

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



DEPARTMENT: Economic & International Development

AGENDA DATE: 10/14/25

PUBLIC HEARING DATE: 10/14/25

CONTACT PERSON NAME: Bill Allen

PHONE NUMBER: 1-915-212-0094

2nd CONTACT PERSON NAME: Karina Brascalla

PHONE NUMBER: 1-915-212-0094

DISTRICT(S) AFFECTED: 6

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 on a Resolution that the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement by and between the City of El Paso and RFD Beaufort, Inc., to further the municipal purpose of promoting economic development in the City, in support of the Development located at 12120 Esther Lama Dr, El Paso, Texas 79936 and as more particularly described and depicted on Exhibit A and A-1 of the Agreement. The City shall provide economic incentives not to exceed \$151,074 in the form of Construction Materials Sales Tax Rebate, Development and Building Fee Rebate, Property Tax Rebate, and a Skills Training Grant.

BACKGROUND / DISCUSSION:

RFD Beaufort will invest \$ 3,027,000.00 to develop the property located at 12120 Esther Lama, El Paso, TX 79936. As consideration, the City will provide performance-based economic incentives not to exceed \$151,074 in the form of:

1. 10 annual property tax rebates of \$ 95,642.00 in accordance with the terms and provisions of this Agreement.
2. A one-time development and Building fee rebate, capped at \$10,000 in accordance with the terms and provisions of this Agreement.
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 \$ 5,432 in accordance with the terms and provisions of this Agreement.
4. A Skills Training Grant not to exceed \$ 40,000.00 in accordance with the terms and provisions of this Agreement.

COMMUNITY AND STAKEHOLDER OUTREACH:

N/A

PRIOR COUNCIL ACTION:

NA

AMOUNT AND SOURCE OF FUNDING:

General Fund - 2323 Incentives
Auxiliary Fund - Skill Training Grant

REPORTING OF CONTRIBUTION OR DONATION TO CITY COUNCIL:

NONE

NAME	AMOUNT (\$)

*****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 sign a Chapter 380 Economic Development Program (“Agreement”) by and between the City of El Paso (“City”) and RFD Beaufort, Inc., (“Applicant”), to further the municipal purpose of promoting economic development in the City, in support of the Development located at 12120 Esther Lama Dr, El Paso, Texas 79936 and as more particularly described and depicted on *Exhibit A* and *A-1* of the Agreement. The City shall provide economic incentives not to exceed \$151,074 in the form of Construction Materials Sales Tax Rebate, Development and Building Fee Rebate, Property Tax Rebate, and a Skills Training Grant.

APPROVED is _____ day of _____, 2025.


CITY OF EL PASO:

Renard U. Johnson
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Oscar Gomez
Assistant City Attorney

APPROVED AS TO CONTENT:



Karina Brasgalla, Director
Economic & 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 this _____ day of _____, 20____ (“**Effective Date**”) between the **CITY OF EL PASO, TEXAS** a Texas home-rule municipal corporation, (the “**City**”) and **RFD Beaufort, Inc., a Delaware Corporation**, (“**Applicant**”), for the purposes and considerations stated below. The City and Applicant may hereinafter be collectively referred to as the *Parties* and individually as the *Party*.

WHEREAS, Article 3, Section 52A, Texas Constitution, authorizes the Legislature to enable cities to implement programs for the public purposes of economic development under which cities and counties may provide financial incentives for the purposes of stimulating local economic development and business and commercial activity in the City; and

WHEREAS, Section 380.001, Texas Local Government Code (“Chapter 380”), authorizes the City Council of the City to establish and provide for the administration of one or more programs in order to stimulate business and commercial activity in the City including, but not limited to, programs for (i) making loans and grants of public money to promote local economic development, (ii) accepting contributions, gifts and other resources to develop and administer a program; and

WHEREAS, the City has established an economic development program and, pursuant to Chapter 380, is authorized to provide loans or grants of public funds as a governmental function to promote economic development, including the creation and retention of jobs, stimulating of business and commercial activity, and expansion of the tax base within the City of El Paso and surrounding region; and

WHEREAS, the City wishes to provide incentives to the Applicant, pursuant to Chapter 380, for the construction of a development located on the real property at *12120 Esther Lama Dr., El Paso, Texas, 79936* more fully described below and in *Exhibit A* and *A-1* 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 City determines that a grant of funds to Applicant will serve the municipal purpose of promoting local economic development and enhancing business and commercial activity within the City and region; and

WHEREAS, the Development will likely encourage increased economic development within the City and region, provide increases in the City’s property tax revenues, and improve the City’s ability to provide for the health, safety and welfare of the general public within and around of El Paso, Texas; and

WHEREAS, the City finds that this Agreement embodies an eligible *program* and promotes economic development within and around the El Paso, Texas, and, as such, meets the

requirements under Chapter 380 of the Texas Local Government Code and further is in the best interests of the City.

