

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

DEPARTMENT: Economic Development

AGENDA DATE: April 7, 2009 (Regular)

CONTACT PERSON/PHONE: Kathy Dodson, PhD, Director 541-4670

DISTRICT(S) AFFECTED: 8

SUBJECT:

Discussion and Action on a Resolution adopting Program Guidelines for the Tax Increment Reinvestment Zone No. 5 (Downtown) Commercial Façade Improvement Grant Program, subject to passage of the Ordinance amending the Final Project Plan and Final Reinvestment Zone Financing Plan for the Zone, and authorizing City Manager or her designee to enter into agreements relating to award funding under the Program and to the extent that tax increment revenue funds allocated to this Program are available to fund grant awards with funding from existing TIRZ Fund Account No. 502215 / 07412 / 72153041 / 72000 in the amount of \$32,000. (District 8)
[Economic Development, Kathryn B. Dodson, (915) 541-4670]

BACKGROUND/DISCUSSION:

A pilot program for the façade grant program was created on September 11, 2007 by the City in partnership with the Downtown Management District (DMD) and an Interlocal agreement between the City and DMD entered into on September 25, 2007 to jointly fund the pilot program. The City of El Paso and the Downtown Management District each designated \$50,000 towards the pilot program. Over thirteen façade applications were funded in the year of the pilot program the \$100,000 funds provided. Given the success and visible improvements made to properties downtown by tenants and property owners, the Tax Increment Reinvestment Zone No. 5 Board is recommending that additional funds be provided for the program to continue through this fiscal year from the Tax Increment Funds received. Neither the City nor the DMD budgeted funds to support the continuation of the program this fiscal year.

The program aims to improve the aesthetic appearance of properties in the downtown area. To be eligible under this funding source, buildings must be located in the downtown Tax Increment Reinvestment Zone. Like the pilot program, grants will be available to building owners or tenants who have the consent of the building owner. Property taxes for the building must be current and there must be no code enforcement actions pending against the property to be eligible for the grant. Façade improvement must adhere to the design guidelines in the 2015 Plan or Historic design guidelines, and must be approved by a review committee as described in the .

PRIOR COUNCIL ACTION:

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

City Council approved a similar pilot program in collaboration with the DMD in September 2007.

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?

Item will be funded from existing TIRZ Fund Account No. 502215 / 07412 / 72153041 / 72000 (TIRZ No. 5 Fund) in the amount of \$32,000 with a transfer required from this account into the Economic Development Department 720150035/15462/PED00002 fund

BOARD/COMMISSION ACTION:

Enter appropriate comments or N/A.

Tax Increment Reinvestment Zone recommended unanimous approval on February 12, 2009

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: U. Morales-Soto for Kathy Dodson

(Example: If RCA is initiated by Purchasing, client department should sign also). *Information copy to appropriate Deputy City Manager*

APPROVED FOR AGENDA: Addition

CITY MANAGER: P. Pradauto **DATE:** 4-2-09

TIRZ No. 5 Advisory Board Project Adoption Recommendation and Update

The media has extensively reported in 2008 the many great things happening in downtown El Paso. The Tax Increment Reinvestment Zone #5 (TIRZ) Board, a diverse group of 14 community leaders, has been working quietly and harmoniously in the background for the last 18 months. The TIRZ Board—with representation from the City of El Paso, the County of El Paso, the Downtown Management District, Thomason Hospital District, and EPCC taxing entities—has spent much time orienting itself to better understand the Reinvestment Zone, its property owners, history, issues, and related legal and financial matters within our purview. Much credit should go to the City's Office of Economic Development, Director Kathy Dodson and her hardworking staff, especially Redevelopment Manager Veronica Rosales-Soto, for compiling and organizing the work of the Reinvestment Zone Board. During the past year, two committees, one for finance, the other for potential projects, have been formed to further review the details and merits of projects under consideration. These committees then provide their recommendations to the full TIRZ Board.

El Pasoans should be glad to know that all of the TIRZ Board members have worked well together and are committed to accomplishing the goal of a vibrant and revitalized Downtown while overseeing the Reinvestment Zone funding. As the first projects to be recommended for funding with TIRZ funds are up for consideration by City Council, the advisory Board felt it was a good time to update our fellow taxpayers on the progress and status of funding for Downtown.

The Reinvestment Zone and TIRZ Board was formed by municipal mandate in December 2006. It was created to oversee, support and recommend allocation of funding for revitalization activities within the boundaries of the new downtown plan and specifically within the Reinvestment Zone and. More detailed information about its formation is at <http://www.elpasotexas.gov/downtown>

Briefly, a TIRZ is a special district created to attract new investment and help finance the cost of redeveloping or encouraging development in a specified area. Taxes attributable to the new improvements (tax increment) are set-aside in a fund to finance public improvements deemed to be of common value to the entire area such as sidewalks,

streets, facades, sewage, drainage, and other enhancements, along with certain other projects of a broader scope.

As new development within the Reinvestment Zone originates and the tax base increases, the resulting annual incremental increase in tax revenue above the base amount is allocated to the zone for the duration of the TIRZ. For example, if the assessed value for a base year is set at \$10 million and improvements to the area increase the assessed value to \$12 million, the taxes collected on the additional \$2 million, or increment, are earmarked for the TIRZ fund to pay for approved projects.

