

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

**AGENDA DATE:** November 19, 2024

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Karina Bragalla, (915) 212- 0094  
David Torres, (915) 212 - 0094

**DISTRICT(S) AFFECTED:** District 8

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

**SUBJECT:**

Discussion and Action on a Resolution authorizing the City Manager to execute a Chapter 380 Economic Development Program Agreement ("Agreement") by and between CITY OF EL PASO ("City") and POPULAR BUILDING EL PASO LLC ("Applicant") in support of a downtown multi-family housing redevelopment project located at 301 E. San Antonio Ave., El Paso, Texas 79901. The Agreement requires the Applicant to make a minimum investment of \$35,000,000. Over the term of the Agreement, the City shall provide economic incentives not to exceed \$2,720,000 in the form of a Real Property Tax Rebate via TIRZ 5 Funds, a Construction Materials Sales Tax Rebate, and a Building Construction Fee Rebate; in addition to a 10-Year Development Note of \$4,000,000 via Impact Funds.

**BACKGROUND / DISCUSSION:**

The Downtown, Uptown, and Surrounding Neighborhoods Plan identified demand for up to 10,000 new housing units by 2040 and set a target of 4,000 affordable units. The proposed Agreement would allow the historic Popular Building, most recently home to Fallas Parades, to be redeveloped as 99 apartment units with ground floor commercial space. The minimum investment is \$35 million. The Developer will be pursuing Historic Tax Credits for the project. 15% of the units will be dedicated as "moderately affordable" (80% AMI).

The incentives package includes a \$4 million, 10-year forgivable Development Note via the Impact Fund. The Impact Fund is dedicated to Downtown development, with a particular focus on multifamily and adaptive reuse projects. Incentives also include a 10-year, 100% property tax rebate via TIRZ #5, a construction materials sales tax rebate, and development fee waivers. Total package is valued at \$6.72M with full recovery in the event of default or failure to complete the project.

The level of participation is similar to other priority initiatives in Downtown from hotel projects to WestStar Towner. The Plan also identified a development feasibility gap for new housing projects, making incentives necessary to address gaps and spur a housing market in the urban core.

On September 4<sup>th</sup>, the TIRZ #5 Board recommend approval of the project unanimously.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

\$4M - Impact Fund

\$2.6M - TIRZ #5 Fund

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

**DEPARTMENT HEAD:**



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

## RESOLUTION

**WHEREAS**, the City has the authority under Chapter 380 of the Texas Local Government Code (“Chapter 380”) to make loans or grants of public funds, as a governmental function, for the purpose of promoting local economic development and stimulating business and commercial activity for the general public within and around the City; and

**WHEREAS**, the City has determined it be in the best interest of the City and the public to enter into a 380 Agreement (the “Agreement”) with Popular Building El Paso LLC, a limited liability company or its affiliates (the “Applicant”) for the purposes of promoting economic development and furthering the public welfare in and around the City of El Paso, Texas; and

**WHEREAS**, the City desires to provide, pursuant to Chapter 380, incentives to the Applicant for the renovation and construction of a development located on the real property at *301 E. San Antonio Ave., El Paso, Texas, 79901*, more fully described on the Agreement attached hereto (the “Development”), and the Applicant wishes to receive the incentives in exchange for compliance with the obligations set forth herein; and

**WHEREAS**, the Development, originally built as the home of The Popular department store was completed in 1917 and designed by famed El Paso architect Henry C. Trost, of the firm Trost & Trost, will restore this iconic building to its former glory, bring much needed housing supply to downtown El Paso, and reinvigorate the streetscape with new commercial businesses; and

**WHEREAS**, the Applicant, pursuant to 13 Tex. Admin. Code § 13, will pursue the Texas Historic Preservation Tax Credit Program for the Development; and

**WHEREAS**, in conjunction with the Agreement, it is necessary to execute a Promissory Note (the “Development Note”) to outline the repayment terms for funds to be provided by the City as specified in the Agreement; and

**WHEREAS**, to secure the obligations under the Development Note, a deed of trust (the “Deed of Trust”) will be executed in favor of the City, encumbering certain property as collateral, which shall be released upon the full and satisfactory completion of the obligations set forth in the Development Note and the Agreement; and

**WHEREAS**, the City determines that the grant and loan of funds to the Applicant will serve the public purpose of enhancing the value of the local tax base; 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 and around the City; and

**WHEREAS**, the City concludes and hereby finds that this Agreement promotes economic development to the general public within and around the City and meets the requirements of Chapter 380 and further, is in the best interests of the City and the Applicant to pursue same.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

