

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

DEPARTMENT: City Development Department
AGENDA DATE: May 7, 2013
CONTACT PERSON/PHONE NUMBER: Marty Howell, Director of Economic Development and Sustainability
915--383-8217
DISTRICT(S) AFFECTED: ALL DISTRICTS

SUBJECT:

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

Discussion and action on a Resolution that the Mayor be authorized to sign the Third Amended Interlocal Agreement between the County of El Paso and the City of El Paso that provides for a Joint Revolving Loan Fund. Revisions to the Agreement and that the Revolving Loan Fund Board adopt by-laws and regulations governing its proceedings in order to effectively carry out its purpose. (All Districts) Economic Development and Sustainability – Marty Howell, Director, 915-383-8217

BACKGROUND / DISCUSSION:

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

The Third Amended Interlocal Agreement between the County of El Paso and the City of El Paso is being amended to remove funds from the North American Development Bank (NADBank), Community Adjustment and Investment Program (CAIP). The CAIP funds will be utilized to establish the Sustainable City Centers Incentive fund, which may be used within the City of El Paso and the County. The Amended Agreement also replaces JPMorgan Chase N.A. with Well Fargo Bank N.A. as the Program Operator. The requirement to appoint ten members to the Revolving Loan Fund Board by the City and County of El Paso has been deleted. The City and County are now required to appoint an equal number of RLF Board members. By not including a minimum number of appointees the City and County can lower the number of board members to allow for a reduction in the number of members needed for a quorum, which further allows for expedient review of loan applications. Exhibit "A" is also revised to allow staff to administratively approve Program Lenders. By allowing administrative approval, Program Lenders may be added to the program to meet the needs of individual business owners.

PRIOR COUNCIL ACTION:

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

City Council approved the first Interlocal Agreement on May 16, 2000, The First Amended Interlocal Agreement on May 08, 2001 and the Second Amended Interlocal Agreement on April 27, 2004.

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?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

DEPARTMENT HEAD: _____

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

STATE OF TEXAS)
)
COUNTY OF EL PASO)

THIRD AMENDED INTERLOCAL AGREEMENT

This Interlocal Agreement, as amended, is entered into on the _____ day of _____, 2012, by and between the CITY OF EL PASO, a Texas home-rule municipal corporation (“the City”) and the COUNTY OF EL PASO, TEXAS (“the County”).

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 maintaining 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

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 (the “Agreement”) is made for the purpose of establishing and maintaining a Joint Revolving Loan Fund, hereinafter referred to as “the Joint RLF” or “the Program,” 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, as amended from time to time, attached hereto as Exhibit “C” 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 Office of Rural Community Affairs (“ORCA”), 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 Joint RLF funds provided.

C. The City and the County agree that the Program shall be undertaken by WELLS FARGO BANK, N. A. (“Wells Fargo”) as “Program Bank” and that other lending institutions may participate in the Program as “Program Lenders” and that Wells Fargo, as Program Bank, will be subject to the terms of the Revolving Loan Program Agreement of even date herewith and in the form substantially identical to Exhibit “A,” attached hereto and by this reference made a part hereof.

D. The City and the County agree that the City, by and through its City Development Department, is the lead party responsible for program oversight, programmatic administrative support, and technical and management assistance. The City and the County further agree that without prior approval, each Party may enter into contract(s) with a third party for the purpose of fulfilling its Program responsibilities, including, but not limited to any services or activities related to the administrative and clerical functions of the Program. The City and the County agree to give written notice to the other Party within ten (10) days of any such action.

E. The City’s Development Department or a third-party independent contractor hired to serve as Program Administrator (“Program Administrator”), where applicable, will provide the staffing to administer the Program.

SECTION 2. COMPLIANCE WITH REQUIREMENTS OF EDA AND ORCA

The Joint 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 Access Program guidelines for funds provided to the County through ORCA.

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 City Manager, P.O. Box 1890, El Paso, TX 79950-1890, 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 EDA and ORCA, 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 an equal amount of members from both the City and the County, who shall be responsible for reviewing and approving (i) applications for loans from the Joint RLF; (ii) major loan modifications or waivers; and (iii) loan foreclosure actions. RLF Board members will each have one or more of the following characteristics in order to serve: previous experience in financing or lending, accounting or bookkeeping experience, or a general business acumen with demonstrated experience. The Director of the City's Economic Development Department or her 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 appointed or elected public office 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. All RLF Board members must comply with local, county, and state conflict of interest laws.

C. The term of office for each member appointed to the RLF Board shall be two years. Successors shall be appointed for two-year terms commencing on the applicable anniversary date of the original effective date of this Agreement. No member of the RLF Board shall serve more than three 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 adopt by-laws and/or rules and regulations for the governing of its own proceedings to carry out the purposes for which the Board is created, not inconsistent with the laws of the State of Texas, Commissioners' Court Orders, or the Charter and Ordinances of the City of El Paso.

E. Notice of meetings shall be provided by the City of El Paso to the public in accordance with the Texas Open Meetings Act and, when applicable, provided by the County in accordance with the citizen-participation guidelines issued by ORCA.

F. Prior to review by the RLF Board, the City's City Development Department ("the Department") will screen loan packages involving City funds for compliance with EDA Guidelines and will forward to the County any loan packages involving County funds to the County for the County to review for compliance with ORCA guidelines. With respect to any applications for loans involving County funds from the Joint RLF, the County will be responsible for evaluation of those loan applicants and will review these proposed projects for compliance with ORCA guidelines. Upon a determination that loan packages are in compliance with the applicable EDA and ORCA guidelines, the Department shall request that the RLF Board be convened to review individual applications.

SECTION 5. CONTRIBUTIONS TO THE REVOLVING LOAN FUND

The original contribution total for the Revolving Loan Fund was \$753,000, with the City's share being \$586,000 and the County's share, \$167,000. Interest accumulated by the Joint

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 Joint RLF shall be dedicated to County projects, i.e., those in the unincorporated parts of the County. The City's portion of the Joint 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 Joint 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 Joint RLF, such funds shall be deemed to be allocated to the respective City and County portions of the Joint 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 Joint RLF shall be proportional to the relative contributions of the Parties.

SECTION 6. REPORTING REQUIREMENTS

The City acknowledges that it is required to submit semi-annual reports to EDA, with respect to establishment and operation of the Joint RLF. The County acknowledges that it is required to provide quarterly reports to ORCA, with respect to establishment and operation of the Joint RLF. The Parties agree that they shall establish appropriate procedures, including the designation of contact individuals, to ensure that pertinent information is obtained from Wells Fargo and other Program Lenders regarding the Joint RLF and that such information is provided to the RLF Board and to EDA and ORCA on a timely basis.

SECTION 7. COMPLIANCE WITH LAWS

The City and the County shall comply with all applicable local, state, and federal 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.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

(SIGNATURES BEGIN ON FOLLOWING PAGE)

THE CITY OF EL PASO, TEXAS:

By: _____

Name: John F. Cook

Title: Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Matthew K. Behrens
Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew McElroy, Director
City Development Department

THE COUNTY OF EL PASO, TEXAS:

By: _____

Name: _____

Title: _____

ATTEST:

County Clerk

APPROVED AS TO FORM:

Assistant County Attorney

“EXHIBIT A”

REVOLVING LOAN PROGRAM AGREEMENT

This Revolving Loan Program Agreement (as it may be amended, supplemented or otherwise modified from time to time, the “Loan Program Agreement” or, within itself only, this “**Agreement**”) dated as of _____, 2013, is executed by and among **Wells Fargo Bank, N.A.** (“**Wells Fargo**”), the **City of El Paso, Texas** (the “**City**”) and the **County of El Paso, Texas** (the “**County**”).

RECITALS

The City of El Paso and the County of El Paso, Texas have funds available to use under the U.S. Department of Commerce, Economic Development Administration (“**EDA**”) Section 209 Economic Adjustment Program and as provided by the Texas Office of Rural Community Affairs (“**ORCA**”) (together, the “**Program**”). Such funds are available for use as a Revolving Loan Fund (the “**Revolving Loan Fund**”) under federal and state guidelines to provide financing for businesses starting-up, expanding in or relocating to El Paso, Texas. One of the requirements of the Program for the Revolving Loan Fund is that the City and the County enter into an agreement with a contractor, in the capacity of “Program Bank” to provide a senior loan to such businesses which will be coupled with a subordinated loan made from the Revolving Loan Fund in order to provide a greater amount of financing to such businesses than would be available without the Revolving Loan Fund. The Parties desire that the Program Bank engaged as the contractor for the City and the County for those purposes also provide loan underwriting, servicing, and limited collection services for such subordinated loans. The City, the County and Wells Fargo desire that Wells Fargo be such contractor during the term of this Agreement. The City, the County, and Wells Fargo further desire that additional lending institutions, as hereinafter described, be permitted to participate in the process of providing senior loans to businesses expanding in or relocating to El Paso, to be coupled with subordinated loans made from the Revolving Loan Fund.

AGREEMENTS

In consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which each party hereto hereby acknowledges, the parties agree as follows:

ARTICLE 1 - General Services To Be Provided by Program Lenders

Section 1.1 Appointment of Wells Fargo. The City and the County hereby appoint Wells Fargo as independent contractor and agent for the City and the County to serve as the Revolving Loan Fund Program Bank (“**Program Bank**”) as the depository for Revolving Loan

Fund bank accounts. It is understood and agreed that Wells Fargo, for its own account (and not as contractor or agent for the City or the County) may offer and make senior loans to such Applicants as a Program Lender or arrange with other lending institutions to make senior loans to such Applicants.

