

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

DEPARTMENT: Economic & International Development Department
AGENDA DATE: CCA Consent July 26, 2016
CONTACT PERSON/PHONE: Cary S. Westin, Managing Director Economic and International Development Department- (915) 212-1614
DISTRICT(S) AFFECTED: Districts 3 & 8

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.

That the City Manager be authorized to sign the Fourth Amendment to the Economic Development Program Grant Agreement of the City of El Paso by and between the City of El Paso and the Medical Center of the Americas Foundation; a First Amendment to Subordinated Lien Agreement by and among the City of El Paso; Citizens Bank of Las Cruces; BCCCXII, LLC; COCRF SubCDE 30, LLC; MCA Tech Park, Inc.; Medical Center of the Americas Foundation, and MCAmericas Holding, Inc., and any other documents approved by the City Attorney necessary and proper to create a valid third lien interest against the Cardwell Collaborative securing the City's interests and pledging the net funds received by the Medical Center of the Americas Foundation from the New Market Tax Credit refinancing to pay debt service. [Economic & International Development, Cary S. Westin, Director, (915) 212-1614].

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 applicant is amending their loan structure in order to take advantage of New Market Tax Credits (NMTC). Under this new loan structure, approximately \$7,771,457 will be refinanced with NMTC. Refinancing under NMTC provides for terms that are more favorable for the Cardwell Collaborative. The "Leverage Loan", with the original \$7,771,457 amount, will have a fixed interest rate equal to 5.75% for a term of 84 months, with interest only payable for 84 months and any accrued interest as well as the principal amount due at maturity. The amendment also includes a "Standstill Period" that is needed in order to avoid recapture, loss, or disallowance of the New Market Tax Credits contemplated by the NMTC Financing. The parties agree to enter into a Deposit Account Control Agreement. The parties agree that funds in the Pledged account may be used only to (i) pay debt service on the Cardwell Collaborative mortgages, or (ii) pay other project costs associated with the Cardwell Collaborative if approved in writing by the City. Therefore, staff is recommending approval of this amendment as it improves the likelihood of success of this project. This proposed 4th amendment will amend and restate the Subordinated Lien Agreement necessary and proper to create a valid second lien interest against the Cardwell Collaborative to secure the City's interests.

PRIOR COUNCIL ACTION:

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

Yes, on February 07, 2012 El Paso's City Council approved a Chapter 380 Economic Development Program Agreement for the development of a biomedical cluster by the Medical Center of the Americas Foundation. On July 31, 2012, the City and the Applicant amended the Chapter 380 Economic Development Program Agreement to facilitate the construction of a Nursing School Facility. On November 12, 2014 the agreement was amended to allow for the waiving of building permit fees. On February 3, 2015 the agreement was amended to allow that in event of default by MCA, either under the loan agreement or the Grant Agreement, the City would divert the Impact Fund dollars to pay the bank. In order to secure the City's interest the bank agreed to allow the City to a subordinate lien position, second only to the bank.

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?

General Fund

BOARD/COMMISSION ACTION:

Enter appropriate comments or N/A.

N/A

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

DEPARTMENT HEAD: _____

CITY CLERK DEPT.
2016 JUL 20 AM 8:34

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign the Fourth Amendment to the Economic Development Program Grant Agreement of the City of El Paso by and between the City of El Paso and the Medical Center of the Americas Foundation; a First Amendment to Subordinated Lien Agreement by and among the City of El Paso; Citizens Bank of Las Cruces; BCCCXII, LLC; COCRF SubCDE 30, LLC; MCA Tech Park, Inc.; Medical Center of the Americas Foundation, and MCAmericas Holding, Inc., and any other documents approved by the City Attorney necessary and proper to create a valid third lien interest against the Cardwell Collaborative securing the City's interests and pledging the net funds received by the Medical Center of the Americas Foundation from the New Market Tax Credit refinancing to pay debt service.

APPROVED this ____ day of July, 2016.


CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

2016 JUL 20 AM 8:37
STATE OF TEXAS
COUNTY OF EL PASO

**FOURTH AMENDMENT TO THE ECONOMIC
DEVELOPMENT PROGRAM GRANT
AGREEMENT OF THE CITY OF EL PASO**
(Medical Center of the Americas-Impact Fund Project)

This Fourth Amendment (the "Fourth Amendment") to the Economic Development Program Grant Agreement dated February 7, 2012 (the "Grant Agreement"), as amended on July 31, 2012 (the "First Amendment"), and subsequently amended on November 12, 2014 (the "Second Amendment") and February 3, 2015 (the "Third Amendment") is made and entered into by and between the CITY OF EL PASO, a Texas home rule municipal corporation (the "City"), and the MEDICAL CENTER OF THE AMERICAS FOUNDATION, a Texas nonprofit corporation (the "Applicant"), pursuant to Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code, for the purposes and considerations stated below.

RECITALS:

WHEREAS, in order to facilitate the financing of the construction of the Cardwell Collaborative, the Lender previously requested the City amend the Grant Agreement to provide that any payments available to Applicant under the Grant Agreement ("Impact Funds") will be paid directly to the Lender to satisfy Borrower's debt if the Applicant defaults on its obligations under the Grant Agreement or if Borrower defaults on its loan payment obligations;

WHEREAS, the City amended the Grant Agreement and was provided with a second lien to protect the City's interests in the event a default under the Grant Agreement or loan occurs and it is necessary for the City to direct Impact Funds to satisfy the debt, as further described in the Subordinated Lien Agreement dated February 3, 2015 (the "Subordinated Lien Agreement");

WHEREAS, the Lender has approved the City holding a subordinated lien position to secure the Applicant's obligations under the Grant Agreement, as amended;

WHEREAS, the Lender has agreed to provide a loan to Investor as part of a New Markets Tax Credit financing (the "NMTC Financing"), as contemplated under Section 45D of the Internal Revenue Code of 1986 (as amended from time to time, the "Code"), with the benefit inuring to the Borrower;

