

STATE OF TEXAS)
) **CHAPTER 381 ECONOMIC DEVELOPMENT**
COUNTY OF EL PASO) **PROGRAM AGREEMENT**

This Chapter 381 Economic Development Program Agreement (“Agreement”) is made and entered into by and between the **COUNTY OF EL PASO, TEXAS** (“County”), a political subdivision of the State of Texas, and **GELTMORE ALDEA, LLC** (“Applicant”), a New Mexico limited liability company authorized to do business in Texas, for the purposes and considerations stated below:

WHEREAS, the Applicant desires to enter into this Agreement pursuant to Chapter 381 of the Texas Local Government Code (“Chapter 381”); and

WHEREAS, the County desires to provide, pursuant to Chapter 381, an incentive to Applicant to develop a Smart Code Master Planned Community as more fully described below; and

WHEREAS, the County has the authority under Chapter 381 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the County of El Paso; and

WHEREAS, the County 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 County; and

WHEREAS, the County seeks to induce Applicant to construct the Smart Code Master Planned Community, a large-scale redevelopment project which will create complete neighborhoods containing residential units of various types and sizes, retail and entertainment space, hotels, offices, parks, open space, and components of a mass transit system; and

WHEREAS, the County and Applicant desire that development of the Smart Code Master Planned Community occur in the County of El Paso; and

WHEREAS, the creation of the Smart Code Master Planned Community will encourage increased economic development in the County, provide significant increases in the County’s property tax revenues, and improve the County’s ability to provide for the health, safety and welfare of the citizens of El Paso; and

WHEREAS, the County has concluded and hereby finds that this Agreement embodies an eligible “program” and clearly promotes economic development in the County of El Paso and, as such, meets the requisites under Chapter 381 of the Texas Local Government Code and further, is in the best interests of the County 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. **Agreement.** The word “Agreement” means this Chapter 381 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- B. **Applicant.** The word “Applicant” means **GELTMORE ALDEA, LLC**, a New Mexico limited liability company authorized to do business in Texas.
- C. **Base Property Tax Valuation.** The words “Base Property Tax Valuation” mean the valuation of the Property by the El Paso Central Appraisal District as of January 1, 2011.
- D. **County.** The word “County” means the County of El Paso, Texas.
- E. **Development.** The word “Development” means the entirety of Applicant’s proposed Smart Code Master Planned Community development upon the Property as more fully described on Exhibits “A” and “A-1”, which are attached hereto and incorporated herein for all purposes.
- F. **Grant.** The word “Grant” means a payment on a yearly basis to Applicant under the terms of this Agreement computed with reference to the designated percentage of the County’s portion of the ad valorem real property tax increment revenue generated from the Property in the Development as identified in Exhibit “A” based upon the increased value of the Property over the value of the Base Property Tax Valuation, as determined by the El Paso Central Appraisal District and collected by the County during the term of this Agreement.
- G. **Grant Submittal Package.** The words “Grant Submittal Package” mean the documentation required to be supplied to the County on a yearly basis as a condition of receipt of any Grant, with such documentation more fully described in Exhibit “B”, which is attached hereto and incorporated herein for all purposes.
- H. **Property.** The word “Property” means the approximately 196 acres of real property near the intersection of I-10 and Executive Drive in El Paso, Texas, more fully described by metes and bounds as shown in Exhibit “A-1.”
- I. **Qualified Expenditures.** The words “Qualified Expenditures” means those costs related to horizontal infrastructure improvements incurred by Applicant in the acquisition, construction or furnishing of the Development, said cost items being specifically described in Exhibit “C”.

SECTION 2. TERM AND GRANT PERIOD.

Except as otherwise provided herein, the term of this Agreement shall commence on the Effective Date (as hereinafter defined in Section 8 below) and shall terminate on the first to occur of the following: (i) the date when the Grant amount is fully paid; (ii) subject to the provisions of Section 3 below, twenty (20) years from the commencement of the Grant Period (as such term is defined below), plus such additional time thereafter as may be necessary to process the final annual Grant payment pursuant to the procedures described in Sections 3 and 4 below; or (iii) the proper termination of this Agreement in accordance with the applicable provisions contained herein. Applicant's eligibility for annual Grant payments shall be limited to twenty (20) consecutive years (the "Grant Period") within the term of this Agreement. The Grant Period shall begin with the filing of the first Grant Submittal Package, which must occur no later July 31, 2015.

SECTION 3. OBLIGATIONS OF APPLICANT.

