

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

AGENDA DATE: May 24, 2022
PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Jessica Cordova, 915-212-1626

DISTRICT(S) AFFECTED: District 8

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

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

SUBJECT:

A Resolution that the City Manager be authorized to sign the 1st Amendment to the Chapter 380 Economic Development Program Agreement ("Agreement") between the **CITY OF EL PASO** and **FLYZONE, LLC**, to decrease the maximum, aggregated Grant payments due to the Applicant over the Term of the Agreement by 5 percent (from \$162,863 to \$154,720) as consideration for an approximate 5 percent reduction in the Minimum Investment required to be incurred by the Applicant (from \$12,414,000 to \$11,763,573).

BACKGROUND / DISCUSSION:

On June 12, 2018, FLYZONE, LLC ("Applicant") entered into a Chapter 380 Agreement with the City for the construction of iFLY, an indoor skydiving facility located in West El Paso. The project was completed in April 2019 and is currently operational. The Applicant's investment in the construction of the project totaled \$11,763,573, approximately 5 percent below the Applicant's contractual obligation of \$12,414,000. To bring FLYZONE, LLC into compliance with its Agreement, staff is recommending approval of this first amendment which allows for an approximate 5 percent reduction in minimum investment. As consideration for the reduction, the maximum, total Grant payment due to the Applicant over the term of the Agreement will be reduced by a proportionate five percent, to be withheld from the Retail Sales and Use Tax Rebate.

PRIOR COUNCIL ACTION:

On June 12, 2018, the City and FLYZONE, LLC entered into a Chapter 380 Economic Development Program Agreement. The original agreement requires a contractual investment amount of \$12,414,000. City of El Paso is to incentivize the project with a Retail Sales Tax Rebate not to exceed \$110,863.00, a Construction Materials Sales Tax Rebate not to exceed \$42,000, and a Building and Planning Fee Rebate not to exceed \$10,000. For a total incentive of \$162,863.

AMOUNT AND SOURCE OF FUNDING:

General Fund

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

PRIMARY DEPARTMENT: Economic and International Development

SECONDARY DEPARTMENT: N/A

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

DEPARTMENT HEAD:



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

RESOLUTION

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

That the City Manager be authorized to sign the 1st Amendment to the Chapter 380 Economic Development Program Agreement (“Agreement”) between the CITY OF EL PASO and FLYZONE, LLC, to decrease the maximum, aggregated Grant payments due to the Applicant over the Term of the Agreement by 5 percent (from \$162,863 to \$154,720) as consideration for an approximate 5 percent reduction in the Minimum Investment required to be incurred by the Applicant (from \$12,414,000 to \$11,763,573).

APPROVED this _____ day of _____, 20____.

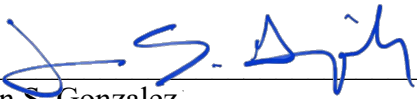
CITY OF EL PASO:

ATTEST:

Oscar Leaser
Mayor

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Elizabeth Triggs, Director
Economic and International Development

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

The First Amendment to the Chapter 380 Economic Development Program Agreement (“First Amendment”) is made this ____ day of _____, 2022, by and between the **CITY OF EL PASO** (the “City”), a Texas home rule municipal corporation, and **FLYZONE, LLC**, (the “Applicant”), an indoor skydiving entertainment facility.

WHEREAS, on June 12, 2018, the City and Applicant entered into a Chapter 380 Economic Development Program Agreement (the “Agreement”) a copy of which is attached and labeled as Exhibit “A”, for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso; and

WHEREAS, the City and Applicant now desire to amend the Agreement to decrease rebate incentive by five percent (5%) in correlation by a five percent (5%) investment reduction.

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. The following provisions of SECTION 2. DEFINITIONS, of the Agreement are revised to read as follows:

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

- G. **Grant** means each annual payment to Applicant under the terms of this Agreement computed as (i) Retail Sales Tax Rebate, (ii) Construction Materials Sales Tax Rebate and (iii) Building and Planning Fee Rebate. For the purposes of this Agreement, the maximum, aggregated amount of Grant payments shall not exceed \$154,720.00.
- J. **Minimum Investment** means those cost incurred by Applicant or third parties in the construction, or furnishing of the improvements for the Project, to include cash and in-kind contributions. For the purposes of this Agreement, the Minimum Investment amount shall be \$11,769,573.00.
- N. **Retail Sales and Use Tax Rebate.** The word "Retail Sales and Use Tax Rebate" means a rebate capped at 80% of the City's one percent (1%) Sales and Use Receipts generated by and attributable solely to Applicant sale 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 total, aggregate amount of payments over the Term of this Agreement to Applicant shall not exceed \$102,720.00

II. The following provisions of SECTION 4. OBLIGATIONS OF CITY, of the Agreement are revised to read as follows:

E. Under no circumstances shall the total aggregate of Grant payments exceed \$154,720.

Except as amended herein, the Agreement between the City and Applicant shall remain in full force and effect.

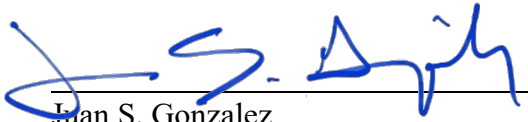
[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this First Amendment to be effective as of the _____ day of _____, 20__.

CITY OF EL PASO:

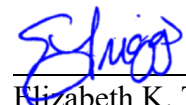
Tomás González
City Manager

APPROVED AS TO CONTENT:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO FORM:



Elizabeth K. Triggs, 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 **Tomás González** as **City Manager** of the **City of El Paso, Texas (CITY)**.

Notary Public, State of Texas
Name printed: _____

My Commission Expires:

FLYZONE, LLC, a Texas limited liability company

By: [Signature]

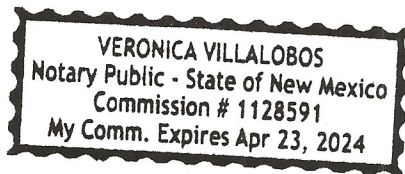
Name: Lynda Sharpe

Title: Owner

ACKNOWLEDGMENT

STATE OF New Mexico §
COUNTY OF Dona Ana §

This instrument was acknowledged before me on the 13th day of May, 2022, by Lynda Sharpe, as Owner of FLYZONE, LLC, a Texas limited liability company.



Veronica Villalobos
Notary Public, State of New Mexico
Name printed: Veronica Villalobos

My Commission Expires:

April 23, 2024