

**CITY OF EL PASO, TEXAS  
REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** Economic Development  
**AGENDA DATE:** October 13, 2009  
**CONTACT PERSON/PHONE:** Kathryn Dodson, Director (541-4872)  
**DISTRICT(S) AFFECTED:** 1, 3, 6, 7, and 8

**SUBJECT:**

Discussion and action on a resolution approving the Empowerment Zone Commercial Façade Improvement Program Guidelines, and further, authorizing the City Manager to execute façade improvement agreements in accordance with Program requirements and any related documents, upon review and approval of the City Attorney. **(1, 3, 6, 7, and 8)** (Economic Development, Kathy Dodson, (915) 541-4670)

**BACKGROUND / DISCUSSION:**

The Empowerment Zone Revolving Loan Fund and Commercial Façade Improvement Program, as delineated in the 2008 Empowerment Zone Strategic Plan, were authorized in May 2009 by the U.S. Department of Housing and Urban Development (HUD) to begin implementation.

El Paso EZ Commercial Façade Improvement Program Guidelines (Exhibit "A") are designed to promote efficiency, consistency, and expediency in the administration and approval of funding requests. The procedures are intended to provide the borrower adequate notice of the application points that will be reviewed in the underwriting and award process, respectively, of an application. City Manager is authorized to execute standard façade improvement agreements in accordance with the Program requirements and in a form substantially similar to the standard contract attached as Exhibit "B."

**PRIOR COUNCIL ACTION:**

On September 22, 2009, El Paso City Council approved an Empowerment Zone Grant funding award in the amount of \$300,000.00 for City administration of a Commercial Façade Improvement Program (the "Program") as part of the City's Empowerment Zone Strategic Plan.

**AMOUNT AND SOURCE OF FUNDING:**

The El Paso Empowerment Zone Program will be funded by the El Paso Empowerment Zone Planning and Implementation Grant and administered by the Community and Human Development Department. The \$300,000 EZ grants funds for the Façade Improvement Program are budgeted in account 71150075-11002-71000-G71EZECEPEZ.

**BOARD / COMMISSION ACTION:**

On August 12, 2009, the Empowerment Zone Advisory Board unanimously recommended approval of a prior version of the El Paso Empowerment Zone Commercial Façade Improvement Program Guidelines.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_  
**DEPARTMENT HEAD:** Lari Pucilli for Kathryn Dodson, Director.  
**APPROVED FOR AGENDA:** \_\_\_\_\_  
**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

## RESOLUTION

**WHEREAS**, on September 22, 2009, El Paso City Council approved an Empowerment Zone Grant funding award in the amount of \$300,000.00 for City administration of a Commercial Façade Improvement Program (the "Program") as part of the City's Empowerment Zone Strategic Plan; and

**WHEREAS**, the City's Economic Development Department recommends that City Council approve and adopt the Commercial Façade Improvement Program Guidelines, under which the City will provide qualified property owners up to \$50,000.00 of matching funds in the form of secured forgivable loans to finance façade improvements to their commercial buildings that are located in the Empowerment Zone and its developable site boundaries; and

**WHEREAS**, the Program Guidelines have been designed to promote efficiency, consistency, and expediency in the provision of financing to qualifying businesses located in the Empowerment Zone and the Department further recommends that certain authorizations be in place to expedite standard applicant requests.

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

That the Empowerment Zone Commercial Façade Improvement Program Guidelines, attached as Exhibit "A", are approved and further, that the City Manager is authorized to execute standard façade improvement agreements in accordance with the Program requirements and in a form substantially similar to the standard contract attached as Exhibit "B" and any related documents, upon review and approval of the City Attorney.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

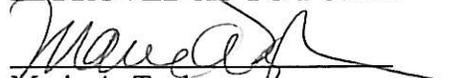
**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook,  
Mayor

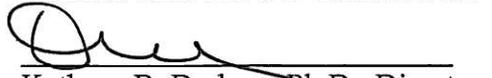
**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Marie A. Taylor  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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



# **El Paso Empowerment Zone Commercial Façade Improvement Program Guidelines**

The City of El Paso

**October 2009**

## **Commercial Façade Improvement Program** El Paso Empowerment Zone

### **Program Purpose**

The purpose of the Commercial Façade Improvement Program (“Program”) is to provide funding to assist property owners finance improvements to the exterior of existing buildings which are located in the U.S. Department of Housing and Urban Development’s designated Empowerment Zone, including its Developable Site boundaries, (“EZ”) as identified in Exhibit A.

By providing funds for exterior renovation, restoration, preservation, and/or rehabilitation of commercial properties, the Program seeks to improve the economic viability and marketability of the EZ, to encourage continued private sector investment that promotes revitalization of an economically distressed area, and to attract new businesses and residents to the area as a means of stimulating job creation.

### **Application Process**

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

- Property address
- Applicant and Property owner name(s), address(es) and signature(s)
- Proof of ownership
- Verification that property taxes on the property are paid and current
- Employee – Residence Address Roster, if applicable under eligibility requirements
- Preliminary Project Scope description, to include a detailed plan and rendering
- Conceptual plans for the work to be completed
- Hard copy and digital photograph of existing building facade
- Estimated Project budget (estimated costs by materials, labor, services and fees)
- Certifications to meet funding source requirements, including but not limited to nondiscrimination, debarment, anti-lobbying, environmental review, etc.

The required application forms are available at the City’s Economic Development Department, located at (City Hall), 2 Civic Center Plaza, 2<sup>nd</sup> floor, El Paso, TX 79901.

For more information contact: Verónica R. Soto, AICP, Redevelopment Manager, City of El Paso, Economic Development Department, 2 Civic Center Plaza, El Paso, TX 79901, Phone: (915) 541-4810 or 541-4670 or via e-mail at [SotoV@elpasotexas.gov](mailto:SotoV@elpasotexas.gov).

## **Federal and Local Requirements**

### **Eligible Applicants**

- 1) Each application will be considered upon its merits without regard to age (provided the applicant is of age prescribed by law), race, creed, marital status, national origin or sex.
- 2) Through the Program, the City will provide available funding in the form of secured forgivable loans, for eligible façade improvement properties located in the EZ. Specific addresses will be verified by City staff to determine eligibility. Applicants are able to utilize the

U.S. Department of Housing and Urban Development's Address Locator available on the web at <http://egis.hud.gov/egis/cpd/rcezec/welcome.htm>.

- 3) Eligible projects will be required to meet the EZ Resident Benefit Standard, as delineated in 24 CFR 598.610 (Exhibit C). This regulation requires a "non-retail business" applicant to retain or make available at least thirty-five percent (35%) of its jobs to Empowerment Zone residents. Applicants will be requested to submit an employee - residence address roster for review. A "retailer" application located within the Empowerment Zone will meet the presumed benefit standard of this regulation.
- 4) Tenants within eligible properties may participate as co-applicants under this Program, and may do so by filing a joint application with the property owner of their leased building(s).
- 5) Applicants must complete and submit the Program application form along with the required attachments and certifications (Exhibit D), and upon award, execution of the Forgivable Loan Agreement for the Program, a promissory note, and required security agreement(s).
- 6) Applicants will be required to demonstrate financial capacity to meet the Program matching requirements, and must be current on all property taxes, mortgages, and property insurance.
- 7) The Applicant must certify that there are no current code enforcement actions pending against the property that would not be mitigated by the project.
- 8) If the real property is not owner-occupied, a copy of the lease or rental agreement must be provided to verify that the property is leased or rented for a term(s) that extends to at least three years from the proposed project completion date.
- 9) Properties located in a flood plain are not eligible, unless they receive a FEMA letter of map revision or letter of map amendment.
- 10) All applicants will be required to comply with applicable federal and local requirements listed in Exhibit D.