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

A. Development.

- (1) Within twenty four (24) months of the Effective Date, Applicant agrees to commence or caused to be commenced the construction of the Development , at its sole cost and expense, or the expense of third parties, the Development as depicted in Applicant's preliminary regulating plan in Exhibit "D". Within thirty (30) days, Applicant will submit a revised Exhibit "D", which removes the Special District currently contained in Exhibit "D". If the El Paso City Manager or her designee approves in writing the submission following its receipt, the revised Exhibit "D" will substitute and replace the original Exhibit attached hereto without the need of a written amendment. Submission of a revised Exhibit "D" is a material term of this Agreement. Further, Applicant agrees to satisfy or cause to be satisfied certain construction build-out requirements for each Phase of the Development such that the valuation of the Property in the Development, as determined by El Paso Central Appraisal, as of January 1, 2018 is at least One Hundred Forty Five Million Five Hundred Fifteen Thousand One Hundred Ninety Nine Dollars (\$145,515,199.00) and as of January 1, 2023 is at least Two Hundred Fifteen Million Fifty Seven Thousand Nineteen and 50/100 Dollars (\$215,057,019.50) and as of January 1, 2028 is at least Two Hundred Twenty One Million Six Hundred Seven Thousand Three Hundred Twenty Five Dollars (\$221,607,325.00).
- (2) Within twelve (12) months of the Effective Date of this Agreement, Applicant shall file with the City a complete application to re-zone all Property within the Development as Smart Code under Title 21, "SmartCode," El Paso City Code, said application to be in conformance with all requirements enumerated in Title 21, El Paso City Code. If within ten (10) business days prior to the expiration of the performance deadline stated in this Section 3(A)(2), Applicant submits to the City a written request for extension along with a reasonable justification for the delay and the same is approved by the El Paso City

Manager or designee, the performance deadline will automatically extend for an additional sixty (60) days without written amendment to this Agreement. Re-zoning of all Property in the Development to Title 21 “SmartCode” zoning is a material term of this Agreement and is a condition precedent to Applicant’s receipt of any Grant payment under this Agreement.

- (3) Applicant agrees that it shall make or cause to be made the Qualified Expenditures of not less than Twelve Million Two Hundred Thirty Thousand Dollars (\$12,230,000.00); provided, however, that if Applicant fails to make Qualified Expenditures of at least Twelve Million Two Hundred Thirty Thousand Dollars (\$12,230,000.00) on the Property, Applicant shall not be deemed to be in default under this Agreement, but the amount of the Grant shall be reduced proportionately based on the amount by which the Qualified Expenditures are less than Twelve Million Two Hundred Thirty Thousand Dollars (\$12,230,000.00). Applicant shall submit to the County, or its designee, such documentation as may be reasonably necessary to verify the incurred costs of Qualified Expenditures, i.e., invoices marked “paid” to third parties and not submitted or to be submitted to any other governmental and/or taxing entity as part of any expenditure verification obligation for receipt of an economic development financial incentive or other similar verifiable documentation, as reasonably required by the County.
- (4) Modifications to the revised preliminary regulating plan may be made by Applicant without written amendment to this Agreement, so long as such modification(s) are: (i) required to meet the minimum requirements of Title 21 or are otherwise required by City of El Paso staff as part of Applicant’s Title 21 re-zoning application or administrative approvals; or (ii) will result in a final regulating plan that consists only of the following development types: traditional neighborhood development, cluster land development, T4O or T5 or both, and regional center development and does not include any Special District(s). Within thirty (30) days following such modification(s), Applicant will provide the County, or its designee, a subsequent revised Exhibit “D”, to substitute and replace the original and first revised Exhibit “D”. Changes other than the modifications identified above shall require approval by the El Paso County Commissioners Court as a written contract amendment.
- (5) Applicant agrees to obtain or cause to be obtained, all necessary permits and approvals from City of El Paso and/or all other governmental agencies having jurisdiction over the construction of improvements to the Property. Applicant will be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Development for so long as Applicant is the owner of the Property.
- (6) Any building exceeding 200 feet in width shall include (ground-floor design treatments, façade modulation, corner treatments, and façade elements such as transparency, building entries, and other architectural details) at 50 foot intervals along all street frontages so as not to degrade the street as the public realm and to add interest to pedestrian trips.

