

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

DEPARTMENT: Economic and International Development Department
AGENDA DATE: CCA Regular March 16, 2021
CONTACT PERSON/PH. No.: Jessica Herrera, Director 915-212-1614
DISTRICT(S) AFFECTED: District 8

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the City Manager is hereby authorized to sign, on behalf of the City of El Paso a First Amendment to a Chapter 380 Economic Development Program Agreement between the City of El Paso and FullBeauty Brands, LLC, a Texas limited liability company, providing FullBeauty the flexibility to maintain the optimal number of full-time employees, further serving to promote local economic development and job retention within the City of El Paso.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

On October 03, 2017, the City of El Paso entered into a 380-grant agreement with FULLBEAUTY Brands, LLC to maintain and operate a catalog sales order contact center on west side El Paso. The company agreed to continue making El Paso the point of sale for all Texas Sales, and to employ and retain 525 fulltime employees. In consideration, the City offered a six-year 50% tax rebate of new sales, capped at \$250,000 per year, for a maximum of \$1,500,000 over the life of the agreement. In order for applicant to qualify for the rebate, \$1,250 will be paid per employee who earns at or above \$12.70 an hour.

Due to the current pandemic, the Applicant made necessary operational changes and will employ and retain 200 Full-time employment positions, and will also be allowed to substitute 1 full-time position for 2 part-time positions, not to exceed the use of 100 part-time positions for substitution of a full-time position. In consideration for the amendment, the incentive package is being reduced to a four-year 50% tax rebate of new sales, capped at \$250,000 per year, for a maximum of \$1,000,000 over the life of the agreement. In order for applicant to qualify for the rebate, \$1,250 will be paid per employee who earns at or above \$12.70 an hour.

Economic Development Staff is recommending approval as this will encourage increased economic development in the City of El Paso.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Executive Session February 15, 2021

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

General Fund

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

for

DEPARTMENT HEAD: _____

Eduardo Garcia

Digitally signed by Eduardo Garcia
Date: 2021.03.09 06:27:40 -07'00'

RESOLUTION

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

That the City Manager is hereby authorized to sign, on behalf of the City of El Paso a First Amendment to a Chapter 380 Economic Development Program Agreement between the City of El Paso and FullBeauty Brands, LLC, a Texas limited liability company, providing FullBeauty the flexibility to maintain the optimal number of full-time employees, further serving to promote local economic development and job retention within the City of El Paso.

APPROVED THIS _____ **DAY OF** _____ **2021.**


CITY OF EL PASO:

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:


Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Eduardo Garcia Digitally signed by Eduardo Garcia
Date: 2021.03.09 06:10:45 -07'00'

for Jessica Herrera, Director
Economic & International Development

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

This First Amendment to the Chapter 380 Economic Development Program Agreement (“Amendment”) is made this ____ day of _____, 2021 by and between the **CITY OF EL PASO, TEXAS** (the “City”) and **FULLBEAUTY BRANDS, LLC** (“Applicant”).

WHEREAS, on October 3, 2017, the City and Applicant entered into a Chapter 380 Economic Development Program Agreement (the “Agreement”), a copy of which is attached and labeled as Attachment “A”, for the purposes of promoting local economic development and job retention within the City of El Paso; and,

WHEREAS, the Agreement requires the Applicant to retain five hundred twenty five (525) full-time positions in order to receive grant payments;

WHEREAS, the Applicant desires to increase the flexibility of maintaining the optimal number of full-time employees;

WHEREAS, the City and Applicant agree to provide the Applicant credit for two (2) part-time jobs for every one (1) full-time job it creates and maintains capped at a maximum of 100 part-time positions;

WHEREAS, the City has concluded and hereby finds that this Amendment will encourage increased economic development within the City of El Paso, provide significant increases in the City’s sales tax revenues, and improve the City’s ability to provide for the health, safety, and welfare of the citizens of El Paso;

WHEREAS, the City has concluded and hereby finds that the Agreement and Amendment embody an eligible “program” and clearly promotes economic development in the City of El Paso and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interest of the City and Applicant.

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

I. Section 1 DEFINITIONS, of the Agreement is revised to read as follows:

(I) Full-Time Employment. The words “Full-Time Employment” mean a job requiring a minimum of 1,664 hours of work averaged over a 12-month period, including allowance for vacation and sick leave with full company benefits, including company paid contributions to health insurance, for those employees that participate in the health insurance program, (Employee must not be required to pay more than 50% of the premium) with such jobs being located at the Development, within the City of El Paso, Texas. These requirements are more completely described in Exhibit “A-1”, which is attached hereto and incorporated herein for all purposes.