#### **Funding and Match Requirements**

The Program is a matching program, which means that matching funds must be matched dollar for dollar by the Applicant for qualified expenditures. The match must be spent on the façade improvement project. The maximum forgivable loan amount under the Program is \$50,000 for approved improvements for a project totaling \$100,000 or greater.

Funding is limited and awards will be subject to funding availability. Applicants will be considered on a first-come, first-serve basis.

Program funding is provided in the form of a loan, which is forgiven on a prorated basis over a three-year period with no payments required, provided the property continues to be maintained in accordance with the Program requirements, such as retention of ownership, maintenance of the façade, and payment of all property taxes due. If the property is sold during the three-year

maintenance period, the remaining unforgiven balance of the loan will be due to the City upon the sale of the property.

Forgivable loan proceeds will be disbursed as progress co-payments (issued in the name of both the Applicant (borrower) and the contractor) to the City-selected contractor based upon an agreed-upon drawdown schedule with the contractor. Loan proceeds for eligible costs not related to actual construction costs but paid by the Applicant, will be advanced to Applicant as reimbursement payments upon submission of evidence to document the eligible expense.

The EZ funds will be collateralized by a lien on the property, which will be released if the façade improvements are maintained for three years. The total indebtedness on the property, including the City's investment, shall not exceed the after rehabilitation value.

### **Eligible Costs**

Labor, design, and material costs are eligible costs. Further, permit fees associated with the proposed renovation/rehabilitation for the project are eligible program costs.

Loan closing costs, legal fees, and City required appraisal costs related to the EZ project are eligible costs.

Costs will be reviewed noting them to be necessary, reasonable, and allocable as related to the proposed improvements; and, in accordance with federal regulations.

In-kind, donated, "sweat equity" or similar no cost to the Applicant improvements, services, or materials will not be matched and are ineligible costs under the Program. Costs incurred for alterations or improvements completed prior to receipt of formal written approval by the Program's Design Review Committee are not eligible for reimbursement.

Applicants should be aware that buildings containing residential units may require lead hazard abatement. The costs of lead hazard abatement are not an eligible expense under the Program and will be the total responsibility of the property owner.

### **Eligible Activities**

Façade renovation activities must involve the general upgrading of an existing building's external appearance in compliance with the Design Guidelines (Exhibit B) and Design Review process.

Eligible activities include:

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

- Exterior cleaning
- Visible roof repairs in conjunction with structural improvements
- Masonry repairs and tuckpointing
- Storefront reconstruction
- Repair/replace/ preserve historical architectural elements
- Clearing and demolition specifically related to the eligible project

Ineligible activities include:

- Interior renovation
- New construction
- Sales and other taxes
- Property acquisition
- Payment of delinquent taxes
- In-kind, donated, “sweat equity” or similar no cost to the Applicant improvements, services, or materials
- Parking lots
- Billboards
- Non-visible roofing
- Expansion of building area
- Conversion of use
- Refinance of existing debt
- Temporary, portable or non-permanent improvements
- Improvements in progress or completed prior to loan/grant approval
- Activities specifically prohibited by the executed Forgivable Loan Agreement

### **Design Requirements**

All improvements must conform to applicable city building codes, zoning ordinances, local, state, and federal laws and to the design guidelines adopted for the area and approved by the Design Review Committee for the Program.

Façade improvements to properties within the designated Downtown Historic District must be completed in accordance with Historic District Guidelines and Applicants must obtain any requisite certifications or other approvals of the City’s Administrative Review Process and/or Historical Landmark Commission.

Façade improvements to properties within the Downtown 2015 Plan boundaries must also be completed in accordance to the design guidelines included in the Downtown 2015 Plan, which is available upon request.

For properties that are subject to more than one set of approved design guidelines, the most restrictive will apply. For properties located within an area without adopted design guidelines, the general design guidelines contained in Exhibit B will apply.

### **Design Review Process: Design Review Committee and Loan Award**

Economic Development Department staff will review all applications to determine whether the application(s) meet the minimum mandatory program requirements. Incomplete applications will not be processed and will be returned to the Applicant without consideration.

Applications that meet the threshold participation requirements shall be further reviewed by the Design Review Committee, to consist of representatives from the City's Development Services Department (2), Engineering Department (1), Economic Development Department (2), Empowerment Zone Division of the Community and Human Development Department (1) and the Empowerment Zone Advisory Board (1). The Design Review Committee shall ensure that the pending application meets all applicable design guidelines.

The Design Review Committee will make a recommendation on an application based on the following Review Criteria and Empowerment Zone Priorities:

- Readiness to begin work and funding availability;
- Substantial visible improvement to the appearance of the building, as determined by the Design Review Committee;
- Projects that do not restore architectural details of facades with significant architectural elements will not be considered;
- Preference is given to commercial buildings with operating businesses; and,
- Preference is given first-time Applicants to the City's Façade Improvement programs.

The Design Review Committee's recommendations for an award, will be submitted to the City Manager or Economic Development Director, acting as her designee, for review and final approval.

#### Appeals Process

Determination of project ineligibility under the federal or local eligibility requirements is not subject to appeal. Eligible projects not recommended for funding by the Design Review Committee or not approved for funding by the City Manager or designee, may be submitted for review and decision directly to City Council for appeal. Such a request must be delivered to the Economic Development Director in writing within seven (7) days of receiving the denial notice.

#### Procurement

Upon approval of an application, a representative of the City of El Paso's Engineering Department will send an approved contractor (procured by the City) to the property to estimate the construction costs. Once the proposed cost is confirmed or adjusted by the Applicant, the City will issue a work order for the Applicant's façade project to be performed by the City's selected contractor. At the time of loan closing, the Applicant will be required to demonstrate that its 50% matching funds are or will be held in escrow, with the City authorized to drawdown those funds to pay the selected contractor on a prorated schedule. Disbursements to the selected contractor will be prorated between the Applicant's match and the Applicant's forgivable loan (EZ funds) proceeds pursuant to the construction schedule less any required retainage.

## **Financing Policies**

1. **Loan Disbursement:** Forgivable loan proceeds will be disbursed as progress co-payments (issued in the name of both the Applicant (borrower) and the contractor) to the City-selected contractor based upon an agreed-upon drawdown schedule with the contractor. Loan proceeds for eligible costs not related to actual construction costs but paid by the Applicant, will be advanced to Applicant as reimbursement payments upon submission of evidence to document the eligible expense.

2. **Security:** The City's forgivable loan will be secured by a deed of trust on the subject real property and will self-amortize proportionally each year for the term of the three-year note, provided the property continues to be maintained in accordance with the program requirements, such as retention of ownership, maintenance of the façade, payment of all property taxes due, and maintenance of property insurance with the City listed as mortgagee. Applicant must enter into a Commercial Façade Improvement Agreement with the City regarding the terms and conditions of his/her participation in the Program. The Program's standard Agreement is available to applicants for their review prior to application submittal.