- B. **Amount of Grant.** The Grant amount payable by the County under this Agreement, if any, shall not exceed the aggregate of all payments made by the County that results in a maximum aggregate amount of Twelve Million Two Hundred Thirty Thousand Dollars (\$12,230,000.00), subject to reduction as specified in Section 3(A) above.
- C. **Disbursement of Grant.**
- (1) During the term of this Agreement beginning as of the commencement of the Grant Period, which must occur no later than July 31, 2015 and ending twenty years thereafter, or at termination, whichever comes first, and subject to the conditions contained herein, Applicant will be eligible to receive on a yearly basis a Grant payment, determined as follows: for tax years 2014 through and including 2018, an amount equivalent to one hundred percent (100%) of the County's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2019 through and including 2028, an amount equivalent to fifty percent (50%) of the County's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2029 through and including 2033, an amount equivalent to twenty five percent (25%) of the County's portion of ad valorem real property tax increment revenue generated from the Property in the Development based on the increased value of the Property over the Base Property Tax Valuation; and so long as the payment of the Grant does not result in Applicant receiving aggregate grant payments in excess of Twelve Million Two Hundred Thirty Thousand Dollars (\$12,230,000.00). For any Grant payment the ad valorem real property tax increment revenue must be attributable to the Property's increase in property tax value as determined by the El Paso Central Appraisal District and collected by the County in the fiscal year.
 - (2) Eligibility for any Grant payment is expressly contingent upon Applicant's satisfaction of the requirements of this Section 3 of the Agreement.
 - (3) Grant payments will continue until the earlier of the expiration of Grant period or termination or expiration of this Agreement or until the aggregate of all payments made by the County results in an amount not to exceed Twelve Million Two Hundred Thirty Thousand Dollars (\$12,230,000.00), or an amount reduced by the provisions of Section 3(a). Under no circumstances shall the County be required to disburse under this Agreement more than an aggregate of all payments made by the County that would exceed Twelve Million Two Hundred Thirty Thousand Dollars (\$12,230,000.00), subject to reduction as specified in Section 3(A), above.
 - (4) A Grant payment for any given year may not result in the cumulative Grant payments to date exceeding the cumulative amount of Qualified Expenditures verified as to the date of the active Grant Submittal Package. Such Grant payment may be reduced to an amount that results in a cumulative Grant payment amount not to exceed the cumulative qualified expenditures verified as of the date of the Grant Submittal. A payment balance equal to

the amount of any such reduction will be carried forward and paid only when an increase in the cumulative amount of Qualified Expenditures will allow for payment to be made.

- (5) In order to receive the disbursement of the Grant, Applicant must submit a Grant Submittal Package, as specified in Section 3(D) below.

D. **Grant Submittal Package.**

- (1) Unless otherwise agreed by the County and Applicant in writing, each Grant Submittal Package shall be in the form provided in Exhibit "B" together with the requisite documentation. No later than July 31, 2015, Applicant shall submit to the County, or its designee, an initial Grant Submittal Package to commence the Grant Period. Thereafter, the Applicant's annual Grant Submittal Package must be submitted no later than July 31 of each year.
- (2) Concurrent with the submittal of a Grant Submittal Package, Applicant will submit to the County, or its designee, documentation as may be reasonably necessary to verify the expenditure to date of the Qualified Expenditures identified in Exhibit "C", which have not otherwise been verified as part of a prior submittal. The County, or its designee, will provide to Applicant a written explanation for any Qualified Expenditures that the County determines cannot be verified. Applicant may submit additional documentation to the County, or its designee, in order to obtain verification.
- (3) If Applicant fails to timely submit a Grant Submittal Package for a particular year, the County, or its designee, 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. The County's, or its designee's, determination of the amount of the Grant payment due to Applicant is final so long as such determination is made in accordance with the terms and conditions of this Agreement; provided, however, that the Applicant may appeal to the El Paso County Commissioners Court within thirty (30) days of payment. The Commissioners Court shall hear the appeal within thirty (30) days of request for appeal and the Commissioners Court'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.

E. **Payment of Taxes.**

- (1) Applicant shall pay or cause to be paid by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the real and business personal property it owns in the Development and any other property owned within the County of El Paso. Applicant must demonstrate that it has incurred no delinquent taxes by providing certified County tax certificates for each parcel of property owned in the County of El Paso, upon the County's request in determining Applicant's eligibility for Grant payment receipt.

- (2) Applicant shall have the right to contest the appraised value of the Property and 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 at Base Property Tax Valuation or lower.

F. **Conditions Precedent.**

- (1) As a condition precedent to Applicant's obligations under this Agreement, including without limitation its obligations relating to the Development as set forth herein, Applicant shall first have: (i) completed the transfer of fee title to the Property; (ii) obtained from the City and other governmental entities, all permits, approvals and entitlements necessary to commence construction of the Development; (iii) obtained from the Texas Department of Transportation (TxDOT) approval of Phase I of the pass through toll projects to provide Interstate Highway I-10 access to the Development; and (iv) a fully executed agreement between Applicant and the El Paso Water Utilities- Public Service Board related to drainage improvements.
- (2) The parties agree and acknowledge that Applicant's obligation to perform under this Agreement is expressly contingent upon the City of El Paso's commitment to provide a local match for the anticipated TxDOT pass through toll project Phase I adjacent to the Development and Interstate Highway I-10, which must be approved by TxDOT within twelve (12) months from the Effective Date, and for which Applicant or its affiliates will donate and dedicate any right-of-way required for that project.
- (3) Applicant shall not be obligated to perform under this Agreement and may terminate this Agreement upon written notice if any of the conditions precedent identified in (1) and (2) above are not completed to the sole satisfaction of the Applicant. The conditions precedent do not alter or extend any proscribed deadlines in this Agreement absent a written amendment by the parties to that affect.