Section 1.2 Program Lenders. Other lending institution(s) (“**Program Lender(s)**”) shall be identified in **Exhibit B** attached hereto, and shall each indicate its acceptance of the terms of this Agreement by having its authorized representative sign said **Exhibit B**. The addition and removal of Program Lenders from participation in the Revolving Loan Fund Program may be done so administratively through action of the City Development Department given the new Program Lenders acceptance of the terms of this Agreement and signing as an attachment to Exhibit B. Removal of Program Lenders from participation in the Revolving Loan Fund Program may also be done administratively through a 30 day written notice to the City Development Department and subsequent notice to the Revolving Loan Fund Board.

Section 1.3 Evaluation of Applications. All Program Lenders agree to review and evaluate applications to the respective lending institutions from Applicants for senior secured loans. Following any such review and evaluation, all Program Lenders agree to (a) make their own independent determination, based on their own underwriting standards and criteria from time to time in effect, and in their sole judgment and discretion, as to whether, in what amount and upon what terms and conditions, the lending institution would be willing to make such a senior secured loan to each such Applicant, and (b) apply such written underwriting guidelines (the “**Underwriting Guidelines**”) as the City and the County shall from time to time provide to all Program Lenders for the purpose of recommending to the Revolving Loan Fund Board (the “**Revolving Loan Fund Board**”) established by the City and County whether, in what amount and upon what terms and conditions, (i) funds from the Revolving Loan Fund should be used to make such a subordinated secured loan to such Applicant or (ii) funds should be used to make a gap-financing loan to an Applicant for such funds. All Program Lenders further agree to apply the Underwriting Guidelines to make similar subordinated secured loans to Applicants who have arranged for senior secured loans from a Program Lender. The City and County agree to furnish all Program Lenders copies of all state or federal documentation describing or setting forth Program rules, regulations, requirements or guidelines, and to advise all Program Lenders promptly of any future changes in the Program and of any changes in federal or state Program

rules, regulations or guidelines affecting the Underwriting Guidelines, the forms or the content of loan documents or any other aspects of the Program. No Program Lender shall have any responsibility for failing to implement any such changes of which the City and County have not given reasonable written notice. Determinations regarding the participating portions of the City and the County in loans made from the Revolving Loan Fund shall be made by those respective entities, with appropriate notice to the Revolving Loan Fund Board and to Wells Fargo or the appropriate Program Lender. All Program Lenders shall use reasonable efforts to market the Program.

Section 1.4 Staffing. The City’s City Development Department or a third-party independent contractor hired to serve as Program Administrator (“**Program Administrator**”), where applicable, will provide the staffing to administer the Program.

Section 1.5 Assistance to Applicants. Upon request by an Applicant, the City’s City Development Department or a designated Program Administrator will:

- a) provide to such Applicant local market, demographic and economic information which is available to the public; and
- b) provide referrals of Applicants to appropriate agencies and entities (e.g., SBA, El Paso Community Colleges’ Small Business Development Center, SCORE, Community Chambers of Commerce, and UTEP) that can offer small business guidance and loan application packaging assistance.

ARTICLE 2 - Loan Application Processing and Underwriting Procedures; Subordination Provisions

Section 2.1 Processing and Underwriting. All Applicants must comply with the requirements listed in the Revolving Loan Fund Plan, as amended from time to time, **Exhibit C** attached hereto, in connection with the making and processing of a loan application; provided, however, that an application for a gap-financing loan, shall comply with EDA and ORCA requirements, and, provided, further, that funds for any sub-award, gap financing, microlending, or buying down the cost of loans shall be at the sole discretion of the City, in accordance with the provisions of the Agreement for Grants between the City and EDA and the County and ORCA, as such agreement may be amended. Upon compliance with all of such requirements, the

Program Lender will determine, in its sole judgment and discretion whether, and upon what terms and conditions, to make a senior secured loan to such Applicant as provided in **Section 1.3**. If a Program Lender decides to make any such senior secured loan, then the Program Lender will provide to the City's City Development Department or the designated Program Administrator a copy of any proposal for a subordinated secured loan for assurance that the loan application complies with EDA guidelines. A copy of any subordinated secured loan application also will be sent to the County for assurance that the loan application complies with ORCA guidelines. Following receipt from the City's City Development Department or the designated Program Administrator and from the County of such assurance, the Program Lender will notify the Revolving Loan Fund Board in writing of the decision to make a senior secured loan, which shall be accompanied by a copy of the loan application materials reviewed by a Program Lender and a statement by the Program Lender whether the Applicant and the loan applied for appear to satisfy the Underwriting Guidelines. With respect to an application for a gap-financing loan, a Program Lender will notify the Revolving Loan Fund Board in writing of the recommendation to make such a gap-financing loan and whether the Applicant and the loan applied for appear to satisfy the Underwriting Guidelines for such a loan. Upon receipt of the assurance and the loan application materials from the Program Lender, the Revolving Loan Fund Board shall determine whether to make a subordinated secured loan to the applicant using Revolving Loan Fund funds or a gap-financing loan and the terms of such loan and the City's and the County's respective participating portions thereof. The City's City Development Department or the designated Program Administrator will advise the Program Lender of the Revolving Loan Fund Board determination and will cause funds sufficient to fully fund such subordinated loan to be made available to the Program Bank for timely funding thereof upon the request of the Program Lender. If such loan is approved by the Revolving Loan Fund Board, a commitment letter signed by the Applicant shall be issued to the Program Lender by the City (if the loan proceeds are to come from the City's portion of the Revolving Loan Fund) or by the County (if the loan proceeds are to come from the County's portion). The Program Lender will cause all documents for such subordinated secured loan to be prepared and will coordinate the closing and funding of both loans (senior and subordinated), and the City and the County will fully cooperate with the Program Lender in all respects, including review and approval of all documents, in order that such loans may be closed, funded and serviced in a timely and orderly fashion. Each Program

Lender shall maintain a Revolving Loan Fund Operating Account with the Program Bank. Upon the City's receipt of the documents described above, the City shall request the Program Bank to transfer funds to the Program Lender's Operating Account to fund the subordinated loan. The documents for each subordinated loan will be on forms prepared by the City, Program Administrator, or the Program Lender and will require the Applicant to comply with lending requirements of the senior loan and submit annual financial statements. The Program Lender will visit the Applicant's principal place of business in or near El Paso, Texas at least annually to confirm that Applicant's business appears to still be in operation and to determine whether equipment against which the Applicant has granted a lien or security interest to secure such subordinated loan appears to still be located at such place of business and to be operational. Prior to the making of a loan using County funds, the County will review applications for compliance with non-financial Community Development Block Grants, Texas Department of Housing and Community Affairs, and ORCA guidelines. The Program Lender will provide the County with materials submitted by Applicants regarding these non-financial factors.

Section 2.2 Subordination Provisions. The documents for each subordinated loan will contain express provisions in the form approved by the City, the County, and the Program Lender subordinating such loan to the loan (if any) made by a Program Lender to the Applicant in both right of payment and lien priority that specifically:

- (A) prohibit
 - (i) any payments from being made on the subordinated loan unless payments on the senior loan are current;
 - (ii) any suit or other action being brought to enforce the subordinated loan unless and until both (x) an event of default on the subordinated loan shall have occurred and continued uncured for one hundred eighty (180) days and (y) a Program Lender, as the case may be, shall have not accelerated maturity of the senior loan before the expiration of that 180-day period;
 - (iii) the holder of the subordinated loan from posting for foreclosure, foreclosing upon or otherwise taking any action to realize upon any of the security for the subordinated loan that is also security for the senior loan;

in each instance if and so long as any default or event or default exists on the senior loan;

(B) require any payments received on the subordinated loan to be held in trust for and immediately paid over to the Program Bank in the form received for application on the senior loan unless payments on the senior loan are current;

(C) prohibit the holder of the subordinated loan from filing bankruptcy, receivership or similar proceedings against any debtor or acting in concert with any debtor or anyone else to do so while the senior loan is outstanding and unpaid or within ninety-one (91) days after its payment in full; and

(D) require the holder of such subordinated loan to file proofs of claim in any bankruptcy or similar proceedings at the request of the Program Lender and to turn over all funds received therefore to the Program Lender for application on the senior loan; provided that such provisions shall not prohibit the holder of the subordinated loan from pursuing any collection efforts that do not include or involve any of the actions described in clauses (A) through (D) above (other than collecting payments that are held in trust and paid over to the Program Lender for application on the senior loan as required by clause (B) above), or from posting for foreclosure, foreclosing upon or otherwise taking action to realize upon any collateral for the subordinated loan that is not also collateral for the senior loan, or from enforcing any guaranties, bonds or other suretyship obligations in respect of the subordinated loan against any guarantor or other surety who is not also either a maker, endorser, guarantor or surety of, or otherwise obligated, either absolutely or contingency, to pay, all or part of the senior loan. The documents for each subordinated loan will also include a document executed by the debtors agreeing that any default under either such subordinated loan or the senior loan to any or all of the obligors on such subordinated loan will be default on both such subordinated loan and such senior loan.

Section 2.3 Notice of Required Special Provisions. The City and the County will notify all Program Lenders of any special provisions required by Program rules, regulations and guidelines to be included in loan documents, as such rules, regulations and guidelines may be supplemented, amended, modified or restated from time to time, and Program Lenders will have any responsibility for including any such special provisions as to which the City and the County do not give reasonable advance written notice.