And so, on behalf of the TIRZ Board, we present this update:

Year 1 – 2007 (to August 31st) TIRZ Budget revenue, based on the 2006-2007 net valuation increase, was a nominal \$111,525.

Expenses allocated from this amount were:

\$25,000 – Marcus Jahns & Associates Consultants - 1/3 partial payment for the Phase II refinement of the 2015 Plan. The Plan provides an implementation pathway to assist City Council, TIRZ Board, and City staff.

\$32,000 – the Commercial Façade Improvement Grant Program provides grants to Reinvestment Zone applicants for storefront and façade improvements. The pilot project in place from 2007 to 2008 has been an incredible success, and now has a waiting list of applicants requesting funding though the original funds have been exhausted. The grants are especially useful for smaller property owners wishing to renovate and rehabilitate their building exteriors, thus improving the visual landscape of downtown.

\$28,000 – First Avenue Lofts Project at 300 S. Florence for sidewalks and street lighting pursuant to a developer agreement, whereby the developer does not receive the grant until the project is completed. Owner/Developers T.J. & Luke Karam are pioneers willing to invest in the downtown vision. The Board feels it is important to support those who are committed early to the downtown vision so that others may follow, and especially interested and committed to support housing projects of all types and scales.

\$11,153 – As recommended by our Finance Committee, 10% of the yearly balance will be held in reserve as required for future bond capacity as permitted by law.

Year 2 – 2008 (to August 31st) TIRZ Budget revenue, based on the 2007-2008 net valuation increase, is \$ 261,176.70. Investors and entrepreneurs are encouraged to see how they can use some of this money to help leverage their ideas or projects. The current economic climate notwithstanding, we are confident that the yearly budget will continue to increase dramatically over the duration of the thirty year TIRZ.

Downtown El Paso is in the midst of an exciting period in the history of our community. A walk down the streets or a drive through the area clearly shows activity and improvement. We are moving toward a new Downtown that benefits all El Paso by making improvements yet being mindful to preserve the many unique features of our region, and the historic places we all love and want to see revitalized again. This and much more is all possible with a committed TIRZ Board and with the help of all El Pasoans. The TIRZ Board meetings are open to the public and we welcome the public to attend or view the meetings on-line. Your interest and input are encouraged as the many exciting Downtown projects unfold. These are our tax dollars and the TIRZ board is committed to spend wisely for the development of our Downtown and for the betterment of the entire community.

Verónica Escobar, TIRZ Board
Chair

Hector Gutierrez Jr., TIRZ Board
Member

Pauline Dow, TIRZ Board Vice-
Chair

Bill Hooten, TIRZ Board Member

Jesse Alvarez, TIRZ Board
Member

Keith A. Mahar, TIRZ Board
Member

Marc Bernat, TIRZ Board
Member

Miguel I. Murguia, TIRZ Board
Member

Bonnie S.Y. Escobar, TIRZ
Board Member

Jim Phillips, TIRZ Board Member

George Reynoso, TIRZ Board
Member

Rebecca Friesenhahn, TIRZ
Board Member

Art Fierro, TIRZ Board Member

RESOLUTION

WHEREAS, by Ordinance Number 016528, adopted December 19, 2006, later amended by Ordinances Nos. 016803 and 016804 on December 18, 2007, the City created Tax Increment Reinvestment Zone Number Five, City of El Paso, Texas (the "Zone") in accordance with the Tax Increment Financing Act (the "Act") for the purposes of development within the Redevelopment Districts in the Downtown 2015 Plan through the use of tax increment financing; and

WHEREAS, on February 12, 2009, the Board of Directors of the Zone approved the final Project Plan and final Reinvestment Zone Financing Plan providing for development and redevelopment of the Zone, which the El Paso City Council adopted as the final Project Plan and Reinvestment Zone Financing Plan for the Zone by Ordinance No. 017081, dated March 10, 2009, and which were subsequently amended by the Board and submitted to City Council to include the Commercial Façade Improvement Grant Program as an eligible project for tax increment financing funds with an initial funding allocation of \$32,000; and

WHEREAS, subject to City Council approval of the amendment to the final Project Plan and final Reinvestment Zone Financing Plan, the City desires to implement the Commercial Façade Improvement Program for the Zone, which will provide up to \$10,000 matching funds to existing business property owners or lessees who renovate, restore, preserve, and rehabilitate the exterior of commercial buildings in the Zone because such aesthetic improvements will prompt further reinvestment and redevelopment in the Zone by the private sector; and

WHEREAS, pursuant to the Act and Chapter 380 of the Texas Local Government Code, City may enter into agreements as the City considers necessary or convenient to implement the Project Plan and Reinvestment Zone Financing Plan and to achieve its purpose and said agreements may dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund to pay any project costs that benefit the Zone, including project costs related to the cost of the preservation of the façade of a private or public building; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That the Program Guidelines for the Tax Increment Reinvestment Zone No. 5 (Downtown) Commercial Façade Improvement Grant Program, attached as **Exhibit "A"**, are adopted subject to passage of the Ordinance amending the Final Project Plan and Final Reinvestment Zone Financing Plan for the Zone; and

2. That the City Manager or her designee is hereby be authorized to enter into reimbursement grant agreements in the form and substance substantially similar to the Agreement attached to this Resolution as **Exhibit "B"** provided the proposed façade improvement project meets the requirements of the Program Guidelines and to the extent that tax increment revenue funds allocated to this Program are available to fund grant awards.