NOW, THEREFORE, for and in consideration of the above recitals and the terms and conditions set forth below, 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 hereto agree as follows:

SECTION 1. DEFINITIONS.

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

- A. **Ad Valorem Taxes.** The term *Ad Valorem Taxes* means with respect to any property tax year, all ad valorem property taxes collected by the City on the Eligible Property for that tax year. For purposes of this Agreement, Ad Valorem Taxes collected by the City shall not include penalties, interest, or attorney's fees.
- B. **Affiliate.** The term *Affiliate* means of any person or entity identified in this Agreement means any other person or entity which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under direct or indirect common control with such specified person or entity. For purposes of this definition, *control* when used with respect to any person or entity in conjunction with the term *affiliate* means (i) the ownership, directly or indirectly, of 50% or more of the voting securities of such person or entity, or (ii) the right to direct the management or operations of such person or entity, directly or indirectly, whether through the ownership (directly or indirectly) of securities, by contract or otherwise, and the terms *controlling* and *controlled* have meanings correlative to the foregoing control as herein defined.
- C. **Agreement.** The term *Agreement* means this Chapter 380 Economic Development Program Agreement, together with all exhibits attached and incorporated herein by reference.
- D. **Applicant.** The term *Applicant* means RFD Beaufort, Inc.
- E. **Base Year Value.** The term *Base Year Value* shall mean the value of the real and personal property on the tax 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 is executed. For the purposes of this agreement, the Base Year Value for Real Property is \$8,186,964.
- F. **Construction Materials Sales Tax Rebate.** The term *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 determination of whether a particular receipt or transaction qualifies for Sales and Use Tax eligibility shall be based on the criteria established under Chapter

321 of the Texas Tax Code. All receipts or transactions submitted for rebate consideration must comply with these criteria and shall be collectively evaluated by the City for rebate eligibility. The Construction Materials Sales Rebate shall not exceed \$5,432.

- G. **Development.** The term *Development* means the development of a manufacturing facility located at *12120 Esther Lama Dr, El Paso Texas, 79936* and as more fully described on *Exhibit A* and *A-1*, which is attached and incorporated herein for all purposes.
- H. **Development and Building Fee Rebate.** The term *Development and Building Fee Rebate* means a one-time 100% rebate of certain development fees, the rebate shall not exceed \$10,000. The Development and Building Fee Rebate shall be limited to the lesser of: (i) the development and building fee costs associated with the construction of the Development or (ii) the Development and Building Fee Rebate Cap. Under no circumstances shall the City rebate reinspection and other building and inspection penalty fees associated with the development and construction of the Development.
- I. **Effective Date.** The term *Effective Date* means the date the El Paso City Council approves the Agreement.
- J. **Full-Time Employment.** The term *Full-Time Employment* means a job in El Paso that:
1. Is created and/or retained by the Applicant, where the employee is on active status and on the payroll of the Applicant on the last day of the reporting year;
 2. In which the employee must work an average of at least 35 hours per week or more, calculated by dividing the total hours worked by the number of weeks worked ($\text{Total Hours} \div \text{Weeks Worked} \geq 35$); and
 3. Has the opportunity to participate in all the Applicant's employee benefits programs, including company-paid health insurance (employee must not be required to pay more than 50% of the health insurance premium) with such jobs being located at the Development, within the City of El Paso, Texas.
 4. These requirements are more completely described in *Exhibit B*, which is attached hereto and incorporated herein for all purposes.
- K. **Grant.** The term Grant means each annual payment to the Applicant under the terms of this Agreement computed as the sum of the applicable rebates: (i) Construction Materials Sales Tax Rebate; (ii) Development and Building Fee Rebate; and (iii) Property Tax Rebate. For purposes of this Agreement, the aggregate Grant payments will not exceed \$151,074.
- L. **Grant Submittal Package.** The term *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 *Exhibit C*, which is attached hereto and incorporated herein for all purposes.

