

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

AGENDA DATE: October 24, 2023
PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER:
Economic Development, Bill Allen, (915) 212 - 1619
Economic Development, Elizabeth K. Triggs, (915) 212- 0094

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:

Discussion and action that the City Manager be authorized to execute a Chapter 380 Economic Development Agreement between the City of El Paso and Desert Pass Townhomes, LLC pursuant to the City's Infill Development Incentive Policy, for the construction of a townhome development located at 201 Desert Pass, El Paso, TX 79912. The project includes the Applicant to make a minimum investment of \$12,008,509.00. Over the term of the Agreement, the City shall provide economic incentives not to exceed \$316,238.00 in the form of a Property Tax Rebate; a Development Fee Rebate; and a Construction Materials Sales Tax Rebate.

BACKGROUND / DISCUSSION:

Desert Pass Townhomes, LLC will invest \$12,008,509.00 to develop 43 high-end townhomes at 201 N. Desert Pass, this will: enhance the neighborhood, bolster future residential construction in the area, and provide a different real-estate option in that area. As consideration, the City will provide performance-based economic incentives not to exceed \$316,238.00 in the form of:

1. Five annual property tax rebates of 100 percent from years 1 to 3 and 75 percent from years 4 to 5 of the incremental property tax revenue received by the City as a result of the project's construction, capped at \$246,195.00;
2. A one-time development fee rebate, capped at \$10,000.00; and
3. A one-time rebate on the one-percent sales and use tax revenue received by the City as a result of construction materials sales made in connection with development of the project, capped at \$60,043.00.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

General Fund

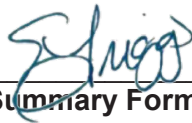
HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Economic and International Development

SECONDARY DEPARTMENT: N/A

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

DEPARTMENT HEAD:



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

RESOLUTION

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

That the City Manager be authorized to execute a Chapter 380 Economic Development Agreement between the City of El Paso and Desert Pass Townhomes, LLC pursuant to the City's Infill Development Incentive Policy, for the construction of a townhome development located at 201 N. Desert Pass, El Paso, TX 79912. The project includes the Applicant to make a minimum investment of \$12,008,509.00. Over the term of the Agreement, the City shall provide economic incentives not to exceed \$316,238.00 in the form of a Property Tax Rebate; a Development Fee Rebate; and a Construction Materials Sales Tax Rebate.

APPROVED AND ADOPTED this ____ day of _____ 2023.

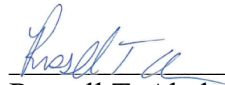
CITY OF EL PASO:

ATTEST:

Oscar Leeser
Mayor

Laura Prine
City Clerk

APPROVED AS TO FORM:



Russell T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:



Elizabeth Triggs, Director
Economic and International Development

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

This Chapter 380 Economic Development Program Agreement ("**Agreement**") is made ___ day of ___, 20___ ("**Effective Date**") between the **City of El Paso, Texas, a Texas home rule municipal corporation**, (the "**City**"), and **Desert Pass Townhomes, LLC, a Texas limited liability company** (the "**Applicant**"). For the convenience of the parties, all defined terms appear in **boldface** print when first defined.

RECITALS

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 for the purpose of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, on May 30, 2017 the El Paso City Council adopted an Infill Development Incentive Policy (the "**Infill Policy**") to promote infill development by providing economic incentives for eligible projects meeting Infill Policy criteria; and

WHEREAS, the Applicant’s real property, located at **201 N. Desert Pass, El Paso, Texas 79912**, is within the Policy’s designated incentive area and the Applicant’s proposed development meets the Policy’s eligibility requirements; and

WHEREAS, the City desires to provide incentives to the Applicant, pursuant to Chapter 380 and the Infill Policy, for the construction or renovation of a development located on the Applicant’s real property, and the Applicant wishes to receive the incentives in exchange for compliance with the obligations set forth herein; and

WHEREAS, the City concludes and hereby finds that this Agreement promotes economic development in the City and meets the requirements of Chapter 380.

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 and incorporated herein by reference.
- B. "**Base Year Value**" means valuation of the real and personal 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 **\$498,624.00**.
- C. "**Construction Materials Sales Tax Rebate**" means 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 **\$60,043.00**.