[Signatures on Following Page]

ADOPTED this ____ day of _____, 2009.

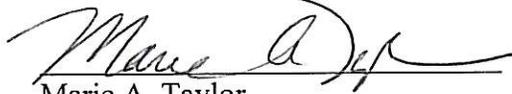
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
Municipal Clerk

APPROVED AS TO FORM:


Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

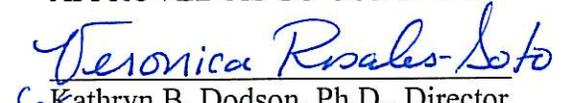

Kathryn B. Dodson, Ph.D., Director
Economic Development Department

Exhibit A



Commercial Façade Improvement Grant Program Guidelines

Tax Increment Reinvestment Zone No. Five (Downtown)

The City of El Paso

April 2009

Summary

The purpose of the Commercial Façade Improvement Grant Program is to provide matching grant funding to existing business and/or property owners to encourage renovation, restoration, preservation, and rehabilitation of the exterior of buildings in the Tax Increment Reinvestment Zone No. 5, City of El Paso, Texas (the "Zone"). Funding for the program is provided through the use of limited funds from the Tax Increment Revenue Fund for the Zone. The initial funding authorization consists of \$32,000.00 to be used directly for the reimbursement grants. The initial program funding shall be limited to façade improvements to business properties located in the original boundaries of the Zone, as identified in Exhibit A.

This Program aims to improve the aesthetics within the Zone, as attractive building façades will positively impact the marketability and perception of the area. The Program consists of a one-dollar to one-dollar match of up to \$10,000.00 for approved improvements. Reimbursement grants will be awarded for façade improvements that restore, preserve, rehabilitate, enhance or beautify a structure in accordance with program requirements.

Eligible improvements include:

- Signs (new, repairs, replacement, removal)
- Grate and grate box removal or conversion of solid grates to an open mesh style
- Awnings
- Lighting
- Paint
- Removal/replacement of inappropriate or incompatible exterior finishes or materials
- Recessing/reconfiguring entrances
- Removal of extraneous elements
- Door/window replacement or repair
- Exterior cleaning
- Historical architectural elements

Design and permit fees associated with the renovation are also eligible project costs.

The Program will be administered by the City's Economic Development Department. An application form is to be submitted with a description of the work to be completed. Applications will be reviewed by a Review Committee consisting staff from relevant City Departments and the El Paso Downtown Management District (DMD).

For more information contact:

Verónica Rosales-Soto, AICP, Redevelopment Manager

City of El Paso Economic Development Department

2 Civic Center Plaza • El Paso, TX 79901

Phone: (915) 541-4810 or via e-mail at Rosalesv@elpasotexas.gov.

Commercial Façade Improvement Grant Program

Tax Increment Reinvestment Zone No. 5 (Downtown)

Program Description

The purpose of the Program is to provide funding to existing business and/or property owners to make improvements to the exterior of buildings in the downtown study area identified in the Zone. The Program will provide matching grants for exterior renovation, restoration, preservation, and/or rehabilitation of commercial properties within the eligible area on a reimbursement basis only.

Program Goals

- 1) Revitalize and improve the appearance of downtown buildings to positively impact the aesthetics, marketability, and perception of the Zone
- 2) Serve as a catalyst for continued private sector investment through visible improvements
- 3) Offer the private sector an incentive program to invest in downtown buildings

Eligible Applicants

This Program aims to improve the aesthetic appearance of commercial properties within the Zone. The initial funding allocation for this Program consists of \$32,000.00 to fund reimbursement grants for façade improvements to business properties located in the original boundaries of the Zone, as identified in Exhibit A. If additional funds are allocated for this Program, property owners and tenant/business owners of properties located within any part of the current Zone boundaries, as identified in Exhibit B will be eligible to participate in the Program. Business owners/tenants must have been at the location for at least one year and have the property owner's express consent for the proposed improvements. To participate in the Program, Applicants must complete and submit the Program application form provided by the Economic Development Department along with the required attachments. Retroactive applications for improvement work that has already been completed will not be accepted. Property taxes must be current, and participants must represent that to the best of their knowledge they have no debts in arrears to the City when a commitment letter is issued. Further, the Applicant must certify that there are no current code enforcement actions pending against the property that would not be mitigated by the project.

Eligible Costs

The Program is a matching grant program, which means that matching funds must be matched dollar for dollar (1:1 ratio) by the Applicant for qualified expenditures. The maximum grant amount under the Program is \$10,000.00 for approved improvements per project. Grant funds are disbursed on a reimbursement basis only. Labor, design, and material costs are eligible costs. Further, permit fees associated with the proposed renovation/rehabilitation and fees for architectural design and engineering for the project are eligible program costs. In-kind, donated, "sweat equity" or similar no cost to the Applicant improvements, services, or materials will not be matched and are ineligible costs under the Program. Costs incurred for alternations or improvements completed prior to receipt of formal written approval by the Program's Review Committee and issuance of the "Notice to Proceed with Improvements" are not eligible for reimbursement.

Eligible Improvements

Subject to application approval and funding availability, grants will be awarded for façade improvements that restore, preserve, rehabilitate, enhance or beautify a structure.

Eligible improvements include:

- Signs (new, repairs, replacement, removal)
- Grate and grate box removal or conversion of solid grates to an open mesh style
- Awnings
- Lighting
- Paint
- Removal/replacement of inappropriate or incompatible exterior finishes or materials
- Recessing/reconfiguring entrances
- Removal of extraneous elements
- Door/window replacement or repair
- Exterior cleaning
- Historical architectural elements

Design Requirements

Applicants are encouraged to promote historic preservation, energy efficiency, and accessibility standards in designing improvements, to the extent that they are financially feasible or required by law. All improvements must conform to applicable city building codes, zoning ordinances, local, state, and laws and to the design guidelines adopted for the area and approved by the Review Committee for the Program. Façade improvements to properties within the designated Downtown Historic District must be completed in accordance with Historic District Guidelines and Applicants must obtain any requisite certifications or other approvals of the City's Administrative Review Process and/or Historical Landmark Commission. All other facade improvements must also be completed in accordance to the design guidelines included in the Downtown 2015 Plan, which is available upon request.

Funding Availability

Funding is limited and grant awards will be subject to funding availability; Project Applicants will prioritized on a first-come, first-serve basis. A commitment letter allocating the project funds for a particular approved project will be issued and a commitment period established so that if funds are not used within that period, program funds can be reallocated for other eligible projects.

Application Process

An application with the following information, at a minimum, is to be submitted for consideration:

- Property address
- Applicant and Property owner name(s), address(es) and signature(s)
- Proof of ownership or if tenant, copy of lease or other property agreement and written consent of Property owner to complete the proposed improvements
- Verification that property taxes on the property are paid and current
- Project Scope description, to include a detailed plan and sketch
- Conceptual or actual building permit plans for the work to be completed
- Hard copy and digital photograph of existing building facade

- Project budget (detailed estimated costs by materials, labor, services and fees)

The required application forms are available at the offices of the City's Economic Development Department. Incomplete applications will not be processed and will be returned to the Applicant without consideration.

The Review Committee for the Program will review and approve applications and select grant award recipients on a first-come, first served basis. The Review Committee will be comprised of: Deputy Director for Planning or designee, Deputy Director for Building Permits & Inspection or designee, Historic Preservation Officer or designee, Economic Development Director or designee, and DMD Director or designee. The Economic Development Department will be primary staff for processing applications and for facilitating the Review Committee process. Specifically, Economic Development Department staff will conduct an initial review of the submitted application to determine whether the application is complete and will meet with Applicants as necessary. Applicants may be invited to present their applications before the Review Committee.

The Review Committee will evaluate applications based on the following Review Criteria and Funding Priorities:

- Preference is given to commercial buildings with operating businesses.
- Substantial visible improvement to the appearance of the building, as determined by the Review Committee
- Projects that do not restore architectural details of facades with significant architectural elements will not be considered. Preference is given to projects that maintain or restore architectural details of facades, especially those with historically significant architectural elements.

Applicants will be notified in writing as to whether his/her application has been rejected or approved by the Review Committee via a commitment letter issuance that allocates funds to the project if approved. Upon approval, the Applicant must enter into a reimbursement agreement with the City regarding the terms and conditions of his/her participation in the Program and receipt of the reimbursement grant, to include the following:

1. Project scope, and property location and attachment(s) identifying the specific improvements to be undertaken;
2. Maximum amount of the allowed reimbursement grant;
3. Work commencement date;
4. Submission of building permit(s) and other applicable permits or approvals;
5. Acknowledgment of the reimbursement claim procedure and requisite supporting documentation for reimbursement processing to the City's Financial Services Department (W-9 and vendor forms required);
6. Monitoring and right of final inspection by Economic Development Department or other City personnel;
7. Acknowledgment of change order procedures;
8. Compliance with applicable local, state, and federal laws;
9. Promotional Rights to the City;

10. Maintenance Requirements and Repayment Penalty for Removal of Improvements within two years; and
11. The City's standard contract terms and provisions (e.g., liability, indemnification, termination, and insurance requirements)

Following execution of the reimbursement agreement and the City's receipt of copies of any required building permits or approvals, the City will issue a "Notice to Proceed with Improvements" that outlines the approved work. The project must begin within 45 consecutive calendar days from the date of the Notice and must be completed within 180 consecutive calendar days, except where the Review Committee has granted in writing the Applicant's written request for an extension stating a reasonable cause for the delay. Applicant may only employ licensed and bonded contractors and subcontractors to perform the proposed improvement work. As appropriate, Economic Development Department staff and/or authorized City personnel will monitor the construction process. The Review Committee must approve in writing any change orders to the proposed improvement work.

Requests for reimbursement will only be processed after the rehabilitation/improvement work is completed and approved following a final field inspection by Economic Development Department staff and/or authorized City personnel in order to verify compliance with the project scope. Further, reimbursement under the Program means that no payment will be issued until the Applicant has paid for the improvement work in full. Reimbursement claims must be accompanied by the following supporting documents: proof of payments (e.g., cancelled checks, paid invoices/receipts of eligible expenses), statements from architects, contractors and/or subcontractors acknowledging that all payments have been received, notarized final lien waivers from all contractors and/or subcontractors, if applicable, proof of final government inspections and a hard copy and digital "after" photograph of the facade improvements. Applicant must complete, sign and submit a request for reimbursement in order for disbursement of funds per the City's Financial Services Department guidelines (Forms required include a W-9 and a Vendor Form). Required reimbursement forms will be issued along with the commitment letter. A photocopy of the front and back of all cancelled checks must be submitted for reimbursement along with an invoice marked "paid." All invoices must clearly indicate the work that was performed, the amount of the invoice as well as the corresponding check number(s). All payments are subject to the review and approval of the Economic Development Department or authorized City personnel. Please allow eight weeks for receipt of the reimbursement check.

Maintenance Requirements

By accepting grant funds, the Applicant commits to properly maintain all facade improvements, clean and free of graffiti for a minimum of 3 years at the Applicant's own cost and expense. Any damage to the facade is to be repaired immediately by the Applicant so that the property remains in good condition and positively contributes to the Zone. Applicant will be strongly encouraged to touch up painted areas and perform any other repairs needed on an ongoing basis and to maintain building appearance including the cleaning of any awnings at least once a year. Applicant also agrees to return a pro-rated amount of the grant money received if the improvement is removed within 3 years.

Promotional Rights

By accepting grant funds, Applicant authorizes the City to promote the project and property including, but not limited to, displaying a sign at the site during and after construction indicating participation in the Program, and using photographs and descriptions of the project and property in the City's printed promotional materials, press releases, and websites.

Exhibit A – Tax Increment Reinvestment Zone Boundary

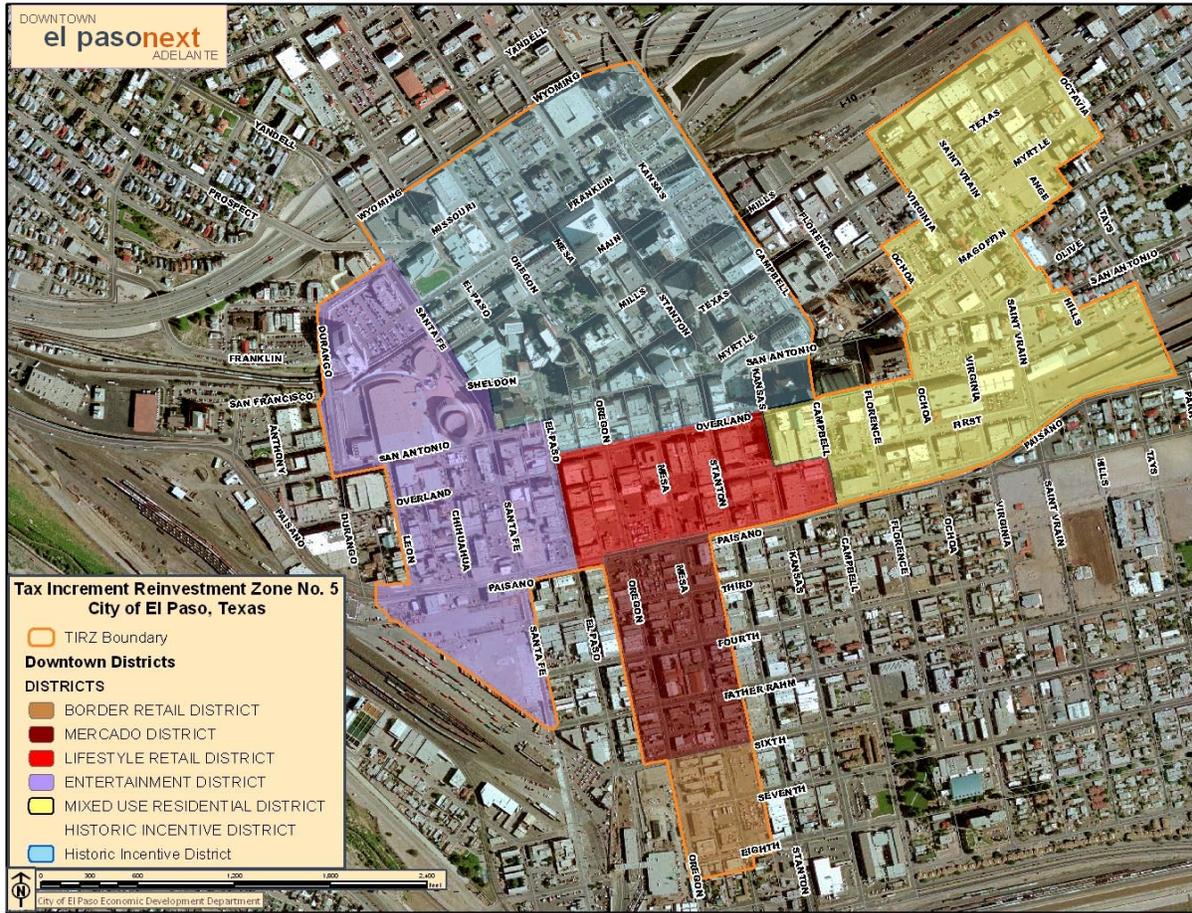
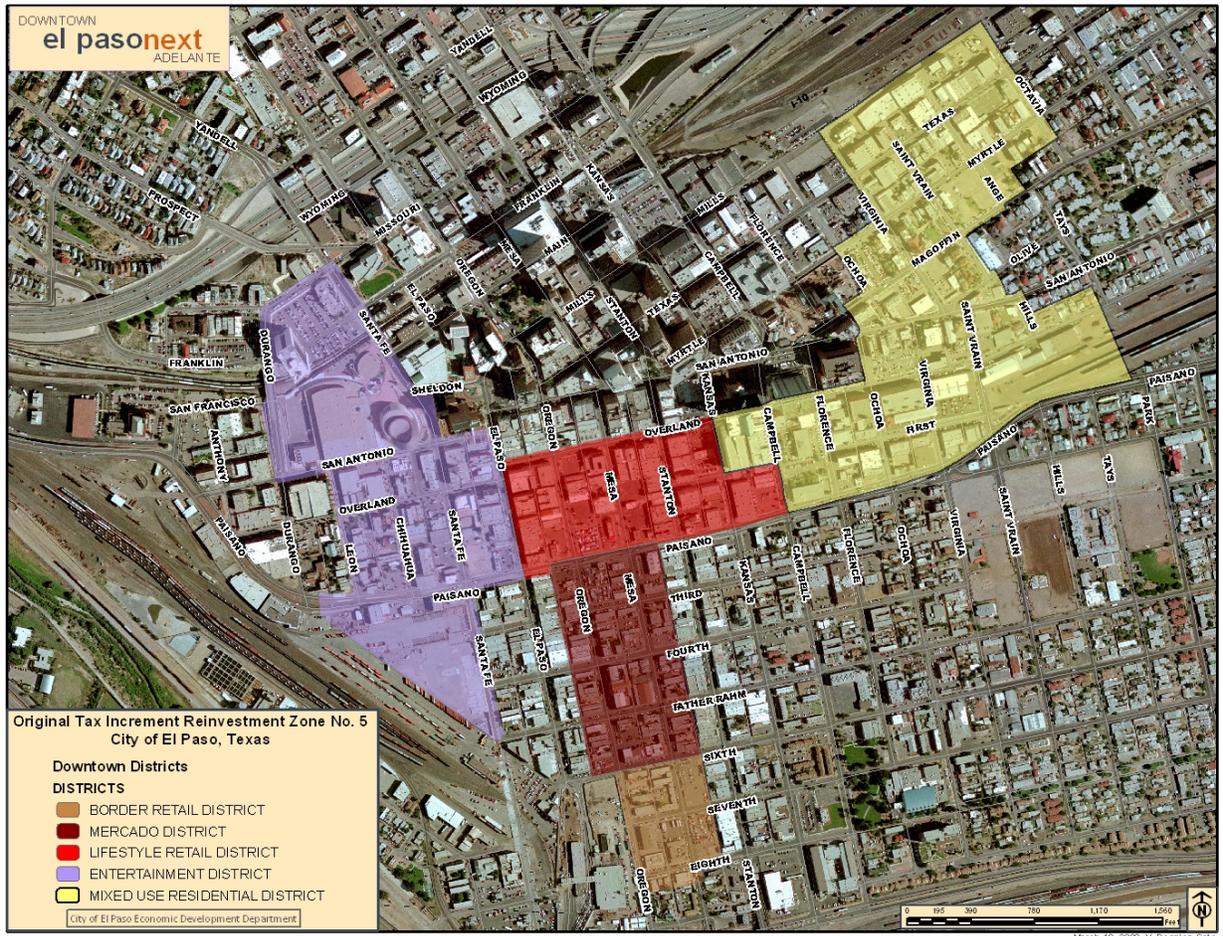


Exhibit B - Original TIRZ No. 5 Boundary



Commercial Façade Improvement Grant Program
TAX INCREMENT REINVESTMENT ZONE NO. FIVE (DOWNTOWN)
Reimbursement Grant Agreement

This Agreement, by and between the City of El Paso, Texas ("City"), and ("Participant"), is made on this _____ day of _____, 20____.

RECITALS

WHEREAS, by Ordinance Number 016528, adopted December 19, 2006, later amended by Ordinances Nos. 016803 and 016804 on December 18, 2007, the City created Tax Increment Reinvestment Zone Number Five, City of El Paso, Texas (the "Zone") in accordance with the Tax Increment Financing Act (the "Act") for the purposes of development within the Redevelopment Districts in the Downtown 2015 Plan through the use of tax increment financing; and

WHEREAS, Section 311.002(1) of the Act authorizes the expenditure of tax increment funds for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the municipality establishing a reinvestment zone that are listed in the Project Plan, which said expenditures and monetary obligations constitute project costs as defined in the Act; and

WHEREAS, on February 12, 2009, The Board of Directors (the "Zone Board") of the Zone approved the final Project Plan and Reinvestment Zone Financing Plan providing for development and redevelopment of the Zone, which the El Paso City Council adopted as the final Project Plan and Reinvestment Zone Financing Plan for the Zone by Ordinance No. 017081, dated March 10, 2009, as may be later amended; and

WHEREAS, pursuant to the Act, City may enter into agreements as City considers necessary or convenient to implement the Project Plan and Reinvestment Zone Financing Plan and to achieve its purpose and said agreements may dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund to pay any project costs that benefit the Zone, including project costs related to the cost of the preservation of the façade of a private or public building; and

WHEREAS, as part of the Project Plan and Reinvestment Financing Plan for the Zone, the City has established a Commercial Façade Improvement Grant Program (the "Program") to provide matching funds to existing business property owners or lessees who renovate, restore, preserve, and rehabilitate the exterior of commercial buildings in the Zone because such aesthetic improvements will prompt further reinvestment and redevelopment in the Zone by the private sector; and

WHEREAS, Participant's property or leasehold is located in the Zone and Participant desires to participate in the Program, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements of the parties hereto, the parties hereto agree as follows:

1. **City's Obligations.** If Participant completes the commercial façade improvement work at _____, El Paso, Texas (the "Property") as specifically described in **Exhibit A** (the "Project") and satisfies the terms contained in the Commercial Façade Improvement Grant Program Guidelines (the "Program Guidelines"), incorporated by reference herein, and this Agreement, the City will reimburse Participant in an amount up to \$ _____ for the approved facade improvement work and eligible costs, subject to the following additional terms and conditions:

(a) The Program is a matching grant program, which means that grant funds must be matched dollar for dollar (1:1 ratio) by Participant for eligible costs.

(b) The sole source of the funds to reimburse Participant for eligible costs shall be the Available Tax Increment Funds contributed by the City to the Tax Increment Revenue Fund for the purpose of implementing the Program and payments shall be made by the City from Available Tax Increment Funds up to the maximum total amount specified in this Agreement. The words "Available Tax Increment Funds" mean the funds contributed by the City, as the sole participating taxing entity, to the Tax Increment Revenue Fund established and maintained by the City for the purposes of implementing the projects of the Zone, less the ongoing administrative costs of the City and Zone Board for managing the Zone

(c) If Available Tax Increment Funds do not exist in an amount sufficient to make such payments in full when the payments are due to Participant under this Agreement, partial payments shall be made to Participant, and the remainder shall be paid as Available Tax Increment Funds become available. Participant agrees and understands that all payments from the Tax Increment Revenue Fund are subject to the following order of priority: (i) amounts pledged or required for payment of outstanding bonds or debt issued for Zone projects, if any; (ii) administrative costs of the Zone as approved by City and Zone Board; (iii) maintenance of a minimum balance of \$50,000.00 in the Tax Increment Fund; (iv) other Zone projects previously approved by the Zone Board and the City Council for the City.

2. **Contract Performance.** Within _____ days from the execution date of this Agreement, Participant will give the City copies of the building permits and other applicable permits, certificates, or approvals that are necessary to begin the work. The City will then give the Participant formal notice to begin the work. The work must start within 45 days from the date of the City's notice and must be completed within 180 calendar days, unless Participant asks for an extension of

the completion date, which may be granted at the City Manager's or her designee's discretion, but which will not be unreasonably withheld. **Time is of the essence for completing this Project.**

3. **Design Requirements.** Participant understands and agrees that all façade improvement work most conform to the design guidelines adopted for the Downtown 2015 Plan area, and any other design guidelines established by the City and contained in the Program Guidelines.

4. **Progress Review and Inspection.** The City's Economic Development Department staff or other authorized representative may periodically visit the Property to review the progress of the Project and to verify compliance with this Agreement. Upon completion of the Project and prior to processing Participant's request for reimbursement, Department staff will conduct a final inspection and approval of the façade improvement work. Any change orders to the Project must be approved in writing and in advance by the City's Economic Development Department before the Participant may proceed with the alternate façade improvement work.

5. **Reimbursement Requests.** Participant agrees that reimbursement of façade improvement work costs are subject to the following terms and conditions:

(a) Eligible costs shall include labor, design, materials, equipment, permit fees, architectural design and engineering costs, and other pre-approved costs that the City's Economic Development Department staff has determined are necessary for completion of the work and are permissible under the Program Guidelines.

(b) Participant understands and agrees that in-kind, donated, sweat equity or similar no-cost improvements, services, or materials are ineligible and excluded from the match requirement. Further, the City will not reimburse any costs for which participant will or has received reimbursement from another source. Any costs associated with façade improvement work completed prior to the formal notice of the City to proceed with improvements are not eligible for reimbursement.

(c) No reimbursement payments will be issued until participant has made full payment for the façade improvement work.

6. **Payment Processing.** Upon final inspection and written approval by the City's Economic Development Department Director or her designee, Participant will submit the following documentation to department staff for payment processing:

(a) A completed and signed request for reimbursement, W-9 and vendor forms, as provided by the City;

(b) Proof of payment (e.g., copies of cancelled checks along with corresponding invoices marked "paid");

- (c) statements from architects, contractors and/or subcontractors acknowledging that all payments have been received;
- (d) notarized final lien waivers from all contractors and/or subcontractors, where applicable;
- (e) proof of any applicable final governmental inspections (e.g., planning or building permits or certificates); and
- (f) hard copy photograph(s) and if requested digital photograph(s) that accurately reflect the completed façade improvements to the property.

The reimbursement request will be subject to review and approval, which if approved, payment will be issued within eight (8) weeks from receipt. The determination of the amount of the reimbursement payment due is final; provided, however, that participant may appeal to the City Council within thirty (30) days of payment in which event the City Council shall hear the appeal within thirty 30 days and the City Council's determination of the amount of the reimbursement payment shall be final.

7. **Term and Termination.** This Agreement starts on the execution date and will terminate three years from the completion date of the façade improvement work, unless terminated on an earlier date by the City or Participant. The Participant and the City agree that this Agreement may be terminated by mutual agreement in writing, for convenience with 30-day written notice to the other party, or for cause with 30-day written notice and a reasonable opportunity to cure the default. If this Agreement is terminated, the Participant agrees that the City will not be liable for any claim for damages by the Participant that is a result of the termination.

8. **Independent Contractor Status.** Participant agrees that it is an independent contractor and is not an employee of the City and that the City are not responsible for the Participant's actions or inactions in performing the work or that of the Participant's employees, contractors, or subcontractors.

9. **Insurance Requirements.** Participant agrees to have and maintain liability insurance for personal injuries in a minimum amount of \$300,000 per person and \$500,000 for two or persons and property damage liability insurance in the minimum sum of \$200,000 during the construction phase of the project. Upon request, the Participant will provide the City a certificate of insurance to document the Participant's satisfaction of the insurance coverage requirements.

10. **Promotional Rights.** Upon the City's request and after the Project is completed, Participant will displace non-intrusive signage provided by the City, indicating participation in the Program for a period of three (3) years. Participant hereby authorizes the City to promote the Property and Project as a participant in the Program, which will include but is not limited to the use of before and after photographs and descriptions of the façade improvement work in the City's

promotional materials, press releases, websites and other forms of publicity mediums.

11. **Maintenance.** Upon completion of Project and for a period of three (3) years thereafter, Participant and/or the Property owner shall be responsible for properly maintaining the façade improvements in finished form and without substantial change or alteration thereto, and shall keep the exterior of the property structure clean and free of graffiti as the Participant's and Property Owner's responsibility. Participant and Property Owner represent that they will endeavor to touch up painted areas and perform any other repairs needed on an ongoing basis and to maintain exterior building appearance including the cleaning of any awnings at least once a year.

12. **Recapture of Funds.** If Participant or Property Owner removes or substantially alters the façade improvements funded through this Agreement within three (3) years from the date of completion of the Project, Participant shall, within thirty (30) days after demand, repay to the City the reimbursement funds awarded to Participant as follows: the full amount of reimbursement awarded for removal/alteration of improvements within one (1) year of completion; two-thirds of the amount of reimbursement awarded for removal/alteration of improvements within two (2) years of completion; and one-third of the reimbursement awarded for removal/alteration of improvements within three (3) years of completion.

13. **Indemnification.** Participant shall **INDEMNIFY, HOLD HARMLESS AND DEFEND** the City and the Zone Board, their officials, agents, employees, officers, directors and representatives, against **ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH OR PROPERTY DAMAGE, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS,** arising out of or relating to the performance of the Participant's activities under this Agreement, all, without however, waiving and governmental immunity available to the City under Texas law.

14. **Representations.** Participant represents, warrants, and agrees as follows:

(a) Participant is the owner of or tenant in good standing of the Property for at least one year; there are no property taxes related to the Property that are delinquent and owing to the City; there are no current code enforcement actions pending against the Property that would not be mitigated by the commercial façade improvement work; and to the best of Participant's knowledge and belief, it has no debts in arrears to the City.

(b) Participant has not made any misrepresentations of material fact, or failed to disclose any material fact in connection with efforts to obtain the award of reimbursement funds under this Agreement.

(c) Participant will comply with all applicable federal, state, and local laws and regulations in performance of its duties under this Agreement.

(d) The parties do not have the authority to bind the other or hold out to third parties that it has the authority to bind the other.

15. **Employment of Undocumented Workers.** During the term of this Agreement, Participant 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), Participant shall repay the amount of the reimbursements received by Participant from the City as of the date of such violation not later than one hundred twenty (120) days after the date Participant is notified by City of a violation of this section, plus interest from the date the reimbursement payment(s) was paid to Participant, at the rate of seven percent (7%) per annum. The interest will accrue from the date the reimbursement payment(s) were paid to Participant 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 reimbursement payment(s) subject to repayment under this section. Participant is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Participant contracts.

16. **Assignability.** This Agreement may be assigned with prior written consent of the parties.

17. **Survival.** Participant will remain obligated to the City under any and all provisions of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the indemnification provisions herein.

18. **Amendments.** This Agreement may be modified, amended, changed if done in writing and signed by the parties.

19. **Entire Agreement.** This Agreement, together with the referenced documents, is the entire agreement between the parties.

20. **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.

CITY: City of El Paso
Attn: Economic Development Department Director
2 Civic Center Plaza, 2nd floor
El Paso, Texas 79901

PARTICIPANT:

or such other addresses as the parties may designate to each other in writing from time to time.

21. **Governing Law.** The laws of the State of Texas govern this Agreement and venue is in El Paso County, Texas.

22. **Severability.** The provisions of this Agreement are severable and if any term or provision is found illegal or invalid, the validity of the rest of this Agreement will not be affected.

EXECUTED on the day and year first written above.

THE CITY OF EL PASO:

Kathryn B. Dodson, Ph.D., Director
Economic Development Department

APPROVED AS TO FORM:

PARTICIPANT:

Marie A. Taylor
Assistant City Attorney

By: _____

Name (Printed)

AUTHORIZATION AND CONSENT TO TERMS AND CONDITIONS OF THIS AGREEMENT BY PROPERTY OWNER (IF DIFFERENT FROM PARTICIPANT):

By: _____

Name (Printed)