

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

**AGENDA DATE:** February 27, 2024

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Jessica Torres, 915-212-1699  
Karina Brasgalla, 915-212-1570

**DISTRICT(S) AFFECTED:** 8

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

**SUBGOAL:** Goal 1.1 Stabilize and Expand El Paso's Tax Base

**SUBJECT:**

A Resolution authorizing the City Manager to sign a Second Amendment to the Chapter 380 Economic Development Program Agreement ("Agreement") by and between the **CITY OF EL PASO** ("City") and **LEGATE CO TEXAS, LLC** ("Applicant") for the renovation of a mixed-use building located in downtown El Paso at 201 East San Antonio Avenue, El Paso, Texas 79901. The Amendment will replace Section 3.1(2) to provide a 6-month extension; and Section 4.A to reduce the Construction Materials Sales Tax Rebate by ten percent (10%).

**BACKGROUND / DISCUSSION:**

On November 8, 2022, City Council approved a Chapter 380 Economic Development Program Agreement with Legate Texas, LLC. Under the terms of the Agreement, the developer will be investing \$421,046 to renovate an existing two-story building at 201 E. San Antonio. The renovation will create shell retail spaces on the first floor and five (5) apartment units on the 2nd floor. The first floor will open opportunities for jobs in various fields and offer a creative mindset for any business to be run successfully. The renovation will offer downtown living opportunities while the street level space will create jobs, generate revenue and bolster downtown activity.

This Amendment replaces Section 3.1.(2) to provide a 6-month extension for submittal of building permits; and Section 4.A. to reduce the Construction Materials Sales Tax Rebate by ten percent (10%).. There is no material change to the terms of the Agreement.

**PRIOR COUNCIL ACTION:**

February 28, 2023 – City Council approved the 1<sup>st</sup> Amendment that replaced Exhibit D in its entirety.  
November 8, 2022 – City Council approved the original Chapter 380 Economic Development Program Agreement.

**AMOUNT AND SOURCE OF FUNDING:**

General Fund

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?** ☒ YES ☐ NO

**PRIMARY DEPARTMENT:** Economic and International Development

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Revised 04/09/2021

## RESOLUTION

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

That the City Manager be authorized to sign an Amendment to the Chapter 380 Economic Development Program Agreement ("Agreement") by and between the **CITY OF EL PASO ("City") and LEGATE CO TEXAS, LLC ("Applicant")** for the renovation of a mixed-use building located in downtown El Paso at **201 East San Antonio Avenue, El Paso, Texas 79901**. The Amendment will extend the deadline to acquire building permits by an additional six (6) months in consideration of reducing the Construction Materials Sales Tax Rebate by ten percent (10%).

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

### CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leeser  
Mayor

### ATTEST:

\_\_\_\_\_  
Laura D. Prine  
City Clerk

### APPROVED AS TO FORM:

\_\_\_\_\_  
Oscar Gomez  
Assistant City Attorney

### APPROVED AS TO CONTENT:

\_\_\_\_\_  
Karina Brasgalla, Interim Director  
Economic & International Development

THE STATE OF TEXAS   )  
  )  
COUNTY OF EL PASO    )

**SECOND AMENDMENT TO  
CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AGREEMENT**

This **Second Amendment to the Chapter 380 Economic Development Program Agreement** (“Second Amendment”) for the renovation of a mixed-use property located at 201 E. San Antonio Street is made this \_\_\_\_ day of \_\_\_\_\_, 2024, by the **CITY OF EL PASO, TEXAS** (“hereinafter referred to as the “City”), a Texas home-rule municipal corporation and **LEGATE CO TEXAS**, a Texas limited liability company (hereinafter referred to as the “Applicant”).