ARTICLE 3 - Loan Servicing Procedures

Wells Fargo, as Program Bank, or a Program Lender, as the case may be, and all other Program Lenders will service the senior loan and the Revolving Loan Fund's subordinated loan in accordance with the usual and customary loan servicing procedures of Wells Fargo or the Program Lender. The Applicant will be responsible for timely paying such loans and complying with all of their respective covenants, terms and conditions. Wells Fargo or a Program Lender will provide each Applicant with a schedule of payments for the entire term of such Applicant's subordinated loan and the Applicant will remit payments on such subordinated loan to Wells Fargo or a Program Lender. Wells Fargo or a Program Lender shall deposit to the Program Lender's respective Revolving Loan Fund Operating Account all payments on each such subordinated loan made by an Applicant to the Lender. Wells Fargo or a Program Lender will monitor each such subordinated loan through the application, approval, disbursement and post-disbursement periods for so long as Wells Fargo or a Program Lender is servicing such subordinated loan pursuant to this Agreement, and will maintain a separate paper file for each loan. The Operating Account of each Program Lender shall be swept of all moneys including interest earned once each month by the Program Bank in order to provide the City and the County with a report of overall activity for the Revolving Loan Fund. The loan activity report will be forwarded to the City and the County, together with the Revolving Loan Fund bank statements, for reconciliation. The City and the County shall maintain databases to compare against loan activity reports submitted by the Program Bank. Subordinated loan payments will be considered past due if unpaid by the tenth (10th) day following their respective due dates, and Wells Fargo or a Program Lender will promptly notify the debtor a written payment reminder notice in respect of any such past due subordinated loan payment. If Wells Fargo or a Program Lender does not receive such payment:

- (a) within twenty (20) days after its due date, Wells Fargo or a Program Lender will use commercially reasonable efforts to contact the relevant Borrower by telephone to request payment and an explanation for the payment's being late;
- (b) within thirty (30) days after its due date, Wells Fargo or a Program Lender will use commercially reasonable efforts to have a face-to-face meeting with the defaulting Borrower; Wells Fargo or a Program Lender agree to notify the City's Economic

Development Department if a Borrower has two consecutive late payments and/or missed payments.

- (c) within sixty (60) days after its due date, or if any Borrower thereon shall sooner become the subject of a case in bankruptcy, or if a default or event of default has occurred on the senior loan and Wells Fargo or the respective Program Lender has commenced efforts to collect that loan, then and in any of such events the City (and the County if County funds are involved) may elect to require that Wells Fargo deliver to the City's designee (or if none, to the City Attorney for the City of El Paso, Texas) (and with a copy to the County's Auditor if County funds are involved) the original promissory note, security instruments and other paper evidencing, securing or otherwise relating directly to such subordinated loan and that are in the files of Wells Fargo or a Program Lender, and that Wells Fargo or a Program Lender thereafter remit to the City (for itself and the County) all sums theretofore collected by Wells Fargo or a Program Lender on such subordinated loan and not already remitted to the City or the County, after which Wells Fargo or a Program Lender shall have no further servicing or other obligation to the City, the County or the Revolving Loan Fund Board in respect thereto. Unless and until the City and the County so require Wells Fargo or a Program Lender to so deliver such subordinated loan to the City's designee or expiration or termination of this Agreement, whichever occurs sooner, Wells Fargo or a Program Lender will continue to service and use efforts to collect such subordinated loan that are commercially reasonable in light of its status as a subordinated loan in default, although in no event shall Wells Fargo or a Program Lender ever be obligated to take any action that would be adverse to its own interest in collecting any senior loan. Wells Fargo or a Program Lender will have no obligation to collect any subordinated loan that shall become past due or otherwise in default other than taking the steps set forth above. Nothing in this Agreement and no act or omission by Wells Fargo or a Program Lender pursuant hereto or in respect hereof shall impair or otherwise affect any of the rights or privileges of Wells Fargo or a Program Lender to make, collect or enforce any of such lender's own loans, including, but not limited to, any loan heretofore or hereafter made by Wells Fargo or a Program Lender to any one or more Applicants, and to realize upon or enforce any

security therefore or guarantee or insurance in respect thereof, in such fashion, manner and order as Wells Fargo or a Program Lender shall elect in its sole and absolute discretion, and Wells Fargo or a Program Lender may act or refrain from acting in respect of any and all of its own loans as if this Agreement never existed.

ARTICLE 4 - Administrative Procedures

Section 4.1 Handling of Loan Files. The City's City Development Department or the designated Program Administrator will be responsible for maintaining the respective Revolving Loan Fund's documentation files and will store such files in secure storage facilities with customary controls on access to assure the safety and security of such files and in accordance with the Program's administrative requirements. The City and the County shall be permitted access to loan documentation files upon ten (10) days' prior written notice and otherwise in accordance with the customary procedures of Wells Fargo or a Program Lender for access and examination of files for loans owned by others that are in such lender's custody or control, as such procedures may be modified by such lender from time to time with or without notice to the City and the County or any other Person.

Section 4.2 Compliance with Reporting Requirements. The City's City Development Department or designated Program Administrator will be responsible for tracking on a monthly basis all disbursed Revolving Loan Fund funds and verifying that all Revolving Loan Fund loan payments are posted to the appropriate account(s). Wells Fargo and the Program Lenders further agree to comply with applicable guidelines of the EDA and of the ORCA with respect to record-keeping and reporting for the Revolving Loan Fund.

Section 4.3 Compliance with Federal and State Grant Control Procedures. Wells Fargo and the Program Lenders will use all reasonable efforts to ensure compliance by them and the Revolving Loan Fund with all applicable federal and state grant-control requirements.

ARTICLE 5 - Fees and Compensation

Wells Fargo and the Program Lenders agree that they shall perform the services contemplated by this Agreement without charge to the City, the County, or the Revolving Loan Fund, for any fees or compensation. The City and the County acknowledge that the agreement of Wells Fargo and the Program Lenders to perform, and their performance of, their services to

be performed hereunder will have substantial and immediate value to each of them and will provide full and adequate consideration for their entering into and performing this Agreement. Wells Fargo and the Program Lenders acknowledge that their opportunity to combine the Revolving Loan Fund program with the senior secured loans as described in Articles 1 and 2 above provides full and adequate consideration to Wells Fargo and the Program Lenders for the performance of such services.

ARTICLE 6 - Term of Agreement

Section 6.1 Term. The term of this Agreement shall be for the period of one (1) year from the date hereof, unless terminated earlier by the City, the County, or Wells Fargo in accordance with the terms hereof. The term shall automatically renew for an additional one (1) year period on its initial termination date, and again on each extension of such termination date, unless either the City, the County, or Wells Fargo shall give notice to the others on or before thirty (30) days preceding such termination date of such party's election that the term not be so automatically renewed. Further, the Parties may, by written agreement, agree to extend the term of this Agreement for such length of time and under such circumstances as they may agree.

Section 6.2 Termination for Breach. If any party hereto shall fail to carry out its duties and obligations hereunder, and such failure shall continue after thirty (30) days' written notice given by one of the other parties to such defaulting party and specifying such failure, then, in addition to and cumulative of all other rights and remedies available at law or equity, the non-defaulting party may elect to terminate this Agreement effective upon written notice to the defaulting party.

ARTICLE 7 - Miscellaneous

Section 7.1 No Commitment to Lend. The City understands and agrees that neither Wells Fargo nor any Program Lender is, nor shall it ever be, committed or obligated in any way to make any senior secured loan or advance to any Applicant or otherwise, on account or in respect of this Agreement or any related papers, and nothing in this Agreement or any related papers or in any course of conduct shall ever create or be construed to be a commitment on the part of Wells Fargo or a Program Lender to make any such senior secured loan or advance. Each such senior secured loan or advance, if any, shall be made in the sole and absolute discretion of Wells Fargo or a Program Lender; provided, however, that, in the event that Wells Fargo or any

Program Lender makes a senior secured loan to an applicant, neither Wells Fargo nor the Program Lender may arbitrarily refuse to make any subordinated secured loan or advance under the Program provided that the Applicant has satisfied the requirements of the EDA or ORCA, as the case may be, and Revolving Loan Fund funds therefore are timely made available to Wells Fargo, as Program Bank. That Wells Fargo or any Program Lender has made senior secured loans or advances before in the same or similar circumstances shall not create any obligation to make any senior secured loan or advance in such circumstances in the future. Except as may be required by applicable law, Wells Fargo and the Program Lenders shall have no obligations to disclose to the City, the County, the Revolving Loan Board or any other person any reason or reasons for the refusal by Wells Fargo or a Program Lender to make any senior secured loan or advance, or whether any such reason or reasons exist. Wells Fargo and the Program Lenders will inform all loan applicants that any and all information provided by the applicant may legally be subject to disclosure to other agencies or the public and that all such information will be subject to such disclosure if forwarded to the Revolving Loan Fund Board or any other agent for the City or County.

Section 7.2 Program Administration. The City and the County have agreed in an Interlocal Agreement, as amended time to time and incorporated herein by reference, that the City, by and through its City Development Department, is the lead party responsible for Program oversight, programmatic administrative support, and technical and management assistance. The City and the County have further agreed that without prior approval, the City and the County may enter into contract(s) with a third party for the purpose of fulfilling its Program responsibilities, including, but not limited to any services or activities related to the administrative and clerical functions of the Program. The City and the County agree to give written notice to each other, the Program Bank and Program Lenders within ten (10) days of any such action.