(II) Grant. The word “Grant” means each annual payment to APPLICANT under the terms of this Agreement computed as the sum of the Retail Sales & Use

Tax Rebate. For the purposes of this Agreement the maximum aggregate amount of Grant Payments over the term of this Agreement is \$1,000,000 dollars.

(III) Retail Sales & Use Tax Rebate. The words “Retail Sales and Use Tax Rebate” means 50% rebate of the CITY’s 1% Sales and Use Tax Receipts generated by and attributed solely to Retailer sales of Taxable Items consummated at the Property located in the Development in the immediately prior calendar year and remitted from the State Comptroller to the City and payable from the CITY’s general revenue fund. The yearly rebate will be calculated in accordance with the terms set out in Exhibits A-1 and up to a cap of \$250,000 dollars for each year of this Agreement. The total, aggregate amount of payments, over the term of this Agreement to Applicant shall not exceed \$1,000,000 dollars.

Section 2. Term and Grant Period

The Applicant’s eligibility for Grant payments shall be limited to 4 consecutive years (the "Grant Period") within the term of this Agreement. The City shall review Applicant’s eligibility for Grant Payments on an annual basis in accordance with Exhibits A-1 and B-1 during the grant period.

Section 7. MISCELLANEOUS PROVISIONS

K. 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

Exhibit A-1

Exhibit A is replaced in its entirety with the Exhibit A-1 attached to this Amendment.

Exhibit B-1

Exhibit B is replaced in its entirety with the Exhibit B-1 attached to this Amendment.

II. Terms and Conditions

All terms and conditions of the Agreement and all subsequent Amendments thereto, except as herein revised, shall remain in full force and effect.

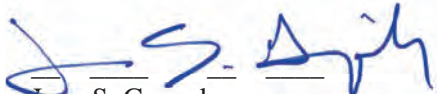
[Signatures begin on the following page]

IN WITNESS WHEREOF, the City and Applicant have executed this Amendment to the Agreement as of the date first written above.

CITY OF EL PASO:

Tomás González
City Manager

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

 Digitally signed by Eduardo Garcia
Date: 2021.03.09 06:15:12 -07'00'

Jessica Herrera, Director
for Economic and International Development

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ___ day of _____, 2021, by Tomás González, as City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas (City).

Notary Public, State of Texas

My Commission Expires: _____

[Signatures Continue on Next Page]

EXHIBIT A-1

[Employment Requirements & Grant Payment Eligibility]

SECTION 1. MINIMUM JOB RETENTION REQUIREMENTS.

In order for Applicant or its Affiliate to be eligible for any Grant Payments, Applicant is required to maintain a minimum of 200 Full-Time Employment (“FTE”) positions for the previous year ending December 31 of each full tax year (January 1 – December 31) during the Grant Period.

APPLICANT shall be allowed to substitute 1 full-time position for 2 part-time positions, not to exceed the use of 100 part-time positions for substitution of a full-time position. The foregoing are the minimum job requirements under this Agreement and in no way limit the **APPLICANT** from creating/retaining additional employment positions at the **DEVELOPMENT**.

SECTION 2. ELIGIBILITY FOR GRANT PAYMENTS.

The Applicant’s or its Affiliate’s eligibility to receive any Grant Payments from the City shall be determined pursuant to Applicant meeting the requirement in Section 1. **MINIMUM JOB RETENTION REQUIREMENTS** *and* will receive \$1,250.00 dollars per employee that earns at or above \$12.70 an hour. This payment will be capped at the lesser of a yearly maximum of \$250,000 or 50% of the City’s portion of the Sales Tax produced by applicant.

Grant payments shall be contingent upon Applicant’s certification that it has maintained at least 90% of the minimum jobs retention requirements during the full tax year (January 1 – December 31), as required herein. Grant payments will be reduced by 10% for each percentage point under 100%.

For illustrative purposes only:

Applicant maintains 98% (or 196 FTE Positions) of the 200 FTE positions, Grant Payments would be reduced by 20% (10% per 1% of job retention percentage) for a maximum potential payment of \$200,000.00 (subject to the Sales Tax Produced by Applicant for the Grant Period in question).

Should Applicant fall below the 90% threshold, no Grant Payment will be owed to Applicant for that Grant Period.