- M. **Landlord.** The term *Landlord* shall mean Applicant's landlord under the lease for the Development and any subsidiary of Applicant's landlord or any entity affiliated with Applicant's landlord.
- N. **Minimum Appraisal Value.** The term *Minimum Appraisal Value* means the valuation of the Real and Personal 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 \$10,007,464. 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.
- O. **Minimum Investment.** The term *Minimum Investment* means costs totaling at least \$3,027,000 that the Applicant incurs directly, contracts out to third parties, self-performs, or causes its Landlord to incur as Qualified Expenditures for the Development.
- P. **Municipal Purpose.** The term *Municipal Purpose* shall mean or otherwise include one or more of the following:
- (i) the funding of maintenance and operations expenditures of the City; and
 - (ii) the funding of debt service on lawfully incurred obligations of the City; and
 - (iii) the funding of any economic development grants or performance, incentive, or tax sharing agreements made in compliance with Chapter 380 of the Texas Local Government Code or other applicable law; or
 - (iv) any capital improvement project or other lawful municipal purpose authorized under Texas law that the City otherwise determines is necessary and appropriate.
- Q. **Personal Property Base Year Value.** The term *Personal Property Base Year Value* means the value of the non-inventory, personal property on the El Paso Central Appraisal District rolls as of January 1st of the year in which this Agreement is executed with respect to the Development. However, under no circumstances shall the Personal Property 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, this amount \$736,964.
- R. **Program.** The term *Program* means the economic development program established in accordance with the Chapter 380 Economic Development Policy pursuant to the Act designed to promote local economic development and stimulate business and commercial activity within the City.
- S. **Project.** The term *Project* means Applicant's planned construction of substantial improvements to real property within the City.

- T. **Property Tax Rebate.** The term *Property Tax Rebate* means a rebate of the City's portion of the incremental ad valorem Real and Personal property tax revenue generated by the Development above the Base Year Value for the Development for the given tax year during the Grant Period and as described in *Exhibit D* attached hereto. The Grant Payments shall not exceed the lesser of (i) 70% of the total value of the City's portion of the incremental ad valorem property tax revenue generated by the Development above the Base Year Value for the Development for the given tax year during the Grant Period or (ii) up to a *maximum amount* of \$95,642 (whichever comes first) during the Grant Period.
- U. **Qualified Expenditures.** The term *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.
- V. **Real Property Base Year Value.** The term *Real Property Base Year Value* means the value of the real property on the El Paso Central Appraisal District rolls as of January 1st of the year in which this Agreement is executed with respect to the Development. However, under no circumstances shall the Real Property 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 purpose of this Agreement this amount is Choose an item. \$7,450,000.
- W. **Skills Training Grant.** The term *Skills Training Grant* means a reimbursement from the City in an aggregate amount of \$40,000 to be disbursed in annual payments as outlined in Section 4(D) for 5 years after December 31, 2026 for costs associated with training materials, training equipment, monthly training classes, and certifications. This Grant is payable from the City's Impact Fund account derived from the franchise fee paid to the City pursuant to the Franchise Agreement adopted by Ordinance No. 017460. (*amended by Ordinance 018772*)

SECTION 2. TERM AND GRANT PERIOD.

The term of this Agreement shall be the lesser of: (i) the lease term (including any renewals) relating to the Development to be located at the Development property; (ii) 12 years from the Effective Date of the Agreement; (iii) the full payment of the Grant by the City to the Applicant, as limited by the Agreement; (iv) termination of the Agreement as otherwise provided by said agreement; or (v) termination by mutual consent of the Parties in writing ("Term").

The Effective Date of the Agreement shall be the date upon which City Council approves the Agreement. However, the Applicant's eligibility for Grant payments shall be limited to 10 consecutive years (the "Grant Period") within the term of the Agreement. The Grant Period shall begin with the first year being the first tax year that begins after: (i) the issuance of the certificate of occupancy for the Development (triggered by the Grant Submittal Date); and (ii) the Applicant meets all Full-time Employment job requirements as described in *Exhibit B*.

SECTION 3. OBLIGATIONS OF APPLICANT.