**WHEREAS**, on November 8, 2022, the City and Applicants entered into a Chapter 380 Economic Development Program Agreement (the “Original Agreement”), a copy of which is attached and labeled as Exhibit “A-1” for the renovation of a mixed-use property located at 201 E. San Antonio Street (“Agreement”);

**WHEREAS**, the Agreement may be amended under the provisions of Section 8. A. Amendments. of the Agreement; and

**WHEREAS**, on March 14, 2023, the City and Applicant entered into the First Amendment of the Agreement (the “Amendment”; the Amendment and the Original Agreement, as amended from time to time, are referred to herein as the “Agreement”) a copy of which is attached and labeled as Exhibit “B-1” was approved by City Council; and

**WHEREAS**, the parties desire to amend Section 3.A.(2) of the Agreement to provide a 6-month extension to November 8, 2023; and

**WHEREAS**, the parties desire to amend Section 4.A. of the Agreement to reduce the Construction Materials Sales Tax Rebate by ten percent (10%);

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. Section 3.A.(2) of the Agreement be replaced:**

Applicant agrees to develop and construct, at its sole cost, the Development. Applicant must obtain the building permits for the Development within twelve (12) months from the Effective Date.

**2. Section 4.A. of the Agreement be replaced:**

The City agrees to provide a Construction Materials Sales Tax Rebate not to exceed \$1,894.50 in accordance with the terms and provisions of the agreement.

*(Signatures begin on the following page.)*

IN WITNESS WHEREOF, the parties have executed this Second Amendment to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF EL PASO, TEXAS:**

\_\_\_\_\_  
Cary Westin  
Interim City Manger

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Oscar Gomez  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Karina Brasgalla, Interim Director  
Economic & International Development

**ACKNOWLEDGMENT**

STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by Cary Westin, as Interim City Manager of the City of El Paso, Texas.

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

My Commission Expires:

\_\_\_\_\_

*(Signatures continue on the following page.)*

**APPLICANT:**  
**LEGATE CO TEXAS, LLC,**  
a Texas Limited Liability Company

By: [Signature]

Name: SAM LEGATE

Title: OWNER

**ACKNOWLEDGMENT**

STATE OF TEXAS §

§

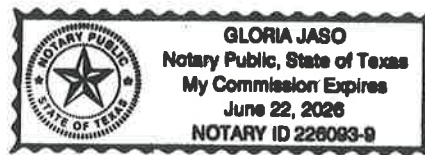
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 8th day of February, 2024,  
by Sam Legate as owner of Legate Co Texas, LLC.  
(Applicant).

[Signature: Gloria Jaso]  
Notary Public, State of Texas

My Commission Expires:

6/22/2026





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**Qtlk lpcnCi tggg gpv**

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|--------------------------|----------|---|
| <b>STATE OF TEXAS</b>    | <b>)</b> | <b>CHAPTER 380 ECONOMIC DEVELOPMENT</b> |
|                          | <b>)</b> | <b>PROGRAM AGREEMENT</b>                |
| <b>COUNTY OF EL PASO</b> | <b>)</b> | <b>(Transit Oriented Development)</b>   |

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 **LEGATE CO TEXAS, a Texas Limited Liability Company** (hereinafter referred to as the "Applicant"), 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 August 30, 2022, 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 for the renovation of a mixed-use property located at **201 E. San Antonio St., El Paso, Texas 79901**, meeting the eligibility requirements of the Transit Oriented Development Incentive Policy with such Development being more specifically described on **Exhibit A** attached hereto (the "Development") 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 has further determined that the Development 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 Development 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** means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- B. **Applicant** means Legate Co Texas, a Texas Limited Liability Company.
- C. **Base Year Value** means the value of the real and personal property on the rolls as of January 1<sup>st</sup> 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 **\$270,000**.
- D. **Building Construction Fee Rebate** means the one-time rebate of certain building construction fees and planning fees as identified in Ordinance No. 018581 paid for the Development and payable from the City's general revenue fund. The Building Construction Fee Rebate shall not exceed **\$1,200** and will be rebated upon the Applicant's provision of the Grant Submittal Package to the City to demonstrate that the total construction cost for the Development is greater than the Base Year Value.
- E. **City** means the City of El Paso, Texas.
- F. **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** 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 **\$2,105**.
- H. **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, with the Development being more



specifically described by **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