WHEREAS, the NMTC Financing would require Lender to reallocate approximately \$7,771,457.00 of Lender's existing loan in the original principal amount of \$18,600,000.00 made by the Lender to the Borrower on February 6, 2015 in order for the Lender to provide the Leverage Loan, resulting in an aggregate loan from the Lender to the Borrower in the principal amount of \$10,828,543.00;

WHEREAS, the Leverage Loan will ultimately be used by the CDEs to make the CDE A Loans;

WHEREAS, the Applicant and MCAmericas Holdings, Inc. will guarantee the CDE A Loans to the same extent as they have agreed to guarantee the Construction Loan and Permanent Loan;

WHEREAS, the Applicant has agreed to amend the Grant Agreement to specify that Impact Funds will be directed to pay the CDE A Loans, in addition to the Construction Loan and Permanent Loan, in the event of default under either the Grant Agreement or any of the loans described herein; and

WHEREAS, the Applicant further agrees that in the event it becomes necessary for the City to assume the debt and pay the CDE A Loan, the Construction Loan or the Permanent Loan, it shall be an additional event of default under the Grant Agreement;

WHEREAS, the Permanent Loan, Leverage Loan and CDE A Loans are being structured such that Borrower will pay interest only on the CDE A Loans for a period of seven years from the date of the CDE A Loans, which coincides with the end of the New Markets Tax Credit compliance period; and

WHEREAS, at the end of the seven-year compliance period, the NMTC Financing may be unwound and the following would occur in connection therewith: (i) the Investor will assign its interest to the Applicant, (ii) CDE A Loans will be repaid and CDE B Loans will be assigned to the Applicant, (iii) CDE A Loan repayment proceeds will be used to satisfy the Leverage Loan, and (iv) CDE B Loans will remain a subordinate lien of the Applicant.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions:** Capitalized terms used in this Fourth Amendment and not otherwise defined herein shall have the same meaning to such terms in the Grant Agreement, as amended, or, if not defined in the Grant Agreement, as amended, the meaning specified below:

A. **“Borrower”:** MCA Tech Park, Inc., a Texas nonprofit corporation

B. **“CDEs”:** BCCCXII, LLC (“**BCCC**”)
c/o Chelsea Investment Corporation
5993 Avenida Encinas, Suite 101
Carlsbad, CA 92008-4459

COCRF SubCDE 30, LLC (“**COCRF**”)
c/o Capital One Community Renewal Fund, LLC
201 St. Charles Avenue, 29th Floor
New Orleans, LA 70170

- C. **“CDE A Loans”**: Collectively, the term loan from BCCC to Borrower in the original principal amount of \$6,082,010 at an interest rate equal to 4.421% and the term loan from COCRF to Borrower in the original principal amount of \$1,689,447 at an interest rate equal to 4.421%.
- D. **“CDE B Loans”**: Collectively, the term loan from BCCC to Borrower in the original principal amount of \$2,647,990.00 and the term loan from COCRF to Borrower in the original principal amount of \$810,553.00
- E. **“Collateral”**: All assets and property real, personal, movable or affixed comprising the building known as the Cardwell Collaborative located on the property commonly known as 5130 Gateway Boulevard East, El Paso, Texas 79905, and more fully described in the Exhibit “A” attached hereto and incorporated herein by reference, secured by a Deed of Trust, Security Agreement and Financing Statement dated as of February 3, 2015 in favor of the City.
- F. **“Construction Loan”**: Construction term loan from Lender to Borrower in the original principal amount of \$18,600,000.00 as reduced to an aggregate principal amount of \$10,828,543.00 at an interest rate equal to Wall Street Journal Rate + 1.00% floating daily with a floor of 4.25% and a ceiling of 20.00% for a term of twenty-seven (27) months (15 months construction + 12 months stabilization), interest only with principal balance to be converted to a Permanent Loan.
- G. **“Investor”**: COCRF Investor 62, LLC
201 St. Charles Avenue
29th Floor
New Orleans, LA 70170
- H. **“Lender”**: Citizens Bank of Las Cruces
505 S. Main Street
Las Cruces, NM 88001
- I. **“Leverage Loan”**: Term loan from Lender to Investor in the original principal amount of \$7,771,457.00 at a fixed interest rate equal to 5.75% for a term of eighty-four (84) months, with interest only payable for eighty-four (84) months and any accrued interest as well as the principal amount due at maturity.
- J. **“Permanent Loan”**: Term loan from Lender to Borrower in the original principal amount of \$10,828,543.00 at an interest rate fixed for seven (7) years with a 180 month maturity based upon a 300 month amortization (25 years).

Principal and interest payments are estimated to be \$66,716.12 per month, subject to proration for any partial months.

2. Section 9 of the Grant Agreement, as amended, is hereby further amended to replace Section 9.D.(3) in its entirety as follows:

“If Borrower (i) fails to make timely payments to Lender in connection with the Construction Loan or Permanent Loan (for any reason other than an Event of Nonappropriation), (ii) fails to make timely payments to the CDEs in connection with the CDE A Loans (for any reason other than an Event of Nonappropriation), or (iii) if the Applicant otherwise defaults on the Grant Agreement, and as a result of the events in (i), (ii) or (iii), the City exercises its rights under the Subordinated Lien Agreement, as amended.”


3. Upon the occurrence of a Special Event of Default under Section 9.D.(3) of the Grant Agreement or upon termination of the Grant Agreement by the City, all payments of Impact Funds to Applicant shall cease. The City will cure any of Borrower's payment defaults under the Construction Loan, Permanent Loan and CDE A Loans and will continue to make payment to the Lender or CDEs, as applicable, as required by the Construction Loan, Permanent Loan or CDE A Loans until all sums owing to Lender and the CDEs have been paid in full.
4. Except as expressly modified herein, all other terms and conditions of the Grant Agreement effective February 7, 2012, as amended by the First Amendment dated July 31, 2012, the Second Amendment dated November 12, 2014, and the Third Amendment dated February 3, 2015 are acknowledged to be in full force and effect and shall remain as written.

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment as of _____, 2016.

CITY OF EL PASO, TEXAS

Tomás González
City Manager

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Cary Westin, Director
Economic and International Development

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on the this ____ day of _____, 2016, by Tomás González, as City Manager of the City of El Paso, Texas (CITY).