SECTION 3. TERMINATION

In the event the Applicant fails to meet employment requirement during two consecutive years, the agreement will be automatically terminated.

EXHIBIT B-1
[Grant Submittal Package Form]

FULLBEAUTY BRANDS, LLC., believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by _____ of **FULLBEAUTY BRANDS, LLC.** Pursuant to the Agreement, **FULLBEAUTY BRANDS, 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. Job Certification Annual Report plus attachments (all attachments as referenced within the Agreement).
2. Documentation showing proof of health insurance coverage were company pays a minimum of 50% of employee premium. For those employees that participate in the health insurance program.
3. Employee benefits documentation on PTO, vacation, sick leave (i.e. employee manual, company pamphlets, or company document where it can be found on.)
4. Property Tax Payment Receipt(s) showing proof of payment for tax year _____.
5. Waiver of Sales Tax Confidentiality Forms.

It is understood by **FULLBEAUTY BRANDS, LLC.**, a Texas Limited Liability Company 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.

Submitted on the _____, day of _____, 20__

FULLBEAUTY BRANDS, LLC.,

By: _____

NAME: _____

TITLE: _____

[Notary Block Continue on Next Page]

ACKNOWLEDGMENT

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20____, by _____, as _____ of the **FULLBEAUTY BRANDS LLC**.

Notary Public, State of _____

My Commission Expires:

ATTACHMENT “A”
[Original 380 Agreement]

22.1.

RESOLUTION

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

That the City Manager is hereby authorized to sign, on behalf of the City of El Paso, a Chapter 380 Economic Development Program Agreement between the City of El Paso and FULLBEAUTY BRANDS, LLC, ("Applicant"), a Texas Limited Liability Company, in order to retain the customer contact center located in El Paso, Texas.

APPROVED this 3rd day of October 2017.



CITY OF EL PASO

Dee Margo, Mayor

Mayor Pro Tempore Svarzbein

ATTEST:

Laura D. Prine
Interim City Clerk

APPROVED AS TO FORM

APPROVED AS TO CONTENT

Juan S. Gonzalez
Assistant City Attorney

Jessica Herrera, Director
Economic & International Development

22-1

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

This Chapter 380 Economic Development Program Agreement ("Agreement") is made and entered into by and between the **CITY OF EL PASO, TEXAS** ("City"), a Texas home rule municipal corporation, and **FULLBEAUTY BRANDS TEXAS, LLC**. ("Applicant"), a Texas Limited Liability Company, formerly known as **OSP GROUP TEXAS, LLC**, for the purposes and considerations stated below:

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

WHEREAS, the City desires to provide, pursuant to Chapter 380, an incentive to Applicant to retain the customer contact and fulfillment center located in El Paso. Applicant has received City incentives in the past and wishes to enter into another incentive agreement with the City of El Paso as more fully described below; and

WHEREAS, the City has the authority under Chapter 380 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso; and

WHEREAS, the City determines that a grant of funds to Applicant will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the City; and

WHEREAS, the City and Applicant desire that the customer contact and fulfillment center, along with its associated jobs, remain located in El Paso; and

WHEREAS, the retention of the local customer contact center will likely encourage increased economic development in the City, 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 citizens of El Paso; and

WHEREAS, the City has concluded and hereby finds that this Agreement embodies an eligible "program" and promotes economic development in the City of El Paso and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the City and Applicant.

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

SECTION 1. DEFINITIONS.

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

- A. **Affiliate.** The word "Affiliate" means with respect to any specified person or entity, any other person or entity that, directly or indirectly, controls, is under common control with, or is controlled by such specified person or entity. For purposes of this definition, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, through ownership of voting securities or through partnership interest.
- B. **Agreement.** The word "Agreement" means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- C. **Applicant.** The word "Applicant" means FULLBEAUTY BRANDS TEXAS, LLC., a Texas Limited Liability Company.
- D. **City.** The word "City" means the City of El Paso, Texas.
- E. **Development.** The word "Development" means Applicant's operations and personal property located at the Property.
- F. **Effective Date.** The date upon which both parties have fully executed this Agreement as set forth on the signature page hereof.
- G. **Event of Default.** This phrase shall have the meaning set forth in Section 5 hereof.
- H. **Event of Nonappropriation.** The phrase means the failure of the City to appropriate for any Fiscal Year, sufficient funds to pay the Grant payment, or the reduction of any previously appropriated money below the amount necessary to permit the City to pay the Grant payments from lawfully available funds.
- I. **Full-Time Employment.** The words "Full-Time Employment" mean a job requiring a minimum of two thousand and eighty (2,080) hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave, with full company benefits, including company paid contributions to health insurance (Employee must not be required to pay more than fifty percent (50%) of the premium) with such jobs being located at the Development, within the City of El Paso, Texas. These requirements are more completely described in Exhibit "A", which is attached hereto and incorporated herein for all purposes.
- J. **Grant.** The word "Grant" means each annual payment to APPLICANT under the terms of this Agreement computed as the sum of the Retail Sales & Use Tax Rebate. For the purposes of this Agreement the maximum aggregate amount of Grant Payments over the term of this Agreement is \$1,500,000.00.
- K. **Grant Submittal Package.** The words "Grant Submittal Package" mean the documentation required to be supplied to City on a yearly basis as a condition of receipt of any Grant, with