DEVELOPMENT

- A. The Applicant agrees to renovate, at its sole cost, the Project. Applicant must obtain the building permits for the Project within 12 months from the Effective Date of this Agreement. ED Director may administratively extend this period.
- B. By January 31, 2027, the Applicant shall submit documentation to the City to verify the qualifying expenses for improvements or new construction and Minimum Investment associated with the completion of the Project and a Certificate of Occupancy for the Development. ED Director may administratively extend this period.
- C. The Applicant agrees that it shall make or cause to be made, at its sole cost and expense or the expense of third parties, Minimum Investment of \$3,027,000 associated with this Project.
- D. The Applicant agrees that the Project shall not include the demolition of buildings with a historic overlay that are deemed historic or contributing at the time of the execution of this agreement, unless specifically approved by El Paso City Council.
- E. **Compliance with Tax Payment(s) Due.** Applicant or its Landlord shall pay by January 31 of each year all of the real and business personal ad valorem taxes due to for the previous tax year on the Development and any other property owned by the Applicant within the City.
- F. **Minimum Appraised Value.** The Parties agree that the taxable value of the Development, after completion of all construction and improvements, will have an assessed land *Base Year Value* of \$7,450,000 for *Property ID 223159*, located at *12120 Esther Lama Dr, El Paso, Texas 79936*. It is the intent of the Parties that the assessed value of the Development on the tax rolls shall have a *Minimum Appraised Value* of \$8,656,950 including the Base Year Value (cumulatively the *Minimum Value*) during the term of the Agreement and after the completion of the Development. Applicant and its Landlord 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 El Paso Central Appraisal District to the extent such challenge would reduce the assessed value below the Minimum Value. Any such action will be deemed an Event of Default. The Minimum Appraised Value should in no way be interpreted to affect the values set by the El Paso Central Appraisal District for tax purposes. Upon the termination of this Agreement, Company 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.

A. EMPLOYMENT POSITIONS

1. Applicant agrees that it shall create, staff, and maintain at least 210 Full-Time Employment positions as described in *Exhibit B* by *December 31, 2030*, and shall maintain the Full-Time Employment positions for the Development through the entire Grant Period of the Agreement. Applicant agrees that it shall retain a workforce at *12120 Esther Lama Dr, El Paso, TX 79936*, which the Parties agree currently represents the equivalent of a minimum 140 Full-Time Employment positions. The Parties agree that Full-Time Employment positions shall be considered *created* if they are above the total number of Full-Time Employment positions with Applicant's operations in the City at the time this Agreement is executed (the "Threshold"). The Parties agree that the Threshold shall be equal to 140 Full-Time Employment positions.
2. Applicant, during normal business hours, at its principal place of business in El Paso, shall allow the City or its agents reasonable access to Applicant's employment records and books, and other records that are related to the economic development agreement considerations and incentives described herein, to verify employment records and any other records related to the City's economic development considerations and incentives provided herein. In order to protect these records, the City shall maintain the confidentiality of such records in accordance with and subject to commercially reasonable practices and all applicable laws.

B. GRANT SUBMITTAL PACKAGE

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 *January 31, 2027* or within 30 business days after this date, or unless otherwise agreed by the City and Applicant in writing that the Grant Submittal Package will occur at an agreed upon date after the initial due date. Thereafter, the Applicant's annual Grant Submittal Package must be submitted on or within 30 business days after January 31st of each year. A failure by the Applicant to timely submit a Grant Submittal Package in accordance with this paragraph may be considered as a waiver by the Applicant to receive a Grant payment for that Grant year. A failure by the Applicant to timely submit a Grant Submittal Package in accordance with this paragraph may be considered as 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.

1. 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 \$5,432 in accordance with the terms and provisions of this Agreement.
- B. The City agrees to provide a *Development and Building Fee Rebate* not to exceed \$10,000 in accordance with the terms and provisions of this Agreement.
- C. The City agrees to provide a *Property Tax Rebate* not to exceed \$95,642 in accordance with the terms and provisions of this Agreement.
- D. The City agrees to provide a *Skills Training Grant* not to exceed \$40,000 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. EVENTS OF DEFAULT.

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

- 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. **Failure to Maintain Development and Job Requirements.** Applicant's failure or refusal to operate the Development and maintain the Full-Time Employment requirements pursuant to this Agreement throughout its Term, and Applicant's failure or refusal to cure such breach in the time and manner provided in Subsection H, shall be deemed an Event of Default. In the event this Agreement is terminated pursuant to this Section 5B, all Grant Payments 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.
- C. **False Statements.** In the event the Applicant provides any written warranty, representation or statement under this Agreement or any related document that is false or misleading in any material respect, either now or at the time made or furnished, and Applicant fails to cure such breach in the time and manner provided in Subsection H, such action or omission shall be deemed an Event of Default. Further, if Applicant obtains actual knowledge that any previously provided warranty, representation or statement has become materially false or misleading after the time 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 the period specified in Subsection H, such action or omission shall be deemed an Event of Default.
- D. **Insolvency.** The dissolution or termination of Applicant's existence as a going business or concern, Applicant's insolvency, appointment of receiver for any part of Applicant's operations, any assignment of all or substantially all of the assets of Applicant for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against

Applicant shall all be deemed an Event of Default; provided, however, that in the case of involuntary proceedings, if such proceedings are discharged within the period specified in Subsection H, no Event of Default shall be deemed to have occurred.