3. **Repayments:** No repayments will be required if all terms are met.

4. **Default:** The borrower (Applicant) shall be considered in default and the balance of the financial assistance will be immediately due and payable upon failure of the borrower to retain ownership of the property for the duration of the forgivable loan; failure to properly maintain the façade after improvements are completed; failure to maintain property insurance with City as mortgagee; delinquency in property taxes; or failure to operate in compliance with all applicable local, state, and federal codes, laws, and regulations.

5. **Remedies for Default:** In the event of default, the City may exercise any combination of the remedies available to it with respect to the security agreement(s). The City may take whatever action at law, or in equity, to collect any outstanding balance or to enforce the performance and observation of any other obligation or agreement of the borrower.

## **Construction Completion**

Following execution of the Commercial Façade Improvement Agreement, construction must begin on the project improvements within 45 consecutive calendar days and complete the project improvements within 180 consecutive calendar days. The Economic Development Department Director may grant an extension upon written request stating a reasonable cause for the delay and accompanied by a revised construction schedule. In no event shall the completion date extend beyond June 30, 2010, the expiration date of the EZ Program. As appropriate, Economic Development Department and Engineering Department staff and/or authorized City personnel will monitor the construction process. The Economic Development Director must approve in writing any change orders to the proposed improvement work.



## **Exhibit B – Design Guidelines**

### **Design Standards & General Guidelines**

Sensitive restoration and reuse of significant structures enhancing their role in defining the street character of the block or neighborhood is critical to the façade program. All properties seeking funding through the Empowerment Zone Commercial Façade program shall comply with applicable sections of the City of El Paso Municipal Code for building design and construction and shall follow adopted design standards including those included in the City of El Paso Comprehensive Plan. These design guidelines shall apply unless there are more restrictive standards for design for particular buildings including established and adopted Historic District Guidelines or the Guidelines applicable to the Downtown Plan area.

#### **General**

- (a) Projects shall strive to maintain or restore architectural details of facades, especially those with historically significant architectural elements. Projects that do not restore architectural details of facades with significant architectural elements will not be considered.
- (b) The form, rhythm, materials, and character established by the existing buildings are defining components of the streetscape and should be reinforced and enhanced in structure renovation.
- (c) Existing buildings that shape the character of the street frontage and set the building quality standard should serve as a guide for renovation and rehabilitation. Adaptive reuse of structures is encouraged.

#### **1. Building Setback and Site Development,**

- (a) Encourage site layout, scale and mass of new construction to be generally compatible with existing development in the same block. Building forms and design should be appropriate to the intended use.
- (b) Reflect and reinforce the scale, massing, proportions, rhythm, and attention to detailing established by the existing buildings in older neighborhoods of El Paso.
- (c) Encourage improvements to existing development to attract more pedestrian friendly businesses and help to move more people through the corridor, not just vehicles.
- (d) Building frontages should be located close to the street with entries to buildings having direct access to the street on which they front. Buildings shall have a principal façade and entry facing (with operable doors) a public street or open space or courtyard.
- (e) Traditional neighborhood commercial “storefronts” that overlook and open to the street are encouraged.
- (f) Buildings and landscape features should be oriented to frame views of special buildings and open spaces. Building entrances should be prominent and easy to identify.
- (g) Building design should encourage multi-modal transportation as a means of reducing the demand for peak period vehicular trips including ride-sharing, flexible working hours, parking management innovations, and mixed-use development
- (h) Promote mixed-use development in neighborhood centers that ties directly into transit facilities and reinforce the pedestrian character of the environment. Encourage a streetscape design favoring pedestrians yet allowing vehicular movement and limited on-street parking, where appropriate
- (i) Focus buildings on the street with minimal setbacks with retail entries accessed from the sidewalk.
- (j) Where possible, incorporate elements which break up the façade plane and create light and shadow.

(k) Articulate side and rear facades in a manner compatible with the design of the front façade. Avoid blank wall surfaces that are visible from streets or other public areas.

## **2. Storefronts**

- (a) Inviting and transparent storefronts are a critical component in creating an attractive and inviting streetscape. Frequent entries, continuous display windows, visible locations for signs, and sensitively scaled proportions, should be incorporated into remodeled storefronts.
- (b) Encourage new storefronts in existing buildings to be compatible with the character of the building in terms of materials, colors, and architectural details.
- (c) Storefronts shall reflect the historic storefront rhythms and proportions found within the existing and adjacent blocks of the property and throughout the neighborhood.
- (d) Multiple storefronts within the same building should be visually compatible in terms of scale, alignment, color, and materials. Maintain a consistent rhythm of storefronts along a block with entrances every 75 feet, on average.
- (e) Street level frontage adjacent to public streets or open spaces should be primarily devoted to entrances, shop windows, or other displays.
- (f) Encourage a high degree of transparency to allow the energy of the street and shops to be visible from both directions. Windows should be inset from the exterior wall surface to add visual relief to the wall. This window reveal is especially important on stucco buildings. Encourage the use of clear, un-tinted and non-reflective glass at street level to allow maximum visual interaction between pedestrians and the interior of the building.
- (g) Walls should be articulated at a minimum every 75 feet. Articulation may include storefront bays with modulating building elements such as recesses, projections, expressed entries, building form, columns, pilasters, and/or other clearly expressed architectural details.
- (h) In order to reinforce the pedestrian scale and the importance of the sidewalk, an expression line should be used to architecturally distinguish the ground floor from the upper façade for multi-story buildings.
- (i) Entries and doors should be substantial and well-detailed. Doors should match the materials, design and character of the display window framing.
- (j) In buildings with no or minimal front setbacks, awnings, canopies, recessed entries, and other features that provide shade for pedestrians are strongly encouraged and should be integrally designed with the building façade.
- (k) Awning shape, size, and height should be proportional to the façade, should fit within framed storefronts. Awning shape, size, color, and material should be consistent with the architectural style and character of the building and should be compatible with adjacent awnings on adjacent properties.
- (l) Awnings and marquees shall be located in the front of the setback and may encroach within the right-of-way, but shall not extend past the curb line.
- (m) Retail building frontage should consider recessed entries, recessed or projecting bays, expression of architectural or structural modules and detail, and/or variations such as surface relief, expressed joints and details, color and texture. Recommended treatments for recessed entries include special paving materials such as ceramic tile, ornamental ceilings such as coffering, and/or decorative light fixtures.
- (n) Where possible, maintain a strong street presence with minimum setbacks for all structures

## **3. Architectural Styles and Materials**

- (a) Building facades should be designed to provide visual interest to the streetscape by encouraging character-defining features.

- (b) Façade renovations should not destroy or cover original details of a structure that are vital to its proportion or integrity.
- (c) Building additions should reflect existing buildings in scale, materials, and window form. Façade renovations should use the same materials whenever possible as in the existing structures. When use of the same materials is not possible, deviations from the original should be minimized.
- (d) Building details and ornamentation should contribute to the architectural character of older neighborhoods in El Paso and should be integral to the design of the façade.
- (e) Incorporate details and ornament that are of a level of quality similar to those used on adjacent existing buildings.
- (f) Incorporate details and ornament which are in scale and harmony with the overall building façade and which respect the existing built character of the neighborhood or block.