such documentation more fully described in Exhibits A and B, which are attached hereto and incorporated herein for all purposes.

- L. **Property.** The word "Property" means the real and personal property located at 500 S. Mesa Hills Drive, El Paso, Texas 79912; upon which the Development is situated and more specifically described in Exhibit D.
- M. **Retail Sales & Use Tax Rebate.** The words "Retail Sales and Use Tax Rebate" means 100% rebate of the CITY'S one percent (1%) Sales and Use Tax Receipts generated by and attributable solely to Retailer sales of Taxable Items consummated at the Property located in the Development in the immediately prior calendar year and remitted from the State Comptroller to the City and payable from the CITY's general revenue fund. The yearly rebate will be calculated in accordance with the terms set out in Exhibits A and B and up to a cap of Two Hundred Fifty Thousand and 00/100 dollars (\$250,000.00) for each year of this Agreement. The total, aggregate amount of payments, over the term of this Agreement to Applicant shall not exceed \$1,500,000.00.
- N. **Retailer(s).** The word "Retailer(s)" is limited to Applicant, in the Development required by the State Comptroller to collect Sales and Use Tax on the sale of Taxable Items consummated in the City at the Property in the Development.
- O. **Sales and Use Tax.** The words "Sales and Use Tax" mean the CITY'S one percent (1%) sales and use tax imposed pursuant to Chapter 321 of the Texas Tax Code on the sale of Taxable Items by Retailers consummated at the Property located in the Development and remitted to the CITY by the State Comptroller, to be used only as a measurement for computation of the Grant to be paid through the use of general funds.
- P. **Sales Tax Receipts.** The words "Sales Tax Receipts" mean receipts of Sales and Use Tax revenue remitted from the State Comptroller based upon the Retailers' collection of Sales and Use Tax during the term of this Agreement, which are generated by and solely attributable to the Retailers' sale of Taxable Items consummated at the Property located in the Development in El Paso, Texas.
- Q. **State Comptroller.** The words "State Comptroller" mean the office of the Texas Comptroller of Public Accounts.
- R. **Taxable Items.** The words "Taxable Items" have the same meaning assigned in Chapter 151, Texas Tax Code.

SECTION 2. TERM AND GRANT PERIOD.

The term of this Agreement shall be 7 years from the Effective Date of this Agreement, including any renewal agreed upon by the parties. The Effective Date of this Agreement shall be the date upon which both parties have fully executed this Agreement, as noted below.

The Grant Period shall begin with the first tax year that begins after the Applicant meets and maintain all Full Time Employment job requirements noted in Exhibit A, which is attached hereto and

incorporated herein for all purposes. Failure of the Applicant or its Affiliate to meet and maintain its Full Time Employment job requirements as noted in Exhibit A, shall result in the immediate termination of this Agreement.

The Applicant's eligibility for Grant payments shall be limited to 6 consecutive years (the "Grant Period") within the term of this Agreement. The City shall review Applicant's eligibility for Grant Payments on an annual basis in accordance with Exhibits A and B, during the Grant Period.

SECTION 3. OBLIGATIONS OF APPLICANT.

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

- A. Applicant agrees that it, and its Affiliate companies, shall staff and maintain the Full-Time Employment positions described in Exhibit "A" for the Development as of December 31 of the applicable year, and shall maintain the Full-Time Employment positions through the entire Grant Period of this Agreement. Applicant and its Affiliate shall maintain the Full-Time Employment positions for each quarter of each fiscal year with the total per day hours worked averaged over each fiscal quarter.