1. **Authority to Execute Documents:** The City Manager, or their designee, be authorized to execute, on behalf of the City, the following documents:
  - a. The Chapter 380 Economic Development Program Agreement by and between the City of El Paso, Texas (“City”) and Popular Building El Paso LLC, or its affiliates (the “Applicant”), including all exhibits, attachments, and amendments thereto;
  - b. The promissory note setting forth the repayment terms of the funds to be advanced by the City under the 380 Agreement;
  - c. The deed of trust, which shall secure the Applicant’s obligations under the Development Note, encumbering property as more fully described in the Deed of Trust; and
  - d. Amendments as may be required in order to support the success of this Development.
2. **Authority to Release Deed of Trust:** Upon full satisfaction of the obligations set forth in the promissory note and the 380 Agreement, the City Manager, or their designee, is further authorized to execute and deliver a release of the deed of trust, thereby terminating the City’s security interest in the property.
3. **Further Actions:** The City Manager, or their designee, is hereby authorized to take such further actions, execute such additional documents, establish future funding sources and make any budget transfers, and make such filings as may be necessary to carry out the intent and purpose of this Resolution.

*(Signatures begin on the following page)*

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

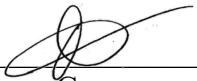
**CITY OF EL PASO:**

\_\_\_\_\_  
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 and International Development

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AGREEMENT**

This Chapter 380 Economic Development Program Agreement (“**Agreement**”) is made \_\_\_\_ day of \_\_\_\_\_, 2024 (“**Effective Date**”) between the City of El Paso, Texas, a Texas home-rule municipal corporation, (the “**City**”), and Popular Building El Paso LLC, a Texas limited liability company or its affiliates (the “**Applicant**”), for the purposes and considerations stated below:

**RECITALS**

**WHEREAS**, the Applicant desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”) and the Texas Constitution Article III Section 52-a; and

**WHEREAS**, the City has the authority under Chapter 380 to make loans or grants of public funds, as a governmental function, for the purpose of promoting local economic development and stimulating business and commercial activity for the general public within and around the City; and

**WHEREAS**, the City desires to provide incentives to the Applicant, pursuant to Chapter 380, for the renovation and construction of a development located on the real property at *301 E. San Antonio Ave., El Paso, Texas, 79901*, more fully described on *Exhibit A* attached hereto (the “Development”), and the Applicant wishes to receive the incentives in exchange for compliance with the obligations set forth herein; and

**WHEREAS**, the Development, originally built as the home of The Popular department store was completed in 1917 and designed by famed El Paso architect Henry C. Trost, of the firm Trost & Trost, will restore this iconic building to its former glory, bring much needed housing supply to downtown El Paso, and reinvigorate the streetscape with new commercial businesses; and

**WHEREAS**, the Applicant, pursuant to 13 Tex. Admin. Code § 13, will pursue the Texas Historic Preservation Tax Credit Program for the Development; and

**WHEREAS**, the City determines that a grant of funds to the 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 and around the City; and

**WHEREAS**, in conjunction with the Agreement, it is necessary to execute a Promissory Note (the “Development Note”) to outline the repayment terms for funds to be provided by the City as specified in the Agreement; and

**WHEREAS**, to secure the obligations under the Development Note, a deed of trust (the “Deed of Trust”) will be executed in favor of the City, encumbering certain property as collateral, which shall be released upon the full and satisfactory completion of the obligations set forth in the Development Note and the Agreement; and

**WHEREAS**, the City concludes and hereby finds that this Agreement promotes economic development to the general public within and around the City and meets the requirements of Chapter 380 and further, is in the best interests of the City and the Applicant.

**NOW, THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## SECTION 1. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- A. **Agreement.** The word *Agreement* means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached and incorporated herein by reference.
- B. **Base Year Value.** The phrase *Base Year Value* shall mean the valuation of the real property by the El Paso Central Appraisal District on the rolls as of January 1st of the year of the Effective Date of this Agreement. The Base Year Value shall not be interpreted to be equivalent or determinative for appraisal purposes or used in any way to determine market value. For the purposes of this Agreement, the Base Year Value is \$2,450,000.
- C. **Construction Materials Sales Tax Rebate.** The phrase *Construction Materials Sales Tax Rebate* shall mean a one-time 100% rebate of the City's 1% Sales and Use Tax from receipts for materials and labor of taxable items used in the construction of the Development. The Construction Materials Sales Rebate shall not exceed \$210,000.
- D. **Development.** The word *Development* means the renovation of an existing vacant or blighted building(s) at 301 E. San Antonio Ave. for a mixed-use facility, including multifamily residential and ground-floor commercial uses, as authorized by the existing local law. The Development is described in *Exhibit B*, which is attached and incorporated for all purposes.
- E. **Development Fee Rebate.** The phrase *Development Fee Rebate* means a one-time 100% rebate of certain development fees based on the fee schedule attached as *Exhibit A* to Ordinance No. 018581; however, under no circumstances shall the City rebate reinspection and other building and inspection penalty fees associated with the development and construction of the Development. The Development Fee Rebate shall not exceed \$10,000 and will be rebated upon the Applicant's provision of the Grant Submittal Package demonstrating that the total construction cost for the Development is greater than the Base Year Value.
- F. **Development Note.** The phrase *Development Note* or *Promissory Note* means a \$4,000,000, 10-Year Promissory Note, fully described at 0% interest to Applicant to be funded by the Impact Fund ("Fund") account derived from the El Paso Electric company franchise fee paid to the City pursuant to the Franchise Agreement adopted by Ordinance No. 017460 and secured by a deed of trust ("Deed of Trust"). The Promissory Note shall be forgiven by the City upon Applicant's successful completion of all *milestones* described herein, and the Deed of Trust shall be released by the City, provided that Applicant complies with all provisions contained herein and is not in default of this Agreement.
- G. **Effective Date.** The phrase Effective Date means the date the El Paso City Council approves the Agreement.
- H. **Grant.** The word *Grant* means each annual payment to Applicant under the terms of this Agreement computed as the sum of the applicable rebates: (i) Construction Materials Sales Tax Rebate; (ii) Development Fee Rebate; (iii) Property Tax Rebate; and (iv) Development Note. For the purposes of this Agreement, the aggregate Grant payments will not exceed \$2,720,000, excluding the amount of the Development Note.
- I. **Grant Submittal Package.** The phrase *Grant Submittal Package* means the documentation required to be supplied to City as a condition of receipt of any Grant, with such documentation more fully described in the Grant Submittal Package, which is attached as *Exhibit C* to this Agreement.