Notary Public, State of Texas

My Commission Expires

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

CITY CLERK DEPT.
2016 JUL 20 AM 8:37

CITY CLERK DEPT.
2016 JUL 20 AM 8:37

Applicant:

**MEDICAL CENTER
OF THE AMERICAS FOUNDATION,**
a Texas nonprofit corporation

Name: Emma W. Schwartz
Title: President

Name: Edward Escudero
Title: Chairman of the Board

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF EI PASO

This instrument was acknowledged before me on this ____ day of _____, 2016, by **Emma E. Schwartz**, as **President of Medical Center of the Americas Foundation (APPLICANT)**.

Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF EI PASO

This instrument was acknowledged before me on the ____ day of _____, 2016, by **Edward Escudero**, as **Chairman of the Board of the Medical Center of the Americas Foundation. (APPLICANT)**

Notary Public, State of Texas

My Commission Expires:

Exhibit A

Lot 1A, Block 1, COLFAX MCA ADDITION REPLAT "A", an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof recorded in Clerk's File No. 20140017563, Real Property Records of El Paso County, Texas

STATE OF TEXAS)

2016 JUL 20 AM 8: 37

COUNTY OF EL PASO)

FIRST AMENDMENT TO SUBORDINATED LIEN AGREEMENT

This First Amendment to Subordinated Lien Agreement (this “**Amendment**”) is made and entered into as of _____ [], 2016, by and among the City of El Paso, a Texas home rule municipal corporation (the “**City**”), Citizens Bank of Las Cruces, a New Mexico banking corporation (“**Bank Lender**”), BCCCXII, LLC, a California limited liability company (“**BCCC CDE**”), COCRF SubCDE 30, LLC, a Delaware limited liability company (“**COCRF CDE**”), MCA Tech Park, Inc., a Texas nonprofit corporation (the “**Borrower**”), Medical Center of the Americas Foundation, a Texas nonprofit corporation (“**Guarantor 1**”), and MCAmericas Holdings, Inc., a Texas nonprofit corporation (“**Guarantor 2**”, collectively with Guarantor 1, the “**Guarantors**”). BCCC CDE and COCRF CDE are referred to in this Amendment collectively as the “**CDE Lenders**”.

RECITALS

WHEREAS, the City, Bank Lender, Borrower, Guarantor 1 and Guarantor 2 entered into that certain Subordinated Lien Agreement as approved on February 3, 2015 (the “**Subordinated Lien Agreement**”) and recorded at Document #20160042549 in the Official Public Records of Real Property in El Paso County, Texas;

WHEREAS, the Subordinated Lien Agreement provides that certain funds (“**Impact Funds**”) available to Guarantor 1 under an Economic Development Program Grant Agreement between the City and Guarantor 1 dated February 7, 2012, as amended (the “**Grant Agreement**”), will be used to retire debt in the event that Guarantor 1 defaults in its obligations to the City of El Paso under the Grant Agreement or if Borrower defaults in its payments to Bank Lender under the Construction Loan or the Permanent Loan (each as defined in the Subordinated Lien Agreement);

WHEREAS, on February 6, 2015, Bank Lender and Borrower entered into a construction Loan Agreement, pursuant to which the Bank Lender agreed to make a loan to Borrower in the principal amount of \$18,600,000 (the “**Existing Construction Loan**”) for the construction of certain permanent improvements on real property located at 5130 Gateway Boulevard East, El Paso, Texas 79905, as more fully described in Exhibit “A” attached hereto and incorporated herein (the “**Project**”);

WHEREAS, Bank Lender has agreed to provide a loan to COCRF Investor 62, LLC, a Delaware limited liability company (“**Investor**”), as part of a New Markets Tax Credit financing (the “**NMTC Financing**”), in accordance with Section 45D of the Internal Revenue Code of

1986 (as amended from time to time, the “Code”), with the benefit inuring to the Borrower and the Project;

WHEREAS, the NMTC Financing requires Bank Lender to reallocate approximately \$7,771,457.00 of the Existing Construction Loan in order for Bank Lender to provide a loan to the Investor in the original principal amount of \$7,771,457.00 (the “Leverage Loan”), resulting in an aggregate loan from Bank Lender to the Borrower in the principal amount of \$10,828,543.00;

WHEREAS, Borrower will enter into an Amended and Restated Loan Agreement and Amended and Restated Promissory Note to evidence the reduction in principal of the Existing Construction Loan, causing the principal balance of each of the Construction Loan and Permanent Loan (as each is defined in the Subordinated Lien Agreement) to be reduced to \$10,828,543.00 (as each loan is respectively amended, the “Amended Construction Loan” and the “Amended Permanent Loan”);

WHEREAS, the Investor will use the proceeds of the Leverage Loan to partially fund the Investor’s acquisition or refinancing of an equity interest in each of BCCC CDE and COCRF CDE, and the acquisition of each equity interest is intended to constitute a “qualified equity investment” as such term is defined in Section 45D of the Code;

WHEREAS, the proceeds of the Leverage Loan will ultimately be used by BCCC CDE and COCRF CDE to make the following loans to Borrower: (i) term loan from BCCC CDE to Borrower in the original principal amount of \$6,082,010 (“BCCC CDE A Loan”), and (ii) term loan from COCRF CDE to Borrower in the original principal amount of \$1,689,447 (“COCRF CDE A Loan”, collectively with the BCCC CDE A Loan, the “CDE A Loans”);

WHEREAS, to facilitate the NMTC Financing, Bank Lender and CDE Lenders have requested this Amendment to the Subordinated Lien Agreement and a further amendment to the Grant Agreement, and the City, Borrower, Guarantor 1, and Guarantor 2 are willing to enter this Amendment in return for the consideration and terms contained herein.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree to this Amendment as follows:

1. **Definitions**. All capitalized terms used in this Amendment shall have the meaning given herein and, if not otherwise defined herein, shall have the meaning given to such terms in the Subordinated Lien Agreement.