Applicant shall provide the City with an annual report by December 31st of each year during the term of this Agreement, certifying the status of compliance through the preceding year. Such annual report shall include the number of new jobs created and retained for the Development, information on any new investments in the Development, and any other information relevant to the Development and the City's economic development goals. Documentation for jobs may be in the form of quarterly IRS 941 returns, Texas Workforce Commission Employer Quarterly Reports, employee rosters that show the hours worked and the positions filled. Applicant shall also provide the City with such other reports as may reasonably be required.

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 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 to the extent allowed by the Texas Open Records Act.

- B. Unless otherwise agreed by the City and Applicant, each Grant Submittal Package shall be in the form provided in Exhibit "B". If Applicant fails to timely submit a Grant Submittal Package for a particular year, the City may, give Applicant written notice of its failure to timely submit such Grant Submittal Package, and Applicant shall have thirty (30) calendar days from the date on which such written notice is given in which to submit such Grant Submittal Package. A failure by 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. The City's determination of the amount of the Grant payment due to

Applicant is final; provided, however, that the Applicant may appeal to the City Council within thirty (30) days of payment. The City Council shall hear the appeal within thirty (30) days of request for appeal and the City Council's determination of the amount of the Grant payment shall be final. Nothing herein shall limit (or be construed to limit) Applicant's rights and remedies as described in Section 5 of this Agreement.

C. The Applicant shall pay by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on any other property owned by the Applicant with the City of El Paso.

D. **WAIVERS OF SALES TAX CONFIDENTIALITY.**

(1) Applicant shall provide the CITY, during the term of this Agreement, a Waiver of Sales Tax Confidentiality which authorizes the State Comptroller to release to the CITY and APPLICANT Sales and Use Tax information pertaining to the sale of Taxable Items by Applicant at the Property in the Development during the term of this Agreement substantially in the form attached hereto as **Exhibit C**. The CITY will verify all such information, but the CITY shall not have an obligation to otherwise collect sales tax information and will have no obligation to make payments under this Agreement without such sales and use tax payment confirmation from the State Comptroller.

(2) The confidential sales tax information provided or reported by the State Comptroller to the CITY shall be used to determine in the amount of the Grant payment that APPLICANT is eligible to receive. For any particular Grant Submittal Package and Grant amount determination, the CITY shall only consider the Sales and Use Tax Receipts that appear on the Retailers Report and that have a valid and effective Waiver of Sales Tax Confidentiality on file with the CITY.

(3) While agreement is in effect, APPLICANT shall, upon request of CITY, provide such additional documentation as may be reasonably requested by the CITY to evidence, support and establish the Sales and Use Tax Receipts.

E. Applicant shall designate El Paso, Texas as the place of business and location for the consummation of all Applicant's Texas sales for the following brands, so long as the brands are owned by the Applicant: Brylane Home, Ellos, Jessica London, KingSize, Roaman's, and Woman Within.

SECTION 4. OBLIGATIONS OF CITY.

During the term of this Agreement and so long as an event of default has not occurred and is not continuing as set forth herein (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), City shall comply with the following terms and conditions:

A. The City agrees to approve or reject any Grant Submittal Package within ninety (90) days after its receipt. The City agrees to process any Grant Payments to Applicant within ninety (90) days after its approval of the Applicant's Grant Submittal Package.

- B. Pursuant to the City's "Incentives Policy – Guidelines and Criteria" and a cost/benefit calculation completed solely by and at the City's discretion, the City shall determine the total amount of Grant Payments due to the Applicant, if any, on an annual basis.
- C. The City shall determine the total amount of Grant payments due to the Applicant, if any, on an annual basis as provided in Exhibits A and B.
- D. Under no circumstances shall the total aggregate of Grant payments exceed the lesser of a yearly maximum of Two Hundred Fifty Thousand and 00/100 dollars (\$250,000.00) or 50% of the City's portion of the Sales Tax produced by applicant.

SECTION 5. EVENTS OF DEFAULT.