- E. **Construction of Development.** Applicant's failure to comply with its construction obligations set forth in this Agreement and Applicant's failure to cure such breach in the time and manner provided in Subsection H shall be deemed an Event of Default, except to the extent such failure is caused by any act or omission of the City.
- F. **Property Taxes.** 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 breach in the time and manner provided in Subsection H, such act or omission shall be deemed an Event of Default; provided, however, that Applicant shall have the right to contest the appraised value of the Development subject to the restrictions noted herein.
- G. **Other Defaults.** Failure of Applicant or the City to comply with or to perform any other term, obligation, covenant, or condition contained in this Agreement or in any related documents, and the failure to cure such breach in the time and manner provided in Subsection H, shall be deemed an Event of Default.
- H. **Notice and Cure.** In the event of any alleged breach or default under this Agreement, the non-defaulting party shall provide written notice ("Notice") to the defaulting party describing the nature of the breach or default. The defaulting party shall have a period of 60 days from receipt of Notice to cure the breach or default (the "Cure Period"), except that defaults related to false statements or delinquent property taxes must be cured within 30 days, and defaults relating to construction obligations must be cured within 90 days. If the breach or default cannot be cured within the applicable Cure Period, no Event of Default shall be deemed to have occurred so long as the defaulting party commences the cure within the applicable Cure Period and continuously and in good faith pursues such cure to completion. If the defaulting party fails to cure the breach or default within the applicable Cure Period, the non-defaulting party may terminate this Agreement upon written notice and shall be entitled to exercise any and all rights and remedies available under this Agreement, at law, or in equity, including the right to recapture any Grant Payments previously made by the City, and the City's obligations under this Agreement shall thereupon terminate.
- I. **Liability.** In no event will either party be liable to the other party for any indirect, special, punitive, exemplary, incidental, or consequential damages. In no event shall the liability of either party exceed the value of Grant payments issued hereunder. This limitation will apply regardless of whether or not the other party has been advised of the possibility of such damages.

SECTION 6. RECAPTURE.

Should the Applicant default under *Section 5* of this Agreement and provided that the Cure Period for such default has expired, the City may, at sole discretion of the City Manager, require that all or a portion of the Grants provided pursuant to this Agreement be recaptured and repaid by the

Applicant previously provided by the City within 60 days from the date of such termination and written notice. The determination of whether recapture is necessary may take into account the nature of the default, the Applicant's risk profile, and any other factors deemed relevant by the City.

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 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. GENERAL 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 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 taxes rebated prior to the attempted transfer, with no ability for the Applicant to cure.
- D. **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 within 30 business days of the Applicant's knowledge of effectiveness 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. **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.
- G. **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.
- H. **Confidentiality Obligations.** The confidentiality of such records employment records and any other 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. Specifically, the City will maintain the confidentiality of any proprietary information to the extent permitted by law 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.
- I. **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.
- J. **Employment of Undocumented Workers.** During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the Grant payments received by Applicant from the 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.
- K. **Execution of Agreement.** The El Paso City Council has authorized the City Manager to execute this Agreement on behalf of the City.
- L. **Filing.** The City shall promptly file this Agreement with the Texas State Comptroller in accordance with Section 380.004 of the Texas Local Government Code.
- M. **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.

N. **Force Majeure.** It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed beyond such party's reasonable control by reason of war, civil commotion, acts of God, severe 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 reasonably delayed.

O. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address. Applicant shall provide all required invoices and other required documentation to City electronically at the following address: *EDcompliance@elpasotexas.gov*.

Applicant: RFD Beaufort, Inc.
ATTN: John Himes
12120 Esther Lama Dr.
El Paso, TX 79936

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

Copy To: The City of El Paso
Attn: Economic Development Department Director
P.O. Box 1890
El Paso, Texas 79950-1890

P. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Development unless specifically enumerated herein.

Q. **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.

R. **Termination or Expiration.** Upon termination or expiration of the Term of this Agreement, Applicant or its assigns agree that the Agreement, or the values contained herein will be used to contest appraisal values or in the determination of the market value of the Development; and

the economic development incentives established in the Agreement between the Parties shall not be considered in valuating the property for tax purposes.