Section 7.3 Standard of Care. Wells Fargo and the Program Lenders agree to use their best judgment and good faith in the performance of their obligations and duties under this Agreement, but shall have no obligations or duties in respect hereto or to the Program other than those specifically stated herein, and neither Wells Fargo nor the Program Lenders nor any of their officers, directors, trustees, agents, employees and counsel (in each case, past, present and future) shall incur any liability to the City, the County or any other person or entity for the acts or omissions of Wells Fargo or the Program Lenders hereunder or in respect to this Agreement or

the Program or for any Claims (as defined below), except as may result from the gross negligence or willful misconduct of Wells Fargo or the Program Lender, as the case may be, **the parties specifically hereby agreeing that in no event shall Wells Fargo or the Program Lender ever be liable for its or its shareholders', directors', officers', employees', contractors' or agents' sole or concurrent ordinary negligence.** Wells Fargo and the Program Lenders shall be entitled to rely upon the advice of its legal counsel from time to time and shall not be liable for any action or inaction by it in reliance upon such advice. **"Claim"** means any and all liabilities, claims, defenses, demands, actions, causes of action, judgments, deficiencies, interest, liens, costs or expenses (including court costs, penalties, attorneys' fees and disbursements and amounts paid in settlement) of any kind or character whatsoever, including claims for usury, breach of contract, breach of commitment, negligent misrepresentation or failure to act in good faith, in each case whether now known or unknown, suspected or unsuspected, asserted or unasserted or primary or contingent, and whether arising out of written documents, unwritten undertakings, course of conduct, tort, violations of law or regulations or otherwise. Wells Fargo and the Program Lenders shall also be entitled to rely upon any notice, document, correspondence, request or directive received by them and purporting to be from the City, the County, the Revolving Loan Fund Board or their successors or assigns that Wells Fargo or the Program Lender believes to be genuine and to have been signed or presented by the proper and duly authorized officer or representative thereof, and shall not be obligated to inquire as to the authority or power of any person so executing or presenting such documents or as to the truthfulness of any statements set forth therein.

Section 7.4 Independent Contractor. Wells Fargo and the Program Lenders shall operate hereunder as independent contractors and not as an officer, agent, servant or employee of the City, the County, or the Revolving Loan Fund Board. Wells Fargo and the Program Lenders shall have the exclusive control of the details of the work and services performed hereunder, and of all people performing the same. The doctrine of respondeat superior shall not apply as between the City or the County, on the one hand, and Wells Fargo or the Program Lenders, their officers, members, agents, servants, employees or subcontractors, on the other. It is expressly agreed that no officer, member, agent, servant, employee or subcontractor of Wells Fargo or of the Program Lenders is in the paid service of the City or the County and that neither the City nor the County has the legal right to control the details of the tasks performed hereunder by Wells

Fargo or the Program Lenders, their officers, members, agents, servants, employees or subcontractors.

Section 7.5 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas, without reference to principles of conflicts of law which might otherwise be applicable.

Section 7.6 Notices. Any notice, demand or consent, required or permitted by this Agreement shall be in writing and shall be effective and deemed delivered only when received by the party to which it is sent. Any such notice, demand or consent shall be delivered in person or transmitted by a recognized private courier service or deposited with the United States Postal Service, certified mail, postage prepaid, return receipt requested, addressed as follows:

TO THE CITY: City Development Department
Economic Development Division
2 Civic Center Plaza
El Paso, Texas 79901
Telephone: (915) 541-4670

TO THE COUNTY: El Paso County Judge
500 East San Antonio - Suite 301
El Paso, Texas 79901
Telephone: (915) 546-2098

TO WELLS FARGO: Wells Fargo Bank NA
221 N. Kansas
El Paso, TX 79901
Attention: Steve Helbing
Telephone: (915) 546-4499

TO PROGRAM LENDERS: To the respective notice addresses provided in
Exhibit B hereof

Each of the above parties may, by thirty (30) days' written notice given hereunder to the others, designate any further or different telephone numbers or addresses to which subsequent notices, requests or other communication shall be sent.

Section 7.7 Successors, Assigns and Participation. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. No party shall, however, have the right to assign its rights under this Agreement or any interest herein, without the prior written consent of the others, except that Wells Fargo and the Program

Lenders each reserve the right, in its sole discretion, without notice to the City, the County, the Revolving Loan Fund Board or any other person, to sell participations or assign its interests, or both, in all or any part of the loans made by Wells Fargo or the Program Lender to any Applicant.

Section 7.8 Headlines. Article and Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provisions of this Agreement.

Section 7.9 No Third Party Beneficiaries. No person or entity other than the City, the County, Wells Fargo, the Program Lenders, and their respective successors and permitted assigns shall have or acquire any right or interest under or arising in connection with this Agreement without the express prior written consent of the parties.

Section 7.10 Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provisions in question invalid, inoperative or unenforceable in any other case or circumstance, or rendering any other provisions of this Agreement invalid, inoperative or unenforceable to any extent whatsoever.

Section 7.11 Counterparts. This Agreement may be executed in several counterparts each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.12 Exhibits. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

Section 7.13 ENTIRE AGREEMENT. THIS AGREEMENT REPRESENTS AND EMBODIES THE ENTIRE AGREEMENT BETWEEN AND AMONG THE CITY, THE COUNTY, WELLS FARGO AND THE PROGRAM LENDERS, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT

ORAL AGREEMENTS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed effective as of the date first above written.

(Signatures on following page)

THE CITY:
CITY OF EL PASO, TEXAS

By: _____
Name: Joyce A. Wilson
Title: City Manager

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Matthew K. Behrens
Assistant City Attorney

Mathew McElroy, Director
City Development Department,
City of El Paso

THE COUNTY:

COUNTY OF EL PASO, TEXAS

By: _____
Name: _____
Title: _____

ATTEST:

County Clerk

APPROVED AS TO FORM:

Assistant County Attorney

WELLS FARGO:

WELLS FARGO BANK, N.A.

By: _____
Name: _____
Title: _____

EXHIBIT "B"

PROGRAM LENDERS

In accordance with Section 1.2 of the Revolving Loan Program Agreement (the "Agreement"), each of the following lending institutions ("Program Lender") is added as a participant in the Revolving Loan Fund Program. Upon the execution of this Exhibit "B" by the authorized representative of the respective party, each Program Lender shall be bound by the terms of the Agreement. Notice addresses for each Program Lender, in accordance with Section 7.6 of the Agreement, appear as follows:

AGREED TO AND ACCEPTED

as of the date hereof:

BANK OF AMERICA, N.A.

Bank of America, N. A.

416 North Stanton Street

El Paso, Texas 79901

Attention: _____

By _____

Telephone: (915) _____

(Name - printed) _____

(Title) _____

AGREED TO AND ACCEPTED

as of the date hereof:

BANK OF THE WEST

WestStar Bank

500 North Mesa Street

El Paso, Texas 79901

Attention: _____

By _____

Telephone: (915) _____

(Name - printed) _____

(Title) _____

AGREED TO AND ACCEPTED

as of the date hereof:

STATE NATIONAL BANK

State National Bank

690 Sunland Park Drive

El Paso, Texas 79912

Attention: _____
By _____
Telephone: (915) _____
(Name - printed) _____
(Title) _____

AGREED TO AND ACCEPTED
as of the date hereof:
UNITED BANK OF EL PASO
DEL NORTE

United Bank of El Paso del Norte
5752 North Mesa
El Paso, Texas 79912
Attention: _____
By _____
Telephone: (915) _____
(Name - printed) _____
(Title) _____

AGREED TO AND ACCEPTED
as of the date hereof:
WELLS FARGO BANK TEXAS, N.A.

Wells Fargo Bank Texas, N. A.
221 North Kansas Street
El Paso, Texas 79901
Attention: _____
By _____
Telephone: (915) _____
(Name - printed) _____
(Title) _____

AGREED TO AND ACCEPTED
as of the date hereof:
FIRST NATIONAL BANK

First National Bank
9343 Alameda Avenue
El Paso, Texas 79907

Attention: _____
By _____
Telephone: (915) _____
(Name - printed) _____
(Title) _____

AGREED TO AND ACCEPTED
as of the date hereof:
FIRST SAVINGS BANK

First Savings Bank
909 North Mesa Street
El Paso, Texas 79902
Attention: _____
By _____
Telephone: (915) _____
(Name - printed) _____
(Title) _____

AGREED TO AND ACCEPTED
as of the date hereof:
FIRST FEDERAL BANK

First Federal Bank
7015 North Mesa Street
El Paso, Texas 79912
Attention: _____
By _____
Telephone: (915) _____
(Name - printed) _____
(Title) _____

AGREED TO AND ACCEPTED

as of the date hereof:

CIT Small Business Lending

CIT Small Business Lending

El Paso, Texas 799__

Attention: _____

By _____

Telephone: (915) _____

(Name - printed) _____

(Title) _____

AGREED TO AND ACCEPTED

as of the date hereof:

InterNational Bank

InterNational Bank of El Paso

175 E. Arizona

El Paso, Texas 79948

Attention: _____

By _____

Telephone: (915) _____

(Name - printed) _____

(Title) _____

AGREED TO AND ACCEPTED

as of the date hereof:

GREATER EL PASO CREDIT UNION

Greater El Paso Credit Union

El Paso, Texas 799__

Attention: _____

By _____

Telephone: (915) _____

(Name - printed) _____

(Title) _____

AGREED TO AND ACCEPTED
as of the date hereof:
FIRST FEDERAL BANK

First Federal Bank
7015 North Mesa Street
El Paso, Texas 79912
Attention: _____
By _____
Telephone: (915) _____
(Name - printed) _____
(Title) _____