#### **4. Circulation & Access**

- (a) Each commercial use with exterior street oriented exposure should have an individual public entry directly accessible from a public sidewalk.
- (b) All buildings should provide at least one primary building entry oriented to a public right-of-way.
- (c) Encourage resident and employment growth within walking distance of neighborhood center transit stops in order to support an inter-modal transportation system.
- (d) Incorporate pedestrian amenities and landscaping that will enhance the pedestrian experience.
- (e) Pedestrian connections should be provided except where such a connection is impracticable due to unique topography.
- (f) Encourage pedestrian connections that connect the on-site circulation system to existing or proposed streets, walkways, and driveways. Where adjacent properties are undeveloped, streets, access ways and walkways should be aligned or stubbed-out to allow for extension to the adjoining property.

#### **5. Parking**

- (a) Parking lots and vehicles should not be allowed to dominate or otherwise diminish the streetscape aesthetic. Parking lots should be located behind or to the side of buildings, such that buildings or landscaping separate parking areas from the street.
- (b) Improve the efficiency of parking areas by allowing multiple uses to share parking spaces, curb cuts, and circulation drives where feasible and practical.
- (c) Minimize the presence of parking areas on pedestrian corridors and the public realm through a combination of site planning, building placement, landscaping, masonry screening, fencing, and other effective buffering. Parking lots should be screened from the sidewalk and landscaped.
- (d) Discourage the location of surface parking between the front facades of residential, institutional, and commercial buildings and the public right-of-way.
- (e) Prevent surface parking from interrupting the fabric and creating voids in activity and use.
- (f) Ground level parking should be screened from the sidewalk with habitable space, unless a suitable alternative is proposed. Blank walls are not permitted.

#### **6. Roofs**

- (a) Mechanical equipment and utility hardware on new construction shall be screened from public view, organized and designed as a component of the roofscape, and not appear to be a leftover or add-on element.
- (b) Roof forms should match the principal building in terms of style, detailing, and materials with consideration of local precedents in the selection of roof forms.

## **7. Fences**

- (a) Fencing should be complementary to the character and style of the properties.
- (b) Chain link or razor wire fencing visible from the public right-of-way is discouraged.

## **8. Lighting**

- (a) Lighting should be of a design, quantity and size compatible with the building and should not diminish the aesthetic design of the building, create a hazard for motor vehicle drivers and/or pedestrians, or unreasonably disturb neighbors.
- (b) Light should not spill onto adjacent properties and excessive brightness is to be avoided.
- (c) The visual impact of exterior lighting onto adjacent properties should be minimized by the use of low level unobtrusive fixtures.
- (d) Building lighting should highlight significant architectural features, signs, entrances, walkways, or display windows.

## **9. Signage**

- (a) Signs should fit within the architectural features of the façade and complement the building's architecture.
- (b) Signs should not overlap, obscure or conceal architectural elements.
- (c) Locations for illuminated signage should be oriented to the public right-of-way.
- (d) Flashing signs and moving signs are not recommended.
- (e) Backlit signs are not recommended.

## **10. Maintenance and Security**

- (a) Encourage the ongoing maintenance of the existing structures.
- (b) Regular maintenance of properties including properly disposing of construction debris and removing unsightly weeds, is required.
- (c) All reasonable measures should be taken to protect structures from damage and deterioration caused by weather, neglect, and vandalism.
- (d) Security grills and tracks should be carefully integrated into storefront design and concealed when not in use.
- (e) Solid roll-down grilles are discouraged

## **11. Landscaping, Screening and Open Space**

- (a) Design landscaping so that it enhances architectural features.
- (b) Plant materials should be drought tolerant species suitable to the climate and/or native to the region.
- (c) Trash containers, mechanical equipment and utility hardware on new construction should be located at the rear of the lot or alley and screened from public view.

## Exhibit C – Empowerment Zone Resident Benefit Standard

### 24 CFR § 598.610 Resident benefit standards

The project or activity described in an implementation plan submitted for HUD approval by an EZ to describe the planned use of HUD EZ Grant Funds must meet one of the following three standards of resident benefit for determining the amount of HUD EZ Grant Funds that may be used to fund a particular project or activity:

(a) *Principal benefit standard*—

(1) *Benefits other than jobs.* If a majority (51 percent) of the direct beneficiaries of the project or activity described in the implementation plan reside within the EZ, the project or activity may be fully assisted with HUD EZ Grant Funds.

(2) *Jobs benefit.* In any case where the direct benefits to be provided by a project or activity described in an implementation plan will be in the form of jobs, the project may be fully assisted with HUD EZ Grant Funds if at least 35 percent of the jobs are taken by, or made available to, EZ residents. A job satisfies this 35 percent requirement if the EZ resident is employed by the employer for at least 90 days during the year. For purposes of this 35 percent requirement, an employer may rely on a certification by the employee that provides to the employer the address of the employee's principal residence, and requires the employee to notify the employer of a change of the employee's principal residence.

(3) *Presumed benefit.* Certain commercial revitalization activities that are located and undertaken in an EZ and that provide services to both EZ residents and non-residents (e.g., supermarkets, drug stores) will presume to meet the 51 percent principal benefit standard in paragraph (a)(1) of this section, provided that the EZ maintains written documentation that briefly describes the activity, its service area, and the rationale for presuming that the activity meets the 51 percent principal benefit standard.

(b) *Proportional benefit standard.* If a project or activity described in an implementation plan cannot meet the principal benefit standard of paragraph (a) of this section, the percent of the cost of the project or activity that may be assisted with HUD EZ Grant Funds may not be greater than the percent of all persons benefiting directly from the project or activity who reside within the EZ.

(c) *Exception criterion.* In any case where a proposed project or activity, including activities outside of the designated area, would not meet the standards of paragraph (a) or paragraph (b) of this section, HUD EZ Grant Funds may be used where HUD determines that an implementation plan, accompanied by the facts that the EZ requests HUD to review and consider as justifying the exception, demonstrates substantial benefits to the EZ that would result from the project or other compelling reasons justifying the appropriateness of the implementation plan to the EZ's strategic plan. A request by an EZ for an exception under paragraph (c) of this section will receive a response by HUD no later than 60 days from the date of the EZ's request provided that the EZ's with all relevant information is considered complete no later than 45 days from the date of the EZ's request.