G. **Deed Restrictions and Property Covenants.**

- (1) Applicant expressly understands, warrants, and agrees that following the re-zoning of the Property to "SmartCode" under Title 21, El Paso City Code, the Property in the Development must be developed in accordance with Title 21, El Paso City Code and the Property shall remain zoned SmartCode for the term of this Agreement.
- (2) Further, as part of the sale, transfer, assignment, or other conveyance of the Property (or any portion thereof), Applicant shall impose deed restrictions and property covenants to run with the land, which restrict the zoning on the Property to SmartCode for a period of twenty years from the date of the City Ordinance approving the SmartCode re-zoning. The deed restrictions and property covenants required under this Section 3(G) shall be filed of record in the Real Property Records of El Paso County, Texas, be made binding upon the parties thereto, and their assigns, heirs, and successors, and made enforceable by a right of action.

SECTION 4. OBLIGATIONS OF COUNTY.

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), County shall comply with the following terms and conditions:

- A. The County, or its designee, agrees to process any Grant Payments to Applicant within ninety (90) days after receipt of the Applicant's Grant Submittal Package.

- B. During the term of this Agreement beginning as of the commencement of the Grant Period, which must occur no later than July 31, 2015 and ending twenty years thereafter, or at termination, whichever comes first, and subject to the conditions contained herein, an amount from the County's general fund will be tendered to Applicant as a Grant payment on a yearly basis, to be determined as follows: for tax years 2014 through and including 2018, an amount equivalent to one hundred percent (100%) of the County's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; for tax years 2019 through and including 2028, an amount equivalent to fifty percent (50%) of the County's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; and for tax years 2029 through and including 2033, an amount equivalent to twenty five percent (25%) of the County's portion of ad valorem real property tax increment revenue generated from the Property in the Development based upon the increased value of the Property over the Base Property Tax Valuation; and so long as the payment of the Grant does not result in Applicant receiving aggregate grant payments in excess of Twelve Million Two Hundred Twenty-three Thousand Dollars (\$12,230,000.00). For any Grant payment the ad valorem real property tax increment revenue must be attributable solely to the Property's increase in property tax value as determined by the El Paso Central Appraisal District and collected by the County in the fiscal year.
 - (1) Such Grant payments will continue until the earlier of the expiration of the term of the Agreement or until the aggregate of all payments made results in no greater than Twelve Million Two Hundred Twenty-three Thousand Dollars (\$12,230,000.00).
 - (2) It is expressly understood by the Applicant and the County that Grant payments made pursuant to this Agreement are conditioned upon: (i) Applicant's construction of the Development or portion thereof in accordance with the terms and conditions set forth in this Agreement; (ii) the County's receipt of ad valorem property tax increment revenue which is attributable solely to the Property's increase in property tax value over the Base Property Tax Valuation in sufficient amount of such Grant payment and from annual appropriations of such funds of the County as may be legally set aside by the County for the implementation of economic development or financing programs authorized by Chapter 381 of the Texas Local Government Code, Section 52-a, Article III of the Texas Constitution, or other statutory authority of the County under applicable Texas law. In no

event shall any Grant payment exceed the total value of the County's designated percentage amounts of its portion of the ad valorem property tax increment revenues generated by the Property in the Development based upon the increased value over the Base Property Tax Valuation as are actually received in hand by the County.

- (3) Under no circumstances shall the County be required to disburse under this Agreement more than an aggregate of all Grant payments made by the County that would exceed Twelve Million Two Hundred Twenty-three Thousand Dollars (\$12,230,000.00), subject to reduction as specified in Section 3(A) above, nor shall Applicant be entitled to receive the Grant unless it satisfies all the requirements of Section 3 of this Agreement.
- C. The City agrees to assist Applicant with its presentations to El Paso County as it requests economic incentives from such authority.

SECTION 5. EVENTS OF DEFAULT.

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

- A. **Failure to Obtain Title 21 "SmartCode" Zoning.** Failure to obtain re-zoning of all Property in the Development under Title 21 "SmartCode", El Paso City Code as described in Section 3(A)(1), within the proscribed deadline and Applicant's failure to cure such failure within thirty (30) days after written notice from the City describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if Applicant fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure to the City's satisfaction, such event shall be deemed an event of default.
- B. **Failure to Construct and Maintain Development.** Applicant's failure or refusal to construct the Development and maintain (or cause to be maintained) the Development thereafter through the entire Grant Period of this Agreement, and Applicant's failure or refusal to cure within thirty (30) days after written notice from the County, or its designee, describing such failure, shall be deemed an event of default. However, if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but the Applicant has not yet commenced such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure, such actions or omissions shall also be deemed an event of default.
- C. **False Statements.** In the event the Applicant 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 fails to cure same within thirty (30) days after written notice from the County, or its designee, describing the violation 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, and Applicant fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, such actions or

omissions shall also be deemed an event of default. Further, if Applicant obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and Applicant fails to provide written notice to the County of the false or misleading nature of such warranty, representation or statement within ten (10) days after Applicant 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, all Grant Payments previously provided by the County pursuant to this Agreement shall be recaptured and repaid by Applicant within sixty (60) days from the date of such termination.