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

- A. **Failure to Maintain Development and Job Requirements.** Applicant's or its Affiliate's failure or refusal to operate the Development and maintain required Full Time Employment pursuant to the provisions of Exhibit A of this Agreement through the Grant Period, and Applicant's or its Affiliate's failure or refusal to cure within sixty (60) days after written notice from the City describing such failure, shall be deemed an event of default. If such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, but the Applicant and its Affiliate have commenced such cure within such sixty (60) day period and continue to thereafter diligently prosecute the cure of such failure, such actions or omissions shall not be deemed an event of default.
- B. **False Statements.** In the event the Applicant or its Affiliate provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, and Applicant or its Affiliate fails to cure same within thirty (30) days after written notice from the City shall be deemed an event of default. If such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, but the Applicant and its Affiliate commence such cure within such thirty (30) day period and continuously thereafter diligently prosecutes the cure of such violation, such actions or omissions shall not be deemed an event of default. Further, if Applicant or its Affiliate obtains actual knowledge that any previously provided warranty, representation or statement has become materially false or misleading after the time that it was made, and Applicant or its Affiliate fails to provide written notice to the City of the false or misleading nature of such warranty, representation or statement within thirty (30) days after Applicant or its Affiliate learns of its false or misleading nature, such action or omission shall be deemed an event of default. In the event this Agreement is terminated pursuant to this Section 5B, all Grant Payments previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant or its Affiliate within sixty (60) days from the date of such termination.
- C. **Insolvency.** The dissolution or termination of Applicant's or its Affiliate's existence as a going business or concern, Applicant's or its Affiliate's insolvency, appointment of receiver for any part of Applicant's or its Affiliate's portion of the Property, any assignment of all or substantially all of the assets of Applicant or its Affiliate for the benefit of creditors of

Applicant or its Affiliate, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Applicant or its Affiliate, shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.

- D. **Property Taxes.** In the event Applicant or its Affiliate allows any property taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) days after written notice thereof from the City and/or El Paso Central Appraisal District, such actions or omissions shall be deemed an event of default. Subject to the restrictions noted herein, Applicant and its Affiliate shall have the right to contest the appraised value of the Development.
- E. **Other Defaults.** Failure of Applicant, its Affiliate, or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, Exhibits, or in any related documents, and Applicant, its Affiliate or City fails to cure such failure within sixty (60) days after written notice from the other party describing such failure shall be deemed an event of default. If such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, and Applicant, its Affiliate, or City commences such cure within such sixty (60) day period and continuously thereafter diligently prosecute the cure of such failure, such act or omission shall not be deemed an event of default.
- F. **Failure to Cure.** If any event of default by Applicant, its Affiliate, or City shall occur, and after Applicant, its Affiliate, or City fails to cure same in accordance herewith, then this Agreement may be terminated without any further action required of the Applicant, its Affiliate, or City and the Applicant's, its Affiliate's, or City's obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.
- G. **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. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT OF APPLICANT.

The City or APPLICANT may terminate this Agreement for its convenience and without the requirement of an event of default by either party, 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 7. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- A. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by all 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 or its Affiliate 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, with no ability for the Applicant to cure.
- D. **Applicant's or Affiliate's Sale or Transfer of the Development.** Prior to any sale or other transfer of ownership rights in the Development, Applicant and its Affiliate shall notify the City in writing of such sale or transfer within thirty (30) business days of the Applicant's or its Affiliate'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 and its Affiliate's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant and Affiliate to the same.
- F. **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.
- G. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

- H. **Employment of Undocumented Workers.** During the term of this Agreement, Applicant and its Affiliate agree 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 and its Affiliate shall repay the amount of the Grant payments received by Applicant or its Affiliate from the City as of the date of such violation not later than one hundred twenty (120) days after the date Applicant or its Affiliate is notified by City of a violation of this section, plus interest from the date the Grant payment(s) was paid to Applicant or its Affiliate, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to Applicant or its Affiliate 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.
- I. **Execution of Agreement.** The City Manager has received authority to execute this Agreement on behalf of the City from the City Council through approval of a resolution.
- J. **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed 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.
- K. **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.

CITY: City of El Paso
City Manager
P.O. Box 1850
El Paso, Texas 79950-1850

Copy To: City of El Paso
Economic & International Development Department
P.O. Box 1850
El Paso, Texas 79950-1850

APPLICANT: FULLBEAUTY BRANDS TEXAS, LLC.
500 S. Mesa Hills Drive
El Paso, Texas 79912

- L. **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.

- M. **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.

[Signatures begin on the following page]

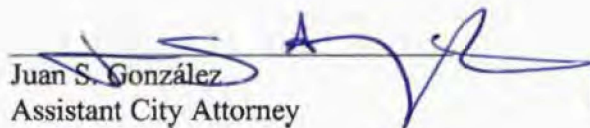
IN WITNESS WHEREOF, the parties have executed this Agreement on this 3rd day of October, 2017.