AGREED TO AND ACCEPTED
as of the date hereof:
CAPITAL BANK

Capital Bank
8700 Montana
El Paso, Texas 79925
Attention: _____
By _____
Telephone: (915) _____
(Name - printed) _____
(Title) _____

AGREED TO AND ACCEPTED
as of the date hereof:
BANK OF TEXAS

Bank of Texas
320 Texas Avenue
El Paso, Texas 79901
Attention: _____
By _____
Telephone: (915) _____
(Name - printed) _____
(Title) _____

AGREED TO AND ACCEPTED
as of the date hereof:
13-1007-706/ Doc. #173580
Exhibit B RLF
MKB

Southwest Securities, FSB
671 S. Mesa Hills, Suite 2-B

SOUTHWEST SECURITIES, FSB

El Paso, Texas 79912

Attention: _____

By _____

Telephone: (915) _____

(Name - printed) _____

(Title) _____

EXHIBIT C

**REVOLVING LOAN FUND PLAN
CITY OF EL PASO AND COUNTY OF EL PASO
CITY OF EL PASO, TEXAS**

AMENDED 2007

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PART ONE: THE REVOLVING LOAN FUND STRATEGY

A: Economic Adjustment Program Overview

1. Economic Adjustment Problems. The overall economic development goal of the City and County of El Paso is the generation of new employment opportunities and retention of existing jobs for El Paso's labor force. Population studies by the United States Census Bureau and the City's Department of Planning and Research indicate that since the 1990 census, El Paso's population has grown annually by 2.5 percent. El Paso's rapid population growth has created a local labor market surplus that exceeds the employment capacity of El Paso's businesses and industries. It is this continued growth that makes the job market more competitive and hampers pay scale upgrades.

An economic study conducted by the University of Texas at El Paso utilizing information garnered from the 2004 Census indicated that there are approximately 44,377 businesses in El Paso County. Of these registered businesses, 56.6% are classified as being minority owned and 22.4% are woman owned. Of these businesses, we conclude that approximately 70% employ less than 10 individuals, and in most cases, less than 5 employees. In 2004, the estimated population of El Paso County was 713,126, an increase of 4.9% since 2000. Further projections show that the minority population in El Paso will continue to increase in the future and indicates that our minority population will account for over 85% of the population by 2030.

2. Strategy Process. The Economic Adjustment Strategy continues to be a city-wide effort inclusive of local stakeholders who are collaboratively promoting economic development initiatives. Over 25 regional economic development organizations are currently collaborating in the formulation of improved economic development strategies. A key concern for growth in El Paso centers on the retention of current businesses, their potential for growth and the availability of capital. Growth for these companies can occur with the adaptation of new technologies in response to industry demands.

Another priority of the economic development strategy is the diversification of the economy, commercial and industrial development, and the use of public funds to assist entrepreneurs through revolving loan fund programs. These elements are recognized as vital ingredients for El Paso's successful economic development strategy.

3. Area Resources/Assets. In the past, El Paso area resources and assets have been limited and only recently have local financial institutions become more receptive to the financing needs of small businesses. The City/County Revolving Loan Fund (RLF) will target small businesses that can best help the City/County achieve long term economic development objectives, as listed in a subsequent section of this document. We use the guidelines determined by the Small Business Administration (SBA) and/or the State of Texas General Services Commission, Historically Underutilized Business (HUB), to classify small businesses. This program's priority will be to extend financial assistance to small businesses which exhibit the following characteristics:

- a. Businesses in need of financial assistance for start-up and expansion in the El Paso area that will create or retain jobs, and:

- b. Offer a progressive career track and ultimately increase in wages and skill levels, and:
- c. Within the Economic Development Department's Target Industries for Business Retention and Expansion:
 - Advanced Manufacturing (defined as the integration and utilization of technology in a system of production to improve processes and techniques to produce goods and services faster, cheaper and cleaner)
 - Aerospace and Defense
 - Bio-Medical
 - Logistics and Trade
 - Technology/Innovation
 - Creative Class (including R&D, publishing, software, television & radio, design, music, film, toys and games, advertising, architecture, performing arts, fashion design, and video game design)
 - Maquila industry suppliers
 - Services, Retail and other small business
- d. Businesses located within the City's Enterprise Zones, Renewal Community areas and the Empowerment Zone.

4. Strategic Adjustment Goals and Objectives. The Revolving Loan Fund will continue to target resources toward the retention and creation of jobs for the unemployed and under-employed. All targeting efforts are performed with a high priority given to those projects yielding the highest in job creation.

Revolving Loan Fund money will be available to finance projects that can leverage a minimum of two private sector dollars to one Revolving Loan Fund dollar (a 2:1 ratio). Preference is given to projects that can leverage private dollars in ratios higher than the minimum required leverage. Private sector funding includes capital invested by the borrower and financing from private financial institutions.

All project funding must be as a result of simultaneous loan efforts for the overall project. Any previously gained loan dollars dealing with any previous expansion projects or any pre-Revolving Loan Fund funding are not eligible.

During the revolving phase of the loan fund, the Revolving Loan Fund guidelines and policies (EDA) will still be primarily targeted toward the creation and retention of new employment opportunities for El Paso workers. Preference is given to city/county projects with the greatest impact on El Paso and those that locate in the federal empowerment zone, State Enterprise zone or Renewal Community. The impact is determined by the number of jobs created and retained, total capital investment and improvement in the El Paso community. However, the retention of existing jobs and the creation of new jobs will continue to be a significant priority of the program.

5. Implementation of Programs and Activities. The City's Economic Development Department ("EDD"), in conjunction with the County and its 26 partners offer an array of technical assistance programs available to companies obtaining Revolving Loan Fund financing, such as technical assistance, business plan assistance, financing workshops, workforce training, and others.

6. Organizational Structure and Responsibility. The City's EDD is the agency responsible for the overall operation, oversight, and day-to-day management activities of the Revolving Loan program, however, the City's EDD may contract with a third party to serve as Program Administrator to perform any or all of its administrative and/or clerical functions, except overall program oversight and monitoring. The Program Bank and participating Banks will provide loan underwriting, servicing, and limited collection services for subordinated loans made from the Revolving Loan Fund, as well as participate in the Revolving Loan Fund program as a senior loan Program Lender.

Technical and management assistance to RLF Applicants/Borrowers will be coordinated by the City's EDD or designated Program Administrator. Depending on the specific needs of the loan recipients, local partners will be used to help them accomplish their goals. Unless borrowers can demonstrate a high level of experience, coupled with a high level of business success, they will be encouraged to enroll in business assistance/development training available through multiple training development partners within the community.

Any revenues derived from the application and closing fees charged to loan recipients will be tracked and used for the administration of the Revolving Loan Fund program.

The City's EDD or designated Program Administrator will facilitate the appointment and maintenance of the Revolving Loan Fund Board (RLF Loan Board or Board), which will govern the Revolving Loan Fund program. The Board will consist of several business and community representatives with financing expertise and business acumen. The Board will have the task of evaluating and approving the projects to be financed by the Revolving Loan Fund program and will be given the authority to grant final loan approvals or deny any loan application.

Before presentment to the RLF Loan Board, all loan assistance packages will be reviewed and evaluated by the City's EDD or designated Program Administrator for program compliance. If the loan applications meet the RLF criteria, then the RLF Loan Board will convene.

The City's EDD will monitor the program for compliance with all applicable local, state, and federal laws and regulations. The Program Bank and when applicable, the City's EDD or designated Program Administrator will make required quarterly, semi-annual, and annual reports to the City's EDD on the status of the loan portfolio or other reports and documentation as necessary to comply with EDA requirements.

B: The Business Development Strategy

1. Business Development Objectives. The Revolving Loan Fund is programmed to fund private business enterprises including but not limited to: manufacturing, aerospace and defense, bio-medical, logistics and trade, technology/innovation, creative class industries, and maquila industry suppliers with maximum amount of job retention and/or new job generation capacity. The Revolving Loan Fund will not offer assistance in the areas of loan guarantee financing prior to full disbursement of grant funds. All loan opportunities must result in the hiring of permanent, full time employees, and retention of existing jobs. These companies must be consistent with the intent of the Revolving Loan Fund to retain and/or create better paying jobs for the citizens of El Paso.

All Revolving Loan Fund applicants will be evaluated on the five criteria items listed in Part I, Section D, of this document. Revolving Loan Fund financing will be available to finance the expansion of locally owned small businesses and new industries to El Paso which meet the RLF criteria. Revolving Loan Fund financing will be available for equipment, inventory and working capital. All of the projects proposed for funding must comply with all of the rules of the Economic Development Administration's Revolving Loan Fund guidelines and/or other guidelines contained within this document when appropriated for RLF County loans.

Funds will be used primarily to finance expansion projects for small businesses in the City and County, preferably businesses using the Participating bank's SBA loan program, but not limited exclusively to SBA loans. Other bank loans that meet the EDA guidelines may be reviewed. We classify small businesses as per the guidelines determined by the Small Business Administration (SBA) and/or by the State of Texas General Services Commission, HUB Certification Section. Emphasis will be on those projects that require financing for retention and expansion projects and shorter term financing opportunities. Fifty percent of total grant funds will be used for loans for fixed asset improvements and the other fifty percent of grant funds will be used for working capital and are considered to be an important financing option. No unsecured loans will be made, and a key-man life insurance policy may be required as appropriate to the loan package. The City/County recognizes that risk assumption is integral to the success of the Revolving Loan Fund. However, reasonable prudence must be shown in protecting the assets of the Joint Revolving Loan Fund.