- J. **Housing Choice Voucher Program.** The phrase *Housing Choice Voucher Program* means the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f) or its successor.
- K. **Minimum Appraisal Value.** The phrase *Minimum Appraisal Value* shall mean the valuation of the Real Property appraised by the El Paso Central Appraisal District (“EPCAD”) of the construction or renovation of the Development. For the purposes of this Agreement, the Minimum Appraisal Value is \$19,950,000. Under no circumstances shall the Minimum Appraisal Value be interpreted to be equivalent of or determinative for appraisal purposes or to be used in any way to determine market value.
- L. **Minimum Investment.** The phrase *Minimum Investment* means those costs incurred, self-performed or contracted to third parties by the Applicant over the course of the renovation or construction project or furnishing of the improvements for the Development. For purposes of this Agreement, the Minimum Investment is \$35,000,000.
- M. **Moderate Income Housing Unit.** The phrase *Moderate Income Housing Unit* means a residential unit reserved for occupancy by an individual or family earning not more than 80% of the area median income, adjusted for family size, as defined by the United States Department of Housing and Urban Development.
- N. **Property Tax Rebate.** The phrase *Property Tax Rebate* means a rebate, according to the Incremental Real Property Tax Rebate Table found in *Exhibit D* of this Agreement, of the City’s portion of the incremental ad valorem property tax revenue generated by the subject property above the Base Year Value for the Grant Period, as defined herein. For the purposes of this Agreement, the total Real Property Tax Rebate amount shall not exceed \$2,500,000.
- O. **Qualified Expenditures.** The phrase *Qualified Expenditures* means the monetary expenditures paid or caused to be paid by Applicant after the Effective Date for material used in constructing or renovating the Development; and labor required for the construction or renovation of the Development.
- P. **Real Property.** The phrase *Real Property* means the real property owned by Applicant located at 301 E. San Antonio Ave., El Paso, Texas, and more fully described on *Exhibit A*, which is attached and incorporated by reference. The Real Property is the location for Applicant’s proposed Development.
- Q. **Vacant Building.** The phrase *Vacant Building* means a building that is 60% or more unoccupied and is registered as a vacant building with the City, pursuant to Title 18, Chapter 18.40, El Paso City Code.

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

- A. This Agreement shall commence on the Effective Date and shall terminate on the first to occur of: (i) the date when the aggregate amount of Grants is paid; (ii) 15 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 (“Term”).
- B. Applicant’s eligibility for Grant payments shall be limited to 10 consecutive years within the Term of this Agreement (the “Grant Period”). The first year of the Grant Period shall be the first tax year after the issuance of the certificate of occupancy for the Development. A temporary certificate of occupancy does not qualify as a certificate of occupancy.