2. **Subordination of Lien**. Section III of the Subordinated Lien Agreement is replaced in its entirety with the following:

“By signing this Amendment, the parties attest to the fact that a deed of trust lien has been created in favor of the City to secure the terms of the Subordinated Lien Agreement and the Grant Agreement, as evidenced by that certain Deed of Trust, Security Agreement and Financing Statement dated as of February 3, 2015 by Borrower in favor the City and recorded at Document #20150024697 in the Official Public Records of Real Property in El Paso County, Texas. The lien in favor of the City shall be subordinate to (i) the lien created to secure the Amended Construction Loan, (ii) the lien created to secure the Amended Permanent Loan, and (iii) the lien created to secure the CDE A Loans, and (iv) other matters of record. Upon execution of this Amendment, it will be recorded in the Official Public Records of Real Property in El Paso County, Texas.

3. **Default of Loan Payments.** Section IV of the Subordinated Lien Agreement is replaced in its entirety with the following:

“Bank Lender and CDE Lenders shall each provide the City with a duplicate notice of default when one is sent to the Borrower and Guarantor 1 and Guarantor 2 in connection with the Amended Construction Loan, Amended Permanent Loan, or CDE A Loans, as applicable. In the event Borrower fails to cure a default, Bank Lender and/or CDE Lenders, as applicable, shall notify the City and the City shall be afforded one hundred twenty (120) days from the date the written notice is received by the City to cure the default; if the City does not cure the applicable default during such cure period, Bank Lender and/or CDE Lender, as applicable, may proceed to enforce any available remedies, including foreclosure, subject to the terms and conditions of the Subordination and Intercreditor Agreement dated as of the date hereof between the Bank Lender, CDE Lenders, Borrower, Guarantor 1 and Guarantor 2. Each of Bank Lender and the CDE Lenders agrees that it will accept payments directly from the City. The City agrees that it will take no action to foreclose its subordinate lien for a period of seven (7) years (the “**Standstill Period**”) from the date that the CDE A Loans are made in order to avoid a recapture, loss or disallowance of new markets tax credits (“**NMTCs**”) contemplated by the NMTC Financing. The intent of the parties being that the City be allowed to assume the role of the Borrower and satisfy the indebtedness in the event of default by Borrower while avoiding a recapture, loss or disallowance of the NMTCs. The City agrees with Bank Lender and CDE Lenders that in the event of an uncured default by Borrower under the Amended Construction Loan, Amended Permanent Loan, or CDE A Loans, that the City will redirect Impact Funds as necessary to pay monetary obligations of Borrower under the Amended Construction Loan, Amended Permanent Loan or CDE A Loans.”

4. **Default Under Grant Agreement.** Section VI of the Subordinated Lien Agreement is replaced in its entirety with the following:

“In the event that Guarantor 1 or any of its affiliates defaults in its obligations to the City under the Grant Agreement and the City terminates the Grant Agreement, the City will redirect Impact Funds directly to Bank Lender and CDE Lenders in return for Bank Lender’s and CDE Lenders’ agreement to allow the City to assume the Borrower’s obligations under the Amended

10774404

1st Amendment to Subordinated Lien Agreement | 15-1007-1310 | 554250 | TC

Construction Loan, Amended Permanent Loan and CDE A Loans or to foreclose its deed of trust lien upon expiration of the Standstill Period. In the event the City, following the expiration of the Standstill Period, elects to pay off the outstanding balance due on the Amended Permanent Loan and the CDE A Loans, then the City may request an assignment of the first and second lien positions securing the Amended Permanent Loan and the CDE A Loans.”

5. **City’s Exercise of Rights and Remedies.** Section VIII.2. of the Subordinated Lien Agreement is replaced in its entirety with the following:

“This Agreement, as amended, shall not prevent the City from exercising its rights under the Deed of Trust securing same, subject to the Standstill Period and provided that the exercise of any such remedies will be subordinated and made inferior to the rights, remedies and liens in favor of Bank Lender and CDE Lenders securing the loans hereinabove described.”

6. **Incorporation.** Any reference in the Subordinated Lien Agreement to (i) “parties” shall hereinafter include BCCC CDE and COCRF CDE, and (ii) “Lender” shall, where not explicitly addressed by this Amendment and when the context so requires or is otherwise appropriate, include BCCC CDE and COCRF CDE.

7. **Effect of Amendment.** Except as expressly modified herein, all other terms and conditions of the Subordinated Lien Agreement, are acknowledged to be in full force and effect and shall remain as written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Each party has duly executed this First Amendment to Subordinated Lien Agreement as of the date first written above.

CITY:

CITY OF EL PASO, TEXAS

Tomás González
City Manager

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Cary Westin, Director
Economic and International Development

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on this ____ day of _____, 2016, by Tomás González, as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires

CITY CLERK DEPT.
2016 JUL 20 AM 8:37

Each party has duly executed this First Amendment to Subordinated Lien Agreement as of the date first written above.

BANK LENDER:

CITIZENS BANK OF LAS CRUCES,
a New Mexico banking corporation

By: _____
Name: Nate Olsen
Title: Vice President

ACKNOWLEDGMENT

STATE OF NEW MEXICO

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 2016, by Nate Olsen, as Vice President of Citizens Bank of Las Cruces.

Notary Public, State of New Mexico

My Commission Expires

CITY CLERK DEPT.
2016 JUL 20 AM 8:37

Each party has duly executed this First Amendment to Subordinated Lien Agreement as of the date first written above.

BCCC CDE:

BCCCXII, LLC,
a California limited liability company

By: Border Communities Capital
Company, LLC, a California limited
liability company, its managing
member

By: Chelsea Investment
Corporation, a California
corporation, its manager

By: _____
Name: Charles A. Schmid
Title: Vice President

ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 2016,
by Charles A. Schmid, as Vice President of Chelsea Investment Corporation, manager of Border
Communities Capital, LLC, the managing member of BCCCXII, LLC.

Notary Public, State of _____

My Commission Expires

NOTARY CLERK DEPT.
2016 JUL 20 AM 8:38

Each party has duly executed this First Amendment to Subordinated Lien Agreement as of the date first written above.