## **Exhibit D – Certifications: Federal and Local Requirements**

1. All work must be done in accordance with the applicable Design guidelines; all applicable local, state, and federal codes, regulations, and laws; all applicable rules and regulations for the El Paso Empowerment Zone Program; including, but not limited to, OMB-Circular No. A-122, Title 24 CFR Parts 84 and 85, the procurement requirements in Title 24 CFR Sections 84.40-.48, the regulations at Title 24 CFR Part 87 related to lobbying, including the requirement that the City obtain certifications and disclosures from all covered persons; the restrictions on participation by ineligible, debarred or suspended persons or entities as described in Executive Order 12549 and at Title 24 CFR Section 5.105(c).
2. Properties with residential components will be required to meet applicable lead-based paint abatement requirements, which include HUD regulations, "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance," contained in Title 24 CFR Part 35.
3. For construction projects covered by Title 24 CFR Part 135, the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. Section 1701u) shall apply, which require that economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be given to low- and very low-income persons and to businesses that provide economic opportunities for these persons.
4. Each borrower (Applicant) will be responsible for all acquisition and relocation costs when displacement of residential or nonresidential tenants occurs as a result of the project, in accordance with the Federal Uniform Relocation and Real Property Acquisition Policies Act and implementing regulations at Title 49 CFR Part 24. If temporary tenant relocation will be required for this project, contact the City for further guidance prior to submitting the application.
5. The borrower (Applicant) agrees to properly maintain all façade improvements, clean and free of graffiti for at least three (3) years at the borrower's own cost and expense. Any damage to the façade is to be repaired immediately so that the property remains in good condition and positively contributes to the Zone. Applicants are strongly encouraged to touch up painted areas and perform any other repairs needed on an ongoing basis and to maintain building appearance including the cleaning of any awnings at least once a year.
6. All applicants, their contractors, and subcontractors shall be required to demonstrate compliance with nondiscriminatory employment practices and shall comply with all the equal opportunity requirements in Title 24 CFR Section 5.105; the requirements of Executive Order 11246 (Equal Opportunity) and the implementing regulations at Title 41 CFR Chapter 60.
7. Applicants are encouraged to utilize minority and women-owned business enterprises under this program as specified in Executive Orders 11625 and 12432 (concerning Minority Business Enterprise) and 12138 (concerning Women's Business Enterprise).
8. The City, the Department of Housing and Urban Development, the Comptroller General of the United States, or any duly authorized representatives, shall have access to any books, documents, papers and records which are directly related to the project assistance for the purposes of monitoring, making audits, examination, excerpts, and transcripts. All records supporting the costs and components of program-assisted improvements shall be maintained for a period of not less than three (3) years following completion of the program agreement period, agreement termination, or default.

9. No Empowerment Zone funds will be released and no reimbursable costs can be incurred until the City has conducted an environmental review as required under federal regulations at Title 24 CFR Part 50. Any funding award will be contingent upon satisfactory completion of the environmental review and HUD approval.
10. No person in the United States shall, on the grounds of race, creed, color, national origin, (including immigration status where an alien holds proper work authorization), religion, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape or form in employment or under projects or activities funded in whole or in part with Empowerment Zone funds made available to the borrower (Applicant), as set forth in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and implementing regulations at Title 24 CFR Part 1; Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07) and implementing regulations at Title 24 CFR Part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and implementing regulations at Title 24 Part 8.
11. The borrower (Applicant) must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons.
12. For projects involving housing, all applicants, their contractors and subcontractors shall comply with the requirements of the Fair Housing Act (42 U.S. Sections 3601-20) and implementing regulations at Title 24 CFR Part 100, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at Title 24 CFR Part 107.
13. In the procurement of supplies, equipment, construction and services by the borrower (Applicant) the conflict of interest provisions in Title 24 CFR Sections 85.36 and 84.42 and OMB Circular A-87 shall apply. No person who is an employee, agent, consultant, officer, appointed official, or elected official of the City of El Paso, Texas shall have an interest nor acquire any personal or financial interest or benefit, direct or indirect, in any program assistance to the borrower (Applicant).
14. The borrower (Applicant) permits City to promote the project and property including, but not limited to, displaying a sign at the site during and after construction indicating participation in the Program, and using photographs and descriptions of the project and property in the City's printed promotional materials, press releases, and websites.

**EL PASO EMPOWERMENT ZONE  
COMMERCIAL FACADE IMPROVEMENT AGREEMENT**

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This Commercial Façade Improvement Agreement ("Agreement") is made by and between the City of El Paso, Texas (the "City"), a home-rule municipal corporation, and ("Participant"), a corporation organized and existing under the laws of the State of \_\_\_\_\_.

**WHEREAS**, a grant has been received from the U.S. Department of Housing and Urban Development ("HUD") through the Empowerment Zone ("EZ") Program, to be administered by the City and made available to eligible subrecipients; and

**WHEREAS**, the El Paso City Council has allocated certain EZ funds under the **FY10** EZ Program to fund exterior renovation, restoration, preservation and/or rehabilitation of commercial properties located in the Empowerment Zone through the Commercial Façade Improvement Program (the "Program") approved by City Council; and

**WHEREAS**, Participant is a qualified applicant for participation in the Program and has agreed to comply with all applicable requirements for a conditionally forgivable loan.

**NOW, THEREFORE**, the parties mutually agree as follows:

**Section 1. GENERAL PURPOSES AND REQUIREMENTS**

A Participant agrees that the EZ funds to be advanced shall be used in a satisfactory manner as determined by the City for the customary and reasonable project specific expenses necessary for the renovation, restoration, preservation and/or rehabilitation of the façade of the building located at \_\_\_\_\_, which building will be used for commercial purposes, and completed in accordance with the Project Scope (the "Project") and Budget attached hereto and incorporated herein as **Exhibit "A"** for all purposes.

B. Participant agrees to perform its obligations within the monetary limits contained in the Budget described in **Exhibit "A"**, in carrying out the façade project described in this Agreement. As a condition of the grant of the City's forgivable loan and continued compliance with this Agreement, Participant shall provide 50% matching funds for the project, shall place such funds in an escrow account for use solely for the project that is the subject of this Agreement, and shall execute an escrow agreement at time of loan closing regarding same in a form acceptable to the City. These funds shall be available to the City for drawdown as set forth in the escrow agreement or other agreed upon document.

C. Participant understands and agrees that no EZ funds will be released and no reimbursable costs can be incurred until the City has conducted an environmental review as required under Title 24 CFR Part 50. Notwithstanding any provision in this Agreement, the parties hereto agree and acknowledge that the commitment of EZ funds is contingent upon satisfactory completion of the environmental review and receipt by the City of a release of funds from HUD under Title 24 CFR Part 50.

## **Section 2. CITY OBLIGATIONS**

A. The City hereby agrees to lend Participant funds not to exceed the total amount of **AND NO/100 DOLLARS** (\$ \_\_\_\_\_), to be drawn from FY10 EZ funds, for payment of eligible costs for the façade work described in the Project Scope and Budget attached hereto, subject to the terms hereinafter specified in this Agreement. Provided Participant faithfully performs in full its obligations hereunder, City shall conditionally forgive this loan amount proportionately over **THREE (3)** years from the execution date of the promissory note.

## **Section 3. CONSTRUCTION REQUIREMENTS**

A. To facilitate compliance with federal, state, and local procurement standards for use of EZ funds for construction work, the City has or will be competitively procuring approved contractors for use in the City's Commercial Façade Improvement Program. It will be the Participant's responsibility to accept, confirm, or adjust the selected contractor's estimated construction costs, plans, specifications, work schedules, and related documents. Participant agrees that the façade work, will be completed in accordance with all plans, specifications, work schedules and all related documents as approved by the City. Upon the Participant's approval, the City will issue a work order for the Participant's façade project to be performed by the selected contractor. Both the Participant and the Director must approve any change orders to the proposed façade work. Participant understands Director's review of the Plans is solely for the benefit of City and HUD and neither Director, HUD, nor City shall be responsible for any mistakes or deficiencies. Participant is and shall remain fully responsible for compliance with professional architectural, professional engineering, and other applicable standards and Participant shall bear complete and sole liability for determining whether or not the plans will result in the construction of a safe, structurally sound, durable, functional, and attractive building suitable for the uses intended.