### SECTION 3. OBLIGATIONS OF APPLICANT.

#### A. DEVELOPMENT.

- (1) Ownership of real property at 301 E. San Antonio Ave., El Paso, Texas, 79901 and more fully described on *Exhibit A* attached hereto.
- (2) Applicant shall renovate or construct, at its sole cost and expense, the Development and shall expend a minimum of *\$35,000,000* in Qualified Expenditures to construct the Development.
- (3) Applicant must obtain the building permits for the Development within *12* months after the Texas Administrative Code, Title 13, Part II, Chapter 13 Historic Tax Credit approval, unless issuance of permits is postponed by the City.
- (4) Within *36* months after the Texas Administrative Code, Title 13, Part II, Chapter 13 Historic Tax Credit approval, Applicant shall submit documentation to the City to verify the following (Completion of this obligation serves as a *milestone* toward the forgiveness of the Development Note):
  - (a) The expenditure of a minimum of *\$35,000,000* in Qualified Expenditures; and
  - (b) That Applicant has received a *Certificate of Occupancy* for the Development.
- (5) 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.
- (6) Applicant agrees that Development shall be in accordance with the requirements and review provisions of Chapter 20.20 Historic Landmark Preservation of the City Municipal Code, where applicable.
- (7) Applicant shall 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.
- (8) The Director of Economic and International Development may provide an extension of the above listed Development deadlines, not to exceed 6 months, provided that Applicant has made a good faith effort to fulfill its obligations. The City, in its sole discretion, shall determine what constitutes “a good faith effort” for purposes of this provision.
- (9) Applicant agrees that during the Term of this Agreement, the Real Property shall be limited to those uses consistent with the Development.
- (10) Applicant must obtain an 80% occupancy rate across the Development as a whole within two years of receiving the Certificate of Occupancy for the Developments and must maintain such for the remaining term of this Agreement. Completion of this obligation serves as a *milestone* toward the forgiveness of the Development Note.
- (11) Applicant agrees that the Development’s commercial and residential space must meet and maintain *Class A* specifications throughout the term of this Agreement. The Developments

must meet all code requirements throughout the term of this contract and have no code violations on record.

- (12) Applicant must include on all leases with commercial tenants a requirement that such tenants have no more than two police department responses per month to calls regarding noise violations or other disturbances to the peace resulting from activities at the commercial establishments located at the Developments during the term of this Agreement.
- (13) Applicant shall reserve 15% of the units in the multifamily residential development for occupancy as Moderate Income Housing Units. Completion of this obligation serves as a *milestone* toward the forgiveness of the Development Note.
- (14) Applicant agrees that the monthly rent charged for a Moderate Income Housing Unit may not exceed 30% of 80% of the area median income, adjusted for family size, as defined by the United States Department of Housing and Urban Development. Completion of this obligation serves as a *milestone* toward the forgiveness of the Development Note.
  - (a) In calculating the income of an individual or family for a lower or Moderate Income Housing Unit, the public facility user must use the definition of annual income described in 24 C.F.R. Section 5.609, as implemented by the United States Department of Housing and Urban Development.
  - (b) If the income of a tenant exceeds an applicable limit at the time of the renewal of a lease agreement for a residential unit, the provisions of Section 42(g)(2)(D), Internal Revenue Code of 1986, apply in determining whether the unit may still qualify as a lower or Moderate Income Housing Unit.
- (15) The Applicant may not:
  - (a) refuse to rent a residential unit to an individual or family because the individual or family participates in the Housing Choice Voucher Program; or
  - (b) use a financial or minimum income standard that requires an individual or family participating in the Housing Choice Voucher Program to have a monthly income of more than 333% of the individual's or family's share of the total monthly rent payable for a unit.
  - (c) Applicant may require an individual or family participating in the Housing Choice Voucher Program to pay the difference between the monthly rent for the applicable unit and the amount of the monthly voucher if the amount of the voucher is less than the rent.
- (16) The Applicant shall:
  - (a) affirmatively market available residential units directly to individuals and families participating in the Housing Choice Voucher Program; and
  - (b) notify local housing authorities of the multifamily residential development's acceptance of tenants in the Housing Choice Voucher Program.
- (17) Each lease agreement for a residential unit within the Development must provide that:

- (a) the landlord may not retaliate against the tenant or the tenant’s guests by taking an action because the tenant established, attempted to establish, or participated in a tenant organization;
  - (b) the landlord may only choose to not renew the lease if the tenant:
    - i. is in material noncompliance with the lease, including nonpayment of rent;
    - ii. committed one or more substantial violations of the lease;
    - iii. failed to provide required information on the income, composition, or eligibility of the tenant’s household;
    - iv. occupies an apartment unit that, through no fault of the tenant, has sustained damages that require repair, and such repairs cannot be performed while the apartment is occupied;
    - v. or committed repeated minor violations of the lease that:
      - 1. disrupt the livability of the property;
      - 2. adversely affect the health and safety of any person or the right to quiet enjoyment of the leased premises and related development facilities;
      - 3. interfere with the management of the development;
      - 4. or have an adverse financial effect on the development, including the failure of the tenant to pay rent in a timely manner;
  - (c) and to not renew the lease, the landlord must serve a written notice of proposed nonrenewal on the tenant not later than the 30th day before the effective date of nonrenewal. A tenant may not waive the protections provided by Subsection (i).
- (18) Applicant shall demonstrate, before the receipts of any Grant payments, that Applicant has incurred no delinquency taxes by providing certified city tax certificates for any parcel of property owned in the City of El Paso.
- (19) Applicant agrees that during years 1-3 of the Grant Period they shall not challenge or permit anyone else to take actions on its behalf to challenge any assessments by the EPCAD of \$19,950,000 or less. This property value should in no way be interpreted to affect the values set by the EPCAD 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.
- (20) Applicant, during normal business hours, at its principal place of business in El Paso, shall allow the City or its agents reasonable access to 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 and for audit purposes, if so requested by the City. The confidentiality of such records will be maintained in accordance with all applicable laws.
- (21) Applicant shall provide all required invoices and other required documentation to the City electronically at the following address: *EDcompliance@elpasotexas.gov*