COCRF CDE:

COCRF SUBCDE 30, LLC,
a Delaware limited liability company

By: Capital One Community Renewal
Fund, LLC, a Delaware limited
liability company, its non-member
manager

By: _____
Name: John Chamberlain
Title: Assistant Manager

ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 2016, by John Chamberlain, as Assistant Manager of Capital One Community Renewal Fund, LLC, the non-member manager of COCRF SubCDE 30, LLC.

Notary Public, State of _____

My Commission Expires

Each party has duly executed this First Amendment to Subordinated Lien Agreement as of the date first written above.

BORROWER:

MCA TECH PARK, INC.,
a Texas nonprofit corporation

By: _____
Name: Emma W. Schwartz
Title: President

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on this ____ day of _____, 2016, by Emma W. Schwartz, as President of MCA Tech Park, Inc.

Notary Public, State of Texas

My Commission Expires

Each party has duly executed this First Amendment to Subordinated Lien Agreement as of the date first written above.

GUARANTOR 1:

**MEDICAL CENTER OF THE
AMERICAS FOUNDATION,**
a Texas nonprofit corporation

By: _____
Name: Emma W. Schwartz
Title: President

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on this ____ day of _____, 2016,
by Emma W. Schwartz, as President of Medical Center of the Americas Foundation.

Notary Public, State of Texas

My Commission Expires

Each party has duly executed this First Amendment to Subordinated Lien Agreement as of the date first written above.

GUARANTOR 2:

MCAMERICAS HOLDINGS, INC.,
a Texas nonprofit corporation

By: _____
Name: Emma W. Schwartz
Title: President

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on this ____ day of _____, 2016, by Emma W. Schwartz, as President of MCAmericas Holdings, Inc.

Notary Public, State of Texas

My Commission Expires

Exhibit A

Lot 1A, Block 1, COLFAX MCA ADDITION REPLAT "A", an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof recorded in Clerk's File No. 20140017563, Real Property Records of El Paso County, Texas

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

ACCOUNT PLEDGE AGREEMENT

This account pledge agreement (“Agreement”) is made and entered into by and between the City of El Paso, a Texas home rule municipal corporation (the “City”), and Medical Center of the Americas Foundation, a Texas nonprofit corporation (“MCA”).

RECITALS

WHEREAS, in order to facilitate the financing of the construction of the Cardwell Collaborative facility (“Cardwell Collaborative”), the City, MCA and others have executed that certain Fourth Amendment to the Economic Development Program Grant Agreement of the City of El Paso (Medical Center of the Americas--Impact Fund Project) (“Fourth Amendment”) and that certain First Amendment to Subordinated Lien Agreement between the City, MCA, affiliates of MCA and the lenders referenced therein (“First Amendment”) (The Economic Development Program Grant Agreement of the City of El Paso, together with all amendments thereto, is referred to herein as the “Program Grant Agreement”, and the Subordinated Lien Agreement, together with all amendments thereto, is referred to as the “Subordinated Lien Agreement”); and

WHEREAS, as a condition precedent to the obligations of the City to execute the Fourth Amendment and the First Amendment, the City is requiring that certain net funds received by MCA out of the New Market Tax Credit refinancing of the loans on the Cardwell Collaborative be placed in an account and pledged to the City to further secure MCA’s obligations to the City under the Program Grant Agreement and Subordinated Lien Agreement; and

WHEREAS, MCA is willing to deposit such funds in an account at WestStar Bank and pledge such account to the City, with the understanding that funds in the pledged account will only be used to pay debt service on the Cardwell Collaborative.

NOW, THEREFORE, the parties agree as follows:

1. **Pledge of Funds.** MCA agrees to deposit the full reimbursement received by MCA (“Pledged Funds”), but in no event less than \$2,300,000, into a demand deposit account (“Pledged Account”) at WestStar Bank (“Bank”) and hereby pledges such funds to the City to secure MCAs obligations to the City under the Program Grant Agreement and Subordinated Lien Agreement. The parties agree that funds in the Pledged Account may be used only to pay debt service on the Cardwell Collaborative mortgages.

2. **Deposit Account Control Agreement.** The parties agree to enter into a Deposit Account Control Agreement in substantially the form of Exhibit A attached hereto by and between MCA, City and Bank in order to establish the controls to be imposed on the Pledged Account and otherwise implement the agreements set forth herein.

3. **Miscellaneous.**

(a) **Notices.** All notices required or permitted hereunder shall be in writing and shall be served at the following addresses:

If to City

City of El Paso
Director of Economic and International Development
P.O. Box 1890
El Paso, TX 79950-1890
Attn: Col (Ret) Cary S. Westin
Email: WestinCS@elpasotexas.gov

With a copy to:

City Attorney's Office
300 N. Campbell
El Paso, TX 79901
Attn: Sylvia Borunda Firth
Telefax: (915) 212-0035
Email: firthsb@elpasotexas.gov

If to MCA:

Medical Center of the Americas Foundation
Cardwell Collaborative
5130 Gateway Blvd. East, Suite 110
El Paso, TX 79905
Attn: Carlos Ortega
Telefax: (915)225-2477
Email: carlos@mcamericas.org
With a copy to:

ScottHulse, PC
201 E. Main Drive
1100 Chase Tower
El Paso, Texas 79901
Attn: W. David Bernard
Telefax: (915)546-8333
Email: dber@scotthulse.com

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered upon deposit, postage prepaid in the U.S. Mail, (b) sent by overnight delivery using a nationally recognized overnight courier, in which case it shall be deemed delivered one (1) business day after deposit with such courier, (c) sent by telefax or e-mail transmission, in which case notice shall be deemed delivered upon transmission of such notice,

provided, however that any such transmission delivered on a week end or holiday or after 5:00 p.m. in the locality of the recipient shall be deemed delivered on the following business day, and provided further that a copy of any telefax or email transmission shall also be confirmed by certified mail or (d) sent by personal delivery. The above addresses may be changed by written notice to the other party, provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

(b) **Entire Agreement.** This Agreement and the Deposit Account Control Agreement, and the instruments and agreements referred to herein and therein constitute the entire agreement of the parties with respect to the subject matter hereof, and supersede any prior agreements, understandings or representations among the parties, written or oral, to the extent that they relate to the subject matter hereof.