- 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 portion of the Property, any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Applicant 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.
- E. **Property Taxes.** Applicant has the right to contest the appraised value of the Property and Development as provided by law, subject to the restrictions contained in this Agreement. In the event Applicant allows any property taxes owed to the County 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 County, or its designee, and/or El Paso Central Appraisal District, such actions or omissions shall be deemed an event of default.
- F. **Other Defaults.** Failure of Applicant or County to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, and Applicant or County fails to cure such failure within thirty (30) 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 thirty (30) day period in the exercise of all due diligence, but if Applicant or County also fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute the cure of such failure, such act or omission shall be deemed an event of default.
- G. **Failure to Cure.** If any event of default by Applicant shall occur, and after Applicant fails to cure same in accordance herewith, then this Agreement is terminated without any further action required of the County and the County'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.

Section 6. RECAPTURE.

Should Applicant default under Sections 3(G) or 5(C) of this Agreement and provided that the cure period for such default has expired, the County reserves the right to recapture any and all previously awarded Grant payments.

SECTION 7. TERMINATION OF AGREEMENT BY COUNTY WITHOUT DEFAULT.

The County may terminate this Agreement for its 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, or illegal, including any case law holding that a Chapter 381 Economic Development Agreement such as this Agreement is an unconstitutional debt.

SECTION 8. 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 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 County expressly prohibits Applicant from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds or its performance obligations under this Agreement without the County's prior written consent, which will not be unreasonably withheld. Any such attempt to sell, transfer, assign or convey without the County's prior written consent shall result in the immediate termination of this Agreement, with no ability for the Applicant to cure.
- D. **Applicant's Sale or Transfer of the Development.** Applicant will notify the County on an annual basis, in writing and in conjunction with its Grant submittal package, as applicable, of any sale or other transfer of ownership rights in the Development or of individual parcels within the Development, Applicant shall notify the County in writing. This provision is a material term of this Agreement and the failure to notify the County 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. County warrants and represents that

the individual executing this Agreement on behalf of County has full authority to execute this Agreement and bind County 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 County 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. **Confidentiality Obligations.** Applicant acknowledges that the County is subject to the Public Information Act, Chapter 552, Texas Government Code (the "Act"). The County will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Act, it will notify Applicant if a request relating to such proprietary information is received. Applicant further acknowledges that the Act excepts disclosure of trade secret and confidential commercial information and that Applicant will need to assert its proprietary interest as a basis for nondisclosure.
- H. **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.
- I. **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date upon which both parties have fully executed this Agreement.
- 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 County as of the date of such violation not later than one hundred twenty (120) days after the date Applicant is notified by County, or its designee, of a violation of this section, plus interest from the date the Grant payment(s) was paid to Applicant, at the rate of seven percent (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 County. County 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. **Entire Agreement.** This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto relating to the subject matter of this Agreement. All prior negotiations, discussions, correspondence, and preliminary understandings between the parties are superseded by this Agreement. There exists no other written or oral understanding, agreements, or assurances with respect to such matters except as are set forth herein.

- L. **Estoppel Certificates.** Any party hereto may request an estoppel certificate from the other party hereto so long as the certificate is requested in connection with a bona fide business purpose in a form substantively similar to attached Exhibit “E”.
- M. **Execution of Agreement.** The El Paso County Commissioners Court has authorized the County Judge to execute this Agreement on behalf of the County.
- N. **Exhibits.** The following Exhibits are attached and incorporated by reference for all purposes.

Exhibit “A”: Development Description
Exhibit “A-1”: Property Description
Exhibit “B”: Grant Submittal Form
Exhibit “C”: Qualified Expenditures
Exhibit “D”: Preliminary Regulating Plan
Exhibit “E”: Estoppel Certificate Form

- O. **Filing.** The County shall file this Agreement in the deed records of El Paso County, Texas upon Applicant’s request and payment of all recordation costs.
- P. **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- Q. **Headings and Construction.** The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All references to the singular shall include the plural , and to the plural the singular.
- R. **Inspections, Access to Records.** Applicant, at its principal place of business in El Paso, shall allow the County or its agents reasonable access and inspect operating records, accounting, books and any other records related to the economic development considerations and incentives described herein, which are in Applicant’s, possession, custody or control, for purposes of verifying the Qualified Expenditures generated by the Development and for audit, if so requested by the County. The confidentiality of such records will be maintained in accordance with and subject to all applicable laws including the Public Information Act, Chapter 552, Texas Government Code. Further, Applicant shall allow the County reasonable access to the subject property owned or controlled by Applicant for inspections during construction of the Development. All inspections will be made only after giving at least twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and or

operations of the Applicant or the Development. For physical inspections, any inspection will be made with one (1) or more representatives of Applicant, and in accordance with its safety standards, if any.