- D. **“Development”** means new construction on a vacant lot or renovation of an existing vacant or blighted building(s) to be used for any of the following land uses: single-family homes for attainable rental housing, office, retail, restaurant, multifamily residential facilities, commercial and industrial within the City of El Paso, 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”** means a one-time 100% rebate of certain development fees based on the fee schedule attached as Exhibit A to Ordinance 018581. The Development Fee Rebate shall not exceed **\$10,000.00** 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. **“Effective Date”** means the date the El Paso City Council approves the Agreement.
- G. **“Grant”** means each rebate payment made by the City to the Applicant pursuant to the terms of this Agreement. The aggregate amount that the City will provide in Grants shall not exceed **\$316,238.00**. This aggregate amount reflects the sum total of all applicable rebates.
- H. **“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.
- I. **“Minimum Appraisal Value”** means the valuation of the Real Property appraised by El Paso Central Appraisal District during and after the construction or renovation of the Development. For the purposes of this Agreement, the Minimum Appraisal Value is **\$6,502,879.00**. 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. The Minimum Appraisal Value shall include the total units of the Development regardless of ownership status
- J. **“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 to qualify for the Grant is **\$12,008,509.00**.
- K. **“Property Tax Rebate”** means a rebate, according to the Incremental 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 Property Tax Rebate amount shall not exceed **\$246,195.00**.
- L. **“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.

- M. **“Real Property”** means the real property owned by Applicant located at **201 N. Desert Pass, El Paso, Texas 79912**, El Paso, Texas, and described on Exhibit A, which is attached and incorporated by reference. The Real Property is the location for Applicant’s proposed Development.
- N. **“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) **8** years and **6** months 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 **5** 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) Applicant represents that the Development complies with, and adheres to, the provisions and requirements of the City’s Infill Policy and is located within the eligible incentive areas identified within the Infill Policy.
- (2) Applicant shall renovate or construct, at its sole cost and expense, the Development and shall expend a minimum of **\$12,008,509.00** in Qualified Expenditures to construct the Development.
- (3) Applicant shall obtain all building permits for the Project within **6** months after the Effective Date.
- (4) Within **42** months after the Effective Date, Applicant shall submit documentation to the City to verify the following:
- (a) The expenditure of a minimum of **\$12,008,509.00** 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) Applicant agrees that during the Term of this Agreement, the Real Property shall be limited to those uses consistent with the Development.
- (9) 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.
- (10) Applicant agrees that during the Term of this Agreement it shall not challenge or permit anyone else to take actions on its behalf to challenge any assessments by the El Paso Central Appraisal District of **\$6,502,879.00** or less. It is the intent of the parties that the assessed value of the Property on the tax rolls have a base value of **\$498,624.00** during the Term of this Agreement. This property 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, not the values contained within, will be utilized to contest appraisal values or in the determination of the market value of the Development.
- (11) 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, if so requested by the City. The confidentiality of such records will be maintained in accordance with all applicable laws.

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 **December 1, 2027**, 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 **December 1**, 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 Construction Materials Sales Tax Rebate not to exceed **\$60,043.00** in accordance with the terms and provisions of this Agreement.
- B. The City agrees to provide a Development Fee Rebate not to exceed **\$10,000.00** in accordance with the terms and provisions of this Agreement.
- C. The City agrees to provide a Property Tax Rebate not to exceed **\$246,195.00** in accordance with the terms and provisions of this Agreement.
- D. The City will process any eligible Grant payment within **90 days** after receipt of the Applicant's annual Grant Submittal Package.

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. **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.

- D. **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 El Paso Central Appraisal District.
- E. **Notice and Opportunity to Cure.** If an Event of Default occurs, the City will provide Applicant with written notice of the 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.
- F. **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 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.

- A. The City may terminate this Agreement without an event of default and 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. GENERAL PROVISIONS.

- A. **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.
- B. **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.
- C. **EMPLOYMENT OF UNDOCUMENTED WORKERS.** During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as

- H. CONFIDENTIALITY. The Applicant acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- I. GOVERNING LAW. This Agreement is governed by Texas law.
- J. VENUE. The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- K. SEVERABILITY. A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- L. HEADINGS. The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- M. 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.
- N. COMPLIANCE WITH THE LAWS. 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.
- O. AUDITING RECORDS FOR THE SPECIFIC PROJECT. The Applicant will allow the City to inspect and copy all records pertaining to the Development of this Agreement.
- P. FORCE MAJEURE. There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.
- Q. SUCCESSORS AND ASSIGNS. This Agreement is binding on the City and the Applicant, and the Applicant's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- R. THIRD-PARTY BENEFICIARIES. There are no third-party beneficiaries for this Agreement.
- S. PROVISIONS SURVIVING THIS AGREEMENT. Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.

- T. REPRESENTATIONS AND WARRANTIES. The Applicant warrants to the City that the Applicant has all required licenses, permits, and expertise to perform the Work of this Agreement. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- U. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties.

[Signatures begin on the following page]

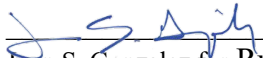
IN WITNESS WHEREOF, the parties hereby execute this Agreement.

CITY OF EL PASO:

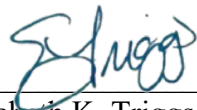
Cary Westin
Interim City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Juan S. Gonzalez for Russell T. Abeln
Senior Assistant City Attorney



Elizabeth K. Triggs, Director
Economic & International Development

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the _____ day of _____, 20____,
by Cary Westin as Interim 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]

EXHIBIT A

Legal Description of the Real Property

4 DESERT TRAIL # 3 LOT 1

EXHIBIT B

Description of Development

APPLICANT PLANS TO DEVELOP 43 HIGH END TOWNHOMES THAT WILL ENHANCE THE NEIGHBORHOOD BY PROVIDING A WELL THOUGHT OUT PLANNING DEVELOPMENT WITH AESTHETICALLY PLEASING ARCHITECTURE. IN ADDITION, THE DEVELOPMENT WILL PROVIDE A DIFFERENT REAL ESTATE OPTION TO THE AREA. THE POSITION OF THE BUILDINGS NEAR THE STREET, AND THE NEARBY SHOPPING CENTERS, MOVIES AND RESTAURANTS ENCOURAGES AND PROMOTES FAMILIES TO WALK THE NEIGHBORHOOD

Renderings/Building Plans:



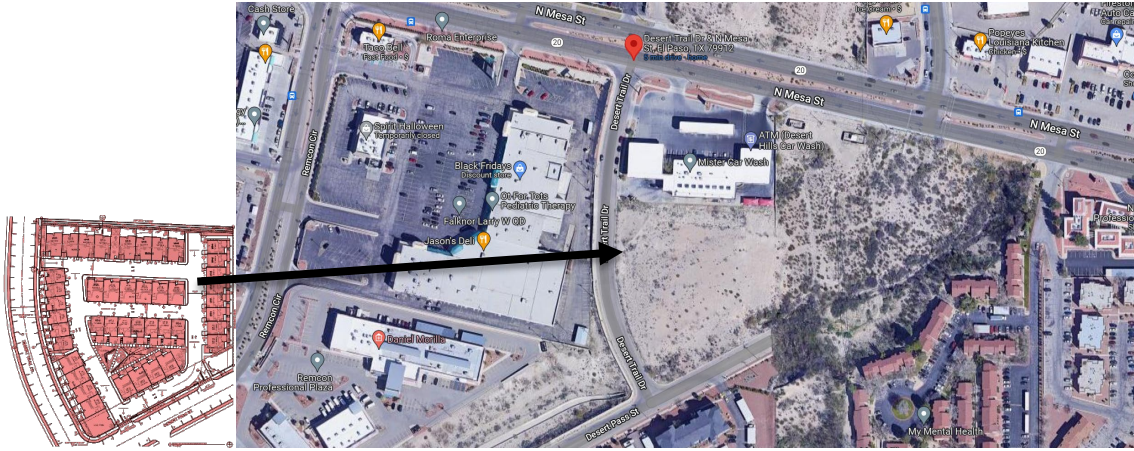


EXHIBIT C

Grant Submittal Package Form

Desert Pass Townhomes, LLC believes that it has substantially met its obligations under the Chapter 380 Agreement dated the _____ day of _____ 20__ and signed by _____ of Desert Pass Townhomes, LLC. Pursuant to the Agreement, Desert Pass Townhomes, LLC submits this Grant Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations met therein.

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

1. Electronically to Email: EDCCompliance@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 \$12,008,509.00 in 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 the calendar tax year being requested (real and personal if applicable):
10. Job Certification Report Spreadsheet with the following breakdown:

a. Employee Roster:

Last Name	First Name	Job Title	Hire Date	Termination Date	Job Category (New/retained)	Total Hours Worked in the Year	Weeks Worked in the Year	Hourly Wage	Gross Annual Salary	Employment Status (FT/PT)	Percentage employee pays for medical premium	Percentage company pays for medical premium

- b. Insurance Benefits Packet
- c. Employee Benefits Packet (pto, vacation, sick leave, etc.)
- d. 941 IRS Reports

It is understood by Desert Pass Townhomes, LLC 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.

DESERT PASS TOWNHOMES, LLC

Name: _____

Title: _____

EXHIBIT D

Property Tax Rebate Table

Years 1-3	Years 4-5
100%	75%