S. **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 ____ day
of _____, 20__.

CITY OF EL PASO, TEXAS:

Dionne Mack
City Manager

APPROVED AS TO FORM:

Oscar Gomez
Assistant City Attorney

APPROVED AS TO CONTENT:

Karina Brasgalla, Director
Economic and International Development

ACKNOWLEDGMENT


STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20__,
by **Dionne Mack**, as **City Manager** of the **City of El Paso, Texas** (City).

Notary Public, State of Texas

My Commission Expires:

(Signatures Continue on the Following Page)

By: 
Name: John Himes
Title: General Manager LBT

STATE OF Virginia §
§
COUNTY OF Virginia Beach §

Margaret Seld # 7528890
Notary Public, State of Virginia

August 31, 2028

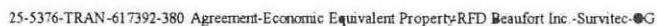


EXHIBIT A

[DEVELOPMENT]

EXHIBIT A-1

[PROJECT DESCRIPTION AND RENEDERING]



EXHIBIT B

[Employment Requirements & Grant Payment Eligibility]

SECTION 1. MINIMUM JOB CREATION AND RETENTION REQUIREMENTS.

In order to be eligible for any Grant Payments, Applicant is required to retain its current 140 full-time equivalent jobs and create and maintain a minimum of 70 additional jobs that comply with the Full-Time Employment requirements of this Agreement by December 31, 2030.

The parties agree that Full-Time Employment positions shall be considered *created* if they are above the total number of Full-Time Employment positions with Applicant's operations in the City at the time this Agreement is executed (the "Threshold"). The parties agree that the *Threshold shall be equal to 140* Full-Time Employment positions.

Jobs	Year 1	Year 2	Year 3	Year 4	Year 5
Retained	140	155	170	180	195
New	15	15	10	15	15
Total	155	170	180	195	210

SECTION 3. ELIGIBILITY FOR GRANT PAYMENTS.

The Applicant's eligibility for Grant Payments and any subsequent Grant Payments made by the City to the Applicant shall be determined pursuant to and in accordance with the following:

- A. Grant Payments shall be made equivalent to at least 70% the total value of the City's portion of the incremental ad valorem property tax revenue generated by the Project above the Base Year Value for the Project for the given tax year during the Grant Period, upon the Applicant's certification that at least 90% of the created and available Full-Time Employment positions required herein for which wages are at or above 90% of the Median Area Wage for the year covered by the Grant Submittal Package.
- B. Should applicant fail to meet all requirements, payment for that year is waived.

SECTION 4. MEDIAN COUNTY WAGE.

For purposes of this Agreement, the Median Area Wage is the median hourly wage established for the El Paso, Texas Metropolitan Area by the U.S. Bureau of Labor Statistics, as adjusted on January 1 of each year. However, in no event shall the applicable Median Area Wage used for determination of Grant payment eligibility be less than the Median Area Wage established for the corresponding year of the Grant Submittal Package.

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. **[DUE WITHIN 12 MONTHS OF AGREEMENT EXECUTION]** Copies of all applicable approvals and permits
2. **[INITIAL GRANT SUBMITTAL ONLY]** Copy of certificate of occupancy
3. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation to evidence minimum expenditures to date and not previously verified,
 - a. Stamped *PAID* invoices
 - b. Copies of checks proving payment – corresponding to paid invoices
 - c. Receipts for purchase of construction materials (must show amount of taxes paid)
 - d. Bank statements (in the event a transaction was paid with credit or debit card)
 - e. Contractor pays applications, notarized with lien releases
4. **[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*;
5. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation to evidence the amount of development and building fees paid as a result of the Development;
6. Job Certification Annual report plus attachment(s) as referenced in section 3(B)(1) of the Agreement;
7. Documentation showing proof of health insurance coverage were company pays a minimum of 50% of employee premium.
8. Property tax payment receipts showing proof of payment for tax year.
9. Other necessary documents as requested by the City of El Paso.

It is understood by *RFD Beaufort, Inc.* 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 terms of the Agreement have not been complied with. A Complete Submittal includes all documents listed on the Grant Submittal Package Form and other necessary documents as determined by the City;

APPLICANT FULL NAME:

By: _____

Name: John Himes

Title: General Manager LBT _____

ACKNOWLEDGMENT

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20 ____,
by _____, as _____ (title) of RFD Beaufort, Inc.

Notary Public, State of _____

My Commission Expires:

EXHIBIT D

<u>Term</u>	<u>Rebate Percentage</u>
10 years	70%