(c) **Amendments; Waivers.** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the party to be bound. The parties waive the right to orally amend the provisions of this Agreement. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

(d) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective successors and assigns. No party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party.

(e) **Further Assurances.** MCA shall cooperate, shall take such further action and shall execute and deliver such further documents as may be reasonably requested by City in order to carry out the provisions and purposes of this Agreement.

(f) **Applicable Law.** This Agreement and all amendments thereof shall be governed by and construed in accordance with the law of the State of Texas applicable to contracts made and to be performed therein.

(g) **No Third-Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

Each party has duly executed this Agreement as of the ___ day of _____, 2016.

CITY OF EL PASO, TEXAS

Tomás González
City Manager

APPROVED AS TO FORM:



 Sylvia Borunda Firth
City Attorney

APPROVED AS TO CONTENT:

Cary Westin, Director
Economic and International Development

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on the this _____ day of _____, 2016, by **Tomás González, as City Manager of the City of El Paso, Texas (CITY).**

Notary Public, State of Texas

My Commission Expires

(Signatures continued on next page)

MCA:

**MEDICAL CENTER
OF THE AMERICAS FOUNDATION,
a Texas nonprofit corporation**

Name: Emma W. Schwartz
Title: President

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF EI PASO

This instrument was acknowledged before me on this ____ day of _____, 2016, by **Emma E. Schwartz, as President of Medical Center of the Americas Foundation (MCA).**

Notary Public, State of Texas

My Commission Expires:

List of Schedules and Exhibits:

Exhibit A – Form of Deposit Account Control Agreement

EXHIBIT A

FORM OF DEPOSIT ACCOUNT CONTROL AGREEMENT

DEPOSIT ACCOUNT CONTROL AGREEMENT

This Deposit Account Control Agreement (this "Agreement") is entered into by and among the City of El Paso, a Texas home rule municipal corporation ("City"), Medical Center of the Americas Foundation, a Texas nonprofit corporation ("MCA"), and WestStar Bank, a Texas banking association ("Bank"), as of _____, 2016.

Whereas, Bank has established a deposit account in the name of MCA as set forth more fully on Exhibit A hereto (and together with any substitute, replacement, or renumbering of the account to protect the interests of City, the "Account").

Whereas, MCA and City are parties to that certain Account Pledge Agreement dated as of _____, 2016 (the "Pledge Agreement"); whereby among other things, MCA was required to establish a segregated deposit account which shall be pledged to City for the exclusive purpose of securing performance of MCA's obligations described in the Pledge Agreement;

Whereas, pursuant to the terms of the Pledge Agreement, MCA desires to grant to City a security interest in and lien upon the Account, any cash balances from time to time credited to the Account, any securities or instruments contained therein, and any and all proceeds of any thereof, whether now or hereafter existing or arising (collectively, the "Account Collateral"); and

Whereas, City and MCA have requested that Bank enter into this Agreement with them to perfect the security interest of City in the Account and the Account Collateral; and Bank is willing to do so upon the terms contained in this Agreement.

Now, Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- The Account.** Bank hereby represents and warrants to City and MCA that: (a) the Account has been established in the name of MCA as recited above, and (b) except for the claims and interest of City and MCA in the Account (subject to any claim in favor of Bank for bank fees related to the maintenance of such Account), Bank does not know of any other claim to nor interest in the Account. All parties agree that the Account is a "deposit account" within the meaning of §9-102(a)(29) of the Uniform Commercial Code as applied in the State of Texas (as amended from time to time, the "Code").
- Acknowledgement of Lien.** Bank hereby acknowledges the security interest in the Account granted to City by MCA.
- Control.** The parties agree that this Agreement shall constitute an authenticated record for purposes of §9-104 of the Code and that City shall have exclusive "control" of the Account, for all purposes and as described in §9-104(2) of the Code. Bank will comply with instructions originated by City concerning the Account, including without limitation, instructions directing the disposition of Account Collateral without further consent by MCA. Such instructions may include the giving of stop payment orders for any Items (as such term is defined in the Code) presented to the Account for payment. Bank shall be entitled to rely upon any instruction from the City that it reasonably believes to be valid.

4. **Representations and Warranties of MCA.** MCA hereby represents and warrants to the parties that: (i) it holds ownership in the Account Collateral, free and clear of any liens or security interests other than that granted to City; (ii) it has full authority to enter into this Agreement, and all necessary action has been taken and all necessary consents have been obtained in order for it to both enter into this Agreement and grant such security interest as contemplated thereby; (iv) it shall neither grant, nor permit to exist, any security interest in the Account or Account Collateral other than that granted to City pursuant to this Agreement.

5. **Statements, Confirmations and Notices of Adverse Claims.** On or about Sept. 1, 2016 and thereafter on a quarterly basis, MCA will send copies of all statements and confirmations concerning the Account to City at the address set forth in Section 14 of this Agreement. Upon written request from City, Bank shall provide a duplicate copy of the most recent statements concerning the Account. Upon receipt of written notice of any lien, encumbrance or adverse claim against the Account or any Account Collateral, if not prohibited by law, Bank will make reasonable efforts to promptly notify City and MCA thereof. Bank's liability for failing to provide a statement of account to City will not exceed Bank's cost of providing such statement of account.

6. **Limited Responsibility.** Bank shall not be liable in connection with the performance or non-performance of its duties hereunder, except for its own gross negligence or willful misconduct. In the event Bank breaches the standard of care set forth herein, MCA and City expressly agree that Bank's liability shall be limited to actual damages directly caused by such breach and in no event shall Bank be liable for any incidental, indirect, punitive or consequential damages or attorneys' fees. Bank shall have no responsibility or liability to MCA for complying with instructions concerning the Account originated by City even if following such instructions results in Bank dishonoring Items presented for payment, and shall have no responsibility to investigate the appropriateness of any such instructions or the existence or enforceability of MCA's obligations to City, even if MCA notifies Bank that City is not legally entitled to originate any such instruction unless Bank has been served with an injunction, restraining order or other legal process issued by a court of competent jurisdiction (a "Court Order") enjoining it from complying and has had a reasonable opportunity to act on such Court Order. Bank will have no fiduciary duties under this Agreement to any other party. This Agreement does not create any obligation or duty of Bank other than those expressly set forth herein.