- S. **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.
- T. **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The County, its past, present, and future officers, elected officials, employees and agents of the County, do not assume any responsibilities or liabilities to any third party in connection with the Development or the design, construction or operation of any portion of the Development.
- U. **Non-Waiver.** No course of dealing on the part of the County or Applicant nor any failure or delay by the County or Applicant in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power, or privilege owing under this Agreement.
- V. **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.

COUNTY: County Judge
County of El Paso
500 E. San Antonio
El Paso, Texas 79901

Copy To: Director
City of El Paso Planning and Economic Development Department
2 Civic Center Plaza
El Paso, Texas 79901

APPLICANT: GELTMORE ALDEA, LLC.
6211 San Mateo Blvd NE, Suite 130
Albuquerque, NM 87109

Copy to: Gordon, Davis, Johnson & Shane, PC
4695 North Mesa
El Paso, Texas 79912

W. **Omitted.**

X. **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.

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of _____, 2011.

ATTEST:

COUNTY OF EL PASO

By _____
Veronica Escobar
County Judge

APPROVED AS TO FORM:

Assistant County Attorney

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2011, by **Veronica Escobar**, as **County Judge** of the **County of El Paso, Texas** (COUNTY).

Notary Public, State of Texas

My Commission Expires:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

APPLICANT:
GELTMORE ALDEA, LLC

By _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2011,
by _____, as _____ of **GELTMORE ALDEA,**
LLC. (APPLICANT).

Notary Public, State of _____

My Commission Expires:

**EXHIBIT “A”
Development Description**

The Development is comprised of approximately 196 acres. The Development is a proposed Smart Code zoned master planned mixed-use community to be located within the City Limits of El Paso, Texas. The community will contain multi-family and single-family detached housing, one or more hotels, mixed commercial, retail, parks, open space and components of a mass transit system. The Development is divided into development parcels and defined by metes and bounds as shown in Exhibit “A-1”.

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EXHIBIT "A-1"
Property Description

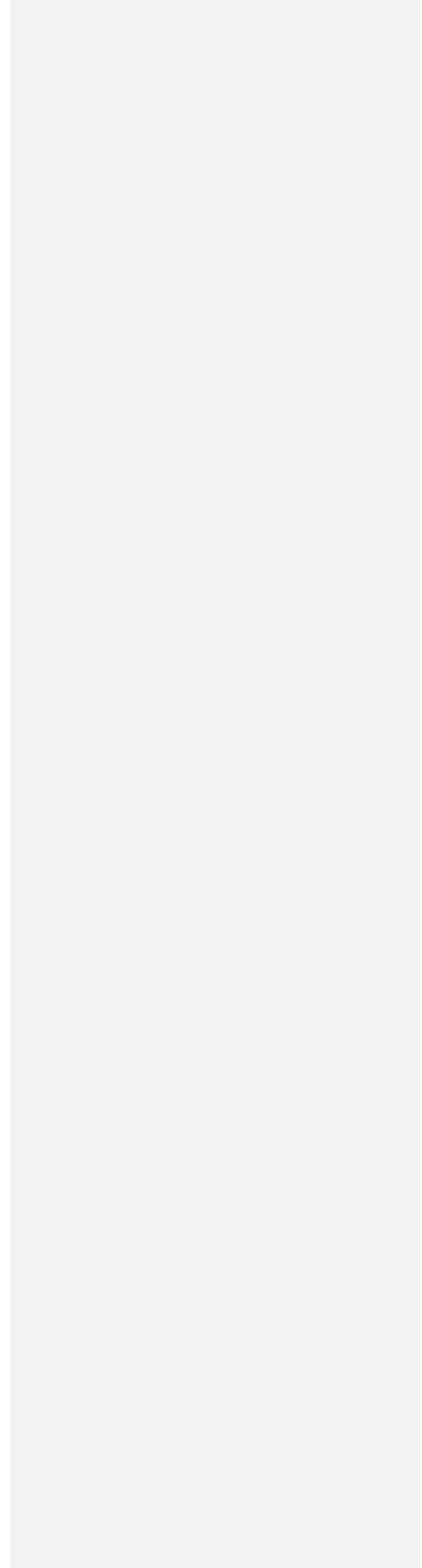


EXHIBIT 'B'
Grant Submittal Package Form

Applicant believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 2011 and signed by _____. 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. Property Tax Payment Receipt(s) of payment for tax year ____ not previously submitted.
2. Qualified Expenditures to date.
3. Copy of ordinance evidencing Smart Code Zoning for property defined by Exhibit "A-1". (Only required upon first submission of Grant Submittal Package).
4. List of current PID's within the geographic boundaries of the area defined by metes and bounds on Exhibit "A-1".

