

STATE OF TEXAS)
)
COUNTY OF EL PASO)

FIRST AMENDED INTERLOCAL AGREEMENT

This Interlocal Agreement, as amended, is entered into on the 8th day of May, 2001, by and between the CITY OF EL PASO, a home-rule municipal corporation, hereinafter referred to as "the City," and the COUNTY OF EL PASO, hereinafter referred to as "the County."

WITNESSETH:

WHEREAS, Texas Government Code, Chapter 791, authorizes local governments of the state to enter into contracts for governmental functions and services to increase their efficiency and effectiveness; and

WHEREAS, the City and the County recognize that establishing a revolving loan fund under this Agreement will benefit both entities as it creates the opportunity to utilize funds available through a grant to the City by the Economic Development Administration and provide required matching funds through amounts held by the County; and

WHEREAS, the County and the City are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this Agreement, and have each entered into this Agreement by the action of its governing body in the appropriate manner prescribed by law;

NOW THEREFORE, in consideration of the premises, it is mutually agreed as follows:

SECTION 1. PURPOSE OF INTERLOCAL AGREEMENT

A. This Interlocal Agreement (also referred to as "Agreement") is made for the purpose of establishing a Joint Revolving Loan Fund, hereinafter referred to as "the Joint RLF" or "the Project," to target resources of the City and County toward small businesses that (i) can best help the City and County achieve long-term economic development objectives, and (ii) can contribute to the City's and the County's economic base and, simultaneously, create and retain jobs. The RLF shall be established in accordance with the provisions of the Joint Revolving Loan Fund Plan attached hereto as Exhibit "A" and by this reference made a part hereof

B. The Agreement will enable (i) the City to utilize funds from the U.S. Department of Commerce Economic Development Administration ("EDA"), and (ii) the County to utilize funds from the Texas Department of Housing and Community Affairs ("TDHCA") and the Texas

Department of Economic Development ("TDED"), in conjunction with private-sector funding, to leverage the overall financing for targeted projects. Private-sector funding includes capital invested by the borrower, financing from private financial institutions, and guaranteed loan programs of the Small Business Administration ("SBA"). The goal is to finance projects that can leverage a minimum of two private-sector dollars for each dollar of RLF funds provided.

C. The City and the County agree that financial administration of the Project shall be undertaken by CHASE BANK OF TEXAS, N.A. ("Chase") as "Program Operator" and that other lending institutions may participate as "Program Lenders" and as Program Operator, subject to the terms of the Revolving Loan Program Agreement of even date herewith and in the form substantially identical to Exhibit "B," attached hereto and by this reference made a part hereof.

SECTION 2. COMPLIANCE WITH REQUIREMENTS OF EDA, TDHCA AND TDED

The RLF shall be established in a satisfactory manner as determined by the EDA pursuant to Title IX of the Public Works and Economic Development Act of 1965, P.L. 89-136, as amended (42 U.S.C. 3121, et seq.), hereinafter referred to as the "Act"; the applicable provisions of Title 13 CFR Chapter III, and the administrative requirements for grants, Common Rule 15 CFR Part 14, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," and its attachments, as amended or superseded in the EDA's regulations; or those found in Title 15 CFR Part 24; "Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments," as applicable. The County portion of the Joint RLF shall also conform to applicable provisions of the Texas Capital Fund guidelines for funds provided to the County through TDHCA and TDED.

SECTION 3. TERM AND TERMINATION.

A. **Effective Date.** This Agreement shall become effective on the date of execution of the last signatory to the Agreement and shall remain in effect for an initial term of three (3) years, and from year to year thereafter, unless terminated by either party in accordance with the provisions of Paragraph B., below.

B. **Termination.** Either Party may terminate this Agreement, effective as of the conclusion of the initial term or as of the conclusion of any year-to-year extension of the term, by providing written notice to the other Party not less than ninety (90) days prior to the expiration of the initial term or prior to any subsequent anniversary of such date. Notice of termination will be

given to the City by certified mail to the Mayor, #2 Civic Center Plaza, El Paso, TX 79901-1196, and to the County by certified mail to the County Judge, 500 East San Antonio - Suite 301, El Paso, TX 79901.

C. Upon termination of the Agreement, any funds remaining in the RLF shall be distributed in the following order of priority: (i) the "fair share" of any funds due the EDA and TDHCA, and (ii) any remaining funds to be distributed between the Parties hereto on the basis of contributions made pursuant to Section 5 hereof.

SECTION 4. REVOLVING LOAN FUND BOARD

A. The Revolving Loan Fund Board, hereinafter referred to as "the RLF Board," shall be comprised of ten (10) members, who shall be responsible for reviewing and approving (i) applications for loans from the RLF; (ii) major loan modifications or waivers; and (iii) loan foreclosure actions. The City and the County shall each appoint five members to the RLF Board. At the first meeting of the RLF Board, the members shall elect a Chairman, who shall be responsible for calling and conducting the meetings of the RLF Board. The Director of the City's Office of Economic Development or his designee shall serve as secretary to the Board.

B. Neither the Chairman nor any other member appointed to the RLF Board shall hold any other public office of honor, trust or profit in the government of the City or the County, nor be an employee of the City or the County during his or her term of office. The Chairman and the members of the RLF Board shall receive no compensation.

C. The term of office for the members appointed to the RLF Board shall be two years, beginning on the effective date of this Agreement. However, so that the terms for the members will be staggered, each entity will separately draw lots so that two members appointed by each entity shall serve for an initial one year term and the other members from each entity shall serve for two-year terms. Thereafter, the successors shall be appointed for two year terms commencing on the applicable anniversary date of the effective date of this Agreement. No member of the RLF Board shall serve more than two consecutive two-year terms; provided, however, that completing an initial one-year term or filling an unexpired term as provided herein shall not be counted toward the two-year term limitation.

D. The RLF Board shall determine the appropriate procedures for the removal and replacement for any member appointed to the Board.

E. Upon any member's death, resignation or removal from the RLF Board, or the expiration of the term of office of a member, the entity which appointed that member shall fill said vacancy as expediently as possible. If the position filled is that of Chairman, the new Chairman or member shall be appointed to fill the unexpired term of the previous appointee, and shall be eligible to serve two additional full terms.

F. The RLF Board shall select from among its members a Vice-Chairman and shall adopt rules and regulations for the governing of its own proceedings to carry out the purposes for which the Board is created, not inconsistent the laws of the State of Texas, Commissioners' Court Orders, or the Charter and Ordinances of the City of El Paso. The RLF Board shall hold regular meetings, at least on a quarterly basis, and shall keep a written record of its proceedings. A quorum shall consist of six members. Notice of meetings shall be provided by the RLF Board to the public in accordance with the citizen-participation guidelines issued by the TDHCA.

G. Prior to review by the RLF Board, all loan packages shall be screened by the City's Economic Development Department ("the Department") for compliance with EDA Guidelines. With respect to applications for loans involving County funds from the Joint RLF, the County will evaluate loan applicants and review their proposed projects for compliance with Community Development Block Grant ("CDBG") guidelines and other TDHCA guidelines. Upon a determination that loan packages are in compliance with the applicable EDA, CDBG, and TDHCA guidelines, the Department shall request that the RLF Board be convened to review individual applications.

SECTION 5. CONTRIBUTIONS TO THE REVOLVING LOAN FUND

The Parties intend to contribute a total of \$753, 000 for the establishment of the RLF, with the City's share being \$586,000 and the County's share, \$167,000. Interest accumulated by the RLF shall be allocated in proportion to such contributions by the Parties: 77.82% for the City and 22.18% for the County. It is anticipated that 22.18% or \$167,000 (the County's share)

of the RLF shall be dedicated to County projects, i.e. those in the unincorporated parts of the County. The City's portion of the RLF, 77.82% or \$586,000, may be used for projects within the city limits of the City and/or outside the city limits, but within the County. Upon effectiveness of the RLF, all County projects shall be funded from the County's share (\$167,000) until such share is fully exhausted. At that time, future County projects will be funded from the City's portion (\$586,000) of the RLF.

In the event that additional funds (e.g., grants) are contributed by third parties for the benefit of the RLF, such funds shall be deemed to be allocated to the respective City and County portions of the RLF on the following basis: 77.82% of such funds for the City's portion and 22.18% for the County's portion. If the Parties themselves make contributions to the RLF in addition to the amounts described above, allocations of interest accumulated by the RLF shall be proportional to the relative contributions of the Parties.

SECTION 6. REPORTING REQUIREMENTS

The City and the County acknowledge that they are required to provide quarterly reports to EDA and TDHCA, respectively, with respect to establishment and operation of the RLF. The Parties agree that they shall establish appropriate procedures, including the designation of contact individuals, to ensure that pertinent information is obtained from Chase regarding the RLF and that such information is provided to the RLF Board and to EDA and TDHCA on a timely basis.

SECTION 7. COMPLIANCE WITH LAWS

The City and the County shall comply with all applicable laws in performance of their obligations under this Agreement.

SECTION 8. GENERAL TERMS AND CONDITIONS

A. Complete Agreement. This Agreement constitutes and expresses the whole agreement of the parties hereto.

B. Amendment. No amendment or modification of this Agreement or any provision of this Agreement shall be effective unless in writing and signed by the authorized representatives of the Parties.

C. Effect of Partial Invalidity. If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then:

- (1) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected;
- (2) the effect of the ruling will be limited to the jurisdiction of the court or other government body making the ruling;
- (3) the provision(s) held wholly or partly invalid or unenforceable will be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the Parties' intent as manifested herein; and
- (4) if the ruling, and/or the controlling principle of law or equity leading to the ruling, is subsequently overruled, modified, or amended by legislative, judicial, or administrative action, then the provision(s) in question as originally set forth in this Agreement will be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

D. No Waiver. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall in no way affect the right of such Party to require performance of that provision. Any waiver by either Party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any right under this Agreement.

E. Binding on Successors. This Agreement will be binding upon and inure to the benefit of the Parties and their successors and assigns permitted by this Agreement.

F. Section Headings. The article headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

G. Representation of Counsel; Mutual Negotiation. Each Party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall

therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the Parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any Party.

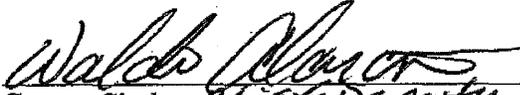
H. Counterparts. This Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. Any such counterpart may comprise one or more duplicates or duplicate signature pages any of which may be executed by less than all of the Parties provided that each Party executes at least one such duplicate or duplicate signature page. The Parties stipulate that a photostatic copy of an executed original will be admissible in evidence for all purposes in any proceeding as between the Parties.

WITNESS the following signatures and seals:

Dated this 1st day of June, 2001.

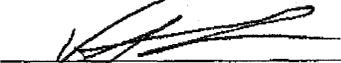
ATTEST:

COUNTY OF EL PASO:


County Clerk - *Chief Deputy*


County Judge

APPROVED AS TO FORM:


Assistant County Attorney

VIBAL A. OAXACA
(printed name)

(Signatures continued on following page)

Dated this 8th day of May, 2001.

ATTEST:


City Clerk

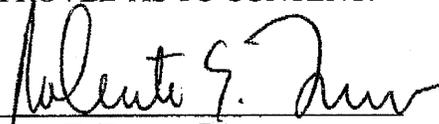
CITY OF EL PASO:


Mayor

APPROVED AS TO FORM:


John F. Nance
Assistant City Attorney

APPROVED AS TO CONTENT:


Roberto E. Franco, Director
Department of Economic Development