## B. 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 November 1, 2029 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 November 1st 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 THE CITY.**

During the Term of this Agreement, and so long as an Event of Default has not occurred and Applicant is in compliance with the Agreement, the City agrees as follows:

- A. The City agrees to provide a 10-Year promissory note at 0% interest, funded by the Impact Fund. Development Note shall be disbursed to the Developer within 60 days of the Effective Date. Development Note shall be forgiven if and only if the Developer meets all performance milestones detailed within Agreement.
- B. The City agrees to provide a Construction Materials Sales Tax Rebate not to exceed \$210,000 in accordance with the terms and provisions of this Agreement.
- C. The City agrees to provide a Development Fee Rebate not to exceed \$10,000 in accordance with the terms and provisions of this Agreement.
- D. The City agrees to provide a Property Tax Rebate not to exceed \$2,500,000 in accordance with the terms and provisions of this Agreement.
- E. The City will process any eligible Grant payment within 90 days after receipt of the Applicant's annual Grant Submittal Package.

## **SECTION 5. PROMISSORY NOTE AND DEED OF TRUST**

- A. The Applicant agrees to execute a Promissory Note in favor of the City for the principal sum of \$4,000,000, 10-Year, fully described at 0% interest to Applicant which represents the funds to be advanced by the City for the purposes outlined in this Agreement. The Promissory Note shall further specify the terms of repayment, including interest rate, payment schedule, and any applicable penalties for non-compliance with these terms.

- B. To secure the Applicant's obligations under the Promissory Note, Applicant shall execute a Deed of Trust granting the City a security interest in the Development located at 301 E. San Antonio Ave., El Paso, Texas, 79901, and 12 MILLS WLY PT OF BLK & PT OF CLSD ALLEY BTW (120' ON NLY - IRREG ON ELY -190.48' ON SLY - 183.05' ON WLY) (30527.09 SQ FT), which shall serve as collateral. The Deed of Trust will be recorded in El Paso County, Texas ensuring the City's interest in the Development remains protected until all obligations under the Promissory Note have been fully satisfied.
- C. In the event of default by the Applicant under the Promissory Note or any other provision of this Agreement, the City shall have the right to enforce the Deed of Trust pursuant to applicable laws, including the right to foreclose on the property. The terms of the Promissory Note and Deed of Trust shall be fully incorporated in this Agreement by reference.

## SECTION 5. EVENTS OF DEFAULT.

Each of the following Paragraphs A through D shall constitute an Event of Default:

- A. **Failure to Comply.** Applicant's failure to comply with, or to perform any obligation or condition of this Agreement or in any related documents, or Applicant's failure to comply with or to perform any obligation or condition of any other agreement between the City and Applicant.
- B. **False Statements.** Any representation or statement made or furnished to the City by Applicant pursuant to this Agreement or any document(s) related hereto, that is/are false or misleading in any material respect; or if Applicant obtains actual knowledge that any such 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 representation or statement within 10 days after Applicant learns of its false or misleading nature.
- C. **Historic Landmark Preservation.** Applicant's failure to comply with the requirements and review provisions of Chapter 20.20 Historic Landmark Preservation of the City Municipal Code and Applicant's failure to cure same within 30 days after written notice from the City shall be deemed an event of default. If such failure cannot be cured within such 30 day period in the exercise of all due diligence but Applicant fails or refuses to commence such cure within such 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 event of default. In the event this Agreement is terminated pursuant to this Section, all Grant Payments and the Development Note previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant within 60 days from the date of such termination.
- D. **Insolvency.** Applicant files a voluntary petition in bankruptcy, a proceeding in bankruptcy is instituted against the Applicant and the Applicant is thereafter adjudicated bankrupt, a receiver for the Applicant's assets is appointed, or any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant.
- E. **Property Taxes.** If Applicant allows its personal or real 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 30 days after written notice thereof from the City and/or EPCAD.
- F. **Notice and Opportunity to Cure.** If an Event of Default occurs, the City will provide Applicant with written notice of the default ("Notice of Default") and Applicant shall have 30 days from the receipt of said notice to cure the default (the "Cure Period"). If the default cannot be remedied within the Cure Period but the Applicant has made a diligent effort to effect a cure, the Cure Period may be extended at the City's sole discretion for a reasonable time. The City, in its sole discretion,

shall determine what constitutes “a reasonable time” and what constitutes “a diligent effort” for purposes of this provision. If the City agrees to extend the Cure Period past the 30 days, the City shall notify the Applicant, in writing, of the expiration date of the extended cure period.