2. Targeted Loan Recipients. These funds will be loaned out to an array of small business enterprises within the city and county areas that qualify for SBA's loan guarantee program. The Revolving Loan Fund is programmed to fund privately owned non-restaurant small businesses, primarily in the advanced manufacturing, aerospace and defense, bio-medical, logistics and trade, technology/innovation, creative class industries, and maquila industry suppliers with maximum amount of job retention and/or new job generation capacity.

Companies requesting the use of this financing vehicle must be in good financial condition as well as exhibit the ability to repay the loan dollars. A strong competitiveness in the marketplace and positive business progress will be relevant. This strategy is attainable if the Banks make a concerted effort to promote and actively participate in the RLF program as part of their loan policy for small business loan expansion. For every two dollars of direct bank loans/SBA guaranteed loans generated; one dollar from the RLF can be leveraged.

The environmental impact that a prospective loan recipient and their industry has on the community is a consideration. Additional consideration will be given to those regarded as "environmentally friendly." No attempts will be made to discourage any business from applying for or receiving RLF money provided they meet local, state, and federal environmental requirements.

3. Economic Development Objectives. The Revolving Loan Fund will promote economic development and revitalization through implementation of the following objectives:

- a. Make available private financing at sufficiently affordable rates and terms.
- b. Provide increased employment opportunities for residents of the City and County.
- c. Offer the Revolving Loan Fund financing opportunities to companies for either long-term or short-term efforts.
- d. Diversify and expand the composition and makeup of the City/County's economic base.
- e. Enhance the formation and expansion of minority and women-owned businesses as well as HUB's (Historically-Underutilized Businesses).
- f. Leverage EDA funds on a 2:1 ratio with private sector funds.
- g. Create one job and/or retain two employees per every \$25,000 loaned.

4. Programs and Activities Undertaken by the Public Sector. There are many regional institutions that offer services ranging from short courses and seminars on how to improve one's business to individual consulting on unique business strategies offered by the partners. Banks will give referral information to loan applicants, i.e., in all pre-loan preparatory paperwork necessary for RLF loan package submission, this training information will be included.

C: The Financing Strategy

1. Current Financing Needs and Opportunities in the El Paso Area. The opportunities for El Paso businesses appear to be brighter today than at any point in recent memory. The primary drivers of this optimism include the advent of growth in troop strength at Fort Bliss and other regional military installations; the development of a four year research oriented medical school; growth in the number of engineering graduates at UTEP and NMSU; the resurgence of the US economy, and the re-emergence of Cd. Juarez as Mexico's maquila industry leader.

These factors will generate opportunity to recruit new business and industry to our community, expand existing businesses, and improve potential market opportunities. El Paso's geographic location also places it in a unique position from the standpoint of both challenges and opportunities. The region offers three distinct operating environments for companies to choose from - El Paso, Southern New Mexico, and Mexico. This same value proposition also creates competitive pressures that do not exist in many North American locations.

The financing needs of the area are somewhat unique. Area small businesses need a readily available source of financing to assist in funding distinctive business expansion projects. These projects can range from working capital financing to facility expansion efforts.

2. Availability of Public and Private Financing. A review of the El Paso capital market and discussions with local small businesses indicate the local capital market has the following characteristics:

- El Paso is a capital poor city with a high demand for financing assistance which exceeds the lending capacity of a limited deposit base.
- El Paso banks follow conservative policies and practices regarding allocation of deposits for lending purposes.
- There is a reluctance to provide financing to high-risk companies or to companies located in blighted or depressed areas of the community.
- There is a shortage of long-term and working capital commercial financing available to small businesses located in El Paso.

Local banks are reluctant to make loans smaller than \$100,000 due primarily to equity deficiency on the part of the borrower, thus making the need for small loan financing opportunities a must for El Paso. In order to accomplish the stated goals of the Revolving Loan Fund, participation with the banking community, which will use the SBA's loan guarantee program loans, is expected to fill a very important niche in El Paso's financial community.

3. The Role of Revolving Loan Fund Financing. The Revolving Loan Fund serves a critical purpose in the City and County's economic development programs by providing direct assistance with project financing for small businesses. These loans will assist in facilitating business expansions, resulting in the creation of new jobs or retention of jobs. The types of companies utilizing the Revolving Loan Fund program will vary. With many of the businesses in El Paso being involved in service and retail businesses, the program specifically targets manufacturing, aerospace and defense, bio-medical, logistics and trade, technology/innovation, creative class industries, and maquila industry suppliers with unique financing needs.

4. Revolving Loan Fund Impact. By making Revolving Loan Fund money available to companies in need of expansion capital or as a supplement to help during temporary cash flow problems, companies can continue to operate successfully while making the changes necessary to remain competitive as well as retain and/or increase employment levels.

Revolving Loan Fund money will be used to strengthen the capital net worth of new and existing expanding businesses, thus allowing the companies to qualify for SBA and other direct loans. The Fund also enables small businesses access to viable financing assistance. Longevity of new jobs can be increased by providing Revolving Loan Fund working capital.

D. Financing Policies

1. Standard Lending Terms and Special Financing Techniques. The El Paso Revolving Loan Fund will employ the following factors in determining which businesses can meet the program's goals and provide jobs to the unemployed and under-employed:

- Businesses and industries that are in the target base linked with job creation and that offer upgrades in wages and skill levels for the El Paso work force.
- Businesses in need of financial assistance for expansion that can leverage their private sector dollars at a 2:1 ratio to EDA's funds.
- Businesses that retain and create the greatest number of jobs available to the unemployed or under-employed.
- Businesses that show previous experience and good financial condition to repay the loan, and businesses that have already been approved for a direct bank loan or with an SBA guarantee provision.
- Businesses with an interest in community development, with a desire to strengthen and/or rebuild their businesses according to the RLF's guidelines.

2. Terms. All Revolving Loan Fund loans will be issued with the understanding that new or retained jobs are a focus of the program and is required.

Range of Allowable Interest Rates. The minimum interest rate that may be charged is four (4) percentage points below the current money center prime rate quoted in the Wall Street Journal, but in no event may the interest rate be lower than four (4) percent. The maximum interest rate allowed will depend on the project under consideration; rates, however, will not exceed what is allowed by the EDA guidelines or the maximum allowed under State law, whichever is lower.

RLF Funding Formula. The Revolving Loan Fund program requires the borrower to provide 10 percent of the equity, assets or cash investment in terms of financing the entire project. The 10 percent required investment exemplifies the level of commitment to the project by the company (owner). The following considerations will be made:

a. The triad of RLF/Bank/Borrower financing will remain in place for both new and existing firms. Since little historical data will be available for new start-up projects, the Revolving Loan Fund will be requesting supplemental information from start-up projects. The additional information is necessary to the decision making process.

b. Working capital loans have been identified as a major financing need for small businesses, which the Board will consider on a case by case basis, as well as loan requests for greater than 50 percent working capital utilization. Please note: During the revolving phase of the fund, it is expected that the ratio of fund usage between fixed asset financing and working capital may increase to the maximum allowed for the portfolio of 50 percent for working capital and inventory. However, the general standards to be achieved for the portfolio, as a whole, will be as stated above.

Standard Repayment Terms. The repayment terms for each project financed through the RLF will correspond to the senior bank loan with compliance to SBA loan guarantee guidelines or other credit enhancement programs. The contract terms will have the same basic elements, and exact terms will be determined on a case-by-case basis.

3. Security. All Revolving Loan Fund loans will be secured with various types of collateral. The RLF will take a second position to the SBA/bank loan. The forms of collateral can differ from contract to contract depending on the assets of the company. The level of financing granted by the Revolving Loan Fund can also determine the extent of the collateral required. Some examples of the preferred forms of collateral are: real estate, machinery and equipment, various types of motor vehicles or personal assets to secure personal guarantees. These items are to be solely owned by the company, free and clear of any liens, as well as be in good working order. The Revolving Loan Fund will seek a first or second lien position for the collateral depending on how the entire project is structured. The value of the collateral must be commensurate with the amount of the loan, with future value being taken into consideration.

Collateral for working capital loans will include second positions in inventory, accounts receivable and fixed assets. Depending on whether a working capital loan is part of a larger, well secured loan or totally for working capital, some flexibility can be utilized as to whether subordinated positions on assets is reasonable. Personal guarantees are required from shareholders with 20 percent or more ownership in the applicant company.

4. Revolving Loan Fund Size. The maximum Revolving Loan Fund loan size will be limited by the current fund balance available for new loans. The Revolving Loan Fund will participate on a 2:1 ratio, ranging from \$10,000 to \$100,000. The RLF will not commit to funding greater than \$100,000 for any one project without prior EDA approval.

E. Portfolio Standards and Targets

1. Anticipated Revolving Loan Fund Investment Profile. El Paso continues to be a service oriented city, with an abundance of professional, health care and other support service providers. Additionally, there are many firms engaged in construction and different forms of light manufacturing which support the heavy manufacturing sector in northern Mexico. Many of these organizations are of modest size and occasionally need working capital. The Revolving Loan Fund is programmed to fund privately owned small businesses, primarily in the advanced manufacturing, aerospace and defense, bio-medical, logistics and trade, technology/innovation, and creative class industries with maximum amount of job retention and/or new job generation capacity.

The primary role of the Revolving Loan Fund is to assist in retaining and expanding current and new industries, giving them an opportunity to expand their employment capabilities. The Revolving Loan Fund can also be used to assist in attracting established business expansions from outside El Paso. Industry attraction is an important part of the City/County's economic development goals, and the Revolving Loan Fund program can help to make some expansions into El Paso a reality. Those will be viewed on a case- by- case basis under exceptional circumstances.