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

APPLICANT:
GELTMORE ALDEA, LLC

Name: _____
Title: _____

Exhibit C
Qualified Expenditures

Qualified Expenditures are those infrastructure improvements within the Development that are located in the public right-of-way or are dedicated to the City and/or County of El Paso for public use including: water, water facilities, sanitary sewer, sanitary sewer facilities, storm drainage, dry utility, roadway improvements, parking facilities, bridge facilities, pond facilities, ponds, parks, park facilities, sidewalks, landscaping, and streetscape. Qualified Expenditures may also include costs to design, construct and/or install the aforementioned infrastructure; engineering and surveying; and all hard costs and the soft costs related to design, construction, installation of such infrastructure improvement projects, as determined by the City and/or County and to include land acquisition costs to the extent the land acquisition costs for any land for infrastructure required under Smart Code provisions in excess of land required to be dedicated absent Smart Code zoning. The proposed infrastructure improvements for the Development are shown summarized below:

Water	\$ 343,076.00
Storm Drainage/Park/Pond/Landscaping	\$ 2,696,047.00
Dry Utility	\$ 988,476.00
Roadway Improvements	\$ 1,719,900.00
Parking Facilities	\$ 6,250,000.00
Bridge Facilities	\$ 913,299.00
Park/Landscaping	\$ 395,240.00
Sidewalks/Streetscape	\$ 434,000.00
Contingency	\$ 1,374,004.00
Engineering Fees	<u>\$ 755,702.00</u>
	\$15,869,744.00

In no event shall the aggregate reimbursement for such Qualified Expenditures exceed Twelve Million Three Hundred Thousand Dollars (\$12,230,000) in grant payments to the Applicant. In no event shall any reimbursement duplicate a reimbursement made by the City under its 380 Agreement with Applicant dated 17 May, 2011, which Agreement is incorporated by reference herein; provided, however, any qualified expenditure authorized under the City's 380 Agreement may be reimbursed as a qualified expenditure under this Agreement so long as it was not reimbursed by the City under its 380 Agreement with Applicant referenced herein.

Narrative for El Paso County Construction

Aldea El Paso is a proposed ±196-acre vertical mixed-use development located at Executive Center and Interstate 10 in the City of El Paso, Texas. Proposed are over 1.08 million square feet of retail space, 265,000 square feet of office space and 1245 residential units. It is a transit-oriented facility expected to take advantage of the emerging Bus Rapid Transit system being implemented by the City of El Paso.

- 1. Installation of reclamation water pipe system**

There is an existing reclamation pipe that runs along the western property line near Interstate 10. That system would be extended throughout the Aldea El Paso development to provide irrigation water for the streetscape, parks and other public areas.
- 2. Trail system along Paragon Channel and Flow Path 20**

Construct a combination bike/pedestrian trail system throughout Aldea El Paso and connect the new trails to existing ones that surround the development making connections to UTEP feasible.
- 3. Combination park / drainage pond for Paragon Channel and Flow Path 20**

Provide areas outside of the low water mark that could be used as parks and/or public spaces during the dry season and then act as a pond to step down the discharge to the Rio Grande to prevent existing flooding downstream at Aldea El Paso. Provide linear park lass Oyo trails system upstream locations if needed.
- 4. Wireless Communications tower for general public**

Provide an area for a wireless communications tower allowing for WiFi connection in public spaces and for the BRT.
- 5. Dry Utility extensions to serve public spaces**

Construct dry utility connections such as electricity, gas, cable and fiber optics to public spaces to support any amenities at those locations for the general public.
- 6. Retaining walls along Rio Bravo, Mesa Park and Walton Way**

Construct retaining walls needed to support the roadways until the development is fully built out. Walls may be incorporated into the building where practical. Retaining walls will be required to accomplish Smart Growth objectives.
- 7. Executive Center Blvd. center lane development for BRT**

Construction of an elevated lane above Executive Center Boulevard allowing the proposed BRT to travel from Aldea El Paso back up to Mesa Street and then down to the University area.
- 8. Intersection traffic signalization**

Modify or provide traffic signals at Executive Center Blvd and Rio Bravo, Mesa Park and Mesa Street, Mesa Park and Walton Way.
- 9. Right of way acquisition expenses and associated costs**
- 10. Parking facilities**

Construction of parking facilities to allow the general public to park in one location and take advantage of the pedestrian avenues and walk to numerous businesses.

11. Bridge facilities

Construct a bridge over Flow Path 20 to connect Rio Bravo to Executive Center Boulevard.

12. Civic space improvements

13. Sidewalks and Streetscape

Construction of wide sidewalks and streetscape amenities to provide for a safe and pleasant pedestrian avenue. Streetscape would include trees, furniture and flowerbeds, along with other amenities such as sculptures.

14. Contingencies Fees

We added a 10 percent contingency fee for the estimates at this time to allow for deviations in the design and conditions.

15. Engineering Fees

We added a 6 percent engineering fee to design all of the necessary facilities to the overall cost.

EXHIBIT "D"
Preliminary Regulating Plan

EXHIBIT "E"
Estoppel

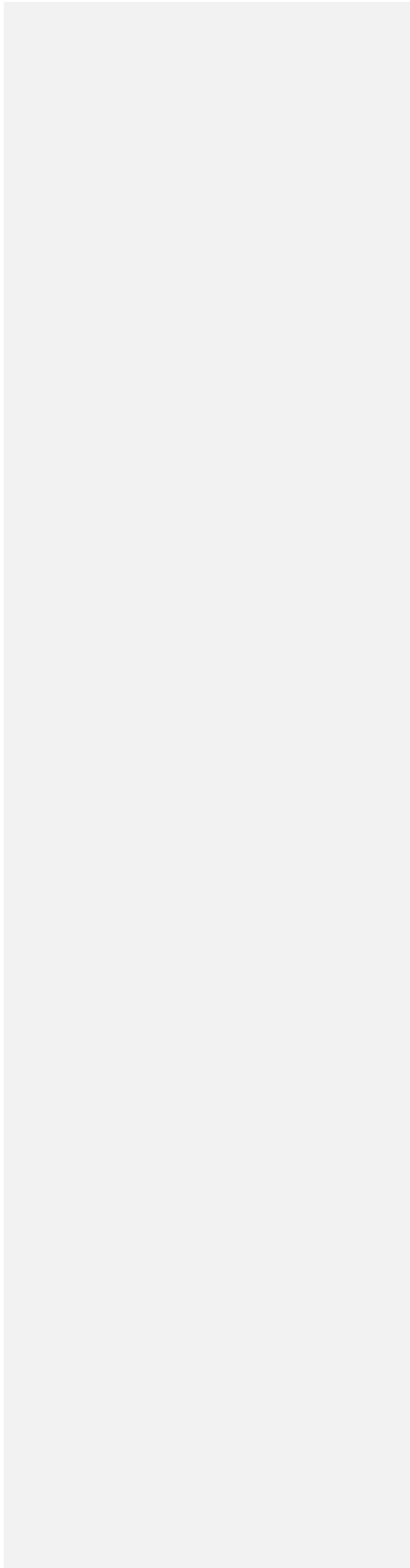
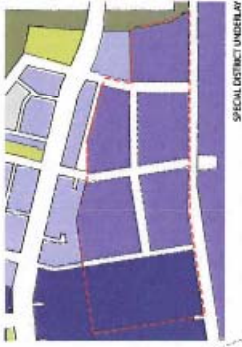


EXHIBIT E
ESTOPPEL

Geltmore Aldea, LLC

Re: Chapter 381 Economic Development Program Agreement (the "Agreement") dated effective _____, 2011, by and between the COUNTY OF EL PASO, TEXAS (the "County"), a Texas home rule municipal corporation, and GELTMORE ALDEA, LLC, a New Mexico limited liability company ("Owner")

Ladies and Gentlemen:

1. Owner is and remains the Applicant under the Agreement covering the Property.
2. The Agreement contains the full and complete agreement of the parties with respect to the subject matter thereof. No other understandings (oral or written) exist with respect thereto. The Agreement is in full force and effect.
3. Any known default:[]
4. The remaining term of the Agreement is _
5. To the best of County's knowledge, as of the date hereof there is no known default under the Agreement, except as noted in paragraph 3 above. To the best of County's knowledge, there exists no condition, event, fact, or occurrence which, by service of notice or passage of time, or both, if uncured, would constitute a default on the part of Owner under the Agreement except as noted in paragraph 3 above.
6. County acknowledges that Applicant is desirous of obtaining a loan from [] ("Lender") in the approximate amount on , secured by a lien against Applicant's interest in the Property (the "Loan").

The County has delivered this Estoppel in satisfaction of the provisions of Section 8(L) of the Agreement. The person executing this Estoppel has the power and authority to execute and deliver this Estoppel on behalf of the County. The County certifies that Owner, [Purchaser and any lender Q! [Lender] and their respective affiliates, successors, assigns and/or participants, may rely on the representations contained herein in connection with [the acquisition of the Property and any loan secured thereby] !!! [the Loan].

COUNTY OF EL PASO, TEXAS

County Judge

APPROVED AS TO FORM:

Assistant County Attorney