B. Participant agrees that all construction must conform to the [**SELECT: Historic District/Downtown 2015 Plan/ Empowerment Program**] Design Guidelines, as developed by the City and adopted for the Program. For property listed on the National Register of Historic Places, all work must comply with the Secretary of Interior's Standards for rehabilitation of Historic Places.

## **Section 4. DRAWDOWNS (LOAN DISBURSEMENTS)**

A. Loan disbursements will be made as progress co-payments issued in the name of the Participant and the selected contractor based upon an agreed-upon construction drawdown schedule with the contractor. Disbursements to the contractor will be prorated between the Participant's escrowed matching funds and the Participant's loan proceeds (EZ funds) pursuant to the construction schedule less any required retainage. Loan proceeds for eligible costs not related to actual construction costs, but paid by the Participant, will be advanced to Participant as reimbursement payments upon submission of evidence to document the eligible expense. Disbursements to the contractor will be made only with the approval of the City Engineer or his designee together with the Participant's assent. Such requests will be accompanied by documentation, which reflects the percentage of completion of the work under the construction contract.

## Section 5. PROMISSORY NOTE AND DEED OF TRUST

Participant agrees to execute and deliver to City the following documents, which will be prepared by the City:

A. A Promissory Note (Participant: Maker; City: Payee) at loan closing, in an amount of **AND /100 DOLLARS (\$ )**, which is incorporated by reference and made a part hereof, for all purposes as **Exhibit "B"**. In the case of a default hereunder, Participant will be required to make all scheduled payments under said Note.

B. A Deed of Trust (Participant: Grantor; City: Beneficiary) at loan closing, which is incorporated by reference and made a part hereof, and attached as **Exhibit "C"** securing all funds advanced under this Agreement. Participant will provide the foregoing so that City has a valid and enforceable lien (of sufficient lien priority to secure all funds advanced hereunder) on said property in an amount of **AND /100 DOLLARS (\$ )**. Said lien shall also serve as City's right to enforce Participant's performance of all its obligations hereunder. At closing, Participant shall provide City with a Mortgagee Title Insurance Policy in the amount of **AND /100 DOLLARS (\$ )** that reflects the acquired property to be free and clear of all liens and encumbrances or alternatively, provide City with sufficient priority status for its lien to secure all funds advanced hereunder.

## Section 6. COMPLETION OF PROJECT

Time shall be of the essence in all aspects of this Agreement. Participant shall cooperate with the City to expedite the Project to the greatest reasonable degree yet shall start the project no more than **forty-five (45)** days following the execution of this Agreement. Participant shall be permitted **one hundred eighty (180)** consecutive calendar days from beginning of the project to completion of the project. The Director may grant an extension upon written request stating a reasonable cause for the delay and accompanied by a revised construction schedule. In no event shall the completion date extend beyond June 30, 2010. At its option, the City reserves the right to cancel and terminate this Agreement if Participant has failed or refused to cause commencement of physical rehabilitation work on the subject building after a period of ninety (90) days from the date of execution of this Agreement or if Participant has failed or refused to complete such rehabilitation work by June 30, 2010. The City's failure to exercise its right to terminate this Agreement due to the Participant's failure or refusal to cause commencement of or to complete the physical rehabilitation work on the building shall not be deemed a waiver thereof, as long as the construction work remains incomplete.

## Section 7. MAINTAINENCE

Participant agrees to maintain all rehabilitation work, in compliance with all local code requirements, clean and free of graffiti for the duration of this Agreement and for three years after completion of construction at Participant's own cost and expense. Participant agrees that the City, its agents or representatives, shall have the right to inspect the property from time to time at any reasonable hour of the date to determine Participant's compliance with this requirement.

## **Section 8. PROMOTIONAL RIGHTS**

Participant agrees to provide the City with a hard copy and digital “before” and “after” photographs of the building and rehabilitation work. Participant hereby authorizes the City to promote the property, building, and project as a participant in the Program and grants permission, which shall include, but is not limited to the use of before and after photographs and descriptions of the rehabilitation work in the City’s promotional materials, press releases, websites and other forms of publicity mediums.

## **Section 9. EVENTS OF DEFAULT OR BREACH**

A Default shall consist of:

1. Use of loan funds for any purpose other than as authorized in this Agreement;
2. A breach of any covenant, agreement, or warranty by Participant made in this Agreement or in any contract entered into between Participant and any third party relating to this project;
3. Failure to fulfill any obligation or requirement of this Agreement;
4. The failure of Participant to complete the Project in accordance with the timelines required for completion as further specified herein;
5. The existence of any collusion or bad faith by or with the acquiescence of Participant;
6. Participant abandons the property, fails to keep insurance and taxes current, fails to obtain permits, violates building code, or otherwise fails to maintain the façade;
7. Failure to maintain tenancies that satisfy the resident benefit standards set forth in Title 24 CFR Section 598.610 for a minimum one-year period following completion of the rehabilitation work.
8. The filing of any petition by or against Participant under the Federal Bankruptcy Act or any similar law, state or federal, or Participant’s failure to continue operations as a going business, or Participant’s insolvency, or any manifestation or statement by Participant that it does not intend to continue performance of its obligations hereunder.

## **Section 10. CITY’S REMEDIES UPON DEFAULT**

Upon the occurrence of any event of default, City may, in addition to all remedies conferred upon it by law, by the Note and Deed of Trust, by this Agreement, or otherwise, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other. City may notify Borrower in general terms, in writing, of the actions it intends to take, but is not required to do so. City may change its course of action at any time as determined by the City Manager.

- A. Upon a determination of default, City may notify Participant of the:
  1. nature of the default;
  2. actions reasonably required to be taken to cure the default; and

3. a reasonable time during which Participant must take all the required actions to cure the default, which shall in no event exceed THIRTY (30) days.

B. In the event of a default not corrected by the Participant after notice as specified in Subsection "A" immediately above, or in the case of any other default hereunder that the City declares as an immediate default, such default to include any of the Section 9 default provisions at the City's discretion, City, by and through the Director may:

1. Accelerate the Promissory Note and declare the loan to be due and payable and Participant shall promptly repay to City an amount equal to the total amount of the loan, interest, penalties, and fees hereunder (as evidenced by the Promissory Note **Exhibit "B"**);
2. Withhold further disbursement of the proceeds of the loan; and/or
3. Exercise or pursue any other remedy or cause of action permitted under this Agreement or the loan, or conferred upon City by operation of law.

#### **Section 11. ACCESS TO RECORDS, AND RETENTION OF GRANTEE RECORDS**

A. Participant shall prepare and maintain files, books, and records in accordance with all applicable HUD requirements, including OMB Circulars Nos. A-87, A-110, A-122, and A-133, as applicable; and Title 24 CFR Parts 84 and 85 as they pertain to costs incurred, audits, program income, administration, activities and functions, recordkeeping, and all of the relevant matters contained in said publications and supplements. These records shall be maintained for a period of three (3) years after the termination or expiration of this Agreement.