7. **Indemnification of Bank.** To the maximum extent allowable under Texas Law, MCA hereby agrees to indemnify and hold harmless Bank, its directors, officers, agents, employees, successors and assigns against any and all losses, claims, causes of action, liabilities, lawsuits, demands and damages, including without limitation, any and all court costs and reasonable attorney's fees, in any way related to or arising out of or in connection with this Agreement or any action taken or not taken pursuant hereto, except to the extent caused by Bank's gross negligence or willful misconduct.

8. **Deposit Account Agreement.** In the event of a conflict between this Agreement, the deposit account agreement governing the operation and maintenance of the Account, any agreements governing cash management or similar services provided by Bank to MCA, or any other agreement between Bank and MCA affecting the Account (each a "Deposit Account Agreement"), the terms of this Agreement will prevail. However, this Agreement will not interfere, negatively affect, nor otherwise obstruct or prevent Bank from raising any claim or defense against MCA available to it under any Deposit Account Agreement, which shall remain in full force and effect, or create any third party beneficiary rights under any Deposit Account

Agreement in favor of City. City and MCA agree to instruct Bank to set up an automatic debit to the Pledged Account for the purpose of paying debt service on the Cardwell Collaborative. Additionally, City agrees to instruct Bank to release to City and/or MCA amounts in the Pledged Account to pay other project costs approved in writing by the City, in its sole discretion, related to the Cardwell Collaborative project.

9. **Termination.** Unless earlier terminated pursuant to this Section, this Agreement shall continue in effect until the earlier of: (1) notification by City to Bank in writing that this Agreement, or its security interest in the Account, is terminated or, (2) at such time as all funds in the Pledged Account have been expended for the purposes expressly authorized herein. Upon receipt of such notice, the obligations of Bank to City under this Agreement shall terminate and City shall have no further right to originate instructions concerning the Account. This Agreement may be terminated unilaterally by Bank for any reason, upon thirty (30) days prior written notice to all parties. Notwithstanding anything herein to the contrary, Bank may terminate this Agreement immediately if it becomes aware of fraud or criminal activity in connection with the Account or this Agreement. If (i) Bank issues a notice of termination of this Agreement; or (ii) terminates this Agreement, then MCA shall immediately and without further demand by City cause any and all amounts held in the Account to be withdrawn from the Account and deposited into another deposit account at a federally-insured bank as directed by City. The obligations of MCA to Bank pursuant to Sections 6 and 7 shall survive the termination of this Agreement.

10. **Complete Agreement.** This Agreement and the instructions and notices required or permitted to be executed and delivered hereunder set forth the entire agreement of the parties with respect to the subject matter hereof, and subject to Section 8 above supersede any prior agreement and contemporaneous oral agreements of the parties concerning its subject matter.

11. **Amendments.** No amendment, modification or waiver of any rights or obligations hereunder shall be binding on any party hereto unless such waiver is in writing and signed by all of the parties hereto.

12. **Severability.** If any term or provision set forth in this Agreement shall be invalid or unenforceable, then such term or provision shall be severed, and replaced with a provision mutually acceptable to the parties which most closely approximates the original intent and economic effect of the parties hereto in adopting the former provision.

13. **Successors.** The terms of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

14. **Notices.** All notices shall be delivered to the parties as follows:

If to City

City of El Paso
Director of Economic and International Development
P.O. Box 1890
El Paso, TX 79950-1890
Attn: Col (Ret) Cary S. Westin
Email: WestinCS@elpasotexas.gov

With a copy to:

City Attorney's Office
300 N. Campbell
El Paso, TX 79901
Attn: Sylvia Borunda Firth
Telefax: (915) 212-0035
Email: firthsb@elpasotexas.gov

If to MCA:

Medical Center of the Americas Foundation
Cardwell Collaborative
5130 Gateway Blvd. East, Suite 110
El Paso, TX 79905
Attn: Carlos Ortega
Telefax: (915) 225-2477
Email: carlos@mcamericas.org
With a copy to:

ScottHulse, PC
201 E. Main Drive
1100 Chase Tower
El Paso, Texas 79901
Attn: W. David Bernard
Telefax: (915)546-8333
Email: dber@scotthulse.com

If to Bank:

WestStar Bank
500 N. Mesa Street
El Paso, Texas 79901
Attn: Burt Blacksher
Telefax: (915) 532-4932
Email: bblacksher@weststarbank.com

Except as otherwise expressly provided herein, any notice, order, instruction, request, or other communication required or permitted to be given hereunder shall be in writing and deemed to have been properly given when delivered in person, or when sent by facsimile, PDF or other electronic means and electronic confirmation of error free receipt is received or upon receipt of notice sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed, as set out in this Section 14. Any party may change its address for notice in the manner set forth above.

15. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

16. **Governing Law and Waiver of Jury Trial.** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Texas. To the extent permitted by applicable law, each party waives all rights to trial by jury in any action, claim or proceeding (including any counterclaim) of any type arising out of or directly or indirectly relating to this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed or caused this Deposit Account Control Agreement to be executed by their respective officers duly authorized, as of the day first written above.

MCA:

MEDICAL CENTER OF THE AMERICAS FOUNDATION,
a Texas nonprofit corporation

By: _____
Name: Emma E. Schwartz
Title: President

BANK:

WESTSTAR BANK,
a Texas banking association

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF EI PASO

This instrument was acknowledged before me on this ____ day of _____, 2016, by **Emma E. Schwartz, as President of Medical Center of the Americas Foundation (APPLICANT).**

Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF EI PASO

This instrument was acknowledged before me on this ____ day of _____, 2016, by _____, as _____ of **WestStar Bank, a Texas banking association.**

Notary Public, State of Texas

My Commission Expires:

CITY:

CITY OF EL PASO, TEXAS

Tomás González
City Manager

APPROVED AS TO FORM:



 Sylvia Borunda Firth
City Attorney

APPROVED AS TO CONTENT:

Cary S. Westin, Director
Economic and International Development

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on the this ____ day of _____, 2016,
by **Tomás González**, as **City Manager** of the **City of El Paso, Texas (CITY)**.