- I. **Effective Date** means the date upon which both parties have fully executed this Agreement as set forth on the signature page hereof.
- J. **Event of Default** has the meaning set forth in Section 5 of this Agreement.
- K. **Event of Non-appropriation** 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** 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) Building Construction Fee Rebate. The aggregate amount of grant payments shall not exceed **\$32,944**.
- M. **Grant Submittal Package** means 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** 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 **\$480,523**.
- O. **Minimum Investment** mean those costs incurred by Applicant or third parties in the construction, or furnishing of the improvements for the Development. For purposes of this Agreement, the Minimum Investment amount will be **\$421,046**.
- Q. **Property** means approximately **0.07 acres** of real property located at **201 E. San Antonio Street**, in El Paso, Texas, more specifically described on **Exhibit A**.
- R. **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 **\$29,639**.

S. **[INTENTIONALLY DELETED]**

T. **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) Seventeen (17) 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. DEVELOPMENT.**

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

(2) Applicant agrees to develop and construct, at its sole cost, the Development. Applicant must obtain the building permits for the Development 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 Development 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.

(5) Applicant shall diligently pursue the completion of the Development in accordance with all applicable federal, state and local laws and regulations.



(6) Applicant agrees expend or cause to be expended, at its sole cost and expense Minimum Investment of **\$421,046** for redevelopment/rehabilitation of the Development.

(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 Development 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.

(9) Applicant shall allow the City and its agents reasonable access to operating records, accounting books, and any other records related to the economic development considerations and incentives described herein, during normal business hours, at its principal place of business in the City of El Paso, Texas, , that are in Applicant's possession, custody, or control, for purposes of verifying the Qualified Expenditures and for audit purposes, if so requested by the City. The confidentiality of such records will be maintained in accordance with all applicable laws.

(10) Applicant shall provide all required invoices and other required documentation to City electronically at the following address: [EDcompliance@elpasotexas.gov](mailto:EDcompliance@elpasotexas.gov).

**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 **\$32,944**.

**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 **\$32,944** 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(D) below.

**D. GRANT SUBMITTAL PACKAGE.**

In order to receive the disbursement of the Grant, the Applicant must submit a Grant Submittal Package, as specified below.

(1) The Applicant shall annually submit one Grant Submittal Package which shall be in the form provided in **Exhibit C**, together with the requisite documentation. The Applicant shall submit to the City the initial Grant Submittal Package on **October 11, 2025**, or within 30 business days after this date. Thereafter, the Applicant's annual Grant Submittal Package must be submitted on or within 30 business days after the **11th day of October** of each year. A failure by the Applicant to timely submit a Grant Submittal Package in accordance with this paragraph is a waiver by the Applicant to receive a Grant payment for that Grant year

(2) Concurrent with the submittal of a Grant Submittal Package, the Applicant will submit to the City documentation as may be reasonably necessary to verify the expenditure to date of the Minimum Investment, which has not otherwise been verified as part of a prior submittal. The City will provide to the Applicant a written explanation for any Minimum Investment that the City determines cannot be verified. The Applicant may submit additional documentation to the City in order to obtain verification.

(3) The City's determination of the amount of the Grant payment due to the 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 provide a Construction Materials Sales Tax Rebate not to exceed **\$2,105.00** in accordance with the terms and provisions of this Agreement.
- B. The City agrees to provide a Building Construction Fee Rebate not to exceed **\$1,200** in accordance with the terms and provisions of this Agreement.
- C. The City agrees to provide a Property Tax Rebate not to exceed **\$29,639** in accordance with the terms and provisions of this Agreement.



- D. [INTENTIONALLY DELETED].
- E. The City will process any eligible Grant payment within ninety (90) days after receipt of the Applicant's annual Grant Submittal Package. The City agrees to process any Grant Payments to Applicant within ninety (90) days after its approval of the Applicant's Grant Submittal Package.
- F. 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 change in control of Developer constitutes an assignment for purposes of this Agreement. 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. **Confidentiality Obligations.** The confidentiality of records related to the City's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act,



Chapter 552, Texas Government Code. To the extent permitted by state or federal law, the City shall maintain the confidentiality of any proprietary information and shall not copy any such information except as necessary for dissemination to the City'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. The 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 the Applicant as a basis for nondisclosure.