2. Anticipated Loan Profile. The anticipated percentage of Revolving Loan Fund portfolio investments will be 20 percent for industrial, 30 percent for commercial and 50 percent for service businesses. In accordance with these anticipated stated percentages, 40 percent will go to new businesses, 50 percent to expanding businesses and the remaining 10 percent to loans for retaining businesses. Exceptions to these percentages will be the responsibility of the RLF Loan Board, reviewing loan package proposals on a case- by case- basis.

As mentioned earlier, working capital loans have been identified as a major financing need for local small businesses. Therefore, it is anticipated that 50 percent of Revolving Loan Fund dollars will be issued in the form of working capital loans but will not exceed this stated amount. The remaining loans will be utilized for fixed asset investments.

3. Portfolio Private Investment Leveraging Ratio. All projects proposed to the Revolving Loan Fund program will be in the form of a three part package. This package will be made up of at least 10 percent owner investment/equity and overall Revolving Loan Fund portfolio investment ratio will be 2:1.

4. Cost per Job for the Overall Portfolio. The City/County Revolving Loan Fund considers a cost per job ratio of approximately \$25,000 loaned out for every one job created and the same amount for every two jobs retained.

F. Revolving Loan Fund Selection Criteria

Each loan application will be evaluated and considered on its own merit and not with any other proposed Revolving Loan Fund project. The overall economic return and impact to the community, in the form of jobs retained or created, and the amount of capital investment and the overall value of the business to the City/County as a whole will all be factors for consideration. In addition to jobs, the Banks will take into consideration the expected revenues of an applicant and determine if intent of the business is to reinvest generated funds in the community.

G. Performance Assessment Process

With assistance from the RLF Loan Board, The City of El Paso and/or the designated Program Administrator, will be responsible for the overall monitoring of the program. The City's EDD or a designated Program Administrator will communicate with the Banking Community, SBA, business service providers and small businesses to get their impressions and input on the annual progress of the RLF program.

Administrative modifications to the Revolving Loan Fund program will be implemented on an as needed basis to ensure the plan is consistent with the current economic development strategy and that Revolving Loan Fund is being operated in accordance with the policies and procedures contained in the plan. Full amendments to any portion of the program plan will be submitted for EDA approval prior to implementation.

PART TWO: REVOLVING LOAN FUND OPERATIONAL PROCEDURES

A. Organizational Structure – To be provided by the City's Economic Development Department.

1. Staff Capacity and Structure. Staff support for administering the Revolving Loan Fund Program is provided by the City's EDD or a designated Program Administrator. The administrative functions include, but are not limited to, the following:

- Marketing the RLF to small businesses and lenders;
- Providing assistance and guidance to companies making application to the program;
- Loan portfolio management to include tracking, processing, etc.;
- Compliance with all grant requirements;
- Defaults and foreclosures will be turned over to the City's legal department for collection after the bank completes its due diligence; and
- Advising the RLF Loan Board on the eligibility of the applicants and putting forth the qualifying applications, defaults, and/or delinquent loans.

In order to administer the program successfully, the City's EDD or designated Program Administrator will also perform the following functions:

a. Assistance to Applicants. The City's EDD or designated Program Administrator will make direct referrals to appropriate agencies that can offer small business guidance and assistance as well as loan application packaging assistance.

b. Identification and Development of Appropriate Financing Opportunities. The RLF will rely on a number of sources to identify and develop appropriate financing projects. One of these sources will be the local banking community for those applicants who do not meet all of the bank's loan requirements and where a third party lending source is required to make the project possible. The RLF Program can fill this gap financing. Other public and private sector lending programs, such as Small Business Administration programs --will have the RLF as a resource when a third party lending source is required to make projects possible. The City's EDD or designated Program Administrator will also make presentations to local business groups and individuals to intensify the recruiting of projects for lending opportunities.

c. Provision of Business Assistance. In an effort to insure that loan applications meet the required standards for consideration of loan approval, professional loan packaging assistance will be provided by the City's Economic Development Department or the designated Program Administrator.

In addition to loan packaging assistance and general business development assistance, loan recipients will be encouraged to attend business seminars. The City's EDD or designated Program Administrator will work closely with regional economic development providers, as well as with private business consultants, to increase the opportunities for success for these companies.

2. RLF Loan Board. The RLF Loan Board shall consist of 10 board members, with five members representing El Paso County and five representing the City of El Paso. It is required that the board members will have one or more of the following characteristics in order to serve: previous experience in lending, accounting or bookkeeping experience or general business acumen with demonstrated experience. Board members will come from the private sector.

An effort will be made to recruit board members who are currently working in the targeted industries and/or business sectors, provided there is no conflict of interest. In an effort to maintain the most current business practices for the RLF, it is preferred that these individuals currently hold positions closely associated with the aforementioned areas of experience where possible without causing a conflict of interest to a loan application or the program. All board members will comply with local and state conflict of interest policies and procedures and in its deliberations for loan approval the RLF Loan Board will adhere to the conflict of interest requirements contained in the EDA Standard Terms and Conditions, dated 2002.

The RLF Loan Board will be given the authority of making the final loan approval. The Board will evaluate and approve the projects to be financed by the City/County Revolving Loan Fund program.

The duty of the RLF Loan Board is to provide the final approval or disapproval for each prospective company that is put forth by the Bank. It will be the duty of the Board to approve loan modifications (or waivers with recommendations by the Program Lender and/or a 3rd party.

Each RLF board member will be expected to serve a term of two years. The terms will be staggered, with five members on each tier to provide continuity to the program. If a board member resigns prior to the completion of his or her term, the replacement person will serve the remaining portion of the term.

City/County RLF board meeting will be called monthly to review and discuss new loan applications, delinquent loans and defaulted loans. The loan board meetings will be governed by a quorum requirement of at least of 51 percent of the current RLF Loan Board members. At least one member with financing experience must be present for each loan decision.

B. Loan Processing Procedures - To be submitted by Program Lender

1. Standard Loan Application Requirements. All loan applicants must supply the following list of documentation in order for the loan review process to begin:

- Accounts receivable, aged
- Fully completed loan application
- Loan write-ups (See Section 7 below)
- Past three years' financial statements with profit and loss and balance sheet
- Listing and description of any real property, machinery and equipment that will be used for collateral
- Work history of principals in company
- Past three years' IRS tax returns for the company and the individuals
- Cash flow projections for the next twelve months
- Current flow projections for the next twelve months
- Current personal financial statement for any principal (and spouse) or any owners with 20 percent or more ownership

2. Credit Reports. A credit report will be required on each company and on any of the principals that are providing a personal guarantee for the repayment of the RLF loan.

3. Appraisal Reports. Current appraisal reports will be sought on any real property, machinery and equipment that will be used as collateral to secure the RLF loan. These reports are crucial to the loan decision process.

4. Environmental Reviews. For those projects involving the purchase of real property, environmental clearance must be achieved prior to the disbursement of funds from the RLF. The loan agreement will clearly state this stipulation.

5. Collateral Requirements. In cases where collateral and personal guarantees are necessary, collateral decisions will be made using the loan policy of the Program Lender(s).

6. Standard Equity Requirements. Existing companies requesting an RLF loan will be required to provide 10 percent equity requirement for the total financed project. The company may also choose to provide matching dollars in company equity. Company equity will be assessed as an amount or percentage of capital or lien free assets.

7. Loan Write-Up. The loan write-up that summarizes the key aspects of the loan will differ for each loan project/company. The loan write-up will be prepared by the participating bank for review by the RLF Loan Board. The loan write-up will use the guidelines in the U.S. Department of Commerce Economic Development Administration Revolving Loan Fund Plan Guidelines 2002 Part II, Section B.7. The loan write-up will be presented to the City's EDD or designated Program Administrator at least ten (10) business days prior to RLF Loan Board meeting to check for program compliance. After the EDD or designated Program Administrator has established that the loan meets the program guidelines, the EDD or designated Program Administrator will convene the RLF Loan Board. Loan write-up will discuss the following points:

- A summary of the firm's history
- Management practices, principles, strategies and structure
- Product(s) or service(s)
- Production capabilities
- Existing and projected market conditions
- Financing structure and continuity
- Collateral specifications
- Assessment of repayment ability
- The mitigated or soon to be mitigated environmental concerns
- The projected increase of business as result of the loan and the number of new employees that will result.
- Letter from Bank stating need for RLF participation

8. Procedures for Loan Approvals. After the loan application package is complete the City's EDD or designated Program Administrator will recommend and present the project information to the RLF Loan Board. After substantial review, the RLF Loan Board will make the final decision on approval or disapproval of the loan application.

The entire process will be documented by the City's EDD or designated Program Administrator by following State of Texas Open Meetings Act regulations. Immediately following the board's final decision on a loan application, each applicant will be notified by telephone and by mail detailing the next step in the loan process or reasons for denial.

C. Loan Closing and Disbursement Procedures

1. General Closing Requirements. Prior to any loan being closed, the borrower will be responsible for providing confirmation of the needed equity injection and proof of any private lender financing.

a. Confirmation of the Needed Equity Injection. The borrower must provide a certified letter or other evidence from the company's financial institution indicating that the company has the required amount of equity dollars for the project. When the company's equity is leveraged collateral, the company must provide current letter(s) of appraisal or other acceptable documentation qualifying the real property and/or machinery and equipment.

b. Confirmation of Private Lender Financing. In order to confirm the private lender financing needed to make the project possible, the Bank will forward to the RLF Board its approved credit memorandum for bank loan. The credit memorandum will include stated loan terms agreement, any collateral utilized in the loan process and adequate justification as to why RLF participation is needed.

2. Loan Closing Documentation Requirements. For all loans made by the RLF, the following documentation will be required prior to the loan closing:

- Proof of ownership
- Confirmation of applicant's equity
- Confirmation of private lender financing
- Current appraisal(s) or other acceptable documentation of value of any real property real or personal property used as collateral
- Current Uniform Commercial Code (UCC) filing on any personal property used as collateral.

If any of the above mentioned documentation items are not supplied, the loan closing will not occur. Only after the borrower has a complete loan closing package as specified above, will the loan closing continue.

3. Loan Disbursement Requirements. Depending on the type of loan requested, the borrower must provide proof that the loan proceeds will be used for the intended purposes prior to disbursement. For example, if the borrower has secured the RLF loan for the purchase of machinery and equipment, the borrower must show proof, e.g., an invoice, that the equipment has been ordered.

D. Loan Servicing Procedures

1. Loan Payment and Collection Procedures. The borrower will be responsible for making timely loan payments on the repayment of the RLF loan account. Each borrower will be given a schedule of payments for the entire repayment period of the loan by the Participating Bank. The program will make every effort to allow the borrower to use an automatic payment withdrawal plan. The automatic payment plan would be accomplished by the borrower's bank making an electronic direct payment to the appropriate City of El Paso account (RLF).

2. Loan Monitoring Procedures. The City's EDD or designated Program Administrator will be responsible for the continuous monitoring of each RLF loan in all stages of the loan process: application, approval, post loan disbursement and the entire repayment period. Communication will be the key to the monitoring process; each loan will have its own portfolio of timely information. Every transaction and communication will be maintained by hard copy within each loan portfolio. Each RLF borrowing company will be required to submit an unaudited quarterly financial statement, prepared by a Certified Public Accountant. The quarterly financial statement will serve as an early warning sign as to the condition of the loan recipient so that the earliest intervention possible can be made to assist a company that might be experiencing problems.

Depending on the terms and conditions of each loan, companies may be required to submit proof of purchase of property insurance. Additionally, if equipment is collateralized, the company will be billed for an annual UCC search that will be conducted to protect the RLF. Borrower site visits will take place on an annual basis to insure that the company is visually in operation and to verify that collateralized machinery and equipment remains on the premises in good working condition. More frequent site visits may take place if warranted by unsatisfactory repayment practice or any other early warning sign of company operational difficulties.

3. Late Payment Follow-Up Procedures. RLF loan payments will not be considered late until they have passed the tenth business day following the due date. Late payments may carry a late payment penalty in conformity with Participating Lender policy. If payment is not made after the tenth business day from the due date, the Program Lender's policies on late payment and collection will be implemented.

Late payment that exceeds 30 days warrants a site visit by the Bank in order to discuss repayment. Late payment that exceeds 90 days will be considered to be an event of default of the loan note and the entire remaining balance of the loan will immediately become due with notification to the Borrower. Subject to any senior loan priority, complete and thorough subrogation proceedings will be commenced to include notification to guarantors of the event of default, the seizure of any collateralized machinery and equipment for immediate resale or other appropriate asset liquidation procedures.

The Bank will notify the City's EDD or designated Program Administrator of all late and/or default loans and their status on a monthly basis.

4. Procedures for Late Payments Over 90 Days. As mentioned above, payments that are not made within 90 days will result in the RLF loan being declared in default, and the entire balance - on the loan becoming immediately due. The City's EDD or designated Program Administrator will provide monthly reports to the City's and County's Attorney's offices on all loans that are delinquent and/or in default and document what collection efforts have been taken to remedy the delinquency. Any proceedings that include the seizure of all collateralized equipment for immediate resale will, where necessary, correspond to senior bank debt. Any subsequent balance due will be brought against the company for immediate collection by any and every means permissible by state and federal law.

5. Write Off Procedures. The RLF will "write off" as uncollectible any loans that are: 1) in excess of 120 days in arrears, 2) concluded by seizure of collateralized equipment, if possible,; and, 3) deemed not collectible by the advice of the City Attorney's office (with the County Attorney's assent if County funds are involved). For accounting purposes, loans deemed uncollectible will be 100% allowed for.

E. Administrative Procedures

1. Procedures for Loan Files and Loan Closing Documentation. The City's EDD or designated Program Administrator is responsible for maintaining all RLF loan program documentation on its premises at all times in a secure location. All executed loan agreements will also be on file at the Program Lender for documentation and safekeeping purposes. These documents will be kept in a fireproof file cabinet.

Each RLF loan project will have its own file folder complete with a paperwork retaining system. These files will have a copy of the following:

- Pre-loan package
- Property appraisals
- Fully executed contract/notes
- Personal guarantees and security agreements
- Loan proceeds draw-down schedule
- Repayment schedule(s) with record keeping cards
- Copy of the private lender loan agreement
- Financial statements (all editions) UCC filing information
- Annual insurance certifications
- Job creation reports
- Annual site visit reports
- All original notes and any other information and/or documentation that is pertinent to the file of each project.

2. Procedures for Complying with Economic Development Administration and Texas Department of Housing and Community Affairs Reporting Requirements. The Program Bank will be responsible for accepting, posting and tracking all loan disbursements and repayments. The Program Bank will be responsible for tracking the RLF loan funds on a monthly basis, verifying that all RLF payments are posted to the appropriate account, then reporting the Fund's status on a quarterly basis to the City's EDD and the designated Program Administrator. It is also the responsibility of the City's EDD or Program Administrator to monitor the level of funds available for lending and to allocate the appropriate dollars to the administration account of the RLF. All late payment fees,

repayment of loan proceeds and any other revenue generated by the RLF program will be added to the capital fund for loan disbursement.

The joint Revolving Loan Fund will be comprised of one account with contributions made by the City in the starting amount of \$586,000 (77.82%) and the County in the amount of \$167,000 (22.18%).

It is anticipated that \$167,000 or 22.18 percent of the RLF shall be dedicated to making loans in the non-entitlement areas of the County (these areas do not include the area within the City limits). The remaining portion of the RLF, \$586,000 or 77.82 percent, may be used for projects within the city limits of the City and/or outside the city limits, but within the County.

The RLF program will concentrate its efforts on making sound loans to qualified businesses and will work hard to make certain the RLF dollars do not remain idle. The RLF program will strive to exceed more than a 75 percent utilization of funding rate, meaning that we will strive to keep less than 25 percent idle. All idle RLF dollars will continue to gain interest in an interest bearing City of El Paso account (RLF).

3. Grantee Control Procedures. The City's EDD and Program Administrator will make certain that the City is in the strictest compliance with all grant requirements to maintain the federal grant dollars in El Paso. Loan monitoring will continue to be accomplished by the City's EDD or designated Program Administrator. The City Comptroller's accounting supervisor and the City's internal auditor will also have a significant role in assisting in maintaining the program's grant compliance, financial records, disbursements, and information maintenance. Legal matters will continue to be handled by the City Attorney's Office to ensure all legal matters are adequately and efficiently taken care of. Since receiving RLF funding from the Economic Development Administration in 1984, the City has always upheld and maintained all grant requirements with the standards of and on request by the Economic Development Administration.

As initially provided in the original grant, the City will have legal counsel review, then re-certify all required documents that were amended and updated, as per the amended RLF plan. The minimum documents required are: Promissory note Agreement, Security Agreement(s), and Subordination Agreement, as per this document.

THE CITY:
CITY OF EL PASO, TEXAS

By: _____

Name: Joyce A. Wilson
Title: City Manager

APPROVED AS TO FORM:

Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

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

THE COUNTY:
COUNTY OF EL PASO, TEXAS

By: _____

Name: _____

Title: _____

ATTEST:

County Clerk

APPROVED AS TO FORM:

Assistant County Attorney



City/County Revolving Loan Fund

Revisions to the City/County
Interlocal Agreement



Background

- On May 10, 2000 the City of El Paso and the County of El Paso signed an Interlocal Agreement establishing the City/County Revolving Loan Fund.
- On May 08, 2001, City Council approved the First Amended City/County RLF Interlocal Agreement.
 - The City and County contributed \$586,000 and \$167,000 respectively to the revolving loan fund. The contributions were necessary to gain access to a matching funds grant by the Economic Development Administration.
- On April 27, 2004 City Council approved the Second Amended City/County RLF Interlocal Agreement.
 - The second amendment added funds from the Community and Adjustment and Investment Program (CAIP) of the North American Development Bank to the City/County RLF.



Third Amended Interlocal Agreement

- Removes CAIP Funds from the Interlocal Agreement.
 - Sustainable City Centers Incentive Fund will be established using CAIP Funds.
 - Sustainable City Centers Fund may be used within City limits (TRZ areas) and the County of El Paso.
 - County of El Paso will work with City staff to adopt the City's sustainable City Centers Incentive Policy and identify unincorporated areas of the County where Incentives will be used.
 - Approximately \$423,365.00 remains in the CAIP Fund
- Amend the minimum number of RLF Board members that are required by the City/County Interlocal.
 - Lower the number of Board members to convene board meetings in cases where loans require quicker action by the Board.
 - Allows staff to meet quorum requirements.



Third Amended Interlocal Agreement

- Update Interlocal to change Program Operator
 - Name Wells Fargo Bank as “Program Operator”
 - JP Morgan Chase was the previous “Program Operator”
- Program Lenders
 - Amendment allows staff to add program lenders administratively.
 - Allows borrowers to utilize their own banks.



QUESTIONS?