B. The City, State Agency, HUD and/or their designees shall have a right of access to make copies of and a right to audit all of the Participant's files, books and records which are deemed pertinent to the performance of this Agreement, as determined solely in the reasonable exercise of the City's, the State Agency's, HUD's and/or their designee's discretion. Copying and auditing will be performed at a reasonable time and place, such as during Participant's usual business hours, and at Participant's principal place of business or office. This right shall continue for three (3) years after termination or expiration of this Agreement. The City, State Agency, HUD and/or their designees may additionally request the copying, mailing and/or electronic transmission of records by Participant.

C. Participant agrees that at all times prior to and after termination of this Agreement, all papers, books, files, correspondence and records relative to the performance of services under this Agreement are owned by and are the sole property of the City. Participant will hold and possess the papers, books, files, correspondence and records as the property of the City and shall relinquish them to the City upon its request during the term of this Agreement and at any time during the three (3) years immediately following the term of this Agreement. Participant will not be required to relinquish those documents which are deemed confidential by Federal, State, or local law.

D. If Participant expends FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) in Federal awards during a year, Participant shall have a financial audit conducted by an independent auditor in accordance with Federal OMB Circular A-133. If Participant expends

less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) in Federal awards during a year, Participant is exempt from Federal audit requirements for that year, except as noted in Federal OMB Circular A-133.215 (a), but records must be available for review or audit by appropriate officials of the City and the General Accounting Office (GAO).

E. Monitoring: City reserves the right on its behalf and on behalf of the Department of Housing and Urban Development (HUD) to perform, or have its designees perform, periodic monitoring of Participant's compliance with the provisions hereof. On-Site monitoring shall be conducted at a reasonable time, place and manner, to include but not necessarily limited to the facility's normal hours of operation. Participant will provide assistance and information needed by City to monitor and evaluate the Participant's performance and compliance with the agreement. It is understood that City or its designee will perform periodic fiscal and program monitoring reviews, including review of the Participant's independent financial audit. Monitoring and audit reviews will include a written report to the Participant documenting findings and concerns that will require a response to City. An acceptable response must be received by the City within THIRTY (30) days from the Participant's receipt of the monitoring report or audit review letter, or the Participant will be considered in default. Failure to take all actions necessary to resolve and close monitoring or audit findings within SIXTY (60) days from receipt of the monitoring report or audit review letter shall be considered a breach of contract for non-compliance. Such breach is a default of the terms provided for herein and is cause for termination of the Agreement by the City Manager. City Manager may then terminate this Agreement and/or initiate its other rights and remedies. Termination made by City Manager shall not be considered appealable. The Director shall have the sole discretion to extend the SIXTY (60) day period for reasons said Director may judge to be extenuating circumstances.

## **Section 12. COMPLIANCE WITH LAWS**

A. Participant, its contractors, and subcontractors shall comply with all applicable federal, state, and local laws including City ordinances, codes, regulations, and all other regulations of HUD and other federal agencies, including but not limited to: OMB Circulars A-87, A-110, A-122, and A-133 and Title 24 CFR Part 85, including but not limited to, Title 24 CFR 85.36; the procurement requirements of Title 24 CFR Sections 84.40-84.48; the regulations at Title 24 CFR Part 87, related to lobbying; the restrictions on participation by ineligible, debarred or suspended persons or entities as described in Executive Order 12549 and at Title 24 CFR Section 5.105(c); the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4201 et seq.), as applicable, and the implementing regulations at Title 49 CFR Part 24 (Relocation). OMB Circular Nos. A-87 and A-133 shall also apply to for-profit corporations. Any reference in this Agreement to an OMB Circular, standard, or publication of any governmental agency, or to the Act, the Code, or any statute, regulation, rule, ordinance, or law of any kind, shall be construed to include any amendments thereto and any successors thereto.

B. Participant understands and agrees that:

1. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an

employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

2. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in **Addendum A**, attached hereto and made a part hereof, that the person has not made, and will not make, any payment prohibited by subparagraph C.1. of this Section.
3. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a disclosure form, set forth in Addendum A, attached hereto and made a part hereof, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph C.1. of this Section if paid for with appropriated funds.

C. Disposition of any acquired property after the term of this Agreement, or any change in use of the property during the term of the Agreement is subject to government-wide regulations governing real property disposition, as set forth in Title 24 CFR Parts 84 and 85.

### **Section 13. LEAD-BASED PAINT HAZARDS**

Properties with residential components will be required to meet applicable lead-based paint abatement requirements, which include HUD regulations, "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance," contained in Title 24 CFR Part 35.

### **Section 14. 24 CFR PART 135 CONSTRUCTION PROJECTS**

For construction projects covered by Title 24 CFR Part 135, the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. Section 1701u) shall apply, which require that economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be given to low- and very low-income persons and to businesses that provide economic opportunities for these persons.

## **Section 15. HISTORIC PRESERVATION**

Participant will take into account the effect of the project on any district, site, building, structure, or object listed in or found by the Secretary of the Interior pursuant to 36 CFR Part 800, to be eligible for inclusion in the National Register of the U.S. Department of the Interior. Participant, and any contractor of Participant, certifies and assures the City that in the performance of this Agreement, it will make every effort to eliminate or minimize any adverse effect on an historic property.

## **Section 16. HATCH ACT**

Neither the EZ Program nor the funds provided thereby, nor the personnel employed thereby or otherwise covered by this Act shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code.

## **Section 17. INTEREST OF CERTAIN FEDERAL OFFICIALS**

No member of or delegate to the Congress of the United States, and no Resident commissioners, shall be entitled to any share or part of this Agreement between City and Participant or to any benefits arising there from.

## **Section 18. POLITICAL AND LOBBYING ACTIVITIES PROHIBITED**

A. None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office, or for publicity, lobbying, and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, or the City Council of the City of El Paso.

B. Employees of Participant connected with any activity which is financed in whole or in part by funds provided to Participant under this Agreement may not during the term of this Agreement:

1. Use their official position or influence to affect the outcome of an election or nomination;
2. Solicit contributions for political purposes; or
3. Take an active part in political management or in political campaigns.

C. Participant hereby agrees to sign the Certification Regarding Lobbying, attached hereto and made a part of this Agreement as **Addendum A**, and if necessary, the Disclosure Lobbying Activities, attached hereto and made a part of the Certification Regarding Lobbying as **Addendum A**, and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to City. Participant shall require the language of the Certification and disclosure be included in all subcontracts and that all sub-grantees shall certify and disclose accordingly.

## **Section 19. CONFLICT OF INTEREST**

A. Participant covenants that, during the Agreement period, neither the Participant and/or any of its officers, boards or committee-members, or employees will have or acquire any interest which conflicts in any manner or degree with the performance of the services to be performed under this Agreement. Participant agrees that none of its paid personnel shall be employees of City or have any contractual relationship with City unless such relationship is disclosed fully and in advance and the Director approves the same as not in conflict with this Agreement.

B. In the procurement of supplies, equipment, construction and services by Participant the conflict of interest provisions in Title 24 CFR Sections 85.36 and 84.42 and OMB Circular A-110 respectively, shall apply.

C. The conflict of interest provisions of paragraph A. above apply to any person who is an employee, agent consultant, officer, or elected official or appointed official of the City, or any designated public agencies, or sub recipients (Participant) which are receiving EZ grant funds.