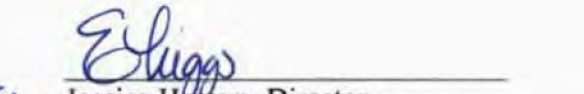
CITY OF EL PASO, TEXAS


for
Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:


Juan S. González
Assistant City Attorney


for: Jessica Herrera, Director
Economic and International Development

APPLICANT: FULLBEAUTY BRANDS TEXAS, LLC.,
a Texas Limited Liability Company



By: Laura L. Warren
Title: COO of
FULLBEAUTY BRANDS TEXAS, LLC.

CITY CLERK DEPT.
2017 OCT -2 AM 10:41

{Acknowledgments begin on the following page}

2017 OCT -2 AM 10:41

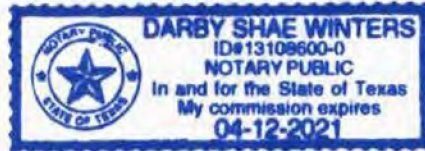
ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 3rd day of October, 2017, by Tomás González, as City Manager of the City of El Paso, Texas (CITY).
Cary Nestin for

Darby Shae Winters
Notary Public, State of Texas

My Commission Expires:
4.12.2020



ACKNOWLEDGMENT

STATE OF INDIANA §
 §
COUNTY OF MARION §

This instrument was acknowledged before me on the 28th day of September, 2017, by Laura L. Warren, as CEO of FULLBEAUTY BRANDS TEXAS, LLC., a Texas Limited Liability Company (APPLICANT).

Joshua A. McFarland
Notary Public, State of INDIANA

My Commission Expires:
11/03/22

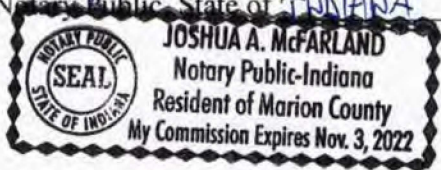


EXHIBIT A
[Employment Requirements & Grant Payment Eligibility]

SECTION 1. MINIMUM JOB RETENTION REQUIREMENTS.

In order for Applicant or its Affiliate to be eligible for any Grant Payments, Applicant is required to maintain a minimum average of 525 Full-Time Employment ("FTE") position for the previous year ending December 31 of each full tax year during the Grant Period

SECTION 2. ELIGIBILITY FOR GRANT PAYMENTS.

The Applicant's or its Affiliate's eligibility to receive any Grant Payments from the City shall be determined pursuant to Applicant meeting the requirement in Section 1. MINIMUM JOB RETENTION REQUIREMENTS and will receive One Thousand, Two Hundred Fifty and 00/100 dollars (\$1,250.00) per employee that earns at or above \$12.70 an hour. This payment will be capped at the lesser of a yearly maximum of Two Hundred Fifty Thousand and 00/100 dollars (\$250,000.00) or 50% of the City's portion of the Sales Tax produced by applicant.

Grant payments shall be contingent upon Applicant's certification that it has maintained at least ninety percent (90%) of the minimum jobs retention requirements during the full tax year, as required herein. Grant payments will be reduced by 10% for each percentage point under 100%. For illustrative purposes only:

Applicant maintains 98% (515 rounded up from 514.5) of the 525 FTE positions, Grant Payments would be reduced by 20% (10% per 1% of job retention percentage) for a maximum potential payment of \$200,000.00 (subject to the Sales Tax Produced by Applicant for the Grant Period in question).

Should Applicant fall below the 90% threshold, no Grant Payment will be owed to Applicant for that Grant Period.

SECTION 3. TERMINATION

In the event the Applicant fails to meet employment requirement during two consecutive years, the agreement will be automatically terminated.

EXHIBIT B

[Grant Submittal Package Form]

FULLBEAUTY BRANDS TEXAS, LLC., believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by _____ of **FULLBEAUTY BRANDS TEXAS, LLC.** Pursuant to the Agreement, **FULLBEAUTY BRANDS TEXAS, 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. Job Certification Annual Report plus attachments (all attachments as referenced within the Agreement). An example of an acceptable Job Certification is attached to this Exhibit B as Exhibit B-1.
2. Property Tax Payment Receipt(s) showing proof of payment for tax year _____.
3. Waiver of Sales Tax Confidentiality Forms.