- G. **Failure to Cure.** If an Event of Default occurs and, after receipt of written notice and opportunity to cure as herein provided, the Applicant fails to cure the default in accordance with the provisions herein, then this Agreement may be terminated by the City by written notice to the Applicant at which time the City’s obligations hereunder will end and the City may exercise any other right or remedy available at 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 Grants, including but not limited to the Development Note, previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant within 60 days from the date of such termination.

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

The City may terminate this Agreement for convenience and without the requirement of an event of default by the 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**

- 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. **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 City in writing of such sale or transfer 30 business days before the effective date of such sale or transfer.
- D. **Assignment.** 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 or Grants that are subject of this Agreement without the City’s consent to assignment other than to an affiliate of Applicant. Any such attempt to sell, transfer, assign, or convey without the City’s prior written consent is void and may result in the immediate termination of this Agreement and recapture of the taxes rebated prior to the attempted transfer.
- 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. 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 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. 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 the same document.
- H. **Employment of Undocumented Workers.** During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the Grant payments received by Applicant from the City as of the date of such violation not later than 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 7% per annum. The interest will accrue from the date the Grant payment(s) were paid to Applicant until the date the reimbursement payments are repaid to City. City may also recover court costs and reasonable attorney’s fees incurred in an action to recover the Grant payment(s) subject to repayment under this section. Applicant is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Applicant contracts.
- I. **Force Majeure.** The parties agree that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- J. **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.
- 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](mailto:EDcompliance@elpasotexas.gov).

To the City:                   The City of El Paso  
  Attn: City Manager  
  P. O. Box 1890  
  El Paso, Texas 79950-1890

With a Copy to:               The City of El Paso  
  Attn: Economic & International Development Department  
  P. O. Box 1890  
  El Paso, Texas 79950-1890

To the Applicant:             Popular Building El Paso, LLC  
  Attn: Robert Palacios  
  221 N Kansas St, Ste 700  
  El Paso, TX 79901

- 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 Function.** The parties agree that the City is entering into this Agreement as a governmental entity performing a governmental function, implementing a government grant program intended to provide a public benefit.
- 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]*



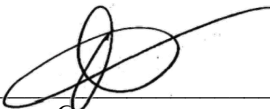
IN WITNESS WHEREOF, the parties hereby execute this Agreement.


CITY OF EL PASO:

\_\_\_\_\_  
Dionne Mack  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

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

  
\_\_\_\_\_  
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 **Dionne Mack as City Manager of the City of El Paso, Texas**, on behalf of the City of El Paso, Texas.

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

My Commission Expires:

\_\_\_\_\_

*[Signatures continue on the following page]*

APPLICANT: Popular Building El Paso  
LLC, a Texas limited liability company

By: [Signature]  
Robert Palacios  
Principal

ACKNOWLEDGMENT

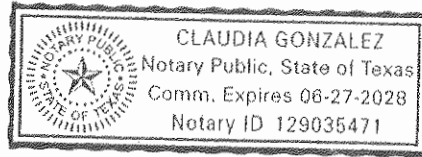
STATE OF TEXAS §  
  §  
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 13<sup>th</sup> day of November, 2024 by  
Robert Palacios as Principal for Popular Building El Paso LLC, a Texas limited liability company.

[Signature]  
Notary Public, State of TEXAS

My Commission Expires:

06/27/2028



## **EXHIBIT A**

### **Legal Description of the Real Property**

12 MILLS WLY PT OF BLK & PT OF CLSD ALLEY BTW (120' ON NLY - IRREG ON ELY -190.48'  
ON SLY - 183.05' ON WLY) (30527.09 SQ FT)

## **EXHIBIT B**

### **Description of Development**

The Development will include the construction of approximately 99 apartment units, 20,000 square feet of retail space, and 40 underground parking spaces in the building located at 301 E. San Antonio Ave. in downtown El Paso.

Originally built as the home of The Popular department store, 301 E. San Antonio Ave. was completed in 1917 and designed by famed El Paso architect Henry C. Trost, of the firm Trost & Trost. The building was constructed in the Chicago architectural style, and features a reinforced concrete skeleton, enclosed by brick walls, and veneered with white terra cotta tiling on the upper floors and granite on the ground floor. The original building is “L” shaped, with street-facing frontage on both N. Mesa St. and E. San Antonio Ave. Two additions to the building were built later in the property’s history. The first, along E. San Antonio Ave., was built in 1946 with Chicago-style architecture matching the original. The second, fronting N. Mesa St. and Texas Ave., was built in 1950 in a modern style.

Founded as the Popular Dry Goods company by Hungarian immigrant Adolph Schwartz in 1902, The Popular quickly grew from a small general store into the premier department store in the greater El Paso area. Its move to the E. San Antonio Ave. building solidified its status as the region’s largest and most important department store. After Adolph Schwartz’ death in 1941, his descendants continued to run The Popular until its closure in 1995. At its peak, The Popular operated four department stores throughout the city of El Paso.

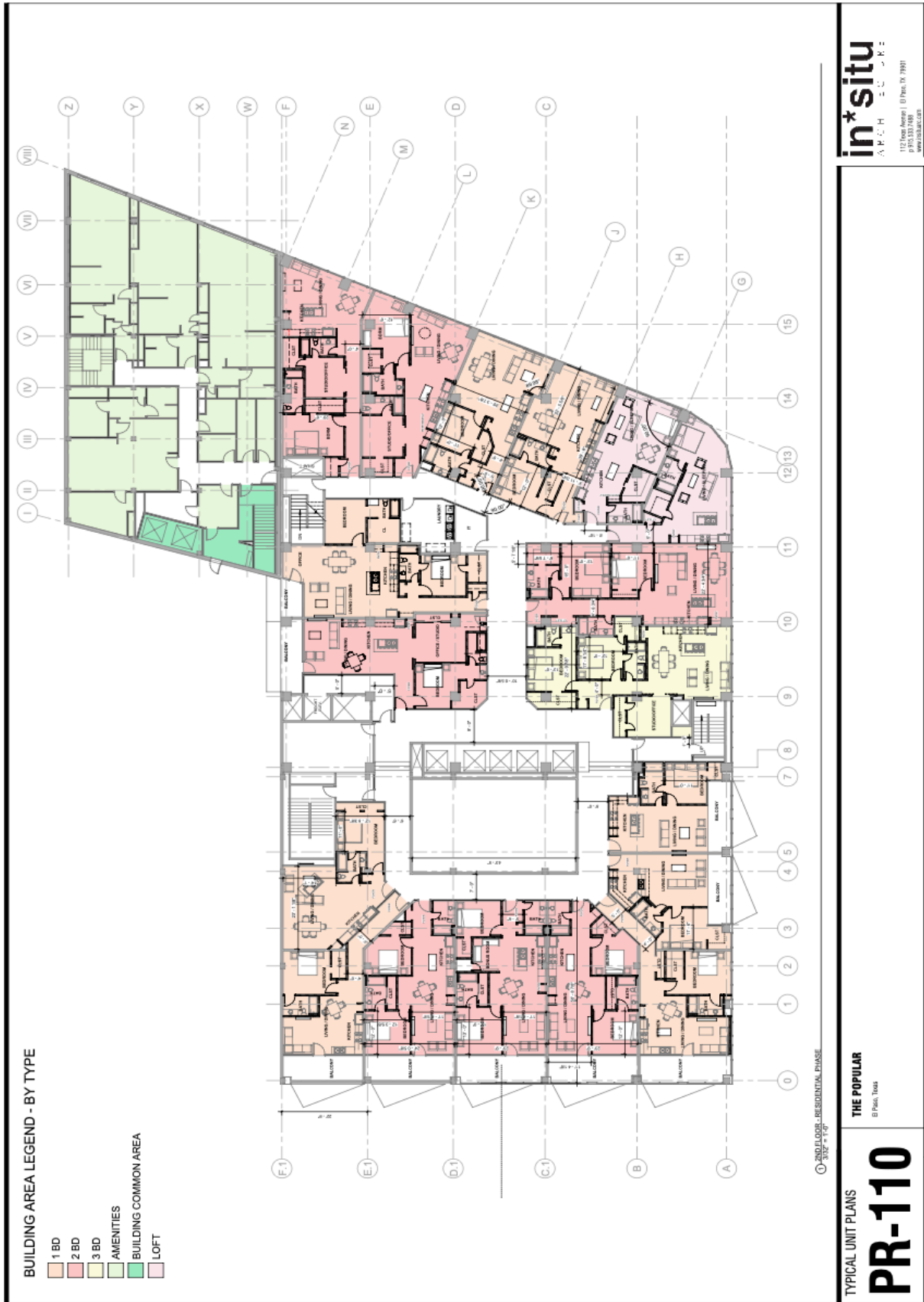
The Development will restore this iconic building to its former glory, bring much needed housing supply to downtown El Paso, and reinvigorate the streetscape with new commercial businesses.

The apartment units will feature a mixture of studio, 1-bedroom, and 2-bedroom units, with a portion being reserved for affordable housing. This will ensure that the apartments are appealing and accessible to El Pasoans of various family structures, stages of life, and income levels. All apartments will be built to Class A standards, and residents will have access to amenities including a fitness center, coworking area, and rooftop deck. This is projected to be one of the largest market-rate downtown housing developments in El Paso’s history.

The commercial spaces will target a mixture of national and local tenants. Efforts will be made to attract categories of businesses currently missing from downtown El Paso, such as a full-service grocery store. Other potential tenants could include fine dining and casual restaurants, coffee shops, hair salons and spas, and boutique retail stores.

The Development’s positive impact will spread far beyond the building itself. Well over 100 residents will call the Development home, some of whom will likely work in downtown El Paso. Others will frequent the numerous museums, theaters, entertainment venues, restaurants, bars, and festivals that downtown offers. This will contribute to making the urban core of El Paso a more walkable, vibrant, and environmentally sustainable place. Additionally, the development’s commercial spaces will attract customers from across El Paso and throughout the binational region, adding to the renewed sense of life downtown.

Renderings/Building Plans:





**EXHIBIT C**  
**Grant Submittal Package Form**

[Applicant] believes that it has substantially met its obligations under the Chapter 380 Agreement dated the \_\_\_\_\_ day of \_\_\_\_ 20\_\_ and signed by \_\_\_\_\_ of [Applicant]. 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. Electronically to Email: [EDCompliance@elpasotexas.gov](mailto:EDCompliance@elpasotexas.gov);
2. Completed Grant Submittal Package Form
3. **[INITIAL GRANT SUBMITTAL ONLY]** Copy of Development Permits;
4. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation to evidence the amount of development fees paid as a result of the Development (receipts, invoices, bank and/or credit card statements, checks);
5. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation evidencing the materials and labor of Taxable Items used in the construction of the Development eligible for rebate to Applicant under the construction Materials Sales Tax Rebate (receipts, invoices, bank and/or credit card statements, checks);
6. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation to evidence minimum expenditures to date and not previously verified (receipts, invoices, bank and/or credit card statements, checks)
7. **[INITIAL GRANT SUBMITTAL ONLY]** Certificate of Occupancy or Lease
8. **[INITIAL GRANT SUBMITTAL ONLY]** 1295 Form
9. Property tax payment receipt showing proof of payment for calendar tax year being requested (real and personal **if applicable**):
10. Retailers Report
11. Provide the lease agreement displaying rent amounts
12. Provide list/percentage of occupancy rate of commercial and residential space.
13. Provide list/percentage of occupied apartments by moderate income housing units.
14. Provide police department statement of compliance.

It is understood by [Applicant] that the City of El Paso has up to ninety (**90**) days to process this request and reserves the right to deny the Grant request if the Applicant has not complied with the terms of the Agreement.

**[Applicant]**  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D**

**Property Tax Rebate Table**

<b>Year</b>	<b>City Property Tax Rebate Incentive</b>
1	\$ 218,076.27
2	\$ 224,618.55
3	\$ 231,357.11
4	\$ 238,297.82
5	\$ 245,446.76
6	\$ 252,810.16
7	\$ 260,394.47
8	\$ 268,206.30
9	\$ 276,252.49
10	\$ 284,540.06
<b>Total</b>	<b>\$ 2,500,000.00</b>



# DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with [Title 2, Chapter 2.92, Section 2.92.080](#)

## Introduction:

Individuals or entities benefiting by a City Council Agenda item must disclose contributions or donations made to current members of Council under the City's Ethics Code. The information on this form is being captured for transparency purposes and will be noted on the relevant City Council Agenda. **Contributions and Donations do NOT disqualify an applicant from doing business with the City.**

## Definitions:

- "Contribution" A direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit.
- "Contributor" A person making a contribution, including the contributor's spouse.
- "Donation" Cash and the value of any in-kind contributions or gifts to the council member for use by their office or in their district.
- "Donor" An individual and spouse, a business entity, or an individual who owns a business entity in whole or in part, or is operated by the individual, that is the subject of a council agenda item.
- "Benefiting" Shall include but not be limited to any contract, bid award, franchise, permit, zoning or rezoning, and other award that council will vote on.

**Instructions:** Please read and complete this form carefully. If you have made campaign contributions or donations to any current City Council member(s) totaling an aggregate of \$500 or more during their campaign(s) or term(s) of City office, you are required to disclose the information as specified below. If you have not made such contributions or donations past the limit specified in the ordinance, you are required to affirm your compliance with the municipal code. Please submit this completed form along with your application or proposal to the relevant city department. Failure to disclose campaign contributions or donations as required by the ordinance may result in a violation of the City's Ethics Code requirements, and sanctions under the Ethics Code 2.92.

## Contributor / Donor Information:

Full Name

---

Business Name

---

Agenda Item Type

---

Relevant Department

---

**Disclosure Affirmation:** Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.

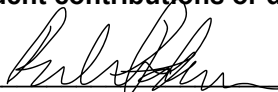
I have **NOT** made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office, as specified in Section 2.92.080 of the El Paso Municipal Code.

OR

I have made campaign contributions or donations totaling an aggregate of \$500 or more to the following City Council member(s) during their campaign(s) or term(s) of City office:

OFFICE	CURRENT COUNCIL MEMBER NAME	AMOUNT (\$)
Mayor		
District 1		
District 2		
District 3		
District 4		
District 5		
District 6		
District 7		
District 8		

**Declaration:** I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, **I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.**

Signature:  Date: \_\_\_\_\_