Notary Public, State of Texas

My Commission Expires

EXHIBIT A
ACCOUNT INFORMATION



Economic and International Development Department

MCA Chapter 380 Agreement 4th Amendment

Strategic Goal: 1. Create an Environment Conducive to Strong,
Sustainable Economic Development
1.1 Stabilize and Expand El Paso's Tax Base

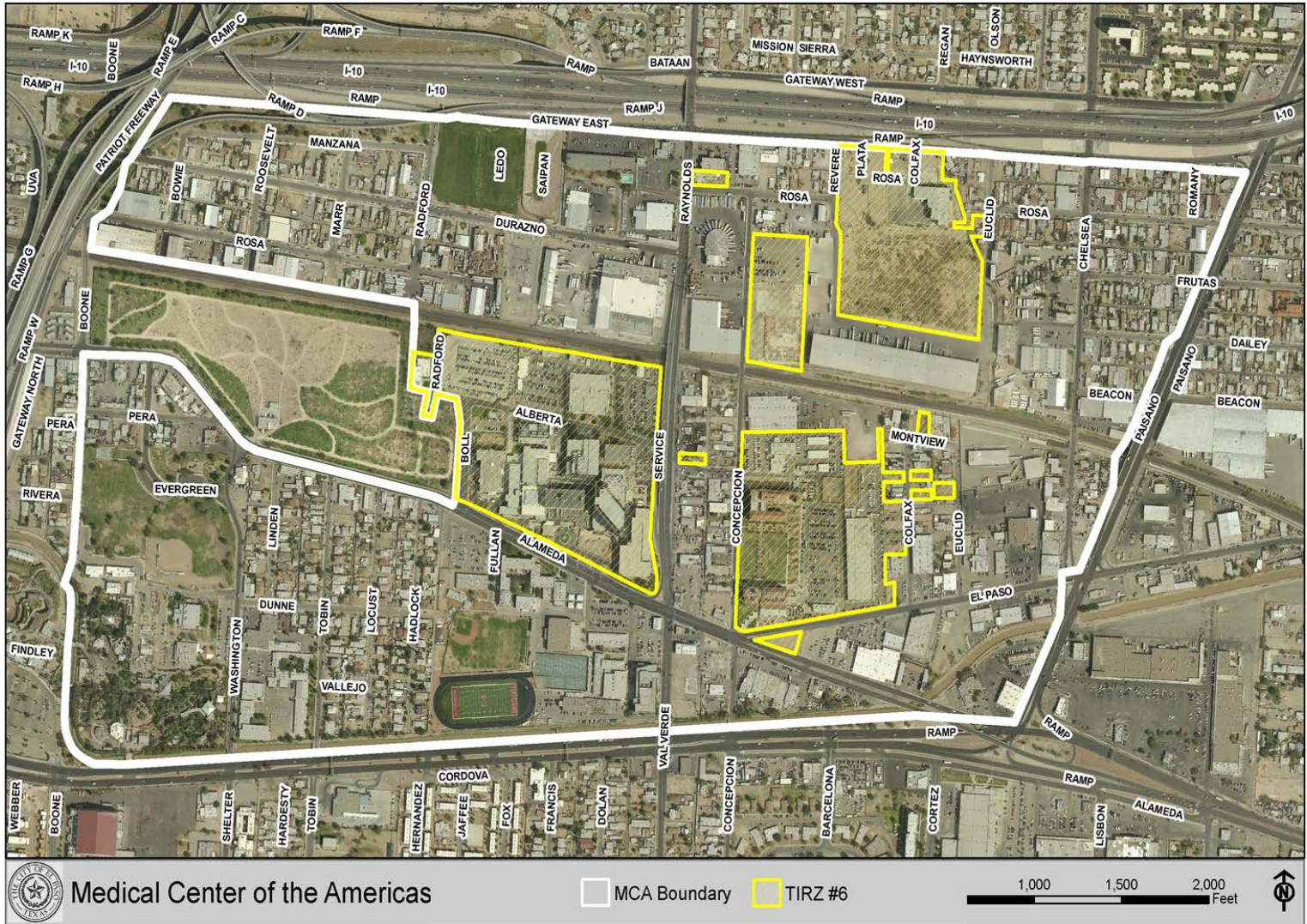


Amendments

- **February 7, 2012:** The City of El Paso entered into an Economic Development Program Grant Agreement with Medical Center of the Americas Foundation
- **July 31, 2012:** First amendment to allow for the construction of a Nursing School Facility
- **November 12, 2014:** Second amendment approved allowing the waiving of building permit fees, in the construction of the Cardwell Collaborative Building
- **February 3, 2015:** Third amendment approved that in the event of default by MCA, either under the loan agreement or the Grant Agreement, the City would divert the Impact Fund dollars to pay the bank. In order to secure the City's interest the bank agreed to allow the City to a subordinate lien position, second only to the bank.



Location



“Delivering Outstanding Services”



Terms

- **Amendments:**
 - MCA seeking a 4th amendment to the Chapter 380 Agreement and 1st Amendment to the Subordinate Lien Agreement
 - Leverage Loan re-structure: the NMTC Financing would require Lender to relocate approximately \$7,771,457 of the principal amount of the Construction Loan and Permanent Loan to the Leverage Loan
 - Leverage Loan will have a fixed interest rate for a term of **84 months**
 - “Standstill Period” - included in amendment in order to avoid recapture, loss, or disallowance of NMTC contemplated by NMTC Financing
 - Parties entering into Deposit Account Control Agreement
 - Pledged account may (i.) be used only to pay debt service on the Cardwell Collaborative, or (ii.) pay other project costs associated with the Cardwell Collaborative if approved in writing by the City of El Paso
- Staff recommends approval of this amendment as it improves the likelihood of success of this project.



Questions?



District Map

City of El Paso Representative Districts

euclid X Q



"Delivering Outstanding Services"