D. Any violation of this Section, deliberate or careless, shall constitute a breach hereof.

## **Section 20. DISCRIMINATION PROHIBITED**

A. No person in the United States shall, on the grounds of race, creed, color, religion, national origin, (including immigration status where an alien holds proper work authorization) sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape, or form in employment or under projects or activities funded in whole or in part with funds made available to the Participant pursuant to this Agreement, as set forth in Title VI of the Civil Rights Act of 1964 (42 U.S.C. section 2000d) and implementing regulations at Title 24 CFR Part 1; Age Discrimination Act of 1975 (42 U.S.C. Section 6101-07) and implementing regulations at Title 24 CFR Part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and implementing regulations at Title 24 CFR Part 8.

B. City will require the selected contractors and subcontractors to comply with all the equal opportunity requirements in Title CFR Section 5.105; the requirements of Executive Order 11246 (Equal Opportunity) and the implementing regulations at Title 41 Chapter 60; and the requirements attached to this Agreement and incorporated by reference herein as **Attachment 6**.

C. Participant must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disable persons. Failure to do so in any manner which impairs the quality of the performance hereunder, or affects the administration of the funds provided hereunder, shall constitute breach of this Agreement.

## Section 21. INSURANCE AND RELATED MATTERS

A. THE CITY SHALL NOT BE SUBJECT TO ANY OBLIGATIONS OR LIABILITIES OF THE PARTICIPANT INCURRED IN THE PERFORMANCE OF THIS AGREEMENT. THE PARTICIPANT, AND/OR ITS INSURER, EXPRESSLY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, DEMANDS, LIABILITIES AND OBLIGATIONS OF ANY KIND AND NATURE, INCLUDING INJURY, DEATH, OR PROPERTY DAMAGE MADE UPON THE CITY, INCIDENT TO, OR ARISING OUT OF, OR IN CONNECTION WITH THE PARTICIPANT'S PERFORMANCE UNDER THIS AGREEMENT, INCURRED DUE TO PARTICIPANT'S NEGLIGENCE, ANY OF PARTICIPANT'S NEGLIGENT ACTS, OR ANY OMISSION TO ACT, ANY BREACH OF CONTRACT, OR ANY ACTIONS OF THE PARTICIPANT OUTSIDE THE SCOPE OF THIS AGREEMENT, INCLUDING ANY ACT OR OMISSION OR NEGLIGENCE BY THE PARTICIPANT'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, WITHOUT WAIVING ANY GOVERNMENT IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW. THIS INDEMNITY SHALL COVER ATTORNEY'S FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS, INCLUDING AWARDS AND SETTLEMENTS AND ANY INTEREST THEREON.

B. Participant agrees to maintain for the term of this Agreement, a liability insurance policy with a deductible of no more than ONE THOUSAND DOLLARS (\$1,000.00) in the minimum amounts of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) for each person and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for each single occurrence covering bodily injury or death and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for each single occurrence of damage to or destruction of property. Such insurance shall name City as an additional insured on the policy with regard to all suits, actions, demands, claims, and liabilities arising out of, occasioned by, or relating to this Agreement or the activities carried out hereunder. Participant's insurance shall also contain a specific provision that it may not be cancelled, non-renewed, or lapse without 30-days' prior written notice to City. Prior to the signing hereof, Participant agrees to provide City with a Certificate of Insurance reasonably acceptable to City. City reserves the right to periodically review the insurance required hereunder and to adjust the coverage amounts. City shall have no obligation to pay or perform under this Agreement until an acceptable Certificate of Liability Insurance and an Evidence of Property Insurance are delivered to the Director and no officer or employee shall have authority to waive this requirement.

C. Participant shall also provide property insurance for the property's full insurable value complete with extended coverage in compliance with Deed of Trust requirements. Deductible provided shall not exceed 2% of the value of the insurable interest or twenty thousand dollars, whichever amount is less.

D. The City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). Upon such request by the City, Participant shall

exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof. Participant remains responsible for procuring any other types of insurance not listed above, but required by law, necessary for performing its duties.

E. Notwithstanding any suspension or termination hereof, Participant shall not be relieved of any liability to City for damages or indemnification due to City by virtue of any breach of this Agreement by Participant or by virtue of this Section. City may withhold payments to Participant until such time as the exact amount of damages due to City from Participant is agreed upon or is otherwise determined.

## **Section 22. PARTICIPANT'S OWNERSHIP, ETC.**

Participant shall *immediately* notify City in writing in the event of any material change in Participant's ownership, organization, control, management, non-profit or tax status, or insurance status.

## **Section 23. INDEPENDENT CONTRACTOR**

City and Participant agree that Participant is an Independent Contractor, and that no term or provision hereof or act of Participant in the performance of this Agreement shall be construed as making Participant an agent of City. All officers and employees of Participant shall be solely responsible to Participant, and the City shall not have any authority, responsibility, or liability with respect thereto.

## **Section 24. ASSIGNMENT AND SUBCONTRACTING**

Participant may not assign or otherwise transfer this Agreement either as to obligations or benefits, except for routine and approved subcontracting.

## **Section 25. GENERAL PROVISIONS**

A. Participant hereby agrees to provide any and all documentation necessary to fulfill any and all grants, (Federal, State, or City) requirements pertaining hereto.

B. Participant represents that the information furnished to City, upon which City relied to make this loan, is correct and true.

C. Participant represents and warrants that the persons executing this Agreement and all instruments related hereto has the authority to commit the corporation to the obligations, financial and otherwise, pursuant to this Agreement.

D. Participant warrants that it is entitled to do business in the State of Texas as a non-profit corporation.

E. This Agreement is entered into in the City and County of El Paso, Texas, and shall be governed and construed under the laws of Texas. Venue shall be in El Paso County, Texas.

F. Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights and the rights granted hereunder are in addition to those available under law and equity.

G. All agreements, covenants, or provisions contained herein are severable, and in the event any of them shall be held to be invalid by any court of competent jurisdiction. This shall be interpreted as though such invalid agreement, covenant, or provision were not contained herein.

H. The captions of the various Sections of this Agreement are for convenience of reference only and shall not alter the terms and conditions of this Agreement.

I. All notices, communications, and reports under this Agreement shall be either hand delivered or mailed, postage prepaid, by United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

**CITY:** The City of El Paso  
Director, Economic Development  
2 Civic Center Plaza, 2<sup>nd</sup> Floor  
El Paso, Texas 79901-1196

**PARTICIPANT:**

J. The term of this Agreement starts on the execution date and will terminate three years from the completion date of the façade work, unless terminated on an earlier date by the City or Participant. Participant and the City agree that this Agreement may be terminated by mutual consent in writing or for cause with 30-day written notice and a reasonable opportunity to cure.

K. This Agreement reflects the final, complete, and exclusive understandings of the parties hereto, and may not be waived, altered, or modified except by written agreement of the parties

**EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.**

**PARTICIPANT:**

By: \_\_\_\_\_

\_\_\_\_\_

**CITY OF EL PASO:**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Marie A. Taylor  
Assistant City Attorney

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

Acknowledgment

STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as of \_\_\_\_\_, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's name (printed)

Notary's Commission Expires:

Acknowledgment

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO   )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **Joyce Wilson as City Manager of THE CITY OF EL PASO**, a home-rule municipal corporation, on behalf of said corporation

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's name (printed)

Notary's Commission Expires: