sales taxes generated by operation of the **DEVELOPMENT** through its sales to Texas resident customers will be collected by the State Comptroller with the **COUNTY**'s portion being remitted to the **COUNTY** and the **DEVELOPMENT** being treated as the retailer's single place of business in Texas wherein all Texas resident customer orders are received by **APPLICANT**.

- (b) **JOB RETENTION.** **APPLICANT** agrees that during the term of this Agreement, **APPLICANT** will retain a minimum of four hundred thirty (430) filled Full-Time Employment positions at the **DEVELOPMENT** and two hundred forty-four (244) filled Part-Time Positions at the **DEVELOPMENT**. The foregoing are the minimum job retention requirements under this Agreement and in no way limit the **APPLICANT** from retaining additional employment positions at the **DEVELOPMENT**.
- (c) **AMOUNT OF GRANT.** The total amount of the **GRANT** payable by the **COUNTY** under this Agreement shall not exceed Six Hundred Twenty-five Thousand and NO/100 Dollars (\$625,000.00).
- (d) **DISBURSEMENT OF GRANT.**

During the term of this Agreement and beginning as of the commencement of the Grant Period, which must occur no later than the first full calendar quarter following twelve (12) months from the Effective Date, and subject to the conditions contained herein, the **APPLICANT** shall be entitled to receive a yearly GRANT disbursement equal to Fifty Percent (50%) of the **COUNTY'S** one-half percent (.5%) of sales and use tax revenue generated by and attributed solely to the **APPLICANT'S** sales at the **DEVELOPMENT** in the immediately prior year and which has been remitted from the State Comptroller to **COUNTY** less an amount equal to \$5062.33, which will be retained by the **COUNTY**. In any given year, the maximum amount of the **GRANT** payment disbursed to the **APPLICANT** for that year shall be limited to \$125,000.00.

APPLICANT'S eligibility for any payment is expressly contingent upon **APPLICANT'S** satisfaction of the requirements of Section 3 of this Agreement.

GRANT payments will continue until the earlier of the expiration or termination of this Agreement or the date that the total aggregate of all **GRANT** payments made shall reach \$625,000.00. Under no circumstance shall the **COUNTY** be required to disburse more than \$625,000.00 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.

- (e) **GRANT SUBMITTAL PACKAGE.** Unless otherwise agreed by the **COUNTY** and **APPLICANT**, each Grant Submittal Package shall be in the form attached hereto as **Exhibit "B"**, together with the requisite documentation. No later than fourteen (14) months following the Effective Date, **APPLICANT** shall submit to the **COUNTY's contract administrator, the City of El Paso Economic Development Department**, an initial Grant Submittal Package, to commence the Grant Period. Thereafter, the **APPLICANT'S** annual Grant Submittal Package must be submitted no later than the 1st of April of each year. If **APPLICANT** shall fail to timely submit a Grant Submittal Package for a particular year, then the **COUNTY** may give **APPLICANT** written notice of **APPLICANT'S** failure to timely submit such Grant Submittal Package, and **APPLICANT** shall have sixty (60) calendar days calculated from the date on which such written notice is given in which to submit such Grant Submittal Package. The **COUNTY'S** determination of the amount of the **GRANT** payment due to **APPLICANT** is final; provided, however **APPLICANT** may appeal to the El Paso County Commissioners Court within thirty (30) days of payment, the El Paso County Commissioners Court shall hear the appeal within thirty (30) days and the El Paso County Commissioners Court's determination of the amount of the **GRANT** payment shall be final; provided, however, nothing herein shall limit (or be construed to limit) **APPLICANT'S** rights and remedies as described in Sections 5 and 6 of this Agreement.

APPLICANT will be responsible for submitting a Waiver of Confidentiality form, attached hereto as **Exhibit "C"**, as applicable. **COUNTY** will use the information provided by the State Comptroller and submitted by **APPLICANT** to the **COUNTY** in determining the amount of **GRANT** disbursement that **APPLICANT** is eligible to receive. The **COUNTY** will verify all such information, but the **COUNTY** shall not have an obligation to otherwise collect sales tax information and will have no obligation to make payments under this Agreement without such sales and use tax payment confirmation from the State Comptroller.

- (f) **PAYMENT OF TAXES.** **APPLICANT** shall pay or caused to be paid by January 31 of each year all of the real and business personal ad valorem property taxes assessed for the previous tax year on the **DEVELOPMENT** referenced in **Exhibit "A"**. Provided, however **APPLICANT** or any affiliated company shall have the right to contest the appraised value of the property in the **DEVELOPMENT** as provided by law.

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 in Section 5 of this Agreement (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** agrees to process any **GRANT** payments to **APPLICANT** within sixty (60) days after receipt of the **APPLICANT'S** Grant Submittal Package.
- (b) During the term of this Agreement and beginning as of the commencement of the Grant Period, which must occur no later than the first full calendar quarter following twelve (12) months from the Effective Date, an amount equal to Fifty Percent (50%) of the **COUNTY'S** one-half percent (.5%) sales and use tax revenue generated by and attributed solely to the **APPLICANT'S** sales at the **DEVELOPMENT** in the immediately prior year and which has been remitted from the State Comptroller to **COUNTY** less an amount equal to \$5062.33, shall be tendered from the **COUNTY'S** general fund as a **GRANT** payment by the **COUNTY** to **APPLICANT** on a annual basis (upon **APPLICANT'S** satisfaction of the requirements of Section 3 of this Agreement). In any given year, the maximum amount of the **GRANT** payment disbursed to the **APPLICANT** for that year shall be limited to \$125,000.00.

Such **GRANT** Payments will continue until the earlier of the expiration or termination of this Agreement or the total aggregate of all payments made reaches Six Hundred Twenty-five Thousand and No/100 Dollars (\$625,000.00). Payments for any given year will not exceed One Hundred Twenty-five Thousand Dollars (\$125,000.00).

SECTION 5. EVENTS OF DEFAULT.

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

- (a) **Failure to Operate the Development.** Failure to continuously operate the **DEVELOPMENT** for the term of this Agreement, and **APPLICANT** fails to cure such failure within thirty (30) days after written notice from 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.
- (b) **Loss of Single Texas Location Status.** Failure to maintain the **DEVELOPMENT** as **APPLICANT'S** single place of business in Texas such that all its Texas local sales taxes collection is attributed to El Paso, Texas, and **APPLICANT** fails to cure such failure within thirty (30) days after written notice from 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.

- (c) **False Statements.** Any written warranty, representation or statement made or furnished to the **COUNTY** by **APPLICANT** under this Agreement or any document(s) related hereto furnished to the **COUNTY** by **APPLICANT** 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 **COUNTY** describing the violation, or if such violation 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 violation, or if **APPLICANT** obtains actual knowledge that any such 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 **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.
- (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** unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.
- (e) **Property Taxes.** If **APPLICANT** allows its 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 **COUNTY** and/or El Paso Central Appraisal District.
- (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, or failure of **APPLICANT** or **COUNTY** to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between the **COUNTY** and **APPLICANT**, and **APPLICANT** or **COUNTY** fails to cure such failure within thirty (30) days after written notice from the **COUNTY** or **APPLICANT**, as the case may be, 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** or **COUNTY** fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure.

- (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 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 the **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 grants.

SECTION 7. TERMINATION OF AGREEMENT BY COUNTY WITHOUT DEFAULT.

COUNTY may terminate this Agreement without an event of default by **APPLICANT** and effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including 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 the party or parties sought to be charged or bound by the alteration or amendment.
- (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) **Applicant's Sale or Transfer of the Development.** Prior to any sale or other transfer of ownership rights in the **DEVELOPMENT**, **APPLICANT** shall notify the **COUNTY** in writing of such sale or transfer within thirty (30) business days of the effectiveness of such sale or transfer. This provision is a material term of this Agreement and the failure to notify the **COUNTY** of such sale or transfer within the applicable period shall constitute an event of default.

- (d) **Assignment.** *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 this Agreement without the *COUNTY'S* *prior written* consent. Any such attempt to sell, transfer, assign or convey without the *COUNTY'S* prior written consent shall result in the immediate termination of this Agreement, with no ability for *APPLICANT* to cure.
- (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. *APPLICANT* warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind *APPLICANT* to the same.
- (f) **Confidentiality Obligations.** The confidentiality of records related to the *COUNTY'S* economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. To the extent permitted by state or federal law, the *COUNTY* shall maintain the confidentiality of any proprietary information and shall not copy any such information except as necessary for dissemination to the *COUNTY'S* agents or employees and agrees that, as required by the Public Information Act, it will notify Applicant if a request relating to such proprietary information is received. *APPLICANT* represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of *APPLICANT* as a basis for nondisclosure.
- (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 *COUNTY* as of the date of such violation not later than one hundred twenty (120) days after the date *APPLICANT* is notified by *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.

- (i) **Execution of Agreement.** The El Paso County Commissioners Court has authorized the County Judge to execute this Agreement on behalf of **COUNTY**.
- (j) **Filing.** If **APPLICANT** so requests, this Agreement shall be filed in the deed records of El Paso County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of **APPLICANT**. **APPLICANT** will be responsible for any recording costs, which will be paid directly by **APPLICANT**.
- (k) **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.
- (l) **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, delivered personally, sent by a nationally recognized overnight courier, or sent by facsimile with an original sent by United States first class mail, postage prepared on the same date 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.

APPLICANT: RUSA Texas, LLC

Attention: _____
Facsimile: _____

With a copy to: _____

Attention: _____
Facsimile: _____

COUNTY: County of El Paso
C/O County Auditor
800 E. Overland, Suite 406
El Paso, Texas 79901
Attention: COUNTY Manager

With a copy to: City of El Paso
Planning & Economic Development, Director
2 Civic Center Plaza, 2nd Floor
El Paso, Texas 79901-1196

Or such other address(es) with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

- (m) **Omitted.**
- (n) **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.
- (o) **Event of Casualty.** In the event of total destruction or damage to the existing **DEVELOPMENT** by fire or other casualty, during construction or thereafter so long as the **GRANT** has not been fully paid, the **APPLICANT** shall determine and advise the **COUNTY** in writing within one year of such destruction or damage whether to restore, reconstruct and repair any such destruction or damage so that the **DEVELOPMENT** will be completed or rebuilt. During any period of restoration, reconstruction or repair, if no sales and use taxes for sales on the **DEVELOPMENT** are being collected, the term of this Agreement shall be automatically extended for a period equal to the period of interruption of operations on the **DEVELOPMENT** due to such damage or destruction. Should the **APPLICANT** determine not to restore, reconstruct and repair such damage or destruction, the **GRANT** shall immediately terminate.
- (p) **Headings.** 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.

- (q) **No Third Party Beneficiaries.** This Agreement is not intended to confer any, rights, privileges, or causes of action upon any third party.
- (r) **Revenue Sharing Agreement.** The **COUNTY** designates this Agreement as a revenue sharing agreement, thereby entitling the **COUNTY** to request Sales and Use Tax information from the State Comptroller, pursuant to Section 321.3022 of the Texas Tax Code, as amended.
- (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 operation of the **DEVELOPMENT**.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 12th day of September, 2011 (the "Effective Date").

APPLICANT: RUSA TEXAS, LLC
 A Delaware limited liability company

By: _____
 Catherine Doucet, CFO

ACKNOWLEDGMENT

STATE OF _____ §
 COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2011, by Catherine Doucet, CFO, on behalf of **APPLICANT**, RUSA Texas LLC, a Delaware limited liability company, organized and existing under the laws of the State of Texas.

 Notary Public, State of _____

My Commission Expires:

ATTEST:

COUNTY OF EL PASO, TEXAS:

County Clerk Delia Briones

By: _____
County Judge Veronica Escobar

APPROVED AS TO FORM:

Lee Shapleigh
Assistant County Attorney

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2011, by Veronica Escobar, County Judge of the County of El Paso, Texas, on behalf of the County of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

EXHIBIT "A"

[Development]

Maintenance and operation of the catalog sales order fulfillment facility at certain real property, legally described as follows:

Lots 2 and 3, Block 2, MESA HILLS PLAZA, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof, recorded in Volume 68, Page 37, Real Property Records, El Paso County, Texas; also known and numbered as 500 S. Mesa Hills Drive, El Paso, Texas.

EXHIBIT "B"

Grant Submittal Package Form

RUSA Texas, LLC believes that it has substantially met its obligations under the Chapter 381 Agreement executed on September 12, 2011. Pursuant to the agreement, RUSA Texas, LLC submits this Grant Submittal Package Form in compliance with said Agreement and in anticipation of receiving the grant in consideration for its obligations met under the Agreement.

As required by the Agreement, the following information is submitted.

1. Documentation to evidence the amount of sales taxes paid as a result of the sales at the DEVELOPMENT;
2. Documentation to evidence that the job retention requirements pursuant to Section 3(b) of the Agreement have been maintained for the year.
3. Documentation to evidence property taxes have been paid on the Property.
4. Waiver of Sales Tax Confidentiality Form for RUSA Texas, LLC.

It is understood by RUSA Texas, LLC that the COUNTY of El Paso has up to 60 days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

Signature: _____

Name: _____

Title: _____

Contact phone and email: _____

EXHIBIT "C"

Waiver of Sales Tax Confidentiality

Date _____

I authorize the Comptroller of Public Accounts to release sales tax Information pertaining to RUSA Texas, LLC, a Delaware limited liability company, its successors, assigns or nominees, to the COUNTY of El Paso, Texas. I understand that this waiver applies only to our catalog sales facility located at 500 S. Mesa Hills El Paso, El Paso County, Texas.

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

Name of Taxpayer Listed on Texas Sales Tax Permit:

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

Taxpayer Mailing Address:

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

Texas Taxpayer ID Number _____

Tax Outlet Number _____

(As shown on Texas Sales Tax Permit)

Authorized Signature

Printed Name: _____

Title: _____

Phone: _____