It is understood by **FULLBEAUTY BRANDS TEXAS, LLC.**, a Texas Limited Liability Company that the City of El Paso has up to ninety (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.

Submitted on the _____, day of _____, 20__

By: _____
NAME: _____
TITLE: _____
of **FULLBEAUTY BRANDS TEXAS, LLC.**, a Texas Limited Liability Company

EXHIBIT B-1

El Paso, Texas Annual Employee Report SAMPLE

Company Name:

Company Address:

Date of submission:

Job Data From To
 Wage Data From To

Job Title	No. of Employees	Last Name	First Name	Hire Date	Termination Date	Hours Worked	Hourly Wage	Earnings
Catalog Sales Associate	400	Doe	John	11/26/2012		2080	\$17.07	\$35,511.57
Customer Service Rep	50	Doe	John	5/13/2011		829	\$10.09	\$8,367.39
On-Line Customer Service Rep	2	Doe	John	3/29/2012	6/29/2013	336.25	\$9.68	\$3,253.95
Order Processing Clerk	0	Doe	John	10/10/2011		655.28	\$9.63	\$6,313.07
Credit Department Associate	1	Doe	John	10/26/2011		2018.13	\$10.44	\$21,070.26
Catalog Sales Associate	25	Doe	John	11/14/2011	8/14/2013	1401.1	\$15.67	\$21,951.77
Customer Service Rep	65	Doe	John	10/28/2013		320	\$15.38	\$4,923.08
On-Line Customer Service Rep	70	Doe	John	3/7/2011	7/27/2011	1294	\$9.57	\$12,386.90
Order Processing Clerk	85	Doe	John	7/29/2011		1445.26	\$10.06	\$14,542.86
Credit Department Associate	90	Doe	John	11/21/2013		138.75	\$9.59	\$1,331.20
Catalog Sales Associate	400	Doe	John	7/4/2009		986.7	\$10.46	\$10,322.90
Customer Service Rep	50	Doe	John	11/22/2011		1565.75	\$9.72	\$15,215.29
On-Line Customer Service Rep	2	Doe	John	8/7/2013		384.75	\$9.50	\$3,655.15
Order Processing Clerk	0	Doe	John	11/20/2013		133	\$9.50	\$1,263.50
Credit Department Associate	1	Doe	John	10/25/2010		30.93	\$9.88	\$305.71
Catalog Sales Associate	25	Doe	John	3/10/2011		1613.01	\$10.03	\$16,181.30
Customer Service Rep	65	Doe	John	11/20/2013		76.5	\$9.50	\$726.76
On-Line Customer Service Rep	70	Doe	John	2/17/2009		1757.81	\$10.54	\$18,529.95
Order Processing Clerk	85	Doe	John	10/31/2013		185.75	\$9.50	\$1,764.63
Credit Department Associate	90	Doe	John	9/20/2010		1908.09	\$9.20	\$17,545.36
Peer Coach	56	Doe	John	2/13/2013		1453.46	\$8.19	\$11,898.37
HR Director	35	Doe	John	9/11/2011		1907.8	\$9.30	\$17,740.02
Manager	28	Doe	John	3/21/2009	2/5/2013	41.3	\$11.20	\$462.36
Administrative Assistant	30	Doe	John	5/16/2011		1916.89	\$16.26	\$31,172.01
Skill Builder	32	Doe	John	8/28/2013	11/19/2013	205.75	\$10.91	\$2,244.29
Contact Center Ops Desk Rep.	56	Doe	John	12/3/2012		1571.73	\$12.23	\$19,216.69

Disclaimer: This is not a real employee roster

EXHIBIT C

Waiver of Sales Tax Confidentiality

Date _____

I authorize the State of Texas Comptroller of Public Accounts to release sales tax information pertaining to the taxpayer indicated below to _____, a _____, its successors, assigns or nominees, and the City of El Paso, Texas. I understand that this waiver applies only to place of business located at _____ in the City of El Paso, El Paso County, Texas.

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

Name of Taxpayer Listed on Texas Sales Tax Permit:

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

Taxpayer Mailing Address:

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

Texas Taxpayer ID Number
Tax Outlet Number
(As shown of Texas Sales Tax Permit)

Authorized Signature

Printed Name:

Title:

Phone:

The authorized signature must be an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at (800) 531-5441.

EXHIBIT D

[MAP AND DESCRIPTION OF DEVELOPMENT]