- G. **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.
- H. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- I. **Employment of Undocumented Workers.** During the term of this Agreement, Applicant 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.
- J. **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 disturbance, acts of God, inclement weather, fire or other casualty, natural disaster, strike, lockout, national or regional emergency, or other similar events beyond the control of the delayed part, that is not the result of negligence or intentional act or misconduct, 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.
- K. **No Joint Venture.** The parties acknowledge and agree that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture between the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in



connection with the Development or the design, construction, or operation of the Development, or any portion thereof.

- L. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when (i) 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; (ii) sent via electronic transmission to the email addresses set forth below; or (iii) when delivered by hand-delivery. 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 shall provide all required Grant Submittal Packages and other required documentation to City electronically at the following address: **EDcompliance@elpasotexas.gov**.

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  
Email: EDcompliance@elpasotexas.gov

Applicant: Sam J. Legate  
Legate Co. Texas LLC  
~~109 N. Oregon 12<sup>th</sup> Floor~~ 420 E San Antonio Ave. 2<sup>nd</sup> Floor  
El Paso, TX 79901  
Email: Samlegate@scherrlegate.com

- M. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising.
- 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. **Governmental Functions.** The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.

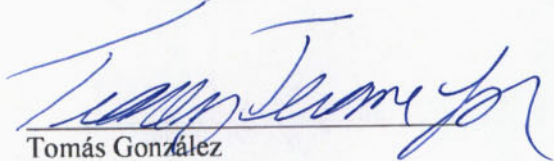
- P. **Compliance with the Law.** The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement. If applicable, then the Applicant will procure all licenses and pay all fees or other charges as required to complete the Work under this agreement.
- Q. **Third-Party Beneficiaries.** There are no third-party beneficiaries for this Agreement.

*[Signatures Begin on the Following Page]*

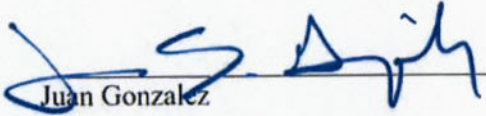


IN WITNESS WHEREOF, the parties have executed this Agreement on this 8<sup>th</sup> day of November, 2022.


**CITY OF EL PASO:**

  
Tomás González  
City Manager

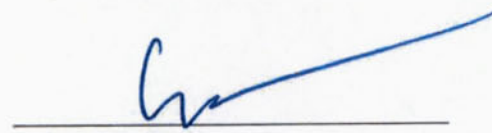
**APPROVED AS TO FORM:**

  
Juan Gonzalez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
Elizabeth Triggs, Director  
Economic & International Development

**Applicant:**  
Legate Co Texas, LLC

  
Sam J. Legate  
Managing Member

*[Acknowledgments begin on the following page]*

ACKNOWLEDGMENT

STATE OF TEXAS §  
COUNTY OF EL PASO §

*Tracy Jerome for*  
This instrument was acknowledged before me on the 10 day of November, 2022  
by **Tomás González**, as **City Manager of the City of El Paso, Texas (City)**.

*Angel Rocha*  
Notary Public, State of Texas



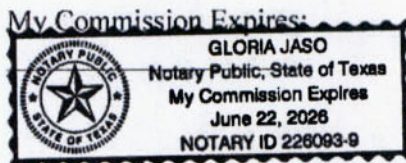
My Commission Expires:  
06-01-2026

ACKNOWLEDGMENT

STATE OF TEXAS §  
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 25<sup>th</sup> day of October, 2022  
by **Sam J. Legate** as **Managing Member of Legate Co Texas, LLC (Applicant)**.

*Gloria Jaso*  
Notary Public, State of Texas



## **EXHIBIT A**

### **[Legal Description / Narrative of Development]**

Legal Description: 5-1/2 MILLS 40 FT ON OREGON X 61.667 FT ON SAN ANTONIO X 66 FT ON TEXAS

Physical Address: 201 E. San Antonio Ave. El Paso, Texas 79901

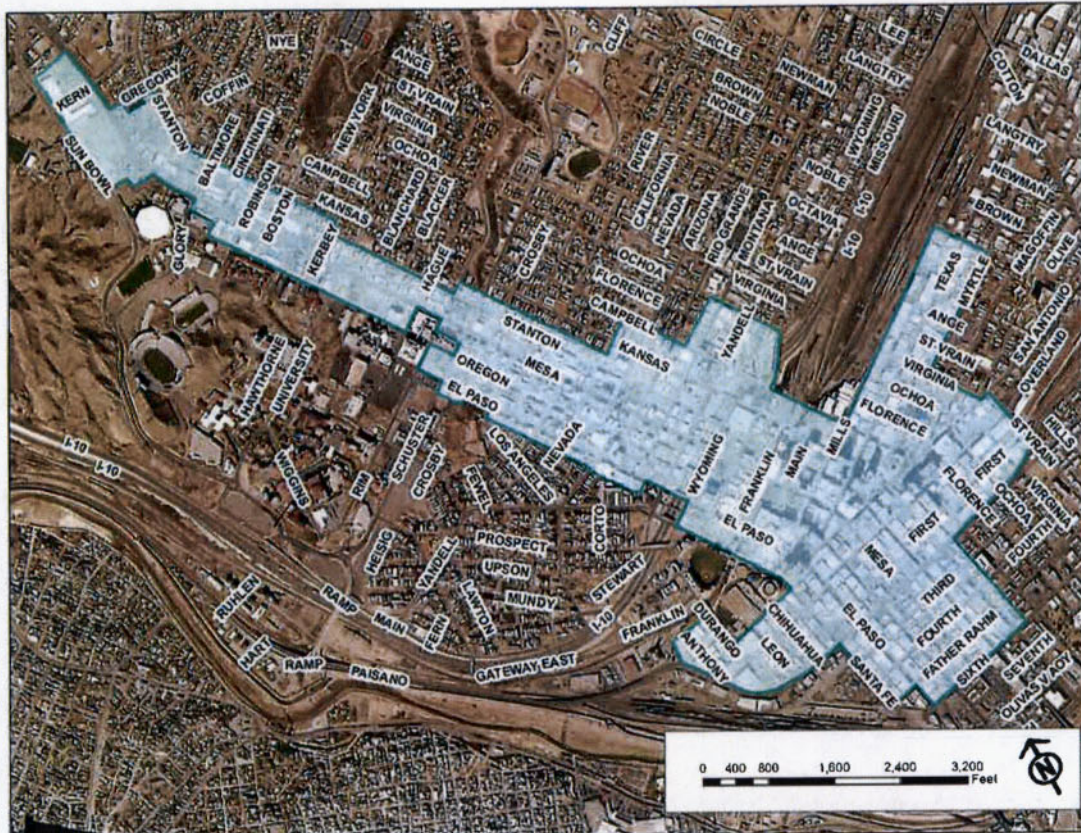


### Narrative of Development:

Owner to renovate an existing 2 story building in Downtown El Paso. Renovation will create vanilla shell retail spaces on the first floor and seven (7) apartment units on the 2<sup>nd</sup> floor. The first floor will open opportunities for jobs in various fields and offer a creative mindset for any business to be run successfully. The renovation will offer downtown living opportunities while the street level space will create jobs, generate revenue and bolster downtown activity



**EXHIBIT B**  
**[Streetcar Corridor Incentive Area]**



## EXHIBIT C

### Grant Submittal Package Form

\_\_\_\_\_(the Applicant) believes that it has substantially met its obligations under the Chapter 380 Agreement executed on \_\_\_\_\_ (date). Pursuant to the Agreement, the Applicant submits this Grant Submittal Package Form in compliance with said Agreement and in anticipation of receiving the Grant in consideration for his obligations met under the Agreement.

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

1. Documentation (i.e. including; but not limited to, bank statements, invoices, copies of checks, receipts) evidencing proof of payment by Applicant of at least a minimum aggregate of **\$421,046.00** in Qualified Expenditures associated with the Development, as those terms are defined in the Agreement.
2. Copies of all required permits and approvals obtained by Applicant or on Applicant's behalf for construction of improvements in the Development.
3. Property Tax Payment Receipt(s) of payment for tax year \_\_\_\_\_.

It is understood by the Applicant that the City of El Paso has up to 90 days to process this request and reserves the right to deny the Grant claim if the Applicant has failed to comply with the terms of the Agreement.

By the signature of the Applicant below, the Applicant hereby certifies that: (1) the copies of the receipts attached to this Grant Submittal Package Form represent Qualified Expenditures incurred in the improvements and new construction to the Development; (2) the Applicant has paid or caused to be paid the City's local sales and use taxes associated with the Qualified Expenditures; and (3) that the copies of the receipts and copies of the permits attached herein are true and correct.

*Signature:* \_\_\_\_\_



**EXHIBIT D**

**Tax Rebate Schedule**

| <b>Retail Sales and Use Tax Rebate Schedule</b> |               |               |               |               |
|---|---------------|---------------|---------------|---------------|
| <b>Year 1</b>                                   | <b>Year 2</b> | <b>Year 3</b> | <b>Year 4</b> | <b>Year 5</b> |
| 100%  | 75%           | 50%           | 25%           | 25%           |

**GZJ DKW'D/3**  
**'Co gpf o gpv**

**THE STATE OF TEXAS    )                    AMENDMENT**  
**)                    TO CHAPTER 380 ECONOMIC**  
**COUNTY OF EL PASO    ) DEVELOPMENT PROGRAM AGREEMENT**

This Amendment to that certain Chapter 380 Economic Development Program Agreement for the renovation of a mixed-use property located at 201 E. San Antonio Street is made this 14th day of MARCH, 2023, by and between the City of El Paso, a Municipal Corporation organized and existing under the laws of the State of Texas (the "City"), and LEGATE CO TEXAS a Texas limited liability company ("Applicant").

**WHEREAS**, on November 8, 2022, the City and Applicants entered into a Chapter 380 Economic Development Program Agreement for the renovation of a mixed-use property located at 201 E. San Antonio Street ("Agreement");

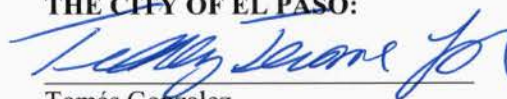
**WHEREAS**, the Agreement may be amended under the provisions of Section 8. A. Amendments. of the Agreement;

**WHEREAS**, the parties desire to amend the Agreement to correct Exhibit D t reflect the appropriate tax rebate schedule;

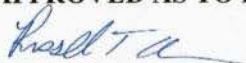
**NOW THEREFORE**, in consideration of the mutual promises set forth in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- 1. EXHIBIT D** of the Agreement be replaced in its entirety by Attachment A to this Amendment.

**CITY**  
**THE CITY OF EL PASO:**

  
Tomás Gonzalez  
City Manger

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Russell T. Abeln  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Elizabeth K. Triggs, Director  
Economic & International Development



**APPLICANT**

**LEGATE CO TEXAS, LLC:**

a Texas Limited Liability Company

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[SIGNATORY CAPACITY]

**EXHIBIT D**

**Property Tax Rebate Schedule**

| <b>New Construction and Rehabilitation - For Mixed-Use Including Residential Component<br/>Incremental Property Tax Rebate Table</b> |                   |                   |                   |                   |                   |                   |                   |                   |                    |                    |                    |                    |                    |                    |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| <b>Year<br/>1</b>  | <b>Year<br/>2</b> | <b>Year<br/>3</b> | <b>Year<br/>4</b> | <b>Year<br/>5</b> | <b>Year<br/>6</b> | <b>Year<br/>7</b> | <b>Year<br/>8</b> | <b>Year<br/>9</b> | <b>Year<br/>10</b> | <b>Year<br/>11</b> | <b>Year<br/>12</b> | <b>Year<br/>13</b> | <b>Year<br/>14</b> | <b>Year<br/>15</b> |
| 100%   | 100%              | 100%              | 100%              | 90%               | 90%               | 90%               | 75%               | 75%               | 75%                | 75%                | 75%                | 75%                | 